

COMPETITION TRIBUNAL

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

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

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

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

B E T W E E N:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT August 28, 2015 CT-2015-009 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 6

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

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

Respondents

AFFIDAVIT OF MARIO BOUCHARD

I, Mario Bouchard, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY:**

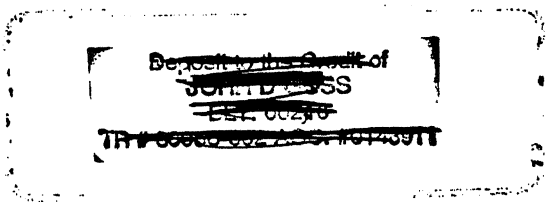
- I have been retained by the Respondent, Stargrove Entertainment Inc., to provide an expert opinion, a copy of which is attached hereto and marked as **Exhibit "A"**.

- 2. A copy of my curriculum vitae is attached hereto as Exhibit "B".
- 3. A copy of my Certificate Concerning Code of Conduct for Expert Witnesses, which I have signed, is attached hereto as Exhibit "C".

Sworn before me at the City of Ottawa, in)
 the Province of Ontario,)
 this 27th day of August, 2015)


 Commissioner for Taking Affidavits)

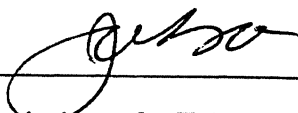

 Mario Bouchard)



**JOHN DENYS GOSS, Barrister & Solicitor &
 Notary Public, Province of Ontario, Canada
 Goss, McCorrison, Stel, 203-2430 Bank Street
 Ottawa, Ontario K1V 0T7**

A

This is **Exhibit "A"** to the Affidavit of Mario Bouchard
sworn before me this 27 day of August, 2015



Commissioner for Taking Affidavits

JOHN DENYS GOSS, Barrister & Solicitor &
Notary Public, Province of Ontario, Canada
Goss, McCriston, Stef, 203-2430 Bank Street
Ottawa, Ontario K1V 0T7

Introduction

1. My name is Mario Bouchard. I have been a member of the Québec Bar since 1975.
2. From 1990 to 2013, I was general counsel to the Copyright Board of Canada (“**Board**”). In this role, I participated in the writing of every decision of the Board, appeared before the Federal Court of Appeal, authored papers dealing with copyright (including the work of the Board, collective administration of copyright and orphan works) and was involved in many files dealing with copyright law reform and new technologies. Through my work, I developed expertise in copyright law, collective administration, the regulation of copyright collective societies and of copyright markets, and the interpretation of copyright contracts. I sit on the external advisory board of the Intellectual Property Law and Technology Program at Osgoode Hall Law School.
3. My knowledge of the operation of the Canadian mechanical licensing market and of the Canadian Musical Reproduction Rights Agency Ltd (“**CMRRA**”) is largely the result of my participation in several Board proceedings dealing with proposed tariffs for the use of CMRRA’s repertoire. My knowledge was further increased as a result of my involvement, on behalf of the Board, in discussions between CMRRA-SODRAC Inc. (“**CSI**”), major record labels and the Board following the settlement reached in the pending list class action, discussed below.

Some Fundamentals of Canadian Copyright Law

What is copyright?

4. Copyright is one’s right to control, to the exclusion of others, certain uses of specific copyright subject matters for a certain time.
5. In Canada, “copyright law is purely statutory law, which ‘simply creates rights and obligations upon the terms and in the circumstances set out in the statute’”.¹

What does copyright protect?

6. Copyright protects specific subject matters, such as musical works and sound recordings.²
7. A musical work is “any work of music or musical composition, with or without words, and includes any compilation thereof.”³
8. A sound recording is “a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work”.⁴ A sound recording includes a recording of

¹ *Bishop v Stevens*, [1990] 2 SCR 467 at 477, quoting *Compo Co v Blue Crest Music Inc*, [1980] 1 SCR 357 at 373. Copyright law is exclusively within the jurisdiction of the federal government: *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91.25, reprinted in RSC 1985, Appendix II, No 5.

² *Copyright Act*, RSC, 1985, c C-42, s 2 (definition of “copyright”) (“*Act*”).

³ *Act*, *ibid*, s 2 (definition of “musical work”).

someone playing an instrument, of someone singing a song or of street noises, onto any recording medium (CD, tape, downloadable file).

Which uses does copyright protect?

9. Copyright protects certain uses but not others. A public performance is protected, however, a private performance is not.
10. Under certain circumstances, a use that would otherwise be protected is not. Broadcasters do not need a licence to keep copies of sound recordings on their hard drives for short periods of time to facilitate their broadcasts. Also, I do not need a licence to make a backup copy of software for which I own a licence.
11. How these and other limits to copyright protection are interpreted depends in large part on the purpose of copyright in different countries. In general, “*droit d’auteur*” jurisdictions (e.g., France) view copyright as an inherent “author’s right”, similar to any other fundamental human right. In contrast, “copyright” jurisdictions generally adopt a more utilitarian approach to copyright. The Supreme Court of Canada endorsed the utilitarian view when it described the purpose of copyright as striking:

[...] a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator (or, more accurately, to prevent someone other than the creator from appropriating whatever benefits may be generated).⁵

12. In the same vein, the Supreme Court has found that copyright exceptions are users’ rights that are to be interpreted liberally, so as to ensure that users get their full benefit⁶ and that copyright protection must not be extended beyond its natural limits, and must take proper account of user rights.⁷

How long does copyright last?

13. Copyright is limited in its duration. A subject matter that is no longer protected by copyright is said to be in the public domain. The term of protection is different for works and sound recordings.
14. As a general rule, copyright in a musical work lasts for “the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.”⁸
15. Until recently, a sound recording was protected until the later of 50 years from its creation and 50 years from its publication. Since June 23, 2015, a published recording is

⁴ *Act, supra* note 2, s 2 (definition of “sound recording”).

⁵ *Théberge v Galerie d’Art du Petit Champlain inc*, 2002 SCC 34 at para 30.

⁶ *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 at para 48.

⁷ *Euro-Excellence Inc v Kraft Canada Inc*, 2007 SCC 37 at para 80.

⁸ *Act, supra* note 2, s 6.

protected 70 years from its publication.⁹ Since all sound recordings found on CDs are published, copyright in these recordings has been extended by recent amendments to the *Act* by 20 years to 70 years from publication.¹⁰

16. Sound recordings that were in the public domain on June 23, 2015 remain in the public domain.¹¹ As a result, the Canadian copyright in sound recordings found on the Beatles' *A Hard Day's Night* LP, released on July 10, 1964, ended with the year 2014 and remain in the public domain. The copyright in sound recordings found on the Beatles' *Help* LP, however, released on August 6, 1965, will end 21 years later, on December 31, 2035.
17. A work is often protected longer (life of author + 50 years) than the sound recording on which it first appears (70 years from publication). The difference can be quite significant. The sound recording of *Can't Buy Me Love* found on the Beatles' *A Hard Day's Night* LP is in the public domain, but the musical work will be protected during the life of Paul McCartney and 50 years hence. The sound recording of *Yesterday* found on the Beatles' *Help* LP is protected until the end of 2035, but the musical work will be protected at least until the end of 2065, since McCartney is still alive.

Licences Needed to Make a CD

18. A sound recording of a musical work comprises three copyright inputs: the work; the performances of the singers and musicians heard on the record; and the sound recording itself.
19. Re-releasing a pre-existing sound recording (e.g., on a compilation CD) may require a licence to copy the sound recording ("**master recording licence**"), a licence to copy the musical work ("**mechanical licence**") or both, depending on whether either or both are protected by copyright.¹²
20. If the sound recording is not protected but the work is, only a licence to copy the work is required. This is the case with the sound recording of *Can't Buy Me Love* found on the Beatles' *A Hard Day's Night* LP.

⁹ Different copyright rules apply to sound recordings that are not published and to sound recordings that are published more than 30 years after they are created.

¹⁰ *Act, supra* note 2, s 23(1.1), as amended by *Economic Action Plan Act 2015, No 1*, SC 2015, c 36, s 81. Copyright in a sound recording also extends to December 31 of the year during which it expires. In this report, I do not always specify this, for ease of reading.

