

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

In the Matter of

Mechanical and Digital Phonorecord
Delivery Rate Adjustment Proceeding

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) Docket No. 2006-3 CRB DPRA
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)

TESTIMONY OF EDDY CUE

1. My name is Eddy Cue and I am global Vice President of iTunes at Apple Computer Inc. ("Apple"). I submit this testimony in connection with and support of the Direct Case of the Digital Music Association ("DiMA") in the above-captioned proceeding for setting rates and terms for the making and distribution of digital phonorecord deliveries ("DPDs").

2. I am responsible for the development and marketing of the iTunes Store (which was previously known as the iTunes Music Store) ("iTunes Store" or "ITS"). I was instrumental in the creation and launch of the iTunes Store in the U.S. in 2003. I have worked for Apple for more than seventeen years, and prior to the existence of the iTunes Music Store played a key role in the development of Apple's Online Store, as well as the engineering and management of Apple's award-winning iLife suite. I have a bachelors degree in Computer Science and Economics from Duke University.

3. The following testimony is based on my personal knowledge and information made available to me in the course of performing my duties at iTunes.

I. SUMMARY

4. The iTunes Store offers the public access to an online store catalogue of millions of songs -- each of which has been licensed for distribution from copyright owners -- available for purchase by anyone with a personal computer. As detailed more fully below, purchasing music from the iTunes Store is fast and easy. Consumers need only download the iTunes client application software (the "iTunes Jukebox"), which enables users to interface with the store and also allows them to store, catalog, and playback music downloaded to their personal computers, and to shuttle music to portable devices such as Apple's iPod. After downloading the iTunes Jukebox and clicking on the link to the store, a consumer can browse the store, find music with an easy-to-use and intuitive search engine, listen to 30-second song samples, learn more about new releases, or read reviews from other users about songs or artists of interest to them. Consumers can purchase songs from the iTunes Store with a credit or debit card, using PayPal, or using a prepaid stored-value iTunes Card, and that music purchase is then downloaded directly to the purchaser's personal computer over a fast, secure, and reliable network.

5. In my testimony, I make the following points:

- **iTunes has incurred significant risk and invested tens of millions of dollars launching and growing an online music store aimed at establishing a digital distribution channel for music that is comprehensive, secure, and easy-to-use.** The risks and investments undertaken by iTunes have yielded millions of dollars in revenues for music copyright holders, and filled a much-needed void by providing the public with a lawful, copyright-compliant and customer-friendly means of obtaining music online.

- **The preservation and growth of the online realm as a commercially viable and secure distribution channel for music has required and continues to require substantial ongoing investments, yet the business remains very much subject to erosion from both lawful and, in particular, unlawful competition.** Digital distribution of music is still in its infancy, and its survival as a commercially viable business model is by no means assured. iTS must constantly replenish its investments in transmission technology, security measures, online site design and capabilities, and customer service simply to compete with well-established brick-and-mortar retail music outlets and to stay ahead of unlawful competition from pirate services that facilitate the unauthorized distribution of music for free.
- **iTS' retail prices must continue to be positioned as a viable substitute for free music.** The traction in the marketplace gained to date by iTS is directly attributable to its focus on providing the public with a customer-friendly shopping experience and a price point that represents a viable alternative to the ubiquitous availability of free music from pirate sources. The \$0.99 per track retail price point is key to making the overall consumer value proposition compelling. It maximizes revenues for all industry participants by creating a viable substitute for free music online, thereby encouraging and expanding the lawful consumption of digital music while providing iTS with a profit margin (albeit a thin one) that encourages Apple to continue to make the investments that are necessary for iTS' survival and growth.
- **Any increase in the royalty rate for DPDs will reduce aggregate revenues for copyright holders and stall or reverse the growth of lawful digital distribution channels for music.** iTS' cost structure and margins are not flexible enough to enable the company to incur an increase in the mechanical royalty rate for DPDs without either (i) imposing a retail price hike that will reduce consumption and thereby reduce overall industry revenues or (ii) absorbing the cost input increase, eroding its margin and thereby jeopardizing its continued ability to invest or remain in the business. Based on my experience at iTunes, helping facilitate millions of digital music sales transactions, I have no doubt that an increase in the \$0.99 per track price point would lower total music purchases at the store, stall growth in customer acquisitions, and therefore -- in relatively short order -- reduce overall license revenues paid to copyright holders. Alternatively, if iTS were forced simply to absorb any increase in mechanical royalty rate, the result would be to significantly increase the likelihood of the store operating at a financial loss -- which is no alternative at all. Apple has repeatedly made clear that it is in this business to make money, and most likely would not continue to operate iTS if it were no longer possible to do so profitably.

II. OVERVIEW OF iTUNES

6. When Apple launched the iTunes Store in the United States in April 2003, millions of people already were obtaining music online. However, the overwhelming majority of them obtained that music for free and without the consent of copyright owners by using file-swapping software that facilitated the unlawful trading of music files online. Online distribution of music had certainly proven to be a popular phenomenon, but it was by no means clear whether it could be a successful business that would yield revenues for distributors, record labels, and artists and composers. While the success of Apple's portable music player -- the iPod -- and the popularity of its digital music client software -- the iTunes Jukebox -- had demonstrated the potential commercial appeal of digital music devices, no one had yet succeeded in establishing a viable business model for online sales of digital music. It is never easy to compete against a product that is free, or to persuade people to begin paying for something that they are accustomed to receiving for nothing. The iTunes Store, however, was born out of the belief that people would switch from piracy to the lawful purchase of digital music online -- and that a viable business could be forged online -- if a distributor made it sufficiently easy, convenient, safe, and secure to obtain almost any song they could want at a price point that, while not free, was attractive enough to create an overall value proposition capable of competing with free. A video introduction to our service is attached hereto as Exhibit A.

7. The iTunes music offering consists of the online "iTunes Store," which allows users to purchase permanent downloads of sound recordings, music videos, TV shows, full-length motion pictures, short films, and audio books. Individuals who wish to

access iTunes do so by way of the free iTunes Jukebox client application software, which can be downloaded from the iTunes website. The iTunes Jukebox works on computers running either the Macintosh OSX or Microsoft Windows operating systems and primarily functions as a digital media player. It allows individuals to play back CDs, music encoded or compressed in a wide variety of different formats (including but not limited to the highly popular MP3 format and the Advanced Audio Coding or “AAC” format), and those video files encoded in either the MPEG4 or H.264 formats. When combined with a suitable output device, such as headphones, speakers, or an amplifier system, it turns a user’s computer effectively into a fairly sophisticated stereo.

8. Besides functioning as a digital media player, the iTunes Jukebox acts as a powerful cataloging tool: it allows users to collate and organize their existing personal music collection on their computer. When first downloaded, it finds and sorts any digitally encoded music that might be stored on the computer’s hard drive and collates it into a personal library accessible through the iTunes Jukebox interface. It also allows users to convert music from their personal CDs into digital files for storage on their computer and import that music into their iTunes Jukebox’s so-called “library” in a choice of different digital formats. Once music has been brought into a user’s personal iTunes library, it can either be played back through the computer or be transferred or “synced” to a portable digital media player so that it can be listened to on the move. The iTunes Jukebox is compatible with more than 30 different media players from at least six different manufacturers, including Apple’s own iPod.

9. The iTunes Jukebox also acts as a seamless conduit or interface to iTS. iTS is an online shop, which allows customers to browse through a catalog of over three and a half million songs, as well as thousands of music videos, TV shows, movies, short films and audiobooks, which are available for purchase on an *à la carte* basis for permanent download. Customers can search the catalog by artist, by song and even by genre or era. They can sample music before purchasing by listening to streamed snippets (of no longer than 30 seconds in length) of any of the catalog songs, or they can download the free weekly Single Of The Week (“SOTW”) or Discovery Download, which are provided on the iTS at no cost to the customer for promotional purposes. In addition, customers can look at album artwork and read reviews on the iTS of the songs and albums before they purchase. They can even look at celebrity playlists where a featured celebrity or artist will list his or her top 12 favorite songs that can be purchased at iTS, together with explanations of why each song has significance in their lives. Finally, every time a customer browses or plays songs that are in his or her library of music within the iTunes Jukebox, iTS will suggest or recommend (if the customer chooses to enable the optional “mini-store” function) other songs or albums by the same or different artists that it believes the user may enjoy.

10. Single-track downloads from iTS are sold at \$0.99 per track and full albums are most commonly sold at \$9.99. Customers can pay for purchases with a credit or debit card, using PayPal, or using prepaid iTunes Cards (of varying monetary values). While the majority of iTunes sales consist of consumer purchase of singles for \$0.99, over 40% of tracks are sold as part of albums, rather than individually.

11. After browsing, customers with an iTS account can click to purchase their selected songs, which are then downloaded to their computer hard drive and added to their personal iTunes library. Music files purchased through iTS are encoded in the “.m4p” file format, which is essentially the AAC file format combined with the copyright protection provided by Apple’s proprietary “Fairplay” Digital Rights Management (DRM) software. The Fairplay DRM allows iTunes to enforce the content usage rules agreed with the content providers, and to set the parameters within which the songs can be used. For example, once purchased and downloaded from iTS, music can be played back through the computer, copied to a total of up to four other computers, copied or “burned” onto a writeable CD, or transferred, complete with album cover artwork (hardware permitting), onto any portable digital media player compatible with Fairplay technology. At present, songs purchased through iTS can only be directly transferred onto iPods and Motorola phones that are compatible with Fairplay.

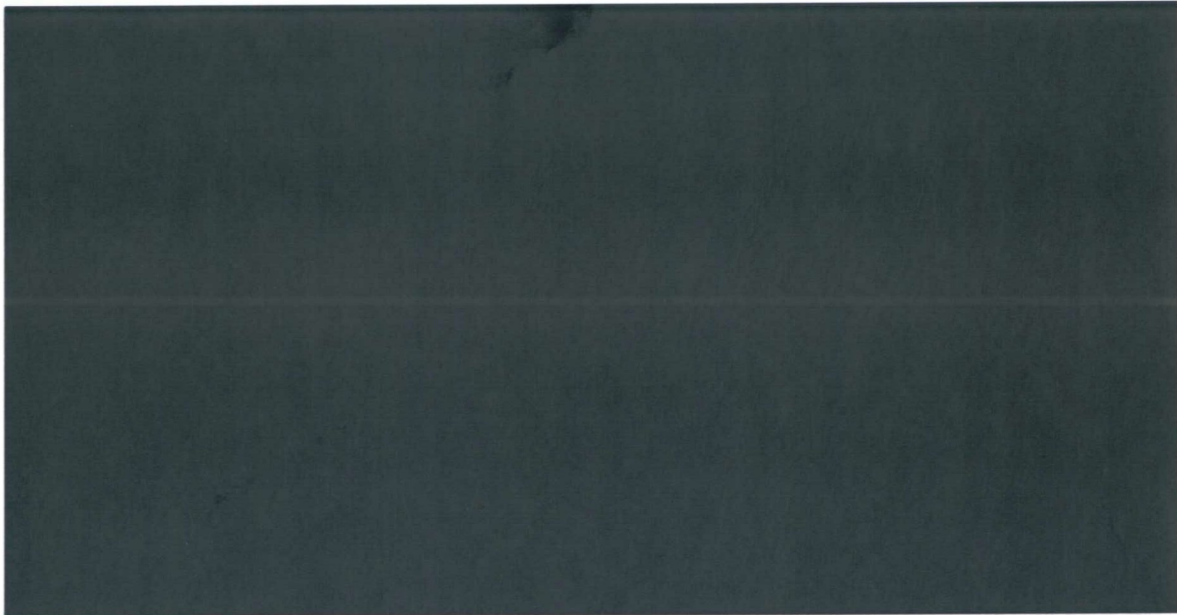
12. CDs that are burned using the iTunes Jukebox, and which contain purchased songs, are identical to those purchased from retail outlets such as Wal-Mart, Best Buy or Amazon.com. Just like their counterparts in the physical retail market, they can be played on ordinary CD players. It is even possible to print out album art and song information in the format of a CD Cover to accompany the burned CD using the iTunes Jukebox. And the customer’s ability to quickly and easily access through the store more in-depth information relating to artists, albums, and musical genres of his or her liking can make shopping at iTS a more individualized and rewarding experience than can be found at large physical CD retail outlets, and thereby facilitates repeat visits and additional music purchases.

III. iTUNES PROVIDES A COMPELLING AND VALUABLE OFFERING THAT BENEFITS BOTH COPYRIGHT OWNERS AND CONSUMERS

A. iTUNES HELPED CREATE AND CONTINUES TO GROW A LEGITIMATE ONLINE MUSIC MARKETPLACE.

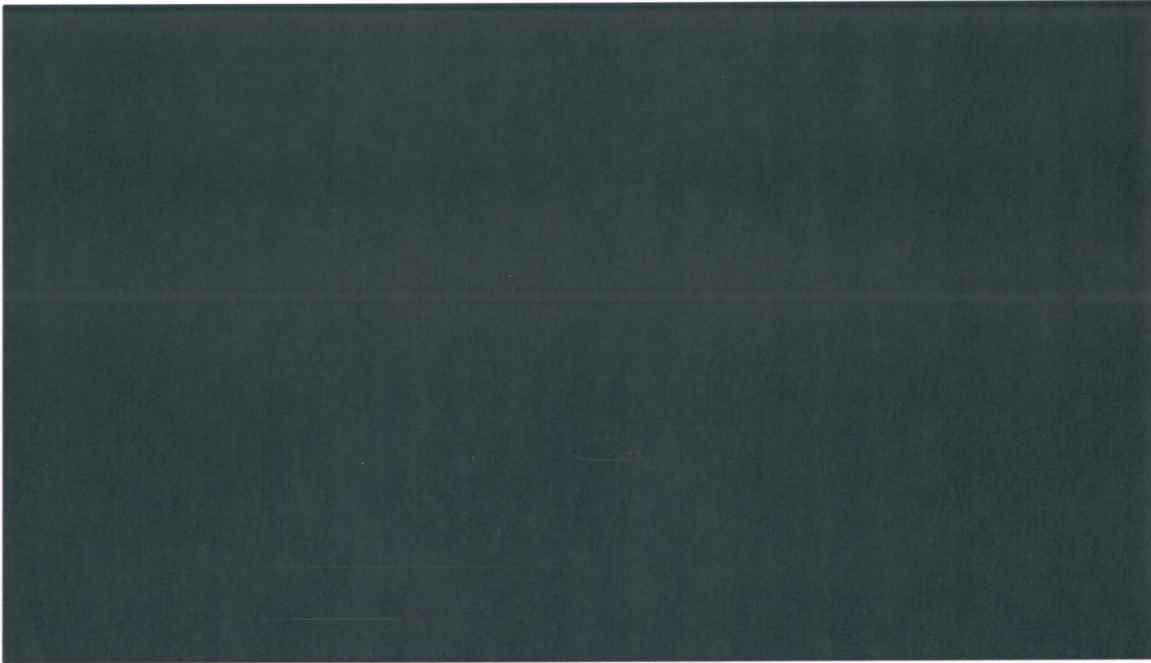
13. When the iTunes Store opened to the public in April 2003, there were millions of Americans already accustomed to obtaining music on the Internet -- mostly for free and mostly without authorization from copyright holders. The iTunes Jukebox and iTS provide the public with a lawful and user-friendly means to research, organize, sample, store, and purchase music digitally. The Justice Department's Antitrust chief recently stated that the service has seemed to solve "a problem that some observers, less than five years ago, predicted might never be solved: how to create a consumer-friendly, yet legal and profitable, system for downloading music and other entertainment from the Internet." It took iTS nearly a year before it reached its one millionth customer. Since the beginning of 2005, iTunes ~~has been gaining 1 million new customers at a rate of~~ ~~roughly every other month~~ (with significantly higher growth around the holidays, in part due to our successful marketing of iTunes gift cards).

Table 1



14. At the time of iTS' launch, copyright owners viewed digital distribution as an insecure platform for music. Today, we feature a catalog consisting of over 3.5 million songs, all licensed from copyright holders for distribution via iTS.

Table 2



A comprehensive schedule of songs and accounts added is attached at Exhibit B.

B. iTUNES PROVIDES A COMPELLING CONSUMER EXPERIENCE THAT INTRODUCES CUSTOMERS TO NEW MUSIC.

15. The growth of iTS is the product of digital functionality and capabilities designed to provide customers with a reliable and user-friendly retail experience that helps them navigate an enormous music catalog to find and purchase whatever music they are seeking, and increases their exposure to other (in many cases previously unknown) music that they might like -- all with a view toward expanding sales and demand. The painstakingly designed storefront that greets customers who visit the iTS is critical to the success of the store. As an example, the graphic below show the appearance of the iTS Music home page.



16. The store's interface is designed to make it as easy as possible for people to search, browse, sample, and purchase music. Customers are greeted with a variety of featured content, lists showing (and links to) featured tracks and songs and albums that are most popular on ITS at the time, and easy links to the many music exploration sections of the store. Among many other features, customers can search the store for songs or artists they are interested in using our advanced content search engine; listen to a 30-second preview of any of the more than 3.5 million songs available from the store; download one or more free singles every week, specially selected by iTunes editorial staff each week; learn about new releases and songs generating buzz through the New Music Tuesday email or interactive podcast or by clicking on any of the albums featured in the "swooshes" (interactive banners) and "bricks" (brick-shaped banners) found on the

store's home or genre home pages; read album reviews and artist biographies for music and artists of their choice; browse the iTunes Essentials collections of recommended song collections (by artist, genre, or other topic, such as holiday music) created by iTunes editorial staff; and check out the iTunes Originals live performances (and interviews) recorded exclusively for iTunes. The graphics below show examples of an artist biography page and an iTunes Essentials collection created by our editorial staff.

The screenshot shows a web browser window with the following elements:

- Navigation Bar:** Home, Music, R&B/Soul, Beyoncé, Biography. A "Sign In" button is in the top right.
- Artist Header:** "Beyoncé" in large text.
- Biographical Data:**
 - BIRTH NAME:** Beyoncé Giselle Knowles
 - BORN:** September 04, 1981 in Houston, TX
 - GENRES:** R&B/Soul, Dance, Contemporary R&B, East Coast Rap
 - YEARS ACTIVE:** '90s, '00s
- Photo:** A portrait of Beyoncé in a shimmering, sequined outfit.
- Biography Section:**

Biography

Beyoncé Knowles is one of the many impressive artists of the new millennium, but an individual in her own right. She's praised for her wildly inventive presentations in music and film, and respected for her down-to-earth persona. With her grace, beauty, charm, and gift for entertaining, Knowles has become a star and an American icon.