¹¹ *Economic Action Plan Act 2015, No 1*, SC 2015, c 36, s 82.

¹² Re-releasing a pre-existing sound recording does not require a permission from the performers: the right to control a performance, once fixed, is "spent" to the extent that the fixation was allowed for the purpose of making CDs: *SOCAN (2008-2010)*; *Re:Sound (2008-2011)*; *CMRRA-SODRAC Inc. (2008-2012)*; *AVLA-SOPROQ (2008-2011)*; *ArtistI (2009-2011)*, (9 July 2010), online: Copyright Board of Canada <<http://www.cb-cda.gc.ca/decisions/2010/20100709.pdf>> at para 80.

The Mechanical Licensing Market: Key Players

21. Reproducing a copyrighted musical work onto a CD requires a mechanical licence.

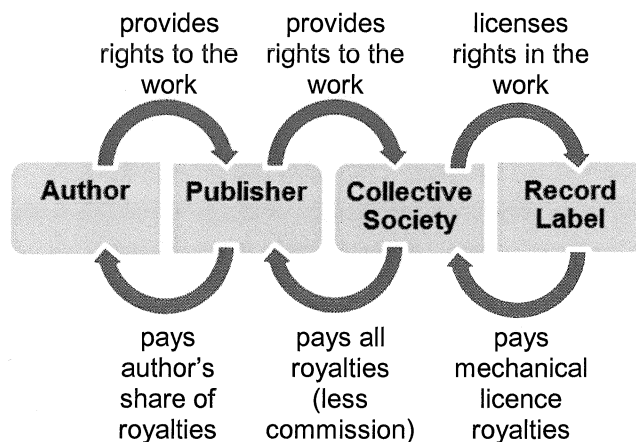


Figure 1: Flow of rights and the associated flow of compensation regarding mechanical licences.

22. A mechanical licence is obtained from the copyright owner or from someone acting on the owner's behalf. The first owner of the copyright in a musical work is the **author**. Few authors administer their own rights; instead, they generally assign the right to issue mechanical licences to a music publishing company ("**publisher**") in exchange for receiving a share of all royalties the publisher will collect from licensing, either directly or through other agents.
23. In Canada, most publishers ask a **collective society** to issue mechanical licences. A collective society carries on the business of collective administration of copyright for the benefit of those who authorize the society to act on their behalf.¹³ Three collective societies are active in the Canadian mechanical licensing market: CMRRA, the Society for Reproduction Rights of Authors, Composers and Publishers in Canada ("**SODRAC**"),¹⁴ and CSI.¹⁵
24. CMRRA is a not for profit corporation formed in 1975 to represent the interests of publishers doing business in Canada. It does not deal with authors; rather, it deals with publishers and users. CMRRA issues mechanical licences for the vast majority of CDs sold in Canada. It distributes royalties to publishers, who then pay royalties to authors.

¹³ *Act, supra* note 2, s 2 (definition of "collective society").

¹⁴ SODRAC acts for the benefit of authors and publishers. SODRAC issues licences for 10 to 15% of CD sales in Canada, and more than 50% in Quebec.

¹⁵ CSI is a joint venture of CMRRA and SODRAC. It licenses the reproduction right in the joint repertoire of CMRRA and SODRAC, generally in markets where administering the repertoires separately would be either not possible or not efficient.

25. Collective societies, like CMRRA, issue mechanical licences to companies that release sound recordings, known as **record labels**. Record labels produce original sound recordings to be released on CD, release CDs of existing sound recordings under licence from the owner of the copyright in the sound recording, or do both.
26. **Major record labels** are affiliated with multinational companies, while **independent record labels** are not. For example, Universal Music Canada is affiliated with Universal Music Group. Similarly, **major publishers** are linked to major record labels, while **independent publishers** are not. For example, Universal Music Publishing Group Canada is affiliated with Universal Music Canada.

The Canadian Mechanical Licensing Process: Law and Practice

27. From 1924, when it came into force, until 1988, the *Act* provided for a compulsory licence to record a musical work that had already been recorded and released. The provision applied to new recordings of the work (“**cover**”) and to re-issues of an existing recording (“**re-release**”). It did not apply to the first recording of a work (“**first release**”).¹⁶
28. The compulsory mechanical licence was repealed in 1988. As a result, the rates, terms and conditions applicable to mechanical licences had to be either negotiated with the recording industry and set out in an agreement, or set by CMRRA. Today, record labels essentially do business with CMRRA according to one of a few Mechanical Licensing Agreements (“**MLA**”) reviewed below.¹⁷
29. In law, a record label should obtain the necessary mechanical licences before pressing a CD, let alone releasing it. In practice, labels almost always release CDs without first obtaining licences. The market operates as if the compulsory licence, abolished in 1988, still exists and as if it applies equally to all recordings.
30. The MLAs, the pending list class action settlement discussed below and even some tariffs certified by the Board¹⁸ reflect the necessity of allowing this system to continue.¹⁹

¹⁶ However, the Canadian recording industry operated, at least to some extent, as if the compulsory licence also applied to first releases. The Québec business model may have been different.

¹⁷ CMRRA operates a “pay-as-you-press” system for small and one-shot uses. Royalties are paid at the prevailing MLA rate, based on the number of CDs the user plans to release, before CMRRA determines whether it can issue a licence. A refund is issued only for works that are not in CMRRA’s repertoire. There are no refunds if fewer CDs are pressed or if the CD is not released. The pay-as-you-press system is not tailored for those who wish to release multiple albums. It represents a very small proportion of CMRRA’s overall business.

¹⁸ *CMRRA/SODRAC Inc. (Online Music Services) for the Years 2005 to 2007* (16 March 2007), online: Copyright Board of Canada <<http://www.cb-cda.gc.ca/decisions/2007/20070316-rm-b.pdf>> at para 150.

¹⁹ For the reasons for this continued practice, see Affidavit of David A. Basskin, sworn January

31. Described succinctly, the licensing process at CMRRA is as follows:²⁰
- The record label applies for a mechanical licence for each musical work found on a CD by providing to CMRRA, before or after the release, a copy of the CD (and cover slip) on which the work is released.
 - CMRRA issues a licence for each work that it represents pursuant to the MLA, as soon as it determines that it represents the work. If CMRRA knows that it does not represent a work, it notifies the record label accordingly. Other works remain unlicensed, unless the label secures a licence directly from the publisher.
 - Quarterly, the record label provides a statement of royalties payable and pays those royalties to CMRRA.
 - CMRRA issues its own statements and remits royalties to its publishers, less its commission.
 - The publisher pays the author.

Contractual Relationships between Publishers and CMRRA, and between CMRRA and Record Labels

32. In a nutshell, the necessary rights flow from one party to the other through contracts is as follows:

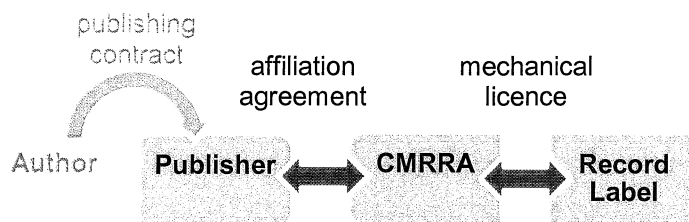


Figure 2: Typical contractual relationships between authors, publishers, CMRRA and record labels.

33. I am concerned only with the contractual relationships between publishers, CMRRA and record labels.

14, 2009 in respect of *Baker Estate v Sony BMG Music (Canada) Inc*, 2011 ONSC 7105 (Sup Ct), Court File No CV-080036065100 CP (“**Baskin Affidavit**”), Appendix 2 at paras 49 to 51.

²⁰ For a much more detailed description, see Basskin Affidavit, *ibid*, Appendix 2 at paras 49-53. The process is slightly different under the Indie MLA Model 2: see note 26 below.