Born in Houston in the fall of 1981, Beyoncé Giselle Knowles started performing at age seven. From dance classes to singing in the church choir, Knowles was a natural. She and cousin Kelly Rowland met Latavia Roberson during this time, and the trio formed a group with Letoya Luckett. Mathew Knowles, Beyoncé's father and Rowland's legal guardian, signed on to be the girls' manager. This situation would ultimately lead to the formation of one of the greatest female R&B groups of all time — **Destiny's Child**.

Destiny's Child made its debut 1990 and within ten years, the vocal act had experienced personal and political highs and lows that fueled the group's desire to make it big. **Destiny's Child** sold 33 million albums worldwide by 2002 and earned a slew of Grammys and additional music awards. "Jumpin' Jumpin'," "Bills, Bills, Bills," "Say My Name," and "Survivor" were smash hits, and the group appeared unstoppable.

In 2001, Knowles, Rowland, and Michelle Williams allowed themselves a break from the singing group and tried their hands at individual solo careers. Before landing several movie roles,
- Right Sidebar:**
 - SEE ALL BEYONCÉ** (with arrow icon)
 - ALERT ME** (with arrow icon)
 - TELL A FRIEND** (with arrow icon)
 - FOLLOWERS** (with arrow icon): Natalie
 - CONTEMPORARIES** (with arrow icon): Kelly Rowland, Justin Timberlake, Ashanti, Craig David, TLC, Michelle Williams, Ciara, Christina Aguilera, Janet Jackson, Monica

iTunes Essentials '90s Alt Rock
Various Artists
Release Date: Mar 08, 2005
Total: 25 songs
\$24.75 [BUY ALL SONGS](#)

The Basics
It started in the Pacific Northwest and emerged as the last great rock upheaval . . . before becoming a catchall term for nearly every style of music that included guitars. From grunge to rap-rock, these are the alternative-rock radio staples that followed "the year punk broke."

[TELL A FRIEND](#)

The Basics | [Next Steps](#) | [Deep Cuts](#) | [Complete Set](#)

#	Name	Time	Artist	Album	Price	Buy Song
1	Smells Like Teen Spirit	5:01	Nirvana	Nevermind	\$0.99	BUY SONG
2	Jeremy	5:19	Pearl Jam	Ten	\$0.99	BUY SONG
3	Loser	3:56	Beck	Mellow Gold	\$0.99	BUY SONG
4	Creep	5:33	Stone Tem...	Core	\$0.99	BUY SONG
5	Sabotage	2:58	Beastie Boys	Ill Communication	\$0.99	BUY SONG
6	You Oughta Know	4:09	Alanis Mori...	Jagged Little Pill	\$0.99	BUY SONG
7	Basket Case	3:03	Green Day	Dookie	\$0.99	BUY SONG
8	Losing My Religion	4:29	R.E.M.	Out of Time	\$0.99	BUY SONG
9	Closer	6:13	Nine Inch ...	The Downward Sp...	\$0.99	BUY SONG
10	Wonderwall	4:18	Oasis	(What's the Story) ...	\$0.99	BUY SONG
11	What I Got	2:51	Sublime	Sublime	\$0.99	BUY SONG
12	Come Out and Play	3:17	The Offspri...	Smash	\$0.99	BUY SONG
13	Been Caught Stealing	3:34	Jane's Addi...	Ritual de lo Habitual	\$0.99	BUY SONG
14	Mysterious Ways	4:03	U2	Achtung Baby	\$0.99	BUY SONG
15	Black Hole Sun	5:18	Soundgarden	Superunknown	\$0.99	BUY SONG
16	Buddy Holly	2:39	Weezer	Weezer	\$0.99	BUY SONG
17	Just a Girl	3:29	No Doubt	Tragic Kingdom	\$0.99	BUY SONG
18	All Apologies (Live)	4:23	Nirvana	MTV Unplugged I...	\$0.99	BUY SONG
19	Killing in the Name	5:14	Rage Again...	Rage Against the ...	\$0.99	BUY SONG
20	Would?	3:28	Alice In Ch...	Alice In Chains: G...	\$0.99	BUY SONG
21	The Beautiful People	3:38	Marilyn Ma...	Antichrist Superstar	\$0.99	BUY SONG
22	Miss World	2:59	Hole	Live Through This	\$0.99	BUY SONG

17. iTS also provides recommendations for other songs and artists in which a customer might be interested. Each time a customer views a particular album within iTS, iTS gives the customer information about music that other customers interested in the same music also bought on iTS (as shown in the graphic below).

The screenshot shows the iTunes interface for the album 'Eyes Open' by Snow Patrol. The top navigation bar includes 'Music', 'Alternative', 'Snow Patrol', and 'Eyes Open'. The album cover is displayed on the left, with the title 'Eyes Open' and genre 'Alternative' below it. The release date is 'Released May 09, 2006' and the total content is 'Total: 12 songs, 1 booklet'. The price is '\$9.99' with a 'BUY ALBUM' button. A 'Gift This Music' link is also present. On the right, there are links for 'SEE ALL ALBUMS', 'ALERT ME', and 'TELL A FRIEND'. Below these are sections for 'TOP SONGS' and 'LISTENERS ALSO BOUGHT'. The 'TOP SONGS' section lists 'Chasing Cars', 'Run', 'Chocolate', 'Hands Open', and 'Open Your Eyes'. The 'LISTENERS ALSO BOUGHT' section lists 'Continuum' by John Mayer, 'The Last Kiss (Original Motion Picture Soundtr...' by Various Artists, 'Dusk and Summer' by Dashboard Confessional, 'Under the Iron Sea' by Keane, and 'Stadium Arcadium' by Red Hot Chili Peppers. At the bottom, a table lists the tracks on the album.

	Name	Time	Artist	Album	Price
1	You're All I Have	4:32	Snow Patrol	Eyes Open	\$0.99 BUY SONG
2	Hands Open	3:15	Snow Patrol	Eyes Open	\$0.99 BUY SONG
3	Chasing Cars	4:25	Snow Patrol	Eyes Open	\$0.99 BUY SONG
4	Shut Your Eyes	3:15	Snow Patrol	Eyes Open	\$0.99 BUY SONG
5	It's Beginning to Get to Me	4:33	Snow Patrol	Eyes Open	\$0.99 BUY SONG
6	You Could Be Happy	3:02	Snow Patrol	Eyes Open	\$0.99 BUY SONG
7	Make This Go On Forever	5:45	Snow Patrol	Eyes Open	\$0.99 BUY SONG
8	Set the Fire to the Third Bar	3:22	Snow Patrol...	Eyes Open	\$0.99 BUY SONG
9	Headlights On Dark Roads	3:29	Snow Patrol	Eyes Open	\$0.99 BUY SONG

In addition, if a customer has chosen to use the optional Mini Store functionality of the iTunes Jukebox, when the customer selects a particular track in his or her iTunes Library, the iTS Mini Store – which (as shown in the following graphic) appears directly below the Library display – will provide the customer with information regarding content by the same and other similar artists that is available for sale in iTS. The customer then can enter the full iTS directly from the Mini Store, and preview and purchase any of the music recommended by the Mini Store.



18. Customers also can encourage others to explore music available on iTunes through our “Tell A Friend” email functionality (which allows a customer to send friends an email with a link to a particular album available on iTunes), by creating and publishing to iTunes, for all customers to see, an iMix collection of tracks selected by the customer (which the customer also can email to friends with a link to iTunes), and even by gifting particular tracks or albums to friends via email.

19. By providing the public with a single source for millions of musical compositions, background information about the songs and the artists, short samples of very song available for purchase, and cross-references to other recordings and artists reflective of a user’s interests and tastes, iTunes functions not only as a retail outlet for music purchases but also as an informational and promotional vehicle for hundreds of

thousands of artists, many of whose works are not readily available at physical retail outlets. iTunes provides anyone who downloads the free iTunes Jukebox software a powerful music exploration tool, and many people clearly use the store as an easy to access and comfortable information resource and sampling mechanism, as evidenced by the fact that in customers on average stream-sample about nine songs before purchasing one.

20. Thus, even though some customer traffic may not yield an immediate purchase from iTunes, the added exposure to new songs and new artists unquestionably has a multiplier effect -- translating into sales on other occasions and at other outlets, just as in the physical world. Recently, *BillBoard* (September 2, 2006) reported that James Blunt's "Back to Bedlam" is the third-highest-selling artist of 2006 with 2.1 million units sold in the United States and more than 10 million copies worldwide since 2004:

Atlantic released it in Blunt's native United Kingdom a full year before his October 2005 debut stateside. In North America, the company used an Internet campaign that started with months of seeding music and info on tastemaker blogs, bulletin boards and music-community Web sites to build an audience for the album. Blunt also received early championing from digital services including AOL Music, Yahoo, MySpace and iTunes.

This multiplier effect, in which an artist or song's early success on digital services like iTunes contributes to considerable success later in terms of physical CD sales has repeated itself on numerous occasions. For example, only a short time ago Death Cab for Cutie was an independent label band with an intensely loyal, but not widespread, fan base. Death Cab for Cutie's music was featured prominently on iTunes, and the band did a special recording session for the store, the "Studio X Sessions," that went to number one on iTunes. This was followed by an iTunes Originals release that featured more new

Death Cab for Cutie songs -- all of which stoked interest in the band from major labels and helped propel their major-label debut release for Atlantic (a part of the Warner Music Group), "Plans," to sales exceeding 700,000 units in the U.S.

21. Other bands such as Fall Out Boy, Panic! At the Disco, and Cute is What We Aim For all were able to parlay initial success on iTunes into a greatly expanded fan base and significant overall sales throughout the U.S. Meanwhile, artists such as Joshua Radin, Kate Havnevik, and Sandi Thom each obtained recording deals from major labels after their music gained prominent exposure on iTunes. iTunes' "developing artist program" continues to nurture talented new artists that have yet to gain significant radio or retail store exposure, raising the profile of bands like She Wants Revenge and Under the Influence of Giants.

22. One unique element of the iTunes storefront is that *none of the songs or artists* that are featured in the store, including on its home page, on a given day are there as a result of any consideration from the artists or their labels. The graphics below show examples of how we use iTunes' "swooshes" (which can be navigated with the arrows on each side to reveal additional featured content) and "bricks" to highlight content available for sale on the store.



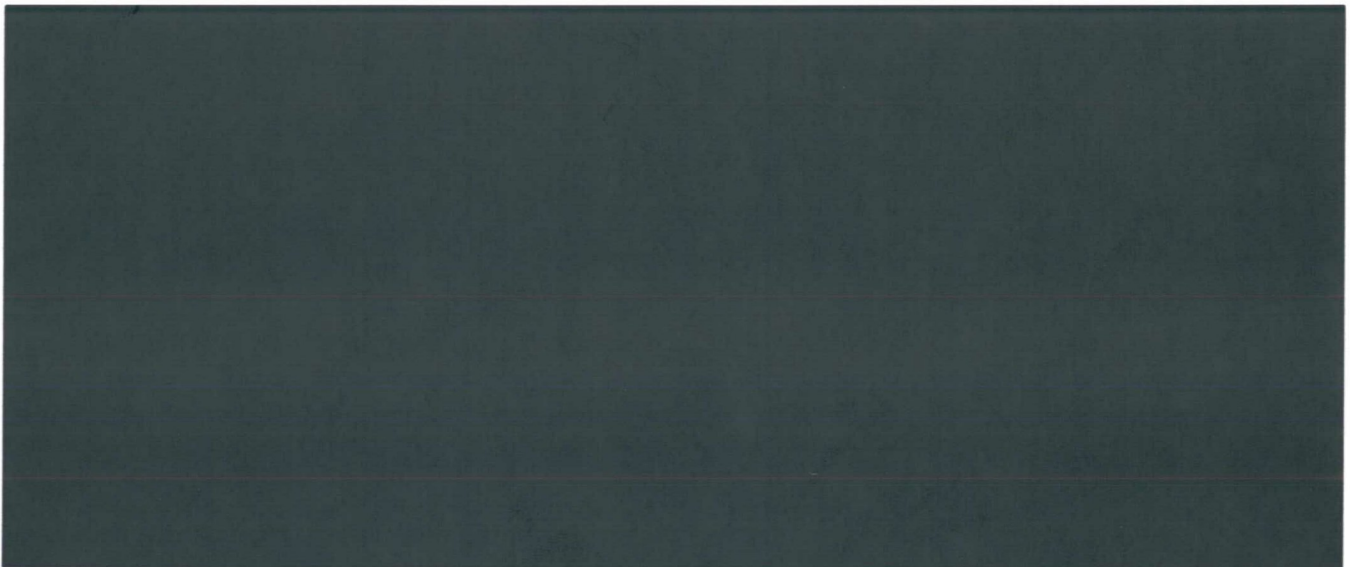
As always, all of the above content was selected by iTunes editorial staff in its sole discretion, in this case to be featured on the iTS Music home page. We pride ourselves on our unfettered editorial discretion, which allows us to focus our features on music we believe customers will enjoy, and allows us to build a relationship of trust and confidence with our customers. From the beginning, iTS has been “all about the music.” Those artists and songs that are highlighted in the storefront are selected mainly to expose our customers to a broad swath of music and drive interest in, and purchases of, musical works that might not otherwise come to the attention of our customers. While the artists and their labels certainly work with us when one of their songs is selected by iTunes to be

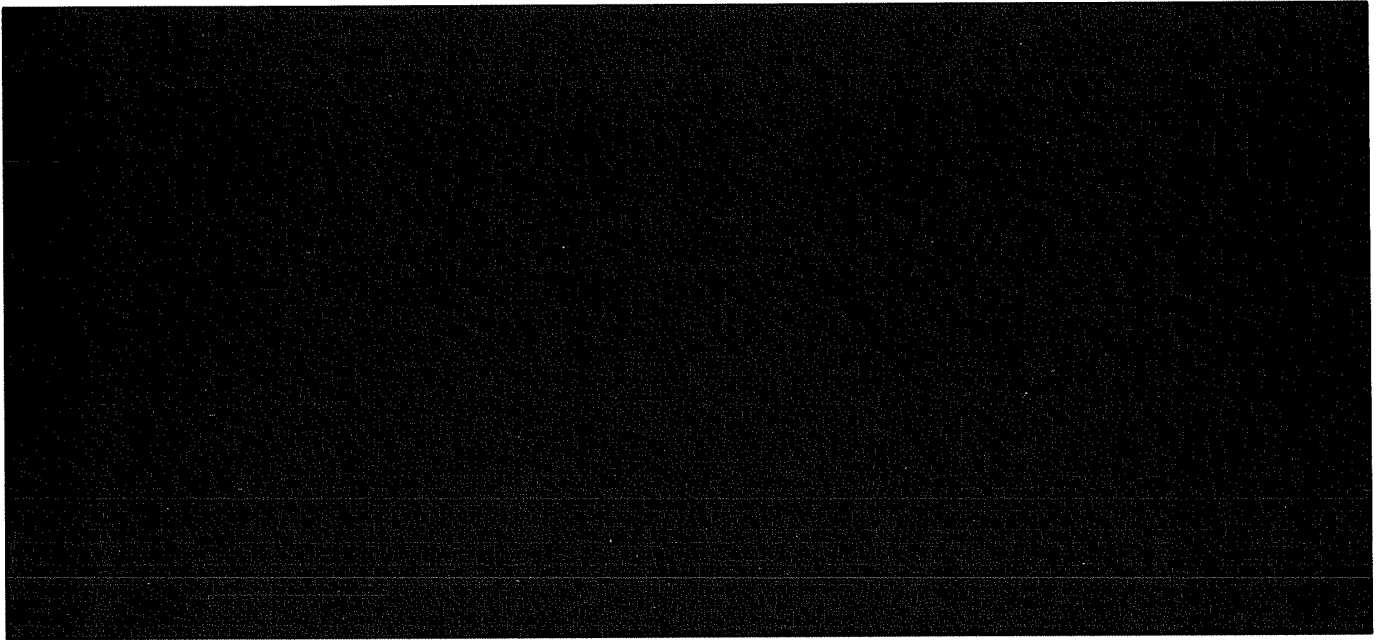
featured in a “swoosh” or “brick,” or chosen by iTunes as a Single Of The Week, there is no advertising on iTS, no sponsored banners from record labels, and no payment for any placement on the storefront. This “music first” emphasis has helped to strengthen our customer relationships, engendering loyalty and earning iTunes plaudits from independent labels, which typically cannot afford the high marketing and promotional incentives associated with obtaining prominent exposure at physical retail outlets.

23. A key promotional feature of iTS is the “Single Of The Week,” which (along with another similar program, the “Discovery Download”) each week offers customers a free download of a song from an up-and-coming band or artist. When we select a particular song as the SOTW, we will obtain from the record label in question an authorization to offer it to the public at no charge on a royalty-free basis during the one week period in which it is featured as the “Single of the Week.”

24. As set forth below, the SOTW has had a significant impact on driving sales of music from new artists:

Table 3





The chart demonstrates the clear and significant benefits of the SOTW promotions by showing the marked degree to which purchases of songs featured in a SOTW promotion increase following the week during which the song is available, compared to the week prior to the applicable SOTW promotion. More complete information on the SOTW is attached at Exhibit C. While other factors may contribute to the increase in sales, the significant impact of the SOTW is undeniable. The songs generally experience a many-fold increase in iTS sales after being featured as a SOTW. Most importantly, this benefit is felt by all participants in the value chain, from iTS to the record label to the composer of the selected song.

Table 4

A large black rectangular box redacting the content of Table 4.

25. And these numbers do not take into account the multiplier effect alluded to earlier, in which awareness of an artist or song due to exposure on iTunes translates into greater sales for that artist or song from other online distributors and physical CD retailers. We have observed that an artist's song being featured as SOTW can create a springboard effect for success industry-wide.

Table 5

A large black rectangular box redacting the content of Table 5.

As shown above, the tracks “Bad Day” (by Daniel Powter) and “Over My Head” (by The Fray) both enjoyed significant increases in sales on iTS following their being featured as a SOTW. However, the benefits to these tracks (and thus to the relevant copyright owners) of being selected and featured by iTunes as a SOTW go beyond increased sales

on iTunes. For example, the track “Bad Day” was the SOTW during the week of August 2, 2005. On October 8, 2005, the track debuted on Billboard’s Adult Top 40 chart at #38. By April 8, 2006, the song was #1 on the Adult Top 40 chart and #1 on Hot 100 chart. The track “Over My Head” was the SOTW during October 11, 2005 and debuted on Billboard’s Adult Top 40 on November 19 at #37, peaking on March 25, 2006 at #5 and on the Hot 100 in June at #8. Neither artist was on these charts at the time of their being featured as our SOTW, and they each rose quickly up the charts following their success on iTunes. It is my opinion, based on my experience in the music business, that each song’s climb up the charts was directly influenced by its being featured as our SOTW. Along with other promotional efforts by the artists and their labels, my experience leads me to believe that iTunes’ selection of these tracks as SOTWs, and the increased exposure within iTunes resulting from that selection, helped propel these new artists toward the top of the overall Billboard charts.