Publishers' affiliation agreements with CMRRA

34. Publishers enter into affiliation agreements with CMRRA. The standard affiliation agreement:
- provides that CMRRA acts as a non-exclusive licensing agent for the publisher;²¹
 - instructs CMRRA to issue mechanical licences on generally applicable business terms;²²
 - provides, in only one instance, that the publisher can prevent CMRRA from issuing a licence: when the publisher intends to issue a licence directly to the record label;²³
 - otherwise does not provide for the possibility that CMRRA or the publisher may decline to issue a licence to a record label that complies with the terms of its MLA.

Mechanical licensing agreements between record labels and CMRRA

35. Typically, CMRRA issues mechanical licences pursuant to the MLA signed by CMRRA and the record label.²⁴ I know of three MLAs. The CRIA MLA was negotiated between CMRRA and the Canadian Recording Industry Association (“**CRIA**”, now Music Canada), acting on behalf of all major and several independent labels; it accounts for a substantial majority of sound recordings sold in Canada.²⁵ The Indie MLA Model 1 and Model 2 are offered to independent labels not represented by CRIA.²⁶
36. All three MLAs appear to be identical in all relevant respects. Each MLA:
- divides CMRRA publishers, for the purposes of the MLA, into **affiliated publishers** (who authorize CMRRA to license their catalogue pursuant to the MLA) and **non-affiliated publishers** (who authorize CMRRA to issue mechanical licences on terms other than the MLA).²⁷ The record label receives a list of both types of publishers;²⁸

²¹ Publisher affiliation agreement general terms & conditions, Appendix 4, s 2.

²² Publisher affiliation agreement general terms & conditions, Appendix 4, Schedule A, s 3.

²³ Publisher affiliation agreement general terms & conditions, Appendix 4, Schedule A, s 3.

²⁴ The MLA is not a licence; it is an agreement to licence.

²⁵ The last version of the CRIA MLA known to me ended on December 31, 2012. Based on past experience, I expect that mechanical licences are still being issued pursuant to that MLA while the new one is under negotiation. Though the CRIA MLA is negotiated by CRIA, each record label represented by CRIA must first sign the CRIA MLA before it applies to the label.

²⁶ The main difference between the two MLAs appears to be in the calculation of royalties. Under Model 1, the label does most of the work. Under Model 2, the label pays an advance royalty linked to the label's market share and CMRRA does most of the accounting.

²⁷ Indie Model 1 MLA, Appendix 3, s 1, s 2(b.2) (“non-affiliated publishers”).

- stipulates that the MLA is not a licence;²⁹
 - provides that CMRRA “shall” issue licences to the record label for the use of a musical work in the catalogue of an affiliated publisher pursuant to the terms of the MLA,³⁰ unless the label secured a licence directly from the publisher;³¹
 - provides that a licence, once issued, cannot be cancelled during the term of the MLA, even if a publisher leaves CMRRA;³²
 - provides that licences for works owned by a non-affiliated publisher are issued according to instructions given, or to be given, by the publisher;³³
 - provides, in only one provision (dealing with budget recordings), for an affiliated publisher to provide specific instructions in respect of the issuance of a licence.³⁴
37. Nothing in the MLAs stipulates that CMRRA or the publisher retains the right to refuse to issue a licence to a record label that complies with the terms of its MLA. Nothing on the website of CMRRA informs labels that CMRRA may seek specific instructions from an affiliated publisher. I know of only two circumstances where CMRRA seeks instructions from an affiliated publisher in the mechanical licensing market. The first concerns budget recordings, already mentioned. The second concerns labels wishing to pay royalties at a rate that is lower than the MLA.³⁵

The Pricing of Mechanical Licences

38. To my knowledge, the price of a mechanical licence remains the same whether:
- the record label creates a new recording (whether a first release or a cover) of the licensed work;
 - the record label re-releases a pre-existing sound recording of the licensed work and the sound recording is protected by copyright, thus requiring the payment of an additional royalty for the use of the sound recording; or

²⁸ The record label also receives a list of works owned by an affiliated publisher that are specifically excluded from the MLA. The only work I have known to be so excluded is Irving Berlin’s *White Christmas*.

²⁹ Indie Model 1 MLA, Appendix 3, s 2(d).

³⁰ Indie Model 1 MLA, Appendix 3, s 2(b.1), 2(d)(v).

³¹ Indie Model 1 MLA, Appendix 3, s 2 (d)(i.c) [not found in the CRIA MLA], 2(e)(ix). The obligation to advise CMRRA that a direct licence is issued falls on the publisher according to the affiliation agreement, and on the record label according to the MLAs.

³² Indie Model 1 MLA, Appendix 3, s 2 (b.1).

³³ Indie Model 1 MLA, Appendix 3, s 2(b.2).

³⁴ Indie Model 1 MLA, Appendix 3, s 9(f) [not found in the Indie Model 2 MLA].

³⁵ Testimony of David Basskin before the Copyright Board, transcript, September 12, 2006, Appendix 5 at pp 932-934.

- the record label re-releases a pre-existing sound recording of the licensed work and the sound recording is in the public domain, and therefore can be used royalty-free.
39. To my knowledge, the price of a mechanical licence has always been the same at any given time whether the musical work was put on a CD, a vinyl or a cassette, even though the price at which each recording medium was sold at any given time was very different.
40. Publishers that issue mechanical licenses directly usually do so at the rates found in the applicable MLA.³⁶

The “Pending List” Class Action Settlement

41. Until recently, most record labels maintained and regularly supplied to CMRRA a list (“**pending list**”) of works that the label had released and for which the label has not obtained a licence.
42. In 2008, a class action was initiated on behalf of copyright owners whose musical works had been released in Canada by the major record labels, when unpaid royalties had accrued on the labels’ pending lists.³⁷
43. In May 2011, the Ontario Superior Court of Justice certified a class and approved a settlement with respect to CDs and other products first released or distributed in Canada by the major labels up to and including December 31, 2012. CSI has been appointed as settlement administrator.
44. The settlement calls for the implementation of a new mechanical licensing system for all CDs released in Canada from January 1, 2013. The new system is intended to avoid the accumulation of pending royalties and to promote the timely payment of royalties.
45. The settlement is relevant to my report for four reasons.
46. First, pending lists exist because record labels release most CDs before obtaining the necessary mechanical licences.
47. Second, the Key Terms of Settlement between CMRRA, SODRAC and the major labels filed as part of the class action settlement presuppose that the practice of releasing CDs before obtaining the necessary mechanical licences will continue in the future, with one key change: CSI, not the labels, will retain the royalties owed to rights holders who remain unidentified or unknown.
48. Third, under these same terms, it would appear impossible that CMRRA or its affiliated publishers retain a residual discretion to refuse to issue a mechanical licence.
49. Fourth, according to the CMRRA website, all CDs released since January 1, 2013 have been licensed through the new system set out in the settlement.

³⁶ Basskin Affidavit, *supra* note 19, Appendix 2 at para 48.

³⁷ *Baker Estate v Sony BMG Music (Canada) Inc*, 2011 ONSC 7105.

Appendices

Appendix	Document
1	List of sources used to prepare this report
2	Basskin Affidavit
3	Independent MLA Model 1 - used to quote
4	Affiliation Agreement
5	Excerpt from relevant testimony

Appendix 1

List of Sources Used to Prepare my Report

in addition to the documents quoted in my report or attached to it

Affidavit of Terry Perusini and Attachments thereto

CMRRA MLA

Indie Model 2 MLA

Website of CMRRA

Website of Music Canada

Appendix 2

Court File No. CV 0800360651 00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE ESTATE OF CHESNEY HENRY "CHET" BAKER JUNIOR BY ITS
PERSONAL REPRESENTATIVE CAROL BAKER, and CHET BAKER
ENTERPRISES LLC**

Plaintiffs

- and -

**SONY BMG MUSIC (CANADA) INC., EMI MUSIC CANADA INC.,
UNIVERSAL MUSIC CANADA INC., WARNER MUSIC CANADA CO., and
their Parent, Subsidiary and Affiliated Companies, CANADIAN MUSICAL
REPRODUCTION RIGHTS AGENCY LTD. and SOCIETY FOR
REPRODUCTION RIGHTS OF AUTHORS, COMPOSERS AND
PUBLISHERS (SODRAC) INC.**

Defendants

**PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*,
S.O. 1992, c.6**

**AFFIDAVIT OF DAVID A. BASSKIN
(sworn January 14, 2009)**

I, David A. Basskin, of the City of Toronto, MAKE OATH AND SAY
THAT:

1. I am the president and chief executive officer of the defendant Canadian Musical Reproduction Rights Agency Ltd. ("**CMRRA**"). As such, I have knowledge of the matters set out herein. The matters set forth in this affidavit are within my personal knowledge based on my position and my review of the records of CMRRA. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of the information and believe it to be true. The statements made in this affidavit are made without the intention of waiving any applicable privilege.