26. The SOTW and other iTunes promotions, coupled with the user-friendly interface of the storefront and the ready availability of track samples, album reviews, background information about artists, and links to other songs and bands that mesh with users interests all reflect the core purpose of iTunes -- which is to increase public exposure to, and purchase of, more music. iTunes enables the public to discover more new music, learn about new artists that they might otherwise never hear, explore different genres that they might previously have overlooked and track down long-forgotten (and often out-of-print) songs. What we offer is an opportunity that is not readily available in the physical world: in effect, we lower transaction costs and barriers for consumers by making it easier for them to hone in on music and artists they are interested in, and to gain

awareness of new bands and tracks that they might not otherwise come across, let alone purchase. The result is to increase overall levels of music consumption by facilitating music purchases that likely would not take place in the physical world.

27. For these reasons, iTunes has been called the “archetypal Long Tail company,” (*New York Times Magazine*, Sept. 10, 2006) and credited with expanding the breadth and diversity of musical works to which consumers are exposed and ultimately purchase -- thereby enabling publishers and music companies to “exploit niche demand more effectively than ever before” Musical works that are unable to obtain meaningful shelf space at physical retail outlets are as readily accessible to iTunes customers as the hit records that dominate the aisles at CD stores.

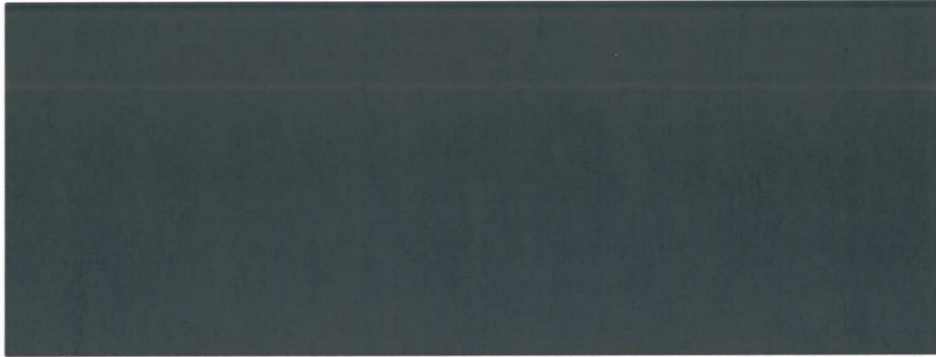
28. Universal Music recently launched an initiative in which it made approximately 3,000 songs from its out-of-print catalog of European artists available for re-release online. In just nine months, online consumers purchased more than 250,000 tracks from this out-of-print catalog, which featured some songs that had been unavailable for over three decades. In noting the initial success of the initiative, Universal stated:

Overall, these results lend weight to author Chris Anderson’s Long Tail theory . . . that given the growing choice and diversity of music that is legitimately available through the Internet consumers will be increasingly drawn to recordings beyond current hits. In this scenario, the total sales of this repertoire (the long tail) can match or exceed those of the hits. (Universal Press Release, October 17, 2006).

At iTS, the percentage of sales attributable to the relatively narrow band of hit songs and hit records is significantly lower than the comparable metric for physical CD outlets such

as Tower and Wal-Mart, highlighting the ability of iTunes to drive sales of a broader and more diverse array of musical works. This is represented in the following table:

Table 6



Based on my experience in the music business, I understand that the significant extent of our sales of music beyond the Top 200 hits is not typical of traditional retail environments, and is a unique benefit offered to consumers and copyright owners by digital distribution.

29. Independent record labels have enjoyed a boost in business in recent years, thanks in part to the degree to which iTunes and other digital music outlets broaden consumer awareness of, and exposure to, artists and albums that lack the marketing muscle provided by major labels and large retail CD outlets. As the graphic below shows, we continually highlight indie content in iTunes on our various Indie Spotlight pages.



There is also evidence showing that iTunes and other digital distribution outlets for music are spurring the record labels to expand the number of albums they release each year, due to the lower costs associated with manufacturing, transporting, and inventorying digital releases. Earlier this year, *Billboard* [March 18, 2006] reported that the number of albums released last year was a record-breaking 60,331, a 35.6% increase over 2004's total of 44,476, which itself was 16% higher than the 2003 total. *Billboard* stated that "[l]ast year's increase in releases is driven by an influx of digital-only, indy-released product." SoundScan defines a digital-only release as those albums in which 99% or more of sales occur through digital services. Thus, iTunes and other online retailers are

helping to drive the release of more music by record labels, thereby enhancing the ability of composers and publishers to find an audience for their works.

30. iTunes is expanding the music marketplace for all industry stakeholders, including copyright holders, and not just cannibalizing sales from physical outlets. This process of enlarging the overall pie by lowering pre-existing barriers to transactions requires continued investment and innovation in order to maintain an interface with customers that facilitates transactions and incremental sales increases. These investments are aimed not just at acquiring incremental customers, but at turning those customers into habitual purchasers of music online. iTunes has gained traction as a reliable, customer-friendly and secure outlet for digital music transactions, and has thereby played a substantial role in transforming the online realm from a hostile environment for copyright holders into a secure distribution channel that provides artists and publishers with a significant new revenue stream.

IV. THE MARKETPLACE IN WHICH WE OPERATE IS HIGHLY COMPETITIVE, RAPIDLY EVOLVING, AND CONTINUALLY POSING NEW CHALLENGES

31. While iTunes has met with noteworthy success since launching our store in the United States in 2003, there have been competitive challenges every step of the way. I believe a key reason for the market's acceptance of our offering has been the selection of a price point for our product that is attractive to consumers, thereby encouraging use of the store and allowing us to be competitive with the two sectors of the market against which we compete, while still covering our operating costs and permitting a small margin for profit.

32. Not only must iTunes compete with other online music services for market share in providing legal online music, but we face powerful competitive pressure from online music piracy and the physical retail world. It is worth looking at each of these in turn, to see how they have affected (and continue to have an impact on) our business model and offering and our pricing structure.

33. Although we compete with a broad range of entertainment and music products and services, illegal music -- including peer-to-peer ("P2P") services -- is our most formidable competitive rival. The emergence of P2P services was facilitated by significant advances in terms of technology and better access to the Internet of the late 1990s. More and more households began to use the Internet regularly for email and free access to information and content generally, and the growing speeds and falling prices of broadband access meant that it became more viable to distribute large media files over the internet by email or by using increasingly sophisticated filesharing networks. I am informed and believe that P2P networks sprang up on a worldwide basis and spread quickly, with services such as the old Napster, KaZaA, Grokster, and Gnutella (to name only a handful) allowing individuals to find and distribute music and video (the vast majority of it without authorization from rights holders) quickly, easily, anonymously and, most importantly, for free. The combination of pervasive broadband networks, increases in storage capacity, and more efficient file compression technologies all combined to spur the emergence of services and technologies predicated upon facilitating online music piracy.

34. Although the recording industry has taken legal steps to combat these networks in the U.S., with some notable court victories, its overall success in combating piracy through legal action has been limited. Each successful yet costly lawsuit can be matched by the arrival of dozens of new networks and the many millions of individuals around the globe that continue this illicit practice. The demand for free digital music has simply grown and the technology for distributing it illegally (together with the quality of the media being distributed) has improved.

35. In light of the perceived limited reach and impact of the legal action taken against piracy, we believed that the best way to successfully compete with the online pirates would be for us to offer a compelling consumer alternative to illicit downloading. Obviously we will never be cheaper than free, but we always hoped that if we were to offer a better product at a fair and competitive price, we would be able to attract to our service those individuals who would otherwise turn to illegal download services to obtain their music.

36. To this end, we had to come up with a product that was attractive in terms of both substance and pricing. One method to achieve this was by the manner of distribution of content. As I have described above, we designed a music store interface that is extremely easy to use yet highly sophisticated in terms of its functionality, and combined it with strong brand recognition to reassure people of the quality of the product. iTS seamlessly blends into the iTunes Jukebox software so that the task of buying songs, adding them to a user's personal collection and then transferring them onto

a CD or a compatible portable digital media player is not only an enjoyable retail experience but also as technologically painless as possible.

37. Another method we employed was carefully selecting the correct compression and DRM technology to sell our songs. We chose the AAC codec to encode our music as it provides near CD quality sound at higher compression rates than the MP3 files more commonly favored by illegal file sharers. This means that the files purchased from iTS are smaller than those being distributed via peer-to-peer networks, which results in quicker download times, greater ease, and better quality music in a product that also takes up less space on an individual's computer hard drive, portable player, or mobile phone. Furthermore, we developed and employed our own proprietary DRM, Fairplay, in conjunction with the AAC file format, in order to ensure that there was a fair balance between the ability of the user to enjoy the music and proper protection of the rights of the copyright holders. iTunes has played a significant role in helping to enhance the security and revenue opportunities afforded composers in the online world.

38. As I stated above, piracy has been a key factor in determining our price point in the U.S. and other markets around the world. It may be stating the obvious, but as we are competing with a product that is free, we need to pick a price that balances that reality against the quality of our product and our variable costs for distributing that product, which affords iTS the opportunity to earn a profit. We believe that a large measure of our success is attributable to the fact that we price songs for less than a dollar, a price point that diminishes the financial "rewards" of pirating "free" music. And we believe that if the price of our songs were to increase, many people would switch back to

piracy. From my perspective and experience, the \$0.99 per-track retail price represents the price point that maximizes overall revenues from iTS for all industry stake-holders. If we had to raise that price, I believe total sales transactions and aggregate revenues would fall precipitously.

39. The other principal competitor we face is, of course, the retail market for CDs. We have always viewed our product as going head to head with CDs, and in fact, as noted earlier, a significant portion of our sales consist of sales of entire albums, as opposed to individual tracks. Although digital downloads and CDs do have differing characteristics in terms of functionality, and each has certain advantages over the other, both provide the consumer with essentially the same thing: a permanent copy of his or her chosen song, album or music video, which can ultimately be played back at will through a compatible computer, portable digital music player, and even a CD player or stereo. Accordingly, one of the factors we have to take into account when setting our price point is the retail price of physical CD albums and single. We have found that consumers generally expect that digital albums should cost somewhat less than their physical counterparts. Given that, unlike CDs, we provide no tangible item to the consumer, and our digital products are wrapped in DRM unlike their CD counterparts, these consumer expectations would not appear to be unreasonable. In any event, as we need to deal with the market reality of these consumer expectations, our albums tend to be priced somewhat lower than physical CDs.

40. When viewed in light of fierce competition from online retailers and music store chains, the relative infancy of the retail market for online music and the

erosion of the music market generally through piracy, [REDACTED]

[REDACTED]. In essence, [REDACTED]

[REDACTED], and we believe that our relative success in the marketplace bears some testament to the correctness of this approach.

V. DEVELOPING THE iTUNES STORE COST TENS OF MILLIONS OF DOLLARS AND REQUIRES MILLIONS OF DOLLARS OF ONGOING INVESTMENT AND EXPENSES

41. Digital distribution of music to retail consumers is neither simple nor cheap. iTunes has committed a substantial amount of capital and resources into creating a storefront and distribution network that is customer-friendly, reliable, and secure. A substantial number of users with accounts may not be regular or repeat customers -- and our business model is not predicated upon recurring revenue streams -- so there is an ongoing need for investment and innovation aimed at rekindling interest from prior customers and recruiting new ones. [REDACTED]

[REDACTED] To continually attract repeat buyers and increase the frequency of other buyers, we are constantly investing in making the store easier to use and more appealing to consumers.

42. Our operating margin is saddled with substantial costs, reflecting both the investment required to develop and bring the iTS to market and the expenses associated with ongoing maintenance and operation. It is true that online music does not face the

same type of manufacturing and distribution costs that the physical retail model faces in manufacturing and physically distributing a CD. However, online music involves a whole host of other very significant costs that do not have any counterpart in the offline world.

43. iTunes has invested [REDACTED] into developing a store that provides music shoppers with a comprehensive catalog and an interface that is fast, clean, intuitive, and easy for even beginners to use. The sophisticated yet user friendly software applications, together with the encoding and digital rights management techniques that form an integral part of our strategy to provide an attractive and competitive alternative to piracy, have been extremely costly to develop and to maintain. iTunes has invested substantial capital in the development and implementation of its hardware and software for iTS, including its “back office” and financial services infrastructure, as well as its online store interface, and in procuring and maintaining sufficient bandwidth to be able to deliver a high-quality service during peak hours with no discernible contention issues. A substantial portion of the millions in development costs incurred by iTunes is related to the engineering costs associated with designing and deploying the software codes and hardware devices necessary to ensure that the store functions in a secure, reliable and customer-friendly manner, and can adapt readily new features and capabilities needed to keep pace with, and ahead of, a highly competitive marketplace.

44. These costs continue on an ongoing basis, as illustrated by the P&L statement attached at Exhibit D. The most significant cost that iTS has to meet is that of

the licensing agreements that it has entered into with record labels to provide its extensive catalog of music. Royalty payments to record labels, including payments by the labels for publishing rights, [REDACTED]

[REDACTED]. Much as in the physical retail market, the bulk of these royalty payments go to the record labels for the sound recording right, (from which portion artists are paid their royalties), but the right to copy and distribute the musical composition also is included in this amount. Again, as in the physical retail market, the record labels bear responsibility for distributing a portion of the royalties paid to them by iTunes to songwriters, in accordance with their agreements with the publisher and composer agencies. iTS' costs would rise significantly if, following the conclusion of this proceeding or at some other time in the future, the record companies stopped sublicensing mechanical rights from copyright holders or if the sums record companies must pay to publishers for mechanical rights were to increase (i.e., any such increase undoubtedly would be passed through to iTunes).

45. As shown by Exhibit D, bandwidth costs are a significant component of our variable costs, [REDACTED]. As the service grows, our bandwidth needs to increase as well, so we must continue to invest in the development and maintenance of our product distribution infrastructure.

46. Our distribution infrastructure not only must be fast and reliable, but it also must be secure in order for iTS to stay one step ahead of the online pirates. Since its launch, both iTS and the iTunes Jukebox have been through numerous systems upgrades or versions not only in order to improve the experience for the end user but also to

maintain the effectiveness of the Fairplay DRM, which has been (and continues to be) the subject of hacking attempts. We have needed to stay one step ahead of projects that seek to break the DRM and thereby place the rights of the publishers and the labels at risk. Our continued investments are protecting the rights holders' interests, but at a significant cost to iTunes. There are also risks and costs associated with the uncertain and still-evolving legal framework governing online music distribution. For instance, performing rights organizations have taken the position that their right to a performance royalty is implicated in connection with the manner in which permanent song downloads are offered and distributed online. While we do not share this view (and it certainly does not prevail in connection with the offering and distribution of music at physical retail outlets), it represents an ongoing issue.

47. Another key cost is that of marketing. There is a real need to educate the public on the benefits of purchasing legal online music, particularly given the incumbency of the physical retail market (and the familiarity of the music buying public with CDs), the infancy of the legal online music market, and the fairly established nature of illegal downloads. The fact that we don't have walk-in stores like physical retailers do is a disadvantage as well as an advantage: although we do not have to bear the same types of overhead costs as a walk-in store, we don't get foot traffic in the way that physical stores do, and so have to rely upon people visiting Apple's website or downloading the iTunes Jukebox software. This requires constant reaffirmation of the benefits of our service through specific marketing initiatives that let consumers know about iTunes, where to locate it, how to use it, and offering enticements for them to do so. This is a major expense to us each year, [REDACTED]

██████████. iTunes also makes gift cards available to the public through a variety of retail outlets and promotional initiatives. While these cards help to expand our customer base by driving consumers to the store who might otherwise not visit, the costs of making and distributing the cards -- and partnering with retail outlets or undertaking card-related promotions -- effectively reduce the margin on tracks purchased with them. We view the costs associated with gift cards as a marketing expense.

48. Consumer awareness of our product also has developed via advertising campaigns that feature iTunes and iPods. Such advertising is important to developing and expanding consumer interest in our digital music offerings, and has helped to strengthen the public awareness of digital distribution as a new and effective mechanism for purchasing music. ██████████ iTunes' proportionate contribution (based upon revenues) to

██████████ Apple's overall music advertising budget has been growing steadily, exceeding \$5 million during the last quarter alone. This cost element is not reflected in the attached

P&L. Of course, the benefits to iTunes and all participants in the music industry from Apple's overall music advertising are not limited just to iTunes' proportional share.

49. Credit card processing fees associated with iTunes are another key ongoing cost that must be taken into account when considering the cost structure of our permanent download business. These fees are growing rapidly each year, ██████████. The size of these fees as a percentage of retail revenue can vary from quarter to quarter, due to the fact that there are certain minimum fees per transaction payable to the credit card companies, and depending upon the number and type of music products (songs or albums) purchased by iTunes customers.

In particular, the sale of single downloads generates proportionally far higher credit card transaction costs. As a result, our margins on small purchases typically are either non-existent or negative. In fact, we can only survive if we are generally able to convince customers to purchase multiple tracks at a time. Moreover, because the vast majority of customer transactions are consummated with credit cards, we face a significant amount of credit card fraud risk (copyright owners demand payment for downloads even if we do not get paid due to fraud). The fraud risk is heightened in the permanent download business -- as compared to physical retailers and other online business models -- because,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Moreover, due to heightened public concern over online fraud and identity theft, we also incur higher fraud prevention costs than our competitors at physical outlets. In short, in any quarter, credit card fees constitute a significant drag on our margins.

50. The margin figures shown in Exhibit D [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

51. The fact is that, even though we are optimistic about the future of the online music marketplace and heartened by iTunes' success so far, there are significant

risks posed by very high operating costs, the infancy of the market, the evolving nature of business models attempting to provide digital music to customers, and the competitive pressures that we face -- in particular from piracy. This is a business of very small margins, but margins nonetheless. It is precisely because iTunes recognizes this that, although faced with an extremely competitive marketplace, iTunes has never lost money on a global basis.

VI. A FAIR ROYALTY RATE WOULD ENSURE THE CONTINUED PRESERVATION AND EVOLUTION OF LAWFUL DISTRIBUTION OUTLETS FOR DIGITAL MUSIC DOWNLOADS

52. Any reasonable royalty should reflect the substantial investments and risks we have incurred to date, the competition and limited margins that iTunes faces, and the significant value we provide to copyright holders. An excessive royalty rate would stifle any effective competition with piracy or the physical retailers, as we would either be forced to raise prices, limit further investment in present and future services or even simply drop out of the market. The net result would be the same: the adoption of legal digital music would slow significantly or fall, and this would naturally have ramifications for everyone in the industry, including the artists and composers.