I. Personal Background

2. I was educated at the University of Toronto, from which I received my B.A. in 1974, and at Osgoode Hall Law School, where I obtained my LL.B. in 1977 and my LL.M. in 1999. In 2003, I graduated from the M.B.A. program at the Rotman School of Management at the University of Toronto. I was called to the bar of Ontario in 1979.

3. Prior to joining CMRRA, I worked as a Law Clerk to the Chief Justice of the High Court of Ontario, as Corporate Secretary and Legal Counsel to CTV Television Network Ltd., and as a member of the legal department of Nelvana Limited, a major Canadian producer of films and television programs. I joined CMRRA in September 1989.

4. CMRRA is Canada's largest music licensing agency and licenses music publishing rights on behalf of thousands of music publishers and copyright owners to record companies, internet music distributors and film and television producers. As CMRRA's President, I direct the negotiation and administration of industry-standard agreements for the licensing of music reproduction and distribution. I also direct the filing of tariffs of royalties with the Canada Copyright Board.

5. In addition to my duties with CMRRA, I also act as legal counsel to CMRRA's parent body, the Canadian Music Publishers Association ("**CMPA**"). In that capacity, I am involved with CMPA's activities respecting copyright reform, telecommunications and broadcast policy in appearances before parliamentary committees, the CRTC and other bodies.

6. I also serve as president of CMRRA-SODRAC Inc. ("**CSI**"), a corporation formed jointly by CMRRA and SODRAC 2003 Inc. ("**SODRAC**"), a successor company to the defendant Society for Reproduction Rights of Authors, Composers and Publishers (SODRAC) Inc., for the purpose of

licensing reproduction rights in music for certain uses and by certain users, including radio stations and online music services.

7. My full curriculum vitae is attached as **Exhibit A** to this affidavit.

II. Summary

8. This affidavit is sworn in support of

- (a) the plaintiffs' motion to certify this action as a class proceeding;
- (b) the plaintiffs' motion to discontinue this action as against CMRRA and SODRAC, and to approve the settlement arrived at between the plaintiffs and those defendants; and
- (c) the motion by CMRRA, SODRAC, and SODRAC 2003 Inc. for leave to intervene in this action as added parties.

9. CMRRA is the largest music reproduction rights licensing agency in Canada. It has been engaged since 1975 in issuing mechanical licences that permit record labels and others to reproduce musical works on physical media such as LPs, cassettes and compact discs. Practical realities of the music industry have dictated that a good deal of CMRRA's mechanical licensing activity take place after the release of the recordings in question, which in turn has given rise to the issues raised in the statement of claim concerning the accumulation of unlicensed musical works on what is known in the Canadian music industry as the "Pending List."

10. CMRRA has a great deal of experience and expertise concerning the existence and growth of the Pending List. Over the last 20 years, it has made a number of attempts to resolve the underlying issues and reduce or eliminate the Pending List problem. It has proven to be economically infeasible to implement the systems that would be needed to resolve the issues internally, without the increased cooperation of the record labels. For their part, the

record labels have generally been unwilling to take the steps that, in the view of CMRRA, would help to resolve the problem.

11. CMRRA had no prior notice of this lawsuit and did not consent to being named as a defendant by the plaintiffs.

12. In response to being named as a defendant, CMRRA was forced to consider whether, in fact, a class proceeding might be an appropriate vehicle to resolve the issues relating to the Pending List in a comprehensive fashion, both retrospectively and prospectively. Having answered that question in the affirmative, CMRRA agreed to assist the plaintiffs in the pursuit of this action as a class proceeding, which it believes will benefit both its music publisher clients and songwriters and music publishers generally.

13. Pursuant to an agreement between the plaintiffs and CMRRA and SODRAC, the plaintiffs have agreed to seek the discontinuance of this action as against CMRRA and SODRAC, who concurrently seek leave to intervene in this action.

14. This affidavit deals with the following subjects:

- (a) The history and function of CMRRA, and its role in the Canadian music industry;
- (b) The structure of that industry from the perspective of the owners of musical works;
- (c) The nature and history of mechanical licensing in Canada;
- (d) The practice of mechanical licensing, with particular reference to the Mechanical Licensing Agreement between CMRRA, the Canadian Recording Industry Association (CRIA), and various record labels;
- (e) The origin and growth of the Pending Lists;

- (f) The size and characteristics of the Pending Lists today;
- (g) The difficulties encountered by CMRRA in attempting to deal with the Pending Lists;
- (h) CMRRA's specific attempts to address the Pending Lists through negotiation with the record labels and through various internal initiatives; and
- (i) CMRRA's involvement in this litigation and the basis on which I have concluded that a class proceeding may be the best way to deal with the Pending List issue.

III. CMRRA

15. CMRRA is a non-profit music licensing agency that represents the reproduction rights of the vast majority of music publishers whose repertoires are in use in Canada.

16. CMRRA was formed in 1975 to represent the interests of music publishers doing business in Canada. Today, CMRRA represents the owners of more than 44,000 catalogues of musical works and has issued licenses on their behalf to more than 19,500 music users, including all major record companies and hundreds of individuals, independent labels and community organizations.

17. On behalf of its music publisher clients, CMRRA issues licences to users of the reproduction right in copyrighted music. These licences authorize the reproduction of music in compact discs, cassettes and other physical media (usually called "mechanical licences") and in films, television programs and other audio-visual productions ("synchronization licences"). Pursuant to these licences, licensees pay royalties to CMRRA and, in turn, CMRRA distributes the proceeds to its clients. The publisher then distributes the songwriter's portion of those revenues to the songwriter(s) involved.

18. CMRRA is funded by a fixed commission that it deducts from the proceeds of its licensing activities. Membership in CMRRA is open to any music publisher with respect to the Canadian use of the reproduction right in its music.

19. CMRRA is a 50% shareholder in CSI. CMRRA and SODRAC incorporated CSI in 2002, initially as a vehicle to collect the royalties derived from their initially distinct Commercial Radio Tariffs for the years 2000 through 2005. Since then, CSI has applied for a series of other tariffs certified by the Copyright Board, including successive iterations of the Commercial Radio Tariff and the Online Music Services Tariff (2005-2007). Tariffs currently pending before the Copyright Board include the CSI Commercial Radio Tariff (2008-2012), the CSI Online Music Services Tariff (2008 and 2009), and the Multi-Channel Subscription Radio Services Tariff (2006-2009). In addition, CSI has entered into private licence agreements with other users of music.

20. As a contractor to CSI, CMRRA is responsible for the bulk of the administration of royalties collected pursuant to CSI tariffs and private agreements. A portion of those royalties are paid to CMRRA, which in turn distributes them to its music publisher clients.

21. In addition, CMRRA collects, on behalf of its music publisher clients, royalties paid to the Canadian Private Copying Collective for the private copying of sound recordings embodying musical works in the repertoires of those clients.

22. In order to carry out these functions, CMRRA has built an extensive infrastructure of information technology and human resources. At present, CMRRA employs over 100 people, including a team of eight IT professionals devoted to licensing and administration.

23. Although CMRRA represents a substantial percentage of the musical works used in Canada, its representation is neither exclusive nor exhaustive.

For example, CMRRA represents an estimated 70% of musical works that are reproduced on sound recordings sold in Canada. The balance of those musical works (which include some by high-profile composers such as Bruce Springsteen, Bob Dylan and Paul Simon, as well as many lesser-known composers) are either licensed directly by their owners or represented by SODRAC. Some copyright owners license their works through music publishers who are not affiliated with CMRRA, while others are not represented by a music publisher at all (and are thus sometimes referred to as being “self-published”).