53. As I understand it, a rate must be set in this proceeding on the basis of various statutory factors involving different objectives. As this marketplace begins to evolve from the stage of early adoption, consumers will be faced with a choice of where to obtain new music going forward. The threat of piracy is real and shows no signs of diminishing in the next five years. To encourage continued consumer migration to lawful digital distribution platforms, and to encourage companies like Apple to continue to incur

the risks and investments incurred by iTunes to build legitimate outlets for the digital distribution and consumption of music, the online music industry should not be saddled with excessive costs. To the contrary, to make the tremendous investments necessary to create and grow this market more reasonable, the costs associated with our business need to be reduced.

54. Apple has been successful to date furthering the availability of creative works to the public. However, given the prevalence and easy accessibility of free illegal music, raising our costs directly (or indirectly by raising costs on the record labels that supply us with content) could result in reducing our presence in the marketplace. Importantly, the rate for digital downloads should not be set higher than the rate for physical CDs. To the contrary, the rate should be lower than the rate for physical CDs because digital retailers such as iTunes have had to incur such substantial risks and development costs simply to establish a lawful digital distribution platform. In addition to the costs associated with establishing and growing a new distribution channel, iTunes and other digital retailers are continuing to make new investments that are expanding both the customer base and the base of musical compositions involved in DPD transactions. These factors, in addition to others mentioned earlier in my testimony, all militate in favor of setting a royalty rate for DPDs that is lower than the rate for physical CDs.

55. On September 28, 2006, Apple entered into an agreement settling copyright royalty litigation in the United Kingdom. The settlement and license are attached at Exhibit E. As a result, Apple will pay the greater of 8% of attributable gross revenues less VAT or applicable minimum fees to the owners of copyright in musical

compositions for the rights necessary to operate iTS in the UK - effectively the equivalent of a blanket license in the United States for all rights of public performance, reproduction, and distribution in the musical compositions sold on iTS. Certain issues [REDACTED] revenue remain to be litigated by the parties. We believe the settlement represents a fair compromise to settle litigation in that marketplace. It is not, however, directly analogous to the current proceeding, given the different market conditions and precedents, different legal rights involved in the UK and covered by the license, and the different legal standards that I am told apply there. At most, it provides an indication of a ceiling on a reasonable rate (provided the UK Tribunal ultimately sets a reasonable revenue definition).

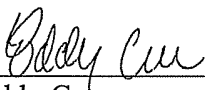
56. Any increase in the royalty rates we pay for musical works would have a significant adverse impact on the commercial viability of iTS. We have ensured that, notwithstanding the very real pressures and difficulties this business faces, iTunes on a global level has always made a profit or broken even, with the hope of building on that base for everyone's benefit. However, this is a risky business, with small margins that can ill-afford to be freighted with additional costs. As noted above, this industry needs reduced, not increased, costs in order to continue to attract the investments necessary to its growth and stability.

VII. CONCLUSION

57. I have been informed that DiMA's expert witness, Margaret Guerin-Calvert, believes a mechanical royalty rate in the lower end of a range of 4-6% would be appropriate. In light of my experience with the iTunes business worldwide for the past

several years, I believe her recommendation is both reasonable and appropriate. As a result, I support DiMA's proposed rate of 4.1% for permanent downloads.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief:



Eddy Cue

Date

A

B

**This exhibit contains restricted information that is
subject to a confidentiality agreement and has
been redacted from the publicly filed version**

C

**This exhibit contains restricted information that is
subject to a confidentiality agreement and has
been redacted from the publicly filed version**

D

**This exhibit contains restricted information that is
subject to a confidentiality agreement and has
been redacted from the publicly filed version**

E

This Settlement Agreement is dated the 28 day of September 2006 and is made between:

- (1) **Mechanical-Copyright Protection Society Limited** whose registered office is at 29-33 Berners Street, London W1T 3AB; and
- (2) **Performing Right Society Limited** whose registered office is at 29-33 Berners Street, London W1T 3AB; and
- (3) **British Academy of Composers & Songwriters** whose registered office is at 25-27 Berners Street, London W1T 3LR; and
- (4) **The British Phonographic Industry Limited** whose registered office is at Riverside Building, County Hall, Westminster Bridge Road, London SE1 7JA; and
- (5) **iTunes S.à.r.l.** whose registered office is at 8 rue Heinrich Heine, L-1720, Luxembourg; and
- (6) **O2 (UK) Limited** whose registered office is at 260 Bath Road, Slough, Berkshire, SL1 4DX; and
- (7) **T-Mobile International (UK) Limited** whose registered office is at Building 4, Hatfield Business Park, Hatfield, Hertfordshire AL10 9BW; and
- (8) **Vodafone UK Content Services Limited** whose registered office is at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN; and
- (9) **Orange Personal Communications Services Limited** whose registered office is at St James Court, Great Park Road, Almondsbury Park, Bradley Stoke, Bristol, BS32 4QJ.

Recitals

- A Terms used in these Recitals shall have the meanings ascribed to them in Clause 1 of this Settlement Agreement.
- B MCPS and PRS promulgated a series of interim, non-precedential, one-year joint licensing schemes including the JOL for the provision of Online and Mobile Music services to the public in the UK for private use.
- C The JOL has been referred to the Copyright Tribunal by the BPI and others, and Notices of Intervention in each of the References have been served by each of iTunes, the MNOs and the Academy.
- D MCPS, PRS, the Academy and the Settling Applicants have agreed to resolve their disputes in relation to the JOL and the References as set out below.

It is agreed:

1 Definitions and Interpretation

1.1 Academy means the British Academy of Composers & Songwriters.

Applicant means any of the BPI, MusicNet (UK) Limited, Yahoo ! (UK) Limited, AOL (UK) Limited, RealNetworks Limited, Napster LLC, Sony United Kingdom Limited, iTunes S.a.r.l and the MNOs.

BPI means the British Phonographic Industry Limited.

Copyright Tribunal means the statutory body established pursuant to Section 145 of the Copyright, Designs and Patents Act 1988 (as amended) and any statutory successor to that body.

IFPI means the International Federation of the Phonographic Industry.

iTunes means iTunes S.a.r.l.

iTunes' Disputed Contention has the meaning ascribed to it in clause 3.2 below.

Interveners means together iTunes and the MNOs.

JOL means the Licensing Scheme for the provision of online and mobile Music Services to the public for private use for the calendar year ending 31 December 2005.

Licensed Service has the meaning ascribed to it in the Scheme.

MCPS means Mechanical-Copyright Protection Society Limited.

MNOs means together O2 (UK) Limited, T-Mobile International (UK) Limited, Vodafone UK Content Services Limited and Orange Personal Communications Services Limited.

MNOs' Disputed Contention has the meaning ascribed to it in clause 3.1 below.

PRS means Performing Right Society Limited.

References means together the References commenced before the Copyright Tribunal and numbered 84/05, 85/05, 86/05, 87/05, 88/05, 89/05 and 90/05 of the JOL against MCPS and PRS.

Scheme means the joint MCPS and PRS scheme attached hereto and marked Schedule 1, save as amended by any decision of the Copyright Tribunal in the References in relation to the

iTunes' Disputed Contention, for iTunes, and in relation to the MNOs' Disputed Contention, for the MNOs.

Settlement Agreement means this Settlement Agreement including Schedules 1, 2 and 3.

Settling Applicants means together the BPI, iTunes and the MNOs.

- 1.2 Headings are for ease of reference only and shall not be taken into account in construing the Settlement Agreement.

2 The Scheme

MCPS and PRS shall forthwith offer to iTunes (subject to the iTunes' Disputed Contention) and to the MNOs (subject to the MNOs' Disputed Contention), and shall offer to Full Members of the BPI from time to time during the term of the Scheme, to license each of them on the terms of the Scheme, and each of the Interveners shall agree to be bound by the terms of the Scheme, subject to the iTunes' Disputed Contention and the MNOs' Disputed Contention as the case may be.

3 Advertising Revenue

- 3.1 The Settlement Agreement shall be varied insofar as it relates to the MNOs as set out in this Clause 3.1. All terms of the Settlement Agreement shall apply to the MNOs as they apply to the BPI, save that the MNOs shall be entitled to continue as Interveners in the References solely for the purpose of contending before the Copyright Tribunal that revenue derived from advertising, sponsorship and commissions on or in connection with a Mobile Licensed Service should only be included within Gross Revenue as defined in the Scheme where that revenue is earned as a result of an advertisement, sponsorship or a click-through link located on a page of a Licensed Service from which the Mobile Licensed Service is actually offered (subject to apportionment where other services not requiring a licence are offered from the same page), and only where that Mobile Licensed Service is offered to the User for free ("**the MNOs' Disputed Contention**").
- 3.2 The Settlement Agreement shall be varied insofar as it relates to iTunes only as set out in this clause 3.2. All terms of the Settlement Agreement shall apply to iTunes as they apply to the BPI, save that iTunes shall be entitled to continue as an Intervener in the References solely for the purpose of contending before the Copyright Tribunal that revenue derived from advertising, sponsorship and commissions on or in connection with a Licensed Service should only be included within Gross Revenue as defined in the Scheme where that revenue is earned as a result of an advertisement, sponsorship or a click-through link located on a page of a Licensed Service from which the Licensed Service is actually offered (subject to apportionment where other services not requiring a licence are offered from the same page),

and only where the Licensed Service is offered to the User at a price which has been artificially depressed to reflect such revenue ("the iTunes' Disputed Contention").

4 Identity of the Licensee

The Licensee for the purposes of the Scheme shall be restricted to the Music Service Provider, as defined in the Scheme.

5 Term

The Scheme shall apply from 1 July 2006 to 30 June 2009. For the avoidance of doubt, the Scheme will terminate automatically on 30 June 2009.

6 Podcasting

Podcasting Services shall be excluded from the Scheme.

7 Other terms

7.1 Neither the Settlement Agreement nor the Scheme shall set any precedent for the licensing of musical works in the offline environment.

7.2 MCPS and PRS confirm their view that:

7.2.1 there is uncertainty as to how the UK online music industry may continue to develop in the future;

7.2.2 there are significant differences that exist between the offline and online exploitation of musical works (including both audio-only and audio-visual products); and

7.2.3 the Settlement Agreement and the Scheme should not, other than in relation to the References, set any precedent in relation to the licensing terms for the online or mobile provision of music.

7.3 The Settling Applicants do not agree with the view of MCPS and PRS referred to in clause 7.2 above.

7.4 The BPI shall forthwith notify IFPI and other national group members of IFPI of the contents of Clause 7.1 above.

7.5 MCPS and PRS shall forthwith notify BIEM and CISAC and those of their respective member societies involved in the administration of music rights of the contents of Clause 7.1 above.

- 7.6 MCPS and PRS confirm that Vodafone's Radio DJ service in its current form is a Webcasting Subscription Service for the purposes of the Scheme.
- 7.7 MCPS and PRS confirm that part A of the application form referred to in the definition of Agreement in the Scheme shall be drafted in good faith by MCPS and PRS by 4pm on 20 October 2006 and shall include only non-contentious, factual and current information about the Licensee and the Licensee's Music Service.
- 7.8 MCPS and PRS on the one hand and the Settling Applicants on the other hand will negotiate in good faith what minima should apply to "long" (for example more than 10 minutes) and "short" (for example of less than one minute) tracks. Should these negotiations not be concluded by 10 November 2006, any of the MCPS, PRS or any of the Settling Applicants may refer the question as to what minima for "long" and "short" tracks (as referred to above) should apply for the period of the Scheme to an expert for determination. The identity of such expert shall either be agreed or, in the absence of such agreement within 7 days of the notice of referral, shall be determined by the Chairman for the time being of the Bar Council. MCPS, PRS and the Settling Applicants will seek to agree the procedure for the conduct of any expert determination. If such agreement is not reached within seven (7) days of the appointment of the expert, the expert shall have power to set the procedure for the expert determination.

8 Online Music Services prior to 1 July 2006

- 8.1 If and to the extent that any of the Interveners has in respect of its online and/or mobile use of any Musical Work prior to 1 July 2006, failed to make any payment and/or has failed to provide any reporting and accounting data due to MCPS and/or PRS pursuant to the terms of any licence granted to it by MCPS and/or PRS in relation to the provision of any of its Licensed Services, such Intervener shall:
- 8.1.1 within twenty-one (21) days of the Settlement Agreement provide MCPS and PRS with full and accurate reporting and accounting data for its online and/or mobile Music Services prior to 1 July 2006 in accordance with its existing licence;
- 8.1.2 pay any invoice issued by MCPS and/or PRS in relation to the provision of its Licensed Service prior to 1 July 2006 and calculated based on the data supplied in accordance with its existing licence within twenty-one (21) days of the date of such invoice; and
- 8.1.3 if any such invoice is not paid within twenty-one (21) days of the date it is issued, pay MCPS and/or PRS interest on the outstanding balance from time to time of such invoice calculated in accordance with the terms of its existing licence.

- 8.2 If and to the extent that any Intervener has not been licensed by MCPS and/or PRS in respect of its online and/or mobile use of any Musical Work for any period prior to 1 July 2006, such Intervener shall:
- 8.2.1 within twenty (20) days of the date this Settlement Agreement apply for a licence in accordance with the terms of the JOL in respect of such period prior to 1 July 2006 (and if it fails to do so, it shall be deemed to be subject to the terms of the JOL) and within forty-one (41) days of the date of this Settlement Agreement provide MCPS and PRS with full and accurate reporting and accounting data for its online and/or mobile music services prior to 1 July 2006 in accordance with the terms of the JOL;
 - 8.2.2 pay any invoice issued by MCPS and/or PRS in relation to the provision of its online and/or mobile Music Services prior to 1 July 2006 and calculated based on the data supplied in accordance with the JOL within twenty-one (21) days of the date of such invoice; and
 - 8.2.3 if any such invoice is not paid within twenty-one (21) days of the date of such invoice, pay MCPS and/or PRS interest on the outstanding balance from time to time of such invoice calculated in accordance with the terms of the JOL.
- 8.3 In calculating the amount to be invoiced pursuant to clauses 8.1.2 and 8.2.2 above, MCPS and/or PRS shall give credit for any payment received from the Intervener in relation to royalties due under its existing licence or the JOL as the case may be for any period prior to 1 July 2006.
- 8.4 For the purposes of this clause 8, the expressions Music Services and Musical Work shall have the meanings respectively ascribed to them in the JOL.
- 8.5 Each of the Interveners agrees to report and account to MCPS and PRS in respect of its online and/or mobile use of any Musical Work from 1 July 2006 pursuant to and during the term of the Scheme.
- 8.6 Within twenty-one (21) days of the date of this Settlement Agreement, each of the Interveners shall provide MCPS and PRS with full and accurate reporting and accounting data for its online and/or mobile Music Services for each completed month since 1 July 2006 pursuant to the Scheme.
- 8.7 Each of the Interveners shall pay any invoice issued by MCPS and/or PRS in relation to the provision of its online and/or mobile Music Services during each completed month since 1 July 2006 within twenty-one (21) days of the date of such invoice.
- 8.8 If any such invoice, as referred to in Clause 8.7, is not paid within twenty-one (21) days of the date it is issued, the relevant Intervener shall pay MCPS and/or PRS interest on the

outstanding balance from time to time of such invoice calculated in accordance with the terms of the Scheme.

- 8.9 The BPI shall use reasonable endeavours to encourage its members who are or have been Music Service Providers to comply with the obligations referred to in Clauses 8.1 to 8.8 above as if references to Interveners were to such members.
- 8.10 MCPS and PRS agree that they will consider in good faith any reasonable request made by an Intervener or a member of the BPI for a variation to the terms set out in this Clause 8, such variation to be set out in a confidential side letter between any such Intervener or member of the BPI and MCPS and PRS.

9 Further cooperation between the Parties

- 9.1 Given the fast-evolving nature of the UK online and mobile market, each of the Settling Applicants, MCPS and PRS agrees, in order to improve their understanding of the UK market, to facilitate future licensing arrangements, and to help to avoid a reference of the scheme(s) promulgated by MCPS and/or PRS in relation to the provision of online and mobile music in the UK after the expiry of the Scheme, the Settling Applicants, MCPS and PRS shall every quarter during the operation of the Scheme and on a strictly private and confidential basis:
- 9.1.1 exchange as between MCPS and PRS on the one hand and each of the Settling Applicants on the other hand information about relevant developments in the UK online and mobile music market, including as to licensed services, business models and pricing; and
- 9.1.2 unless otherwise agreed by MCPS and PRS on the one hand and each of the Settling Applicants on the other hand, meet on a quarterly basis to discuss the information exchanged pursuant to clause 9.1.1 above. For the avoidance of doubt, MCPS and PRS may be represented at such meetings by its management and/or by members of the Music Publishers' Association Board and BPI may be represented by its management and/or by members of the BPI Council or Rights Committee. The disclosure of confidential information by a Settling Applicant to any person other than the authorised management representatives of MCPS and PRS shall be subject to the consent of the disclosing Settling Applicant, such consent not to be unreasonably withheld, and the agreement of appropriate confidentiality arrangements, such agreement not to be unreasonably withheld by the disclosing Settling Applicant.
- 9.2 In the event that these meetings do not result in agreement between the Settling Applicants, MCPS and PRS as to the licence terms that should apply from 1 July 2009 in relation to the provision of online and mobile music in the UK, then MCPS and/or PRS shall produce and provide to the Settling Applicants on or before 1 May 2009 a proposed scheme or schemes which it and/or they propose should take effect from 1 July 2009. If MCPS and/or PRS fail to

provide such a scheme or schemes by that date, then and only then may the Settling Applicants or any of them refer the Scheme to the Copyright Tribunal.

10 Universal Music Complaint

The BPI shall provide to MCPS and PRS on the date of the Settlement Agreement a letter signed by Universal Music Group withdrawing with immediate effect as against MCPS and PRS its complaint to the EU Commission (Case COMP C2/39.237 Universal Music v. collecting societies and publishers) in the form attached hereto and marked Schedule 2.

11 Costs

- 11.1 Subject to Clause 11.2, MCPS, PRS, the Academy and the Settling Applicants agree that, as between themselves, each shall pay all of its own costs in relation to and/or incurred and/or for which it is already obliged to pay at the date of this Settlement Agreement as a result of the References. For the avoidance of doubt, to the extent that there are any existing Copyright Tribunal costs awards in the References as between MCPS, PRS, the Academy and the Settling Applicants, those awards shall not be enforced.
- 11.2 Clause 11.1 shall not apply to costs incurred by MCPS, PRS, the Academy, iTunes and the MNOs after the date of this Settlement Agreement in relation to the MNOs' Disputed Contention and/or iTunes' Disputed Contention and these costs shall be costs in the References.