24. As I will explain in more detail below, CMRRA is of the view that, despite its substantial market share of mechanical licensing activity in general, a very significant percentage of works on the various Pending Lists are not represented by CMRRA.

IV. The Structure of the Canadian Music Industry

25. Sound recordings released and sold in Canada fall into three major categories: those which are actually recorded in Canada and feature Canadian artists, those which are manufactured by Canadian record labels but feature master recordings produced by non-Canadians, and those which are manufactured elsewhere and imported into Canada for sale.

26. “Record label” is an industry term of art that refers generally to entities engaged in a variety of different activities. The common thread among them is that they are engaged in either the production of original sound recordings (in which case they will often own the copyright in the recordings in question) or the manufacture of sound recordings under licence. Some record labels are responsible for the distribution of their own product while others (particularly independent labels) contract that function out. Neither major labels nor independent labels manufacture their own products; that function is contracted out to one of a small number of so-called “pressing plants” active in Canada.

27. The so-called "major" record labels currently active in Canada are the defendants EMI Music Canada Inc. ("**EMI**"), Universal Music Canada Inc. ("**Universal**"), Warner Music Canada Co. ("**Warner**") and SONY BMG Music (Canada) Inc. ("**SONY BMG**"). As I have come to understand it during my years with CMRRA, and from my personal contact with the management of these companies from time to time, these record labels engage both in the making of original sound recordings in Canada, featuring artists who are either signed to exclusive recording agreements with the record labels or who produce their own recordings and license them to the record labels for release, and in the release and distribution in Canada of recordings produced and/or licensed either by their parent or affiliated companies in other jurisdictions or by other unrelated companies in both Canada and other jurisdictions.

28. There are also a large number of so-called "independent" record labels active in Canada. Independent labels are those who are not affiliated with a multinational parent company, as the majors are, and as such they generally have much less extensive catalogues of sound recordings available for release and distribution in Canada. However, like a major label, the catalogue of an independent label will typically consist of a combination of owned and licensed recordings.

29. Only rarely will an independent label take responsibility for its own distribution; more commonly, that function will be contracted out to a third party, either a standalone distribution company or one of the major record labels. Each of the major record labels in Canada has distribution agreements in place with a number of independent record labels, both Canadian and otherwise.

30. Regardless of the origin of a particular recording, the Canadian label is generally responsible for administrative and accounting functions related to its distribution and sales activities in Canada, including the task of obtaining the necessary mechanical licences for the reproduction of the musical works that

the recording embodies. The responsibility to obtain mechanical licences for recordings manufactured and/or released in Canada falls with the Canadian labels by law, by industry custom, and by contractual agreement. The Canadian major labels named as defendants in this action are also responsible for creating, maintaining and administering the so-called "Pending Lists" that are the subject of the current litigation.

31. As a result, in its day-to-day licensing activity, CMRRA deals extensively with the defendant Canadian major record labels. By contrast, CMRRA has very little contact with their parent companies or with their affiliates in other jurisdictions.

32. Copyright in a musical work, as distinct from the sound recording in which it is embodied, is generally owned and controlled not by a record label but by either the songwriter or a music publisher to whom that songwriter has assigned the copyright. In Canada, the vast majority of musical works are represented for licensing purposes by music publishers rather than individual songwriters (although, as I will explain below, the percentage of works on the Pending Lists that are so represented may be smaller). As in the case of record labels, there are a number of "major" music publishers active in Canada, specifically EMI Music Publishing Canada, Universal Music Publishing Canada, Warner/Chappell Music Canada and Sony/ATV Music Publishing Canada.

33. There are also a large number of independent music publishers active in Canada, ranging from large, professional operations such as Casablanca Music Publishing Inc. and Olé Media Management Inc. to individual songwriters who act as self-publishers. To facilitate licensing and the collection and administration of royalties, some self-published songwriters enter into publishing administration agreements with a major or independent music publisher. While CMRRA represents all of the major publishers, a large number of independent publishers and publishing administrators, and many

self-publishers, a significant number of independent publishers and unrepresented songwriters are not represented by CMRRA or any collective society.

V. Mechanical Licensing

34. The term “mechanical licensing” has its origin in section 3(1)(d) of the *Copyright Act*, which provides that the owner of copyright in a musical work has, among other things, the exclusive right “to make any sound recording, cinematograph film or other contrivance *by means of which the work may be mechanically reproduced or performed*” (emphasis added). The term is widely used to describe the reproduction of music onto physical products (for example, LPs, cassettes and compact discs).

35. The great majority of mechanical licensing activity in Canada is carried out by CMRRA or SODRAC as licensors (or, in the case of CMRRA, an agent for the licensors) and record labels as licensees. However, CMRRA and SODRAC also issue mechanical licences to individual makers of sound recordings who are not formally organized as “record labels” per se.

36. Prior to 1988, the *Copyright Act* contained a compulsory statutory licence for mechanical reproduction, which set royalties at two cents “per playing surface” but contained no particular accounting or reporting requirements. The compulsory licence allowed any person to make a reproduction of a work for sale or distribution in Canada after the initial release of a recording had occurred.

37. The Canadian compulsory licence was introduced in 1924 and paralleled a similar provision that had been long entrenched in the United States. However, unlike the United States equivalent, the Canadian compulsory licence did not contain very detailed accounting provisions, which made mechanical licensing activity difficult to track.

38. Until CMRRA was established in 1975, mechanical licensing in Canada was carried out either directly by copyright owners (i.e., songwriters and music publishers) or by the Harry Fox Agency, a licensing agency based in the United States.

39. By 1988, the two-cent statutory mechanical rate was less than half the rate in the United States. In fact, it was the lowest rate in the world, with the exception of territories without any effective music licensing infrastructure at all. Moreover, the drafting of the statutory provision arguably left it open to the interpretation that record labels were liable to pay only two cents for each side of a long-playing record.

40. Amendments to the *Copyright Act* in 1988 included the repeal of the statutory mechanical licence. The amendments also introduced a significant expansion of the then-existing system of collective administration, allowing the formation of collective societies to license, among other things, the reproduction rights in musical works.

41. The abolition of the statutory licence necessitated direct negotiation between record labels and music publishers with respect to all terms of each mechanical licence. This led to a significant change in the role of CMRRA. During the era of the statutory licence, CMRRA's principal function was to collect royalties at the statutory rate and remit them to its music publisher clients. Now, CMRRA assumed responsibility for the negotiation of both the mechanical licensing rates and the terms and conditions applicable to those licences.

(i) *The Mechanical Licensing Agreement*

42. In 1988, there were nine major record labels active in Canada: A&M Records of Canada Ltd., BMG Music Canada Inc., Capitol Records-EMI of Canada, CBS Records Canada Ltd., Island Records of Canada Ltd., MCA Records Canada, PolyGram Inc., Virgin Records Canada Inc., and WEA

Music of Canada, Ltd. All of these companies, as well as a number of independent record labels, were represented by a single trade association, the Canadian Recording Industry Association (“**CRIA**”). In all, CRIA represented the makers of a substantial majority of all sound recordings sold at that time in Canada. CMRRA, on the other hand, represented a smaller but still significant percentage of the musical works reproduced on those recordings.

43. Following the amendments to the Copyright Act, CRIA and CMRRA entered into negotiations with a view to settling both the rates and the terms for mechanical licensing in the absence of a statutory licence. The negotiations were lengthy and adversarial, with the record labels arguing that as little as possible should change so as to avoid disruption to well-established commercial practices. However, some progress was made, and CRIA eventually agreed to increase the mechanical licensing rate to CDN5.25¢ per song (mirroring the USD 5.25¢ rate that was then in effect in the United States), but the resulting Mechanical Licensing Agreement (“**MLA**”), attached as **Exhibit B** to this affidavit, was not particularly comprehensive.

44. The first MLA expired at the end of September 1990, and another lengthy and difficult negotiation ensued. This time, CMRRA and CRIA negotiated a much more detailed code of conduct and rate determination in an agreement that ran from October 1990 through December 1997. The 1990 MLA is attached as **Exhibit C** to this affidavit.