12 Settlement Terms

- 12.1 The Settlement Agreement, as varied for iTunes pursuant to Clause 3.2 above and for the MNOs pursuant to Clause 3.1 above, is on the basis that:
- (a) save for the purposes of the pursuit by the MNOs of the MNOs' Disputed Contention and the pursuit by iTunes of the iTunes' Disputed Contention, it is in full and final settlement of all claims and disputes between each of the Settling Applicants on the one hand and each of MCPS and PRS on the other hand howsoever arising directly or indirectly out of or in connection with the exploitation of Repertoire Works (as defined in the Scheme) prior to 1 July 2006 (where such exploitation would otherwise have fallen within the scope of the JOL) or the JOL and/or any of the References. For the avoidance of doubt, (i) nothing in this Settlement Agreement including this Clause 12.1(a) shall prevent any Settling Applicant from later referring to the Copyright Tribunal or otherwise challenging any podcasting scheme or licence promulgated or proposed (currently or in future) by MCPS and/or PRS; (ii) nothing in this clause 12.1(a) shall prevent the MCPS and PRS from enforcing their rights pursuant to this Settlement Agreement.

- (b) subject to Clause 9.2 above, no Settling Applicant shall refer, nor assist (save and to the extent required by any order of the Copyright Tribunal or a court of competent jurisdiction or by law so to do) a third party in referring, nor intervene in any reference made by a third party referring the Scheme;
- (c) save for the purposes of the pursuit by the MNOs of the MNOs' Disputed Contention and the pursuit by iTunes of the iTunes' Disputed Contention, and save and to the extent that it is required by any order of the Copyright Tribunal or a court of competent jurisdiction or by law so to do or under an existing contractual obligation to make any payment including to Richard Boulton, Derek Ridyard or their respective firms for work done in relation to the References after the date of the Settlement Agreement, no Settling Applicant shall in any way whether financially or otherwise assist any Applicant to pursue the References or any of them or any part of them against MCPS and PRS;
- (d) subject to the iTunes' Disputed Contention for iTunes and the MNOs' Disputed Contention for the MNOs:
 - (i) the Settlement Agreement including the Scheme is a package deal, and taken in its entirety its terms are fair and reasonable; and
 - (ii) MCPS, PRS, the Academy, the BPI, the MNOs and iTunes shall advance and defend the position in the Copyright Tribunal (or any appeal) as described in Clause 12.1(d)(i), and shall contend that the Scheme represents the terms that should apply to all licensees for online and mobile music services within the scope of the Scheme for the purposes of the References;
- (e) Notwithstanding Clause 12.1(d) above, the execution of the Settlement Agreement shall not be treated as any acceptance by any of MCPS, PRS, the Academy or any of the Settling Applicants that any individual element of the Settlement Agreement including the Scheme is, viewed in isolation, fair and reasonable.
- (f) the BPI shall forthwith withdraw its Reference, its written submissions and its witness of fact evidence.
- (g) the MNOs and iTunes shall each forthwith amend their written opening submissions and witness of fact evidence, solely to the extent necessary to enable them to pursue the MNOs' Disputed Contention and iTunes' Disputed Contention as the case may be, and shall take no part in the References save and to the extent necessary to pursue the MNOs' Disputed Contention or the iTunes' Disputed Contention, as the case may be.
- (h) no order shall be sought from the Copyright Tribunal by the Settling Applicants, MCPS, PRS and the Academy in relation to the Settlement Agreement, and no order shall be

made as to costs as between MCPS, PRS, the Academy and the Settling Applicants save in relation to the costs referred to in Clause 11.2.

13 Jurisdiction

MCPS, PRS, the Academy and each of the Settling Applicants agree that any dispute arising out of or in connection with this Settlement Agreement shall be subject to the exclusive jurisdiction of the English Courts, save and to the extent that any such dispute is subject to the jurisdiction of the Copyright Tribunal.

14 Public Statement

14.1 MCPS, PRS, the Academy, the BPI and/or the MNOs shall forthwith issue a press release in the form of the draft attached hereto and marked Schedule 3, and shall make no other public statement in relation to the Settlement Agreement including the Scheme unless it has the same or materially similar content, and iTunes shall make no public statement in relation to the Settlement Agreement including the Scheme.

14.2 MCPS and PRS shall provide a copy of the Settlement Agreement including the Scheme and any side letters to the Copyright Tribunal and to the Applicants which are not Settling Applicants, provided that such side letters shall be "class 2" Confidential Information as defined in the Mutual Non-Disclosure Agreement between the Applicants, MCPS, PRS and the Academy dated 28 April 2006 unless otherwise agreed by the parties to the relevant side letter.

15 Counterparts

This Settlement Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. The Settlement Agreement is not effective until each party has executed at least one counterpart.

As duly authorised agent for and on behalf of
Mechanical-Copyright Protection Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Performing Right Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
British Academy of Composers & Songwriters

By:
[name & position]

As duly authorised agent for and on behalf of
The British Phonographic Industry Limited

By:
[name & position]

As duly authorised agent for and on behalf of
iTunes S.a.r.l.

By:
[name & position]

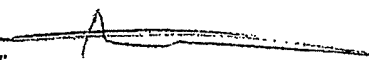
As duly authorised agent for and on behalf of
O2 (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
T-Mobile International (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Vodafone UK Content Services Limited

By: 
Nicholas Read, Director

As duly authorised agent for and on behalf of
Mechanical Copyright Protection Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Performing Right Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
British Academy of Composers & Songwriters

By:
[name & position]

As duly authorised agent for and on behalf of
The British Phonographic Industry Limited

By:
[name & position]

As duly authorised agent for and on behalf of
ITunes S.a.r.l.

By:
[name & position]

As duly authorised agent for and on behalf of
O2 (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
T-Mobile International (UK) Limited

By:
[name & position]

ANDREW LEE
Head of Legal
T-Mobile International (UK) Ltd

As duly authorised agent for and on behalf of
Vodafone UK Content Services Limited

By:
[name & position]

As duly authorised agent for and on behalf of

Mechanical Copyright Protection Society Limited

By:

[name & position]

As duly authorised agent for and on behalf of

Performing Right Society Limited

By:

[name & position]

As duly authorised agent for and on behalf of

British Academy of Composers & Songwriters

By:

[name & position]
CHAIRMAN

As duly authorised agent for and on behalf of

The British Phonographic Industry Limited

By:

[name & position]

As duly authorised agent for and on behalf of

iTunes S.a.r.l.

By:

[name & position]

As duly authorised agent for and on behalf of

O2 (UK) Limited

By:

[name & position]

As duly authorised agent for and on behalf of

T-Mobile International (UK) Limited

By:

[name & position]

As duly authorised agent for and on behalf of

Vodafone UK Content Services Limited

By:

[name & position]

As duly authorised agent for and on behalf of
Mechanical-Copyright Protection Society Limited

By:
[name & position]

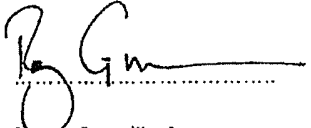
As duly authorised agent for and on behalf of
Performing Right Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
British Academy of Composers & Songwriters

By:
[name & position]

As duly authorised agent for and on behalf of
The British Phonographic Industry Limited

By: 
[name & position]
ROZ GROOM
GENERAL COUNSEL

As duly authorised agent for and on behalf of
iTunes S.a.r.l.

By:
[name & position]

As duly authorised agent for and on behalf of
O2 (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
T-Mobile International (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Vodafone UK Content Services Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Mechanical-Copyright Protection Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Performing Right Society Limited

By:
[name & position]

As duly authorised agent for and on behalf of
British Academy of Composers & Songwriters

By:
[name & position]

As duly authorised agent for and on behalf of
The British Phonographic Industry Limited

By:
[name & position]

As duly authorised agent for and on behalf of
iTunes S.a.r.l.

By: *Eddy Cue*
EDDY CUE, DIRECTOR
[name & position]

As duly authorised agent for and on behalf of
O2 (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
T-Mobile International (UK) Limited

By:
[name & position]

As duly authorised agent for and on behalf of
Vodafone UK Content Services Limited

By:
[name & position]

As duly authorised agent for and on behalf of
behalf of

Mechanical-Copyright Protection Society Limited

By:

[name & position]

As duly authorised agent for and on

Performing Right Society Limited

By:

[name & position]

As duly authorised agent for and on behalf of
behalf of

**British Academy of Composers & Songwriters
Industry Limited**

By:

[name & position]

As duly authorised agent for and on

The British Phonographic

By:

[name & position]

As duly authorised agent for and on behalf of
behalf of

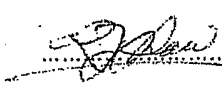
iTunes S.a.r.l.

By:

[name & position]

As duly authorised agent for and on

O2 (UK) Limited

By: 

Russ Shaw
Capability & Innovation Director

As duly authorised agent for and on behalf of
behalf of

**T-Mobile International (UK) Limited
Limited**

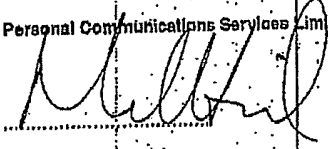
As duly authorised agent for and on

Vodafone UK Content Services

As duly authorised agent for and on behalf of

Orange Personal Communications Services Limited.

By:


Mark Hird, Director of Products and Innovation

Schedule 1 – The Scheme

LICENSING SCHEME FOR THE PROVISION OF ONLINE AND MOBILE MUSIC SERVICES TO THE PUBLIC FOR PRIVATE USE

1. ONLINE AGREEMENT

1.1 The terms and conditions contained in the standard form Online Agreement ("the Online Agreement") which is set out in Appendix 1 will apply to an online and/or mobile Music Service where:-

- (a) the service provider has applied to MCPS and PRS for that Agreement; and
- (b) MCPS and PRS have granted that application in writing;

1.2 Application for an Online Agreement shall initially be in the form set out in Appendix 2, but MCPS and PRS shall be entitled to ask reasonable further questions to satisfy themselves of the eligibility of the applicant.

2. AVAILABILITY OF ONLINE AGREEMENT

2.1 The Online Agreement is available to providers of online and mobile music services:

- (a) who, in relation to such services, are the Music Service Provider (as that term is defined within the Online Agreement); and
- (b) where the royalties payable (as defined in the Online Agreement) in relation to such music service(s) would be likely to be more than £200 per year.

2.2 Where a Quarterly Advance is payable under the Online Agreement, it shall be a minimum of £50.00 per Quarter.

2.3 Where 2.1(b) above does not apply, alternative licensing arrangements may be offered to the provider.

3. TERRITORY

The territory covered by the Online Agreement is the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man. The position as to which additional countries (and in respect of which repertoire) can be included within the definition of 'Territory' may change throughout the Term. MCPS and PRS will inform the applicant for an Online Agreement as to which additional countries may be covered at the time of application.

4. LINKS TO UNLICENSED MUSIC

MCPS and PRS shall have the right to refuse to license any service which provides internet or mobile "links" to unlicensed music (whether in the form of recordings or notation, scores, lyrics, etc).

5. DEPOSITS AND FINANCIAL GUARANTEES

MCPS and PRS may make the grant of an Online Agreement conditional upon the provision of such financial guarantees (by way of example only, deposits or advances) as are reasonably necessary to provide security against the risk that the members of MCPS and PRS may not receive such royalties as may be payable under the Online Agreement. Upon termination of an Online Agreement, MCPS and PRS shall release or repay any guarantee or similar security and shall repay any deposit or similar payment with accrued interest within 14 days of the

latest of (a) termination, or (b) the licensee having materially complied with all of its obligations under the Online Agreement or (c) resolution of any claim under any audit or other claim in relation to which notice was given to the Licensee prior to such termination.

For the avoidance of doubt, any guarantees under this provision are separate from the Quarterly Advance referred to in clause 6 of the Online Agreement and no interest shall be payable on any Quarterly Advance.

6. COMMENCEMENT AND TERM OF SCHEME

This scheme shall take effect on 1 July 2006 and shall continue until 30 June 2009.

Appendix 1

THIS AGREEMENT IS MADE BETWEEN

MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED whose registered office is at 29-33 Berners Street London W1T 3AB ("MCPS") contracting for and on behalf of itself and for and on behalf of and as agent of its various Members and the Associated Societies (as defined below); and

PERFORMING RIGHT SOCIETY LIMITED whose registered office is at 29-33 Berners Street London W1T 3AB ("PRS") contracting for and on behalf of itself and for and on behalf of and as agent of the Associated Societies (as defined below); and

THE LICENSEE (as set out in schedule 6)

WHEREAS

- (A) The Licensee wishes to offer an online and/or mobile music service within the meaning set out in this Agreement;
- (B) PRS and MCPS have developed a joint licensing scheme for licensing musical works for use in such online and mobile music services;
- (C) PRS and MCPS have agreed to license musical works to the Licensee on the above basis and upon the terms and conditions contained in this Agreement.
- (D) Given the fast evolving nature of the UK online and mobile market, this Agreement shall operate only in relation to the period 1 July 2006 until 30 June 2009.

NOW IT IS HEREBY AGREED AS FOLLOWS

1. Definitions

"the Act"	means the Copyright, Designs and Patents Act 1988, as amended from time to time.
"Agreement"	means these terms and conditions, the schedules to the terms and conditions and part A of the application form completed by the Licensee.
"Alliance"	means MCPS-PRS Alliance Limited whose registered office is at 29-33 Berners Street London W1T 3AB.
"Associated Society"	means each collecting society (or other body representing rights in Musical Works) with which MCPS and/or PRS has, from time to time, an agreement under which MCPS and/or PRS is authorised to grant licences in relation to the other society's (or body's) repertoire for the purpose of this Agreement PROVIDED THAT where such an agreement is only entered into after the commencement of the Term, a collecting society (or other body) shall only be regarded as an "Associated Society" for the purposes of this Agreement with effect from the date of signature of such agreement with MCPS and/or PRS (as applicable).

"Associated Society Member"

means any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society by the relevant Associated Society to MCPS and/or PRS.

"Audio-Visual Material"

means any specific presentation of Musical Works in conjunction with images, whether moving or still. For the avoidance of doubt (but without prejudice to the express restrictions contained in this Agreement), the following shall not be treated as Audio-Visual Material for the purpose of this Agreement:

- (a) the fact that ordinary web pages (or equivalent) are visible to the User while the User is listening to music; or
- (b) the fact that the media player used to play the music generates random visual images while the music is playing;

provided, in both cases, that the User would not reasonably be expected to associate the Repertoire Works being played with the images presented or think that there is any deliberate association by the Licensee of the Repertoire Works with such images.

"Commencement Date"

means the date specified in schedule 6.

"Commercial Work"

means any Repertoire Work other than:

- (a) one where the Member owning or controlling the copyright in such Repertoire Work has authorised MCPS to license it as so-called production or library music; or
- (b) a Commissioned Work, PROVIDED THAT for the purposes of clauses 3.2 and 4.5, a Commissioned Work shall not be excluded from such definition where the commissioning agreement does not authorise the Licensee to use the Commissioned Work in the context set out in those clauses.

"Commissioned Work"

means a Musical Work specially and expressly commissioned by the Licensee from composer/writer members of PRS and/or MCPS.

"Data Storage Device"

means any medium on which data can be stored (whether temporarily or permanently) whether existing now or invented in the future.

"Dramatico-Musical Work"

means any ballet, opera, operetta, musical, musical play or work of a similar nature.

"Electronic Reporting Format"

means the format set out in schedule 4. If and when the DDEX format is agreed within the industry, the DDEX format shall replace the format set out in schedule 4 within 6 months of such agreement unless otherwise agreed between the parties, acting reasonably.

"Gross Revenue"	shall have the meaning set out in schedule 3.
"Licensed Services"	means the Music Services listed in schedule 6.
"Licensee"	means the party set out as such in schedule 6.
"Licensors"	means PRS and MCPS.
"Member"	means: (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to online exploitation either before or during the Term other than where such person, firm or company has opted not to participate in the licensing scheme pursuant to which this Agreement has been entered into, PROVIDED THAT a member who has so appointed MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and (b) in the case of PRS, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of PRS has been admitted either before or during the Term as a member of PRS other than where such person, firm or company has reserved to himself the relevant rights pursuant to Article 7(cd) of the Articles of Association of PRS (or other equivalent article), PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into PRS.
"Month"	means a calendar month.
"Musical Work"	means any musical work (as defined in the Act) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.
"Music Service Provider"	means, the party which, in relation to a Music Service, most closely meets the following criteria: (a) contracts with the User in relation to the provision of the Licensed Service; (b) sets and controls the price the User pays; (c) can fully report on all elements of Gross Revenue (including relevant advertising revenues); (d) can fully report on all elements of music usage (or can procure such reporting); (e) controls how content is offered and bundled within the

Licensed Service;

- (f) carries out or authorises, on their instruction, the carrying out of the copyright restricted acts licensed under this Agreement.

"Music Usage Information" means the information referred to in the Electronic Reporting Format.

"Music Videogram" means any audio-visual production:

- (a) which has as the main feature of the soundtrack thereof a recording of a single Repertoire Work copies of which recording have been or are intended to be released as audio records for sale to the general public; and
- (b) the making of which was carried out by or on behalf of the record company releasing that recording or by or on behalf of the main artist(s) featured in that recording.

"Music Service" means a music service falling within the definition set out in schedule 1.

"Permitted Excerpts" refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Audio-Visual Material complies with all the following limitations:

- (a) the total duration of the excerpts does not exceed 20 minutes;
- (b) the use is not a "potted version" of the Dramatico-Musical Work;
- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work;
- (d) each excerpt is not presented in a "dramatic form" as defined below; and
- (e) as regards ballets specifically devised for television or excerpts from existing ballets, the total duration does not exceed five minutes.

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-Musical Work and/or its associated words is woven into and carries forward the plot and its accompanying action (a dramatic form shall not, for example, be deemed to be created by the use of costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

"Quarter" means each of the periods from 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, and 1st October to 31st December, throughout the Term.

"Quarterly Advance"	means the sum set out in schedule 6, excluding VAT (or other equivalent sales tax, as applicable).
"Relevant Party"	means a party which is involved in the provision of the Licensed Services, as set out in clause 15.2.
"Repertoire Work"	means each Musical Work the relevant copyright in which is owned or controlled, from time to time, in the UK by: (a) MCPS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Works that a Member of MCPS or an Associated Society has withdrawn or withheld from this Agreement; and (b) PRS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not PRS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by PRS or the Associated Society or the relevant member or Associated Society Member. For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.
"Reporting Date"	means: (a) where the Licensee is undertaking monthly accounting in accordance with clause 6, 5.00pm on the Friday following the Week to which the reporting relates; or (b) where the Licensee is undertaking quarterly accounting in accordance with clause 7, one month following the Quarter to which the Music Usage Information relates.
"Royalty Fee"	means the royalties payable as set out in schedule 2.
"Server Territory"	means the European Economic Area, Switzerland, the United States of America, Canada and such other territories as may be agreed in writing by the parties.
"Term"	means the period starting on the Commencement Date and ending upon the date set out in clause 13.1 (unless terminated earlier under clauses 4.6, 13.2, 13.3, 13.4 or 13.5).
"Territory"	means the UK, and those territories (if any) listed in schedule 6 (subject always to clause 4.6 and schedule 2, paragraph 5) and such other countries as the Licensors and the Licensee

may agree in writing.

- "UK"** means the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.
- "User"** means a natural person in the Territory who receives the Licensed Services for their own private and non-commercial use.
- "VAT"** means value added tax pursuant to the Value Added Tax Act 1994 and each like tax imposed in addition to or in substitution therefor.
- "Week"** means a week starting on Monday and ending on Sunday.

2. Grant of Licence

- 2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPS grants the Licensee a non-exclusive licence to do the following during the Term:
- (a) to reproduce Repertoire Works on servers within the Server Territory for the purpose of transmitting the same to Users (for the User's own private and non-commercial use) by means of the Licensed Services; and
 - (b) where the Licensed Services expressly authorise the temporary or permanent reproduction of Repertoire Works on Users' Data Storage Devices, to cause such copies to be made in the Territory for the User's own private and non-commercial use; and
 - (c) to authorise the reproduction of "pre-loaded" copies of Musical Works on Data Storage Devices and distribute such Data Storage Devices to the public within the Territory in an encrypted or other protected form within consumer electronic equipment where the Repertoire Works are solely intended to be accessible at a later date only to Users (for their own private and non-commercial use) through the Licensed Service(s). For the avoidance of doubt, the royalties set out in schedule 2 (including the Minimum Royalties) shall be payable in respect of Musical Works "pre-loaded" in accordance with this sub-clause 2.1(c). However, the royalties in respect of such "pre-loaded" Musical Works shall not accrue until the User has become able to access and play such Musical Works. This is without prejudice to the obligation of the Licensee to pay the Quarterly Advance.

For the avoidance of doubt (but subject to all terms of this Agreement, in particular clause 3.3), it is intended that this Agreement licenses all reproductions of Repertoire Works necessary in the ordinary operation of the Licensed Services.

- 2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, PRS grants the Licensee a non-exclusive licence, during the Term, to communicate to the public (as that term is defined in the Act) and to authorise the communication to the public of Repertoire Works within the Territory solely as part of and for the purposes of the provision of the Licensed Services.
- 2.3 The above licences shall apply where Repertoire Works are used in audio-only material and, subject to clause 3.2, Audio Visual Material.
- 2.4 The Licensors will not unreasonably refuse or delay any request by the Licensee to include further services of the Licensee within the scope of this Agreement provided that:
- (a) they are a Music Service; and

- (b) the Licensee is, in relation to that service, the Music Service Provider; and
 - (c) they are otherwise within the scope and limitations set out in this Agreement.
- 2.5 The provisions of clauses 3.2, 3.6, 4.1, 4.2, 4.4 and 4.5 shall not apply to a particular Repertoire Work where the owner of the relevant rights in such Repertoire Work has granted permission to the Licensee for the use of that Repertoire Work on the Licensed Services in the manner described under the relevant clause on such terms and conditions (including, if required, the payment of royalties or fees in addition to those specified under this Agreement) as the owner thinks fit.
- 2.6 The licences granted in clauses 2.1 and 2.2 above shall not apply to any Licensed Service which knowingly or recklessly provides internet or mobile "links" to music which requires a licence, but is unlicensed (whether in the form of recordings or notation, scores, lyrics, etc). The inclusion of such links on a Licensed Service shall constitute a material breach of this Agreement (which is capable of remedy).
- 2.7 Where the Licensee wishes to launch a service where music is the primary theme of such service, but such service does not fall within the definition of Music Service as set out schedule 1 to this Agreement, then the Licensors agree to enter into good faith discussions with the Licensee concerning the inclusion of such new service within the scope of this Agreement and the appropriate royalty rate and minima which shall be applicable.

3. Exceptions and Limitations

- 3.1 The licences granted under clause 2 of this Agreement are valid only insofar as:
- (a) the Licensed Services are Music Services; and
 - (b) the Licensee is the Music Service Provider in relation to the Licensed Services.
- 3.2 Subject to clause 2.5, the incorporation of Commercial Works into Audio-Visual Material is only licensed under this Agreement where the Audio-Visual Material consists of:
- (a) a Music Videogram; or
 - (b) a live concert performance or a film of a live concert performance by the artist performing that particular Commercial Work; or
 - (c) subject to clause 4.5, such Commercial Works being combined with photographs or other images relating to the artist performing the Commercial Work or the composer of the Commercial Work; or
 - (d) subject to clause 4.5, an interview with an artist, composer, producer or other person involved in the creation, performance or production of music where the Commercial Work(s) used are associated with the interviewee(s); or
 - (e) where permitted under clause 4.1, a performance of Permitted Excerpts of the Dramatico-Musical Work of which the Commercial Work forms part.

For the avoidance of doubt, such Audio-Visual Material as is licensed under 3.2(a) to (e) above is only licensed insofar as it is reproduced or communicated to the public via the Licensed Services.

- 3.3 For the avoidance of doubt, this Agreement does not grant any "synchronisation licence" (to the extent that such a licence may be required by the Licensee) covering the initial fixation of Repertoire Works in combination with visual images to create and produce Audio-Visual Material.

- 3.4 For the avoidance of doubt and except as specifically provided for in clause 2.1(c), the licences granted under clause 2 of this Agreement shall not authorise the manufacture or distribution of physical products containing Repertoire Works, such as (without limitation) the ordering of compact discs (or any other type of physical media) via a Music Service, but which are distributed by mail.
- 3.5 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not extend to the public performance (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.
- 3.6 Subject to clause 2.5 and paragraph 5 of schedule 3, the licence granted under clause 2.1 of this Agreement shall not permit the use of Repertoire Work(s) with any advertising or sponsorship of whatsoever nature where:
- (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
 - (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.
- 3.7 Subject to paragraph 5 of schedule 3, for the avoidance of doubt (but without prejudice to the generality of clause 3.6), the licences granted under this Agreement shall not apply to any Repertoire Work(s) made available for the purpose of (whether in whole or in part):
- (a) directly or indirectly encouraging the User to purchase or obtain goods or services of whatsoever nature (other than music via the Licensed Service); or
 - (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party;
- in such a manner that:
- (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
 - (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.
- 3.8 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of Repertoire Works. For the avoidance of doubt, the licences granted under this Agreement shall not apply to any "karaoke" service within a Music Service.
- 3.9 The licence granted under clause 2.2 shall only apply to a Repertoire Work communicated to the public as part of a Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work and for that particular form of exploitation via the Licensed Service either pursuant to this Agreement or otherwise. By way of example only, the licence granted by MCPS under clause 2.1 does not cover the copying of Repertoire Works in an advertisement (see clause 3.6 above). However, clause 3.6 does not apply to the licence granted by PRS under clause 2.2. Therefore, pursuant to this clause 3.9, the licence granted by PRS under clause 2.2 would not apply (in the context of this example) unless the Licensee has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Service(s)).
- 3.10 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to Repertoire Works which are made available by the Licensee outside of the Licensed Service.
- However, such other exploitation of Repertoire Works may fall within the scope of other licensing schemes operated by the Licensors, details of which shall be made available to the Licensee on request.

4. Further Restrictions

4.1 Subject to clause 2.5, where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to Audio-Visual Material, to the reproduction of:

- (a) the whole Dramatico-Musical Work; or
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
 - (i) that which is copied or communicated to the public via the Licensed Services under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and
 - (ii) neither of the Licensors has notified the Licensee in writing that their Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

4.2 Subject to clause 2.5, where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to material other than Audio-Visual Material, to the reproduction of the whole or substantially the whole Dramatico-Musical Work unless:

- (a) the Licensee has specifically notified the Licensors that it wishes to reproduce the whole or substantially the whole work; and
- (b) the Licensors have notified the Licensee that all relevant Members consent to such reproduction.

For the purposes of this clause 4.2, the expression "Dramatico-Musical Work" shall include any version of such work (with or without cuts, additions, interpolations or the like) which has been publicly performed. Furthermore, for the avoidance of doubt, substantially the whole work shall be deemed to be reproduced where all or nearly all the individual songs or other music included in the work are reproduced.

4.3 In any event, any licence hereunder only applies to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.

4.4 Subject to clause 2.5, the licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or communicated to the public as part of a Licensed Service unless the relevant Member has consented to such adaptation. By way of example only, this applies to:

- (a) any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work) or the communication to the public or reproduction in the form of a sample of such part of a Repertoire Work; or
- (b) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (c) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

However, subject always to clause 4.10 and provided that such alterations do not amount to an adaptation of a Repertoire Work and do not contravene clause 4.5, then this Agreement shall apply in relation to Repertoire Works that have been modified (including music and/or lyrics) for the purpose of satisfying the requirements of the relevant recording.

For the avoidance of doubt, the Licensors acknowledge, for the purposes of the restriction set out in this clause 4.4, that the production and inclusion as part of the Licensed Services of audio clips of Repertoire Works of up to 30 seconds (or, for "classical" genre Repertoire Works, up to 1 minute) duration to promote the supply of music via the Licensed Services does not of itself constitute an adaptation or sample.

- 4.5 Subject to clause 2.5, the licences granted under this Agreement shall not extend to:
- (a) the reproduction or communication to the public of any Commercial Work or part thereof in the form of a parody or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
 - (b) the use of any Commercial Work in any context which the Licensee ought reasonably to consider as being likely to be insulting or detrimental to the composer featured on the commercially released sound recording of the music or the relevant Member or Associated Society Member.
- 4.6 Any additional limitations in relation to the Associated Societies' rights to grant the licences set out in clause 2 of this Agreement which have been notified to the Licensors shall be notified to the Licensee in writing (which may include by email) and shall be binding no less than 10 days following such notice. Where any restriction of a material nature is added, the Licensee shall have the right to terminate this Agreement by giving written notice to the Licensors.
- 4.7 All rights not specifically granted under this Agreement are hereby reserved.
- 4.8 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings, films, dramatic works, performers' rights or rights in performances. The Licensee is required to obtain the appropriate waivers, consents and/or licences from the person(s) owning or controlling rights in relation to sound recordings containing Repertoire Works or performers of that Repertoire Work.
- 4.9 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.
- 4.10 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the UK or any other territory.

5. Payment and Accounting

- 5.1 Where the Licensors are satisfied that:
- (a) the projected Gross Revenue of the Licensee during the first year of the Agreement is over £500,000 (excluding VAT or other equivalent sales tax), such figure to be increased each calendar year in accordance with the Retail Price Index change over the previous calendar year; and
 - (b) there is no adverse credit risk causing the Licensors to have reasonable concerns over the Licensee's ability to pay royalties due under this Agreement; and
 - (c) the Licensee is capable of accurately reporting and paying royalties on a monthly basis in accordance with the provisions of this Agreement;
- then the Licensee shall pay royalties in accordance with clause 6 below.
- 5.2 Otherwise, the Licensee shall pay royalties in accordance with clause 7 below.

- 5.3 All licence fees and payments referred to in this Agreement are subject to VAT or other equivalent sales tax. The Licensee shall pay to the Licensors VAT or other equivalent sales tax (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 5.4 Except as expressly set out in this Agreement, no deduction in respect of any tax, or any other deduction or set-off of whatsoever nature, shall be made in calculating or paying any sum due under this Agreement.
- 5.5 Notwithstanding the provisions of clauses 6 and 7 below, the Licensors confirm and warrant that the Alliance is authorised to receive all payments under this Agreement as agent on behalf of the Licensors, each of the Members and, subject to clause 4.6, the Associated Societies.
- 5.6 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.
- 5.7 All payments made under this Agreement shall be in Sterling unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to Sterling from another currency, the exchange rate used shall be the Financial Times closing mid market rate on the last working day of the Quarter to which the payment relates. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors (or the Alliance pursuant to clause 5.5).
- 5.8 The address for delivery of the royalty statement referred to in clauses 6.2 and 7.5 is Online Licensing Team, MCPS-PRS Alliance Limited, Copyright House, 29-33 Berners Street, London, W1T 3AB.
- 5.9 In relation to Permanent Download Services and LD/ODS Services only, if and insofar as, (i) a Musical Work is not in copyright in the relevant part of the Territory, or (ii) it is not a Repertoire Work, credit shall be given by either or both of the Licensors (as the case may be) for any overpayment of royalties. The parties shall discuss in good faith the mechanism for calculating and granting any rebate for Musical Works which are not Repertoire Works. Unless and until agreed otherwise, the terms set out in this Agreement shall apply, it being acknowledged by the Licensors that it may then be necessary to make adjustments to payments that have already been made by the Licensee to the Licensors as from the Commencement Date so as to allow for royalties paid on Musical Works that are not Repertoire Works.
- 5.10 Notwithstanding the above, for Music Services where a significant proportion of Musical Works accessed by Users are either no longer in copyright in the relevant part of the Territory or are otherwise not Repertoire Works (by way of example, services specialising in classical music), the Licensors shall agree an appropriate deduction to the Gross Revenue and Minimum Royalties to apply as from the Commencement Date. This deduction shall be reviewed every six months.
- 6. Fees and Payment – Monthly Accounting**
- 6.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors the Royalty Fee.
- 6.2 Within 8 working days of the end of each Month, the Licensee shall send to the Licensors a fully and accurately completed royalty statement (in the form attached in schedule 5).

6.3 The Alliance shall, on behalf of the Licensors, each of the Members and, subject to clause 4.6, the Associated Societies, raise an invoice for the due amount, and the Licensee shall pay such invoice by electronic bank transfer (or, if agreed by the Licensee, direct debit) within 10 days of the invoice date.

6.4 Where, in relation to any particular Month, the Licensee fails to provide by the required date the information required under the Agreement to calculate the Royalty Fee, then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Months and (b) any other relevant factors which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different from those paid or payable in previous Months.

7. Fees and Payment – Quarterly Accounting

7.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors:

- (a) the Quarterly Advance; and
- (b) subject to clause 7.2, the Royalty Fee.

7.2 The Quarterly Advance is recoupable against the Royalty Fee. If any part of the Quarterly Advance remains unrecouped at the end of a Quarter, such unrecouped amount may be carried over to subsequent quarters, but for the avoidance of doubt, shall not (except as set out in clause 7.3 below) have the effect of reducing any subsequent Quarterly Advance. If any part remains unrecouped upon termination or expiry of the Agreement, the Licensors shall return such part to the Licensee.

7.3 The Quarterly Advance shall be reviewed at the end of each calendar year. It may also be reviewed during a calendar year if the royalties calculated for any particular Quarter under schedule 2 differ from the Quarterly Advance by 20% or more.

7.4 Where, in relation to any particular Quarter, the Licensee fails to provide by the required date the information required under the Agreement to allow the calculation referred to in clause 7.1(b), then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different to those paid or payable in previous Quarters.

7.5 The Quarterly Advance shall be payable by direct debit on the first day of each Quarter. Where the Agreement begins (and/or a Licensed Service comes into operation) within a Quarter, the first Quarterly Advance payment shall be pro-rated (according to the Commencement Date) and shall be payable upon the later of signature of this Agreement and the date on which the first Licensed Service is made available to Users for the first time.

7.6 Within 15 working days of the end of each Quarter the Licensee shall provide to the Licensors a fully and accurately completed royalty statement (in the form attached in schedule 5).

7.7 The Alliance shall, on behalf of the Licensors, each of the Members and, subject to clause 4.6, the Associated Societies, raise an invoice for the due amount, and the Licensee shall pay such invoice by electronic bank transfer (or, if agreed by the Licensee, direct debit) within 21 days of the invoice date.

8. Supply of Information

8.1 In relation to any and all Repertoire Works reproduced and communicated to the public (or otherwise accessed through a Licensed Service if from "pre-loaded" copies pursuant to clause 2.1(c)) under this Agreement via all Licensed Services, the Licensee will deliver the Music Usage Information to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) in the Electronic Reporting Format weekly (where the

Licensee is undertaking monthly accounting) or quarterly (where the Licensee is undertaking quarterly accounting) by the Reporting Date.

- 8.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been reproduced or distributed via all Licensed Services.
- 8.3 Where any or all of the Licensed Services are accessible by Users only on payment of subscription or other similar payment (or access is otherwise limited or controlled in some way), the Licensee shall, upon request of the Licensors, use reasonable endeavours to ensure that such Licensed Services are at all times accessible by the Licensors (and the Alliance) free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement. For the avoidance of doubt, the Licensee shall not be required to provide free access to downloads under a Permanent Download Service or to provide free access to a mobile phone network or internet access.
- 8.4 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to their Members and the Associated Societies. Therefore, if the Licensors wish to make any reasonable upgrade or alteration of whatsoever nature to the Music Usage Information or data specification referred to in schedule 4 during the Term, the Licensee agrees to use its reasonable endeavours to implement the changes required as soon as is reasonably practicable, PROVIDED THAT the Licensors shall not request that the Licensee implements the change in less than six months from the making of the request, and in each case of a change the following procedures shall apply:
- (a) the Licensors shall give full details thereof in writing to the Licensee;
 - (b) the Licensee will respond in writing within 4 weeks of receipt of the request, stating the date by which it commits to comply with the change and the Licensors shall provide full assistance to the Licensee in order to assist the Licensee in complying with the change; and

the parties will then finalise the details and undertake tests to ensure that the change operates satisfactorily within the terms of this Agreement, satisfactory operation of which will be deemed acceptance of the change and schedule 4 and/or the definition of Music Usage Information will be amended or replaced accordingly. For the purpose of this clause, in determining what change may be reasonable, regard shall be had to the DDEX project.