45. Successor agreements to the 1990 MLA were executed in 1998 (**Exhibit D**), 2004 (**Exhibit E**), 2006 (**Exhibit F**) and 2008 (**Exhibit G**). During this time, CRIA has gradually come to represent fewer record labels, both as a result of industry consolidation (for example, the merger of Sony and BMG and Universal’s acquisition of PolyGram and MCA) and because of the resignation of a number of independent record labels from the association.

46. The current MLA, executed in September 2008, is effective as of January 1, 2007 and runs through December 31, 2012.

(ii) Mechanical Licensing Outside the MLA

47. As indicated above, not all sound recordings made in Canada are made by labels represented by CRIA and are therefore not subject to the MLA with CRIA. CMRRA offers other mechanical licensing schemes for these labels (and, for that matter, other individual makers of sound recordings) when they seek mechanical licences from CMRRA. Some of these labels sign their own MLAs with CMRRA while others are subject to the “pay as you press” program discussed below. However, in every case, the basic royalty rate remains the same.

48. Similarly, not all music publishers doing business in Canada are represented by CMRRA. Some are represented by SODRAC, and therefore subject to mechanical licensing arrangements authorized by SODRAC from time to time, while others are not represented by either CMRRA or SODRAC and therefore license their repertoire directly to makers of sound recordings. I do not have direct knowledge of the mechanical licensing practices of these publishers. However, on the basis of many conversations with these publishers over the years, I have come to understand that the usual practice is to license their repertoire at the rates in effect under the then-current MLA.

(iii) Mechanical Licensing Practice

49. In Canada, as in most territories, the common practice is for major labels to release new records without first obtaining mechanical licences. This practice had its origin in the pre-1988 era, when the combination of a statutory compulsory licence and a legislated two-cent royalty rate made the issuance of a mechanical licence a foregone conclusion; the only issue was locating and paying the copyright owner.

50. After the repeal of the statutory licence, this practice continued. Although it would be desirable if mechanical licences were to be sought and obtained in advance, there are significant practical barriers to such a system.

Chief among these is that the maker of a sound recording may not have complete or accurate information as to who owns the copyright in the underlying musical work, particularly when there are multiple authors, each of whom may own a share of copyright. Indeed, in many cases the authors will not have directed their own minds to resolving ownership issues by the time a recording of their composition is ready to be released; this may not be settled until months later. As a consequence, if a licence needed to be obtained in advance for every song on an album, it would often take a very long time before a completed record could be released.

51. As a practical response to this conundrum – and despite the fact that the absence of a compulsory licence means that a given copyright owner is entitled to refuse a licence request and might well do so – the practice remains for record labels to release their new product before obtaining the requisite mechanical licences. Instead, the licensing process set out in the MLA, broadly speaking, is as follows:

- (a) Prior to the execution of each successive MLA, CMRRA is to provide each label with a list of all music publishers whom it represents and who have authorized CMRRA to license their compositions pursuant to the MLA (“**Affiliated Publishers**”), all music publishers whom it represents but who have authorized CMRRA to license their compositions on terms other than those set out in the MLA (“**Non-Affiliated Publishers**”), and specific musical works which, while owned by an Affiliated Publisher, are specifically excluded from the scope of the MLA by instruction of their owners (“**Non-Authorized Compositions**”).
- (b) During the term of the MLA, each label is to apply to CMRRA for mechanical licences for all recordings that the label sells or distributes in Canada and which contain reproductions of musical works. These applications are to be made by way of the label’s

providing CMRRA with one copy of each physical contrivance on which the recording is released.

- (c) As soon as possible, once CMRRA has ascertained that a recording contains one or more compositions authorized for licensing under the MLA ("**Authorized Compositions**"), it is to grant a licence permitting the label to reproduce each such Authorized Composition on recordings manufactured or imported by or on behalf of the Manufacturer in Canada, and to distribute those recordings in Canada.
- (d) If the label applies to CMRRA for a mechanical licence for a work that CMRRA knows it does not represent, or does not represent the entire work (i.e., where there is more than one copyright owner and CMRRA represents some but not all of the resulting copyright interests), CMRRA is to advise the label as soon as possible.
- (e) If the recording supplied by way of licence application (and/or the packaging of that recording) does not disclose enough information to enable CMRRA to identify and issue licences for the musical works that it contains, CMRRA is to request in writing, and the label is required to provide, additional data in relation to that recording. The required data is to include, at minimum, (i) the name and address of the label, (ii) the name of the musical work, (iii) the name(s) of the performer(s) or group featured on the recording, (iv) the label's catalogue number for the recording, (v) the type(s) of product on which the recording was released, (vi) the title of the recording, and (vii) the release date.
- (f) Where a mechanical licence has not been obtained for any ownership interest in a musical work reproduced on a recording,

the label is required to record, on a so-called "Unlicensed Recording List" (the "**Pending List**"), certain identifying information (discussed below) about the work and the recording thereof. The label is required to provide an updated cumulative Pending List to CMRRA with each quarterly payment of royalties under the MLA.

- (g) Upon receipt of the Pending List, CMRRA is to review the list and attempt to identify and issue mechanical licences for any musical works that it is authorized to license pursuant to the MLA. Depending on the reason that the work ended up on the Pending List, interest may be payable on royalties payable pursuant to the licences so issued. The interest provisions of the current MLA, which set out the circumstances in which interest is and is not payable, are found in paragraph 4(f) of the CMRRA-Manufacturer Mechanical Licensing Agreement that is included as part of **Exhibit G** to this affidavit (at page 23 of that exhibit).

52. In practice, the system works as follows:

- (a) Sometime after the release of a given product (or occasionally before the release), the record label submits information about the musical works that it contains, by submitting a copy of the product itself and, in some cases, a separate transcription of the product's label copy.
- (b) Upon receipt of that material, CMRRA manually reviews the product or label copy and inputs all available information about the songs into its computer system.
- (c) CMRRA attempts to match the information supplied by the record label with information in the CMRRA song database.

- (d) If there is a match, and CMRRA represents a musical work in whole or in part, then a licence is issued for the interest that CMRRA represents. The licence takes the form of a paper document, a copy of which is attached as **Exhibit H** to this affidavit. Where there are multiple copyright owners and CMRRA represents more than one of the ownership shares, a separate licence is issued for each share.
- (e) If there is a match but the rightsholder information is incomplete – that is, less than 100% of the publishing interest in the musical work has been allocated – CMRRA conducts further research to identify the missing ownership shares and, where the copyright owner is a CMRRA client, obtains a formal work registration from the client as confirmation of its ownership share. (This is sometimes necessary because CMRRA's clients do not always register all their works with CMRRA before those works become active in Canada.) Once the work registration is received, the information is recorded in CMRRA's works database and a licence is issued for the additional share(s).
- (f) If there is a match but CMRRA does not represent the work or understands that it is in the public domain, CMRRA notifies the record label. Further, if CMRRA knows who represents a musical work that it does not represent itself, it often provides that information to the record label as a courtesy. Either way, it is then the responsibility of the record label to find the copyright owner(s) and obtain the necessary licence.
- (g) If there is no match, and it appears that the information supplied by the record label is insufficient, CMRRA requests the supplementary information set out in paragraph 51(e) above.

- (h) If there is still no match after reviewing all of the initial and supplementary information provided by the label, CMRRA notifies the label that the song has not been licensed and flags the song for further work and investigation, as time and resources permit, to verify its ownership.
- (i) Notification of unrepresented and/or unidentified musical works is provided in the form of an "Unlicensed Composition Sheet," which CMRRA prepares on a product-by-product (i.e., album-by-album) basis, showing which works on the particular product are not represented by CMRRA, which are in the public domain, and which simply cannot be identified.
- (j) For songs licensed by CMRRA, the labels regularly provide electronic statements identifying the royalties payable for songs on products they have sold, and pay those royalties to CMRRA. If CMRRA becomes aware of any changes in the ownership of a song, it amends the applicable licence(s) and makes the necessary adjustments to the royalty statement.
- (k) CMRRA issues its own statements to its music publisher clients and remits the royalties due and owing them, less its commission.