- 8.5 Without prejudice to any right in law that the Licensors may have to obtain such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Users or which otherwise constitutes "personal data" as defined in the Data Protection Act 1998. For the avoidance of doubt, the Licensee must still provide all required Music Usage Information (or other information to be provided under this Agreement), but is entitled to remove any element of it which reveals the identity of Users or otherwise causes it to include or constitute "personal data".
- 8.6 The Licensee shall notify the Licensors in writing in advance of all arrangements which it enters into for "pre-loading" content on Data Storage Devices pursuant to clause 2.1(c), such notification to include details of the relevant Data Storage Devices.
- 9. Late Reporting**
- 9.1 The following provision applies where the Licensee has:
- (a) failed to deliver prior to the required date Music Usage Information for the Licensed Service; or

- (b) delivered such Music Usage Information prior to the required date, but it contains any omission or error of whatsoever nature (by way of example only, Repertoire Works having been omitted therefrom or incorrectly or misleadingly named, or the duration of any Repertoire Works having been under-reported) which is material and the Licensee has failed to give notice in writing to the Licensors correcting the omission or error by the date upon which such reporting should have been provided.
- 9.2 In such circumstances (and without prejudice to any other rights which either or both Licensors may have against the Licensee) if one or both of the Licensors has distributed some (or all) royalties received (excluding any commission) to Members and/or Associated Societies based on the usage data supplied, but, as a result of clause 9.1(a) or (b) applying, the royalties distributed do not accurately or fairly represent that which each of the Members and/or Associated Societies should have received (when considering the true usage of Repertoire Works), then the Licensee shall pay the fees set out in clauses 9.3 and 9.4 (in addition to those set out in clauses 6 and 7).
- 9.3 Where clause 9.2 applies, separately in relation to each relevant Repertoire Work either omitted from the relevant Music Usage Information or as regards which there was a material omission or error of whatsoever nature or in relation to which the relevant Music Usage Information was not delivered, the additional fees shall be calculated at the rate equivalent to that which has been or will be paid by MCPS and/or PRS (as applicable) to their members (or associated societies) in relation to the Music Usage Information which was submitted prior to the required date.
- 9.4 Where clause 9.2 applies, the Licensee will also pay interest on the additional fees as referred to in clause 9.3 above computed in accordance with clause 5.6 and calculated from the date on which MCPS and/or PRS (as applicable) first made a distribution to their members (or associated societies) in relation to the relevant period to the date on which the Music Usage Information was received by the Licensors or the date on which the Licensors received written notice of the relevant error, as the case may be.
- 9.5 The provisions of this clause apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which MCPS and PRS have in relation to any failure to submit Music Usage Information fully or accurately completed within the time stipulated in clause 8.1.

10. Credits and Notices

The Licensee shall include on each of the Licensed Services:

- (a) the logos of PRS and MCPS; and
- (b) details of the following website and, where practical, hypertext links to it:
<http://www.mcps-prs-alliance.co.uk>; and
- (c) where reasonably practicable, the name of the composer and publisher of the Repertoire Works provided via the Licensed Services; and
- (d) a notice explaining that use of the musical works is subject to restrictions and that a summary of these restrictions may be obtained by accessing the Licensors' website through the link referred to above.

Approval of the Licensors shall be deemed to be given to the positioning of the above credits and notices within the terms and conditions of the Licensed Service(s) where it is not reasonably practical to position such information elsewhere.

11. Auditing

- 11.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each Relevant Party keeps and makes available for inspection upon reasonable

notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) the use of all Musical Works and (b) any income or other consideration received by or on behalf of the Licensee in relation to the Licensed Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.

- 11.2 For the purposes of this clause 11, the Licensee shall allow upon reasonable notice (and shall procure that each Relevant Party shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of the Licensors shall have such access to the Licensee's premises and shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.
- 11.3 If tests under any audit and verification process indicate under-payment of the correct Royalty Fee during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to the Licensors to the date when it was actually paid (at the rate set out in clause 5.6).
- 11.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct Royalty Fee during the period under audit and/or (b) failures to report correctly (so as to affect a distribution by the Licensors to their Members) amounting to at least 7.5% of the music usage during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 11.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefor.
- 11.5 If tests under any audit and verification process indicate over-payment of the correct Royalty Fee during the period under audit, then the Licensors shall, as soon as is reasonably practical, pay the amount of the overpayment back to the Licensee (but, for the avoidance of doubt, no interest shall be payable unless the overpayment is a result of an act or omission of the Licensors (in which case interest shall be payable at the rate set out in clause 5.6)). However, where the overpayment does not result from an act or omission of the Licensors and the Licensors have already distributed such overpayment to their Members and/or Associated Societies, the Licensors shall be entitled to deduct its reasonable internal and/or external costs in administering the payment back of the overpayment.
- 11.6 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 11, save that such confidential information may be disclosed to the Licensors' directors, board sub-committee members, officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.
- 11.7 For the avoidance of doubt, books, records and accounting records as referred to in clauses 11.1 and 11.2 above shall include data, information and records held on computers.
- 11.8 The Licensee shall, if requested by the Licensors, provide a statement from its auditors (but not more than once per year) confirming that the financial information submitted by the Licensee for the relevant requested period is in accordance with the actual Gross Revenue (as defined under this agreement) for that period.

12. Security and Encryption

- 12.1 Unless agreed otherwise, the Licensee will utilise or require the utilisation of an industry security standard which is developed and is available for use in the protection of Repertoire

Works. Until such time, the Licensee must use its reasonable endeavours to prevent unauthorised copying and/or the unauthorised issuing of copies of Repertoire Works by whatever technical means are practicable. Upon request, the Licensee will inform the Licensors concerning its activities in relation to fulfilling this obligation.

12.2 Save as may be permitted by law, the Licensee agrees it shall not (and shall procure that any Relevant Party shall not) attempt to:

- (a) remove or alter any rights management or identifier information that may be associated with any Repertoire Works; or
- (b) circumvent any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

13. Termination and Expiry

13.1 This Agreement shall expire on 30 June 2009 unless terminated earlier by written agreement or in accordance with the terms of this clause 13.

13.2 This Agreement may be terminated by the Licensee, by giving not less than three months written notice to the Licensors or upon written notice in circumstances where the Licensee is ceasing to engage in activities covered by this Agreement.

13.3 Each party shall have the right to terminate this Agreement by notice forthwith where the other party:

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt of notice of such breach; or
- (b) commits a material breach of this Agreement which is not capable of remedy;

and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 14 day cure period specified in clause 13.3(a) above.

13.4 The Licensors shall have the right to terminate this Agreement by notice forthwith if the Licensee:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts (as that term is defined in section 123 of the Insolvency Act 1986) or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or

- (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;
 - (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
 - (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).
- 13.5 The licences granted under clause 2 of this Agreement are so granted on the basis of the representations made by the Licensee in part A of the application form.
- 13.6 Termination of this Agreement for whatever reason shall be without prejudice to any rights which have already accrued to the parties under this Agreement.
- 14. Effect of Termination**
- 14.1 Upon termination of this Agreement all licences granted under this Agreement shall terminate and the Licensee shall immediately cease to be licensed by the Licensors for the reproduction or communication to the public of Repertoire Works via the Licensed Services. Termination shall be without prejudice to the ability of Users to retain a copy of a Repertoire Work supplied to them under a Permanent Download Service.
- 14.2 Clauses 5, 6, 7, 8, 9, 14, 11, 17 and 18 shall survive the termination of this Agreement, but only in relation to the Licensee's activities during the Term.
- 15. No Assignment**
- 15.1 Subject to clause 15.2, the licences granted under this Agreement are personal to the Licensee and the Licensee may not assign, sub-license or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of both MCPS and PRS except where the Licensee wishes to assign or transfer its rights and obligations to a direct or indirect subsidiary or direct or indirect holding company of the Licensee in which case the Licensors may not unreasonably withhold consent.
- 15.2 Subject always to the other provisions of this Agreement, the Licensee shall be permitted to use the services of a third party in operating the Licensed Services, provided that:
- (a) the Licensee retains complete control and direction over the provision of the Licensed Services to Users; and
 - (b) the Licensors are able to audit such third party in accordance with clause 11.
- 15.3 The Licensee shall include the following provisions in its terms and conditions for the supply of the Licensed Services to Users:
- (a) that any Repertoire Works communicated to Users may only be copied as permitted under this Agreement or by applicable law; and

- (b) that, save as may be permitted by law, no attempt shall be made by Users to:
 - (i) remove or alter any rights management or identifier information that may be associated with any Repertoire Works; or
 - (ii) circumvent any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

15.4 The Licensee shall, upon request by either Licensor, supply such Licensor forthwith with a copy of the Licensee's standard terms and conditions applying to the provision of any or all of the Licensed Services.

16. Controlled Composition Agreements

Where any person, firm or company is or becomes a member of either of the Licensors or an Associated Society and that party itself or that party's predecessor in title or grantor has a current contract with the Licensee or the Licensee's predecessor in title or grantor:

- (a) to the extent that such contract would otherwise apply in relation to the grant of any or all of the licences referred to in this Agreement and/or the terms and conditions on which such licences are granted, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract; and
- (b) upon the written request of the Licensee the relevant Licensor will provide the Licensee with evidence that the relevant Member has become a Member and has given the relevant Licensor or the relevant Associated Society authority to bind the Member as regards this Agreement.

This clause does not prevent the Licensee from obtaining a licence only in relation to the rights referred to in clause 2.1 from the relevant party owning or controlling such rights where such licence is validly obtained whether before or after the Commencement Date but other than as a result of a contract with an individual composer or recording group.

For the avoidance of doubt, where the Licensee is exploiting the relevant rights outside the United Kingdom, and has in relation to such exploitation a valid licence from the Associated Society entitled to grant that licence in relation to the relevant territory or territories, this clause 16 does not operate so as to override the terms of that licence.

17. Notices

- 17.1 Except where expressly stated otherwise, any notice or other written communication given under or in connection with this Agreement shall only be effective if it is in writing. Faxes and e-mails are permitted save that notices under clause 13 of this Agreement shall not be served by e-mail. In the absence of any legitimate electronic signature system, either party shall be permitted to require the confirmation in writing (signed by an authorised signatory) of any notice originally sent by email.
- 17.2 The address for service of any party shall be its registered office marked for the attention of the Chief Executive or Managing Director, or, if any other address or addressee for service has previously been notified to the server, to the address so notified. A single notice served on or sent to the Alliance and addressed to either Licensor shall be treated as validly served on both Licensors.
- 17.3 Any such notice or other written communication shall be deemed to have been served:
 - (a) if personally delivered, at the time of delivery;

- (b) if posted, at the expiry of two business days or in the case of airmail four business days after it was posted;
- (c) if sent by facsimile message or e-mail, at the time of receipt of transmission (if received during normal business hours that is 09.30 to 17.30 local time) in the place to which it was sent or (if not received during such normal business hours) at the beginning of the next business day at the place to which it was sent.

17.4 In proving service of a notice it shall be sufficient proof that personal delivery was made, or that such notice or other written communication was properly addressed stamped and posted or in the case of a facsimile message or e-mail that an activity or other report from the sender's facsimile machine or computer can be produced in respect of the notice or other written communication, in the case of a fax, showing the recipient's facsimile number and the number of pages transmitted.

18. Miscellaneous

18.1 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

18.2 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on any representation or term not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.

18.3 The headings to the clauses in this Agreement are included for ease of reference only and are not part of this Agreement and are not to be taken into account in its construction.

18.4 The parties shall (and shall procure that any other necessary party within its control shall) execute and do all such documents acts and things as may be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.

18.5 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable.

18.6 This Agreement shall be construed according to the laws of England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

Signed by:

Signed by:

**Duly authorised signatory on behalf of
MCPS**

**Duly authorised signatory on behalf of
PRCS**

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Signed by:

**Duly authorised signatory on behalf of the
Licensee**

Name: _____

Position: _____

Date: _____

SCHEDULE 1

Definition of Music Service

"Excluded Service"	means any service (or the relevant part of a service) which is a Podcasting Service or which falls within the scope (from time to time) of any of the following MCPS/PRS licensing schemes: (a) MCPS – Ringtone licensing scheme; (b) PRS – Ringtone licensing scheme; (c) MCPS – Karaoke and MIDI scheme; (d) MCPS – Music-on-hold scheme; (e) MCPS – Supply of Background Music Services scheme; (f) MCPS – Premium Telephone Line Services scheme; (g) PRS – Premium Telephone Line Services scheme; or (h) MCPS & PRS Joint Ringback scheme; or (i) MCPS & PRS B2B Music Preview scheme.
"Limited Download / On-Demand Streaming Service " or "LD/ODS Service"	means a service (or the relevant part of a service), other than an Excluded Service, whereby a User may receive a Musical Work by streaming on-demand via a Network (where the time and place at which such Musical Work is received is selected by the User) and/or may download via a Network that Musical Work but where such download may not be retained by the User on a permanent basis. Any service falling primarily within the foregoing definition but which also includes elements which fall within the definition of Premium and Interactive Webcasting Service and/or Pure Webcasting Service shall be deemed in its entirety to be a LD/ODS Service.
"Music Service"	means a service or the relevant part of a service which is: (a) a Permanent Download Service; (b) an LD/ODS Service; (c) a Premium and Interactive Webcasting Service; (d) a Pure Webcasting Service; or (e) any combination of (a) to (d) above.
"Network"	means the internet, a mobile network or any other wired or wireless network.
"Permanent Download Service"	means a service (or the relevant part of a service), other than an Excluded Service, by which a Musical Work is communicated to the public via a Network in the form of a

	download and where such download may be retained by the User on a permanent basis.
"Podcasting Service"	means a service (or the relevant part of a service) whereby "programmes" (as opposed to individual Musical Works) may be downloaded to Users' Data Storage Devices (whether permanently or temporarily) and any tracks included within such programme cannot be disaggregated.
"Premium and Interactive Webcasting Service"	means a service (or the relevant part of a service), other than an Excluded Service, by which Musical Works are communicated to the public via a Network and: (a) no permanent or temporary copy of any Musical Work is retained by the User; and (b) such service is neither a Pure Webcasting Service, a Permanent Download Service, a LD/ODS Service or a Simulcast Service.
"Pure Webcasting Service"	means a service (or the relevant part of a service), other than an Excluded Service or a Simulcast Service, by which Musical Works are broadcast (as that term is defined in the Act as at 1 July 2006) to Users via a Network. For the avoidance of doubt, to constitute a Pure Webcasting Service, there must be: (a) no interactive functionality, for example (without limitation), no use of controls that enable the User to pause, skip, move forward or backwards through the stream; (b) no personalisation of the service by the User or the ability for the User to offer preferences which then dictate the tracks that are provided to that User, for example (without limitation), no ability for the User to rate tracks so as to influence subsequent tracks that are played; (c) no advanced notification to the User of titles of specific tracks to be played or specific albums from which tracks will be played (other than the introduction of the next track in DJ led services); (d) in any 3 hour period: (i) no more than 3 songs from a particular album (including no more than 2 consecutively); (ii) no more than 4 songs from a particular artist or from any compilation of tracks (including no more than 3 consecutively); (e) no archived programmes less than 5 hours in duration or available for more than 2 weeks; and (f) no continuous programmes of less than 3 hours duration; and

	(g) effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent: (i) a User or any other person or entity from automatically scanning the Licensee's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the User; and (ii) a User from making copies, other than transient copies, of the sound recordings; and (h) no automatic or intentional cause by the Licensee of the device receiving a transmission to switch from one program channel to another.
"Simulcast Service"	means the broadcast (as that term is defined in the Act as at 1 July 2006) of a programme via a Network where such broadcast: (a) is simultaneous with the broadcast of such programme via a traditional terrestrial, satellite or cable television or radio service; and (b) is made from the website or other service of the originating broadcaster.
"Special Webcasting Service"	means a Pure Webcasting Service or Premium and Interactive Webcasting Service where more than 50% of the sound recordings of the Musical works communicated to the public (i) are by a single artist or band or (ii) comprise a live performance by a single artist or band with related performances by other artists and/or bands.

SCHEDULE 2

Royalty Fee

1. Definitions

"Applicable Revenue"	means the Gross Revenue less VAT (or other equivalent sales tax, as applicable).
"Limited Subscription Service"	means an LD/ODS Service whereby the User: (a) pays to the Licensee a regular fee in order to access such service; and (b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to 20,000 different Musical Works or less.
"Minimum Royalties"	means the applicable minima set out in paragraphs 2.1(b), 2.2(b), 2.3(b) and 2.4(b) below.
"Mobile Licensed Service"	means a Licensed Service which is provided to Users and where, subject to paragraph 4.5 of schedule 3 the charge to the User for the Licensed Service includes all mobile network delivery charges applicable to the provision of such service. References to Mobile Permanent Download Service, Mobile LD/ODS Service, etc. shall be construed accordingly.
"PC Subscription Service"	means an LD/ODS Service whereby the User: (a) pays to the Licensee a regular fee in order to access such service; and (b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works; and (c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer; and (d) is unable to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).
"Portable Subscription Service"	means an LD/ODS Service whereby the User: (a) pays to the Licensee a regular fee in order to access such service; and (b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works; and

	(c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer; and (d) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).
"Subscriber"	means a User who is a subscriber to a PC Subscription Service, a Portable Subscription Service, a Limited Subscription Service or a Webcasting Subscription Service as the case may be.
"Subscription Permanent Download Service"	means a Permanent Download Service whereby the User pays to the Licensee a regular periodic fee in order to obtain permanent downloads.
"Webcasting Subscription Service"	means a Pure Webcasting Service or Premium and Interactive Webcasting Service (but not a Special Webcasting Service) whereby the User pays to the Licensee a regular fee in order to access such service.

2. Royalty Fee

2.1 In respect of a Permanent Download Service the Royalty Fee per download shall be the higher of:

- (a) 8% of the Applicable Revenue; and
- (b) either (subject to (c) and (d) below):
 - (i) £0.04 in respect of each Musical Work downloaded per download; or
 - (ii) if a Musical Work is downloaded as part of a bundle of eight to twelve (inclusive) Musical Works, £0.035 in respect of each Musical Work downloaded.
 - (iii) if a Musical Work is downloaded as part of a bundle of thirteen to seventeen (inclusive) Musical Works, £0.03 in respect of each Musical Work downloaded.
 - (iv) if a Musical Work is downloaded as part of a bundle of eighteen to twenty-nine (inclusive) Musical Works, £0.025 in respect of each Musical Work downloaded.
 - (v) if a Musical Work is downloaded as part of a bundle of thirty or more Musical Works, £0.02 in respect of each Musical Work downloaded.
- (c) Where a single Musical Work is available for download and:
 - (i) the relevant sound recording of such Musical Work was originally released (whether in a physical or online form) two or more years previously; and

(ii) it is sold for a retail price of 49 pence (including VAT) or less;

then the minimum royalty applicable under paragraph 2.1(b)(i) above shall be £0.03.

(d) Where a bundle of Musical Works is available for download and:

(i) every sound recording of a Musical Work in the bundle was originally released (whether in a physical or online form) two or more years previously; or

(ii) the same bundle was originally released (whether in a physical or online form) two or more years previously;

then the minimum royalty applicable under paragraph 2.1(b)(ii) above shall be £0.03 or, for bundles of more than twelve tracks, shall be as set out in paragraphs 2.2(b) (iii) to (v) above.

(e) For the purposes of paragraph 2.1 (a) to (d) above, a collection of tracks shall only be considered a bundle if is (i) put together or otherwise approved by the relevant record company (or companies) or (ii) put together by the Licensee (provided permission of the owner of the relevant sound recording rights or artist (or artists) has been obtained and that the bundle is purchased as a whole. Collections of tracks assembled by Users are therefore not "bundles" for the purposes of paragraphs 2.1 (a) to (d).

(f) Tracks which consist of either public domain Musical Works or non-music works (for example, spoken word) shall not be regarded as "tracks" for the purposes of counting the number of Musical Works in a bundle.