53. That describes the system in general. However, there are also certain exceptions. For example:

- (a) Since about August 2004, Universal has submitted its licence requests electronically, in addition to providing product samples and/or label copy, and CMRRA has issued licences to Universal in electronic rather than paper format.
- (b) If a dispute is raised with respect to the ownership of all or part of the copyright in a song, record labels will often refuse to pay any

royalties for that song until the dispute is resolved – sometimes even if there are shares of the copyright that are not in dispute and that CMRRA has confirmed that it represents those shares.

- (c) For smaller licensees, whether labels or other entities, who seek mechanical licenses, CMRRA has implemented a “pay-as-you-press” system, whereby the licensee pays royalties in advance, at the prevailing MLA rates, on the basis of the volume of product actually produced.

54. CMRRA has achieved some very significant milestones in relation to mechanical licensing. In its 33 years of operation, it has issued over 2 million mechanical licences and has developed a song and publisher database containing over 1.6 million songs.

55. However, the CMRRA mechanical licensing system faces a number of challenges. Fundamentally, we cannot issue a licence for a musical work until we have confirmed who owns it and that the owner is in fact represented by CMRRA. However, CMRRA is dependent for this confirmation upon information provided by third parties – both its record label licensees and its own music publisher clients.

56. Until 1998, the record labels were unwilling to agree contractually to any required categories or format for the provision of information required for licensing purposes. Physical products (and their packaging) vary widely in terms of the amount and quality of information that they contain; for example, some CD covers contain comprehensive information about each song, including the names of the songwriters and music publishers, while others contain none of that information at all. Even where the information is provided, it may not be entirely accurate or complete.

57. Further, CMRRA's repertoire changes continuously. New music publishers become affiliated with CMRRA on a regular basis, while existing

clients expand or modify their catalogues by buying and selling copyrights. Consequently, on a daily basis, CMRRA receives notification both of new works and of changes in the ownership of existing repertoire (which sometimes leads to the removal of songs from the scope of CMRRA's representation). As such, the accuracy and completeness of the CMRRA song and publisher database depends heavily on the timely and accurate submission of changes by its clients.

58. The quality of third-party information is not, however, the only constraint on the comprehensiveness of CMRRA's records. CMRRA does not represent all of the music publishers whose repertoire is in use in Canada. Accordingly, CMRRA's information resources are necessarily limited; there are many songs that are not included in the CMRRA song database because we do not represent them and never have. Although the database does contain information about many songs that we do not represent, mostly because we have encountered them on recordings released over the years and taken note of them for purposes of attempted matching, the information about those songs may not be complete and there are some songs that we have not encountered at all. There are some third-party resources available that CMRRA uses for research purposes, to help identify potential owners of certain musical works, but these cannot be considered authoritative.

VI. Pending Lists

59. When I arrived at CMRRA in 1989, I learned for the first time that, for a number of different reasons, a significant number of musical works were being recorded and released by record labels for which licence had not been obtained and royalties were not being paid to the owner of the copyright in those musical works. I became aware from CMRRA staff at the time that, in situations where a record label had not identified or could not contact the person to whom mechanical royalties should be paid for the use of a musical work, the record label accrued the unpaid royalties in their financial records.

60. From the time I started at CMRRA, these unlicensed recordings were a frequent topic of discussion with the record labels. CMRRA had learned from the major labels that they maintained one or more lists of unlicensed recordings against which they recorded unpaid royalties. Depending upon the record label, these lists were referred to by a number of names that could change: "no address", "unmatched", "unlicensed", "disputed" and "pending." Although they are referred to in the MLA as "Unlicensed Recording Lists," they are most frequently referred to in the industry by the colloquial term, "pending lists," or collectively as "the pending list."

61. Subsequently, through extensive experience at CMRRA with the Pending Lists, I have learned that musical works end up on the lists in a variety of ways and for a variety of reasons, including the following:

- (a) The record label has not applied for a mechanical licence;
- (b) Although CMRRA has advised the record label that it does not represent the work, the record label has not secured a licence directly from the music publisher or other copyright owner;
- (c) Although a mechanical licence has been issued, signed and returned, no royalties have been paid for reasons unknown to CMRRA;
- (d) CMRRA has issued a mechanical licence but the record label has not signed and returned it as required under the MLA. Most record labels take the position that royalties are not payable until the licence has been signed and returned;
- (e) A mechanical licence has been issued but the record label has paid less royalties than required; and
- (f) A licence has been sought by the record label but either (i) CMRRA has not yet responded to the request because we

cannot yet confirm whether or not the work is within our repertoire, or (ii) the licence was sought for a work that CMRRA represents, but was sought too close to the cut-off date in the relevant accounting period for royalties to be released in time for the work to be removed from that quarter's Pending List;

- (g) CMRRA has not been able to confirm whether or not it represents the work in question, either because the record label has failed to provide sufficient or accurate information to identify it (e.g., an unrecognizable or inaccurate song title or catalogue number) or because CMRRA has sent a request to one of its clients to verify its suspected representation of the work but the publisher has not responded;
- (h) The work is in the public domain but has not been identified by the record label as such or has not been identified with sufficient particularity to allow CMRRA to determine whether it falls into the public domain;
- (i) The work is subject to an ownership dispute in which CMRRA has issued a mechanical licence but the record label purports to have obtained a conflicting licence from a third party. In these situations, the label will usually provide CMRRA with information about the third-party claim and will not release royalties until the situation is resolved. CMRRA will notify all the claimants of the dispute and ask that they advise when it has been resolved so that licences can be issued in accordance with the resolution;
- (j) The musical work does not actually appear on the product in question, but the record label has pended royalties on it nonetheless.

62. Since even before the inception of the MLA licensing process, CMRRA has received information from the major record labels about their Pending Lists. Before I arrived at CMRRA, and in the early years of my tenure, CMRRA received Pending Lists from the record labels in the form of paper printouts of information. The information contained on these lists varied from record label to record label, and might consist of as little information as an album title or catalogue number and accrued royalties, or as much information as song title, unit amounts, label catalogue number and/or UPC codes.

63. For the larger labels, these lists were huge. In fact, within a few days after my arrival at CMRRA, I recall my predecessor, Paul Berry, directing my attention to a large stack of paper, about two feet high, and informing me that it was PolyGram's most recent Pending List. Prior to that introduction, I had never heard of Pending Lists.

64. In the days of the statutory compulsory licence, this was primarily a payment issue; since there was no question as to whether the record label could obtain a licence to use any particular composition, it was simply a matter of to whom the necessary royalties were to be paid. Since the repeal of the compulsory licence, however, it has become a licensing issue: the availability of a mechanical licence, or the rate at which a licence might be granted, is no longer a certainty (at least in the case of songs that fall outside the repertoire of CMRRA and SODRAC), and songs that are on the Pending List are likely unlicensed.

65. Prior to 1990, Pending Lists were provided to CMRRA by the major labels only in paper format and with no consistency as to form or content. Each label's Pending Lists were different and it was left to CMRRA to review them by hand and attempt to reconcile the information where possible. While I have limited personal knowledge of the practices that were observed in those days, I am informed by Anatole Banner, who has been engaged by CMRRA as an IT consultant continuously since the mid-1980s, and believe on that

basis that relatively few songs could be identified successfully on the basis of the material provided in hard copy format.