(g) For the avoidance of doubt and for the purposes of paragraphs 2.1(b) (ii) to (v) above, by way of example, in respect of a bundle of 15 different sound recordings (including mixes) of the same Musical Work, the applicable Minimum Royalty for the whole of the bundle would be 45p.

(h) Only one royalty (or one minimum, as applicable) shall be charged for so called "dual-downloads" where for a single price, the same track is delivered to a User's PC and mobile device.

(h) The parties shall discuss in good faith Minimum Royalties in respect of long and short tracks.

(j) The Licensee shall be entitled to produce and include as part of a Licensed Service free audio-only or audio-visual clips of a Musical Work embodied in a sound recording of up to 30 seconds duration (or for "classical" genre up to one minute's duration) without payment of any Minimum Royalty provided that such clip is used solely to promote the sale or other use of the Musical Work as part of the Licensed Service.

2.2 In respect of an LD/ODS Service the Royalty Fee shall be the higher of:

(a) 8% of the Applicable Revenue; and

(b) either:

(i) where the Music Service is a Portable Subscription Service, £0.60 per Subscriber per Month; or

(ii) where the Music Service is a PC Subscription Service, £0.40 per Subscriber per Month; or

(iii) where the Music Service is a Limited Subscription Service, £0.20 per Subscriber per Month; or

(iv) for all other LD/ODS Services, £0.0022 per Musical Work played.

2.3 In respect of a Special Webcasting Service the Royalty Fee shall be the higher of:

- (a) 8% of the Applicable Revenue; and
- (b) £0.0022 per Musical Work communicated to the public per User unless the Special Webcasting Service is a Subscription Service, in which case the parties shall negotiate in good faith a minimum fee per subscriber per month to apply in place of this £0.0022. In relation to the non subscriber based minimum, for the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of £2.20.

2.4 In respect of a Premium and Interactive Webcasting Service (other than a Special Webcasting Service) it shall be the higher of:

- (a) 6.5% of the Applicable Revenue; and
- (b) either:
 - (i) where the Music Service is a Webcasting Subscription Service, £0.22 per Subscriber per Month; or
 - (ii) otherwise, £0.00085 per Musical Work communicated to the public per User. For the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of £0.85.

2.5 In respect of a Pure Webcasting Service (other than a Special Webcasting Service) it shall be the higher of:

- (a) 6.5% of the Applicable Revenue; and
- (b) either:
 - (i) where the Music Service is a Webcasting Subscription Service, £0.22 per Subscriber per Month; or
 - (ii) otherwise, £0.0006 per Musical Work communicated to the public per User. For the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of £0.60.

2.6 For the avoidance of doubt, the calculation leading to the Royalty Fee for a particular download, subscription or stream being either (a) or (b) above (in each of paragraphs 2.1 to 2.5 above, as applicable) shall be carried out individually in respect of each download, subscription or stream (as applicable) to each User and then the Royalty Fees, calculated on that basis, for all downloads, subscriptions or streams (as applicable) to all Users shall be added together in order to calculate the full Royalty Fees due. For the purposes of the foregoing calculation, where there is any Gross Revenue arising which is not attributable to a particular download, subscription or stream (for example, revenue arising from advertising or sponsorship etc), this shall be apportioned equally between all downloads, subscriptions or streams (as applicable).

3. Bundling

3.1 Where a Music Service (for the purposes of this clause "Service A") is provided to Users in conjunction with a service which is not a Music Service (for the purpose of this clause "Service B"), then the price deemed to be payable by Users ("the User Price") for the Music Service (for the purpose of calculating Gross Revenue) shall be calculated in accordance with this paragraph 3.

- 3.2 Where there are separate published prices for Service A and Service B when available alone, then the User Price shall be the proportion of the bundled price represented by the relative standalone prices for Service A and Service B.
- 3.3 Where there are no separate published prices for Service A and Service B, then the User Price shall be deemed to be the proportion of the bundled price represented by the relative standalone prices for comparable UK services for Service A and Service B. If there is more than one comparable service, then the average shall be used.
- 3.4 If in the Licensors' reasonable opinion there are no comparable UK standalone services for Service A and Service B, then the applicable Minimum Royalties shall be payable.
- 3.5 For the avoidance of doubt, where the User Price is set according to either of paragraphs 3.2 and 3.3 above, the royalty payable shall be the higher of the applicable royalty rate applied to the User Price and the applicable Minimum Royalty.

4. Promotional Use

- 4.1 Provided that the owner of the copyright in the sound recording has agreed to allow the Licensee to make the sound recording available for free to Users of its Music Service and that such owner is not entitled to payment of any royalty or any other consideration whether in monetary form or otherwise in relation to such use, the Licensors shall permit Musical Works incorporated in such sound recordings to be made available for free to Users and no royalty shall be due under the Agreement in relation to such use on the terms set out in this paragraph 4, but not otherwise:
- 4.2 For a paid for PC Subscription Service, Limited Subscription Service, Portable Subscription Service and Webcasting Subscription Service, the Licensee may provide such Licensed Service to each User for free for 2 weeks as a one-off introductory discount.
- 4.3 For a paid for Subscription Permanent Download Service, the Licensee may provide such Licensed Service to each User for free for 2 weeks as a one-off introductory discount provided that the User is limited during this period to accessing no more than ten (10) Permanent Downloads of Musical Works for free.
- 4.4 For a Permanent Download Service (other than a Subscription Permanent Download Service) that has annual Gross Revenue exceeding £625,000 but less than £6,250,000 (excluding VAT) calculated by reference to the four preceding full quarters' reporting data, the Licensee may make available to Users at any one time up to two (2) Permanent Downloads of Musical Works for free provided that:
- (a) such promotional usage is solely to promote sales of paid-for Permanent Downloads of Musical Works by the same artist/band or songwriter as the Permanent Download of the Musical Work being made available for free;
 - (b) the length of time that any one Permanent Download of a Musical Work is made available to Users for free is limited to one period of no more than thirty (30) days;
 - (c) any vouchers issued in relation to such promotional usage must be redeemed by Users within thirty (30) days of their first distribution; and
 - (d) the publisher(s) owning the rights to the Musical Work has/have granted prior written consent to such use.
- 4.5 For a paid for Permanent Download Service that has annual Gross Revenue exceeding £6,250,000 (excluding VAT) calculated by reference to the four preceding full quarters reporting data, the Licensee may make available to Users at any one time up to five (5) Permanent Downloads of Musical Works for free provided that it satisfies each of the terms set out in paragraphs 4.4 (a) to (d) above.

- 4.6 For the avoidance of doubt, where prior written consent of the publisher (s) owning the rights to the Musical Work is required pursuant to paragraphs 4.4(d) and 4.5, the Licensors shall put in place reasonable procedures to seek to ensure that such consent is granted or withheld within five (5) working days of the Licensee's written request, and if such consent is provided by the publisher(s), then the Licensors shall forthwith provide any additional consents in relation to such use of the rights which they or either of them administer.
- 4.7 For the avoidance of doubt, the Licensee may without restriction make the Licensed Services available for free over and above the limits set out in paragraphs 4.1 to 4.6 above, but the applicable Minimum Royalties shall apply in respect of any free access or downloads over and above such limits.
- 4.8 Insofar as any particular music publisher shall request that the promotional allowances set out above should be exceeded for the purposes of a specific promotion, the Licensors shall consider such request in good faith.

5. Provision of Music Services to Users outside the United Kingdom

Without prejudice to the territorial restrictions set out in this Agreement (and, for the avoidance of doubt, subject to the availability of the repertoire), where this Agreement is to cover the accessing by Users of the Licensed Service(s) from outside the UK, then the Licensee acknowledges that the Licensors may require that the royalties payable in respect of the Licensed Service(s) being accessed outside the UK shall be calculated on the basis of the rates at that time published as applying in the additional countries in question. If the Licensors require such rates to be payable and the Licensee does not agree to pay on the basis of those rates, then it may not be possible for this Agreement to cover the availability of the Licensed Service(s) outside the UK. The Licensors and Licensee shall discuss such issues in good faith, but if no agreement can be reached by such time as either party may decide at its discretion, then that party may terminate this Agreement (only in respect of the availability of the Licensed Services outside the UK) by giving the other party one month's written notice.

SCHEDULE 3

Definition of Gross Revenue

"Gross Revenue"

means, subject to the provisions of this Schedule:

- (a) all revenue received (or receivable) by the Licensee from Users in relation to the provision of the Licensed Services; and
- (b) all revenue received (or receivable) by the Licensee as a result of the placement of advertising on or within the Licensed Services; and
- (c) all revenue received (or receivable) by the Licensee as sponsorship fees in relation to the provision of the Licensed Services; and
- (d) all revenue received (or receivable) in the form of commissions from third parties as a result of Users accessing and/or purchasing from a service of a third party via the Licensed Services; and
- (e) any other revenue received (or receivable) by the Licensee arising in relation to the provision to Users of the Licensed Services (including, without limitation, such revenue received in relation to donations, barter or contra deals, such deals to be valued for these purposes);

and in each of the above cases such revenue shall, for the avoidance of doubt, include any such revenue whether received or receivable by the Licensee or any associate, affiliate, agent or representative of such party.

Subject to the remainder of this schedule 3, there shall be no other deduction or set-off from the above revenues other than refunds to Users for services that they were unable to use due to technical faults in the Licensed Services.

1. General

- (a) For the avoidance of doubt, the definition of Gross Revenue above shall be applied in conjunction with the provisions on bundling set out in paragraph 3 of schedule 2.
- (b) For the further avoidance of doubt, revenue which relates solely to services other than the Licensed Service shall not be included in the Gross Revenue. By way of example, this includes:
 - (i) revenue from non-music voice, content and text services;
 - (ii) revenue obtained solely in relation to non-music products and services supplied by the Licensee even if such product or service is obtained from

within the Licensed Service (eg. an artist related T-Shirt purchased from the Licensed Service).

- (c) For the further avoidance of doubt, Gross Revenue shall not be reduced by credit card commissions or similar payment process charges.

2. Advertising and Sponsorship Revenue

- (a) Gross Revenue obtained in the form of advertising or sponsorship revenue shall be reduced by 5% to reflect the costs of obtaining it.
- (b) By way of clarification, advertising and sponsorship revenue shall be included in the definition of Gross Revenue if it is derived in relation to pages within the Licensed Service, including music related pages which do not contain or enable direct access to Repertoire Works (eg. content consisting of concert or music reviews).
- (c) Where advertising and sponsorship revenue is derived from pages which include both music and non-music related content or services (eg. on a home page or sub-home page of a service), then a reasonable proportion of such revenue shall be included in the Gross Revenue (such proportion to reflect the relative dominance of the music and non-music content).

3. Audio-Visual

- (a) Prior to the Date of Convergence (as defined below), Gross Revenue generated in relation to the use of Repertoire Works in Audio-Visual Material shall be discounted by 15%.
- (b) If and when Convergence has been reached shall be assessed by the Licensors using reporting data submitted to it and this shall then be notified to the Licensee. If any dispute arises between the Licensors and the Licensee regarding this assessment, it shall be subject to expert determination by an independent accountant to be nominated by the President for the time being of the Institute of Chartered Accountants, in the absence of agreement between the Licensors and Licensee.
- (c) "Convergence" means the aggregate number of unit sales in the UK of Permanent Downloads in the form of Audio-Visual Material licensed under this Agreement is the same or greater than the aggregate number of unit sales in the UK of Permanent Downloads during any period of three Months prior to or ending on 30 June 2009 calculated by reference to not less than 80% of the units of each form of Permanent Download sold and the "Date of Convergence" means the last date of that three Month period. The Licensors shall use reasonable endeavours to inform the Licensee from time to time of the anticipated Date of Convergence.
- (d) For the avoidance of doubt, the discount set out in this clause 3 applies only to Gross Revenue and the Minimum Royalties shall not be reduced in relation to Repertoire Works in Audio-Visual Material licensed under this Agreement.

4. Mobile Delivery

- 4.1 In relation to Mobile Licensed Services, for the purpose of calculating Gross Revenue under this Agreement, then, subject to paragraphs 4.2 to 4.5 below, the price paid by the User shall be reduced by:
 - (a) 15% for Mobile Permanent Download Services; or
 - (b) 7.5% for all other Mobile Licensed Services.

- 4.2 The reduction referred to in paragraph 4.1 (a) above will:
- (a) no longer apply, in relation to Mobile Permanent Download Services, from the point in time when the price of such downloads converges to 117.65% or less than the weighted standard average price of downloads (of a similar type) obtained from other Permanent Download Services. This will be deemed to have taken place when the weighted average sales price of downloads (of a similar type) obtained from Mobile Permanent Download Services operated by the top 5 (by royalty value paid to the Licensors in the previous 4 Quarters) UK mobile network operators in a given Quarter is 117.65% or less than the weighted standard average price of downloads obtained from the top 5 (by royalty value paid to the Licensors in the preceding 4 Quarters) other Permanent Download Services for the same Quarter; or
 - (b) not apply, in relation to a particular download obtained from a Mobile Download Service, if the retail price of that download is 117.65% or less than the weighted standard average price of a similar type of download obtained from other Permanent Download Services (to be calculated as set out in clause 4.2(a) above).
- 4.3 The reduction referred to in paragraph 4.1(b) above will no longer apply for a particular Mobile Licensed Service where the retail price of that service is 117.65% or less than the weighted standard average price of the top 5 (by royalty value paid to the Licensors in the preceding 4 quarters) equivalent Music Services (which are not Mobile Licensed Services) in the preceding Quarter
- 4.4 For the avoidance of doubt, for the purpose of paragraphs 4.1(b) and 4.3 above, where a Mobile Licensed Service is launched at a price point that means that it does not qualify for the reduction under paragraph 4.1(b) above, if the relative price of that service and the non-mobile services referred to in paragraph 4.3 change to the extent that it would subsequently qualify for the reduction, then it shall be entitled to the reduction in paragraph 4.1(b) above until such time as the threshold in paragraph 4.3 above is reached again.
- 4.5 Where content and delivery charges for music are quoted separately for a Mobile Music Service, then the royalty charged for the provision of such music shall be the equivalent amount to the royalty charged to that Licensee when the content and delivery charges for equivalent music products are quoted as a single price. Where the Licensee does not provide equivalent music products on the basis that content and delivery prices are quoted as a single price, then such provision of music shall be excluded from this Agreement and royalty terms shall be subject to a separate discussion in good faith between the parties.
- 4.6 All references in this paragraph 4 to prices shall be deemed to be excluding VAT or other equivalent sales taxes.
- 4.7 In the event of any dispute between the parties over the implementation of paragraphs 4.1 to 4.6 above, such dispute shall be subject to expert determination by an independent accountant, to be nominated by the President for the time being of the Institute of Chartered Accountants in the absence of agreement between the parties.
- 5. Vouchers**
- 5.1 This paragraph 5 applies only to a Licensee which runs a voucher scheme where each issued voucher ("the Voucher"):
- (a) is issued in conjunction with a festival or other musical event, and the voucher contains no branding other than that of the Licensee, the band/artist performing at the festival or other musical event, and/or the festival or other musical event; or
 - (b) does not refer to any specific artist(s), band(s) or Musical Work(s).

Repertoire Works provided via a Voucher scheme which is outside this paragraph 5.1 are not licensed under this Agreement and a separate licence for premium usage of this type must be sought from the Licensors.

- 5.2 The price of each Voucher, calculated in accordance with paragraph 5.3, below shall be included in Gross Revenue if and to the extent that it is redeemed by a User or Users.
- 5.3 The price of each Voucher shall be calculated as follows:
- (a) Where the Voucher does not contain any branding or no branding other than (i) that of the Licensee for the Licensed Service, (ii) that of a third party ordinarily engaged in the sale of vouchers to Users or (iii) as permitted under paragraph 5.1(a) above, the price shall be the price charged to each User.
 - (b) Except as set out in (a) above, where the Voucher contains branding of a third party (which includes for the purposes of this paragraph 5.3(b) an entity in the same corporate group as the Licensee) and/or is distributed as part of a promotion by a third party, the price shall be deemed to be the full usual retail price charged by the Licensee for the Music Service to which the Voucher relates.

SCHEDULE 4

Online Music Services

Music Usage Information Reporting Format

[To be added]

SCHEDULE 5

Form of Accounting Statement

[to be added]

SCHEDULE 6

Licence Details

Licensee	
Licensee Registered Address	
Agreement Number	
Licensed Services	
Additions to Definitions of "Territory"	
Quarterly Advance (if applicable)	
Commencement Date	

Schedule 2 – Letter from Universal Music Group to MCPS and PRS

Ms Arianna Vannini

The European Commission

Competition DG

70 Rue Joseph II

B-1000 Bruxelles

Belgium

[] September 2006

Dear Ms Vannini

Case COMP/C2.39237 Universal Music Group International Complaint to the European Commission concerning Online and Mobile Licensing

As you are aware, a reference was made by the British Phonographic Industry ("BPI") to the UK Copyright Tribunal concerning a dispute with MCPS and PRS over those societies' Licensing Scheme for the provision of online and mobile music services to the public for the private use.

Following resolution of this matter between the BPI and MCPS and PRS, Universal Music Group withdraws the above Complaint in respect of MCPS and PRS.

With kind regards

Yours sincerely

Richard Constant

General Counsel, Universal Music Group International

Schedule 3 – Draft Press Release

Companies agree digital royalties deal

Companies representing a substantial majority of the UK digital music market have reached a settlement relating to the royalties paid to composers, songwriters and music publishers for the digital delivery of music (such as full track downloads but not including ringtones) for online and mobile use.

The agreement amounts to a partial settlement of a case which is due to begin at the Copyright Tribunal today (Thursday September 28).

The three-year deal has been agreed between the MCPS-PRS Alliance representing songwriters, composers and music publishers, British recorded music trade association the BPI, iTunes and four UK mobile network operators, O2, Orange, T-Mobile and Vodafone. It sets a rate of 8% of Gross Revenue less VAT to be paid to composers, songwriters and publishers when their music is offered in a digital environment, with a lower rate (6.5%) for non-on-demand services. These rates are subject to minimum royalties.

All parties to the settlement welcome this agreement, which will help drive the on-going growth of the legitimate digital music market. The UK music download market is the biggest in Europe with sales of 34m units so far this year according to the Official UK Charts Company, already more than in the whole of 2005.

The Copyright Tribunal proceedings will continue in respect of issues which remain unresolved between the MCPS-PRS Alliance and the other parties as well as a single issue that remains outstanding for the mobile network operators and iTunes.

Dated

September 2006

**Mechanical-Copyright Protection
Society Limited**

Performing Right Society Limited

**British Academy of Composers &
Songwriters**

**The British Phonographic Industry
Limited**

iTunes S.a.r.l.

O2 (UK) Limited

T-Mobile International (UK) Limited

Vodafone UK Content Services Limited

**Orange Personal Communications
Services Limited**

SETTLEMENT AGREEMENT