66. More recently, as I will detail below, the Pending Lists have been provided to CMRRA in electronic format.

VII. Pending Lists Today

67. Data provided by the defendant record labels in relation to the second calendar quarter of 2008 indicate that the total aggregate value of the four companies' Pending Lists at that time was \$53,110,684.08 and the four lists contained a total of 385,673 line items with an average assigned royalty value of \$137.71 each. The breakdown of the four Pending Lists as at that time was as follows:

Label	Total Value	Number of Line Items	Average Value per Line Item	Average Value per Product
Universal	\$30,313,444.52	248,423	\$122.02	\$1,593.31
Warner	\$7,779,390.37	43,559	\$178.59	\$1,883.04
Sony BMG	\$7,973,108.28	74,777	\$106.63	\$1,122.09
EMI	\$7,044,740.91	18,914	\$372.46	\$1,886.05
TOTAL	\$53,110,684.08	385,673	\$137.71	\$1,621.12

68. In 2006, CMRRA performed an analysis of Pending List data from the fourth quarter of 2005 to determine the number of individual line items that fell within certain ranges of value. The results of that analysis are as follows:

Range	Number of Line Items	Percentage of Total Line Items	Total Value	Percentage of Total Value	Average Value per Line Item in Range
> \$10,000	194	0.1%	\$3,097,339	6.1%	\$15,965.66
\$5,000.01 to \$10,000.00	760	0.3%	\$5,067,215	10.0%	\$6,667.39
\$1,000.01 to \$5,000.00	9,005	3.2%	\$17,418,509	34.3%	\$1,934.32
\$500.01 to \$1,000.00	11,557	4.1%	\$8,106,738	15.9%	\$701.46
< \$500	257,839	92.3%	\$17,154,766	33.7%	\$66.53
TOTAL	279,355		\$50,844,566		\$182.01

69. In a similar study performed in 2005, CMRRA determined that 71.63% of all items on the record labels' cumulative Pending Lists had an assigned royalty value of less than \$100. The total value of those items was \$4,630,232 – just 9.43% of the \$49,085,502 cumulative value of the Pending Lists at that time.

70. Each of the defendant record labels has recently provided CMRRA with Pending List data for the third quarter of 2008. The current breakdown of the lists, by record label, is as follows:

Label	Total Value
Universal	\$30,255,712.30
Warner	\$7,858,575.66
Sony BMG	\$8,086,709.61
EMI	\$8,011,674.34
TOTAL	\$54,212,671.91

Although we have not yet had an opportunity to analyze the latest data in detail, I expect the breakdown of Pending List items to be roughly the same as in the previous quarter.

71. It is also worth mentioning that Sony BMG delivers two separate Pending Lists to CMRRA each quarter. One of the lists is called "Unlicensed" and the other is called "Unmatched." Only the "Unlicensed" list provides information regarding the value of each line item. The items on the "Unmatched" list do not contain sufficient information to assess their value; at times, not even the title of the musical work is included. Accordingly, only the value of the "Unlicensed" list is included in the figures cited in paragraphs 67 to 70 above. However, I am advised by Caroline Rioux, CMRRA's Vice President of Operations, and believe on that basis that the "Unmatched" list could account for as much as \$1.5 million more in unpaid royalties.

72. CMRRA has no specific data on the percentage of Pending List items that it represents. However, we have always believed that the Pending Lists contain significant numbers of works in our repertoire. From time to time, both we and the record labels have analyzed samples of the Pending Lists and generated results that might be indicative to some degree.

73. For example, during the negotiations leading to the 2004 MLA, it was agreed that CMRRA and each record label would analyze a random sample of 100 items on that record label's Pending List, each with a per-item value of \$100 or less. Tables and charts summarizing the full results of that study, as conducted by CMRRA, are attached as **Exhibit I** to this affidavit. CMRRA was able to estimate that it represented 29.17% of works on Warner's Pending List, 15.70% of BMG's, 35.14% of Sony's, 14.21% of EMI's, and 38.27% of Universal's. When the numbers were revised to extrapolate for items for which CMRRA representation was "unsure" – neither confirmed nor negated conclusively – the numbers grew to 38% for Warner, 29% for BMG, 55% for Sony, 35% for EMI, and 56% for Universal.

74. Each of the record labels other than EMI performed a similar analysis, the results of which are attached as **Exhibit J** (Warner), **Exhibit K** (Universal), **Exhibit L** (Sony), and **Exhibit M** (BMG). Separately, Warner and EMI analyzed all products (i.e., albums or other multi-track configurations) on their Pending Lists with aggregate per-product values of over \$10,000. Those results are attached as **Exhibit N** (Warner) and **Exhibit O** (EMI). Warner's analysis was generally the most comprehensive, and its findings were as follows:

- (a) On the products researched with a per-product value greater than \$10,000, 66.15% of the total royalty value related to musical works that were not represented by CMRRA, 5.73% related to works that had been licensed (either by CMRRA or otherwise) and for which royalties were about to be paid, and 0.98% related to works that were the subject of disputes about the ownership of rights. The balance (27.14%) related to works that were being processed by CMRRA but had not yet been licensed successfully.
- (b) Of the individual items researched with a per-item value less than \$100, 62% were not represented by CMRRA, 1% were in dispute, and 1% were charity releases that were not subject to royalties. The balance (36%) were being processed by CMRRA but had not yet been licensed successfully.

75. Where musical works referred to in the Warner study had not yet been licensed successfully, it cannot be determined on the basis of the study alone whether or not the musical works in question were represented by CMRRA at that time. That conclusion is reinforced by the parallel study that CMRRA conducted at that time, which established that CMRRA was unable to confirm the ownership status of 33.17% of the items in the Warner study with values under \$100.

76. Similarly, in 2006, Universal analyzed the results of its "Royalty Recovery Program," a short-term program (discussed below) that it undertook to resolve Pending List items, and determined that, of \$6.4 million in royalties that it managed to resolve, 40% of songs were represented by CMRRA, 11% were represented by SODRAC, 14% were not represented by either, and 35% were in the public domain. It should be noted that these percentages reflect Universal's appraisal of the resolved items; CMRRA is not in a position to verify the ownership or copyright status of works for which Universal has not applied to CMRRA for licences, including those that Universal determined to be in the public domain.

77. These results may or may not be predictive of the precise degree of CMRRA's representation of all items on the Pending Lists. However, if we rely on the low end of the various analyses and assume that about 30% of the line items on the Pending List represent musical works within our repertoire, it would appear that, at current levels, the Pending List is likely to contain at least \$16 million in unpaid royalties owed to CMRRA clients – before interest.

78. Consequently, with justification, the Pending List has long been a matter of serious concern for CMRRA. So long as works within our repertoire remain unlicensed, CMRRA is unable to collect the royalties to which our clients are entitled or to receive our commission on the collection of those royalties. However, the sheer magnitude of the problem – more than 385,000 individual line items, about 90% of which have an average individual value of less than \$100 – coupled with CMRRA's limited resources and the apparent unwillingness or inability of the record labels to address the problem in a meaningful way, has made it next to impossible for us to make any significant progress toward ensuring that copyright owners are paid for the use of their musical works.

VIII. Difficulties Encountered by CMRRA in Addressing the Pending Lists

79. Over the years, CMRRA has found it very difficult to identify works on the Pending Lists in order to issue mechanical licences for those that are in our repertoire. A number of factors have contributed to this difficulty.

(i) *Insufficient Information Provided by the Record Labels*

80. The record labels have failed to provide sufficient information to enable CMRRA to identify compositions on the Pending Lists. They have not provided complete or accurate information for the fields of data required under the MLA (as discussed below). The name of the composition is sometimes reported in an obviously incorrect way – for example, a recent review of EMI's Pending List disclosed multiple references to "Canadian Other Unknown Tune," which I do not believe to be a real song title – and the catalogue number of the product on which the song supposedly appears is often unrecognizable or inconsistent with other available data, which makes it difficult or impossible for CMRRA to cross-reference the song title with the recording to obtain further clarification. Moreover, while the MLA has provided, since 1990, for the name of the composer to be provided on an optional basis, only Universal and Warner provide that information, and then only sporadically and often inaccurately.

81. As I have already indicated, the record labels have refused in successive MLA negotiations to agree to provide information that, in my view, would go a considerable way toward clearing the Pending Lists. Some of this information is contained on the face of the products as released and/or required in response to a request under the MLA for supplemental identifying information, yet the record labels have resisted including it on their Pending Lists. Other information, such as the percentage interests of songs that are licensed and unlicensed, is sometimes withheld as well. Attached as **Exhibit P**

to this affidavit is a list of the data fields currently provided by each of the major record labels.

(ii) No Standard Format for Pending List Data

82. Until very recently, the record labels have also refused to agree to a standard format for the submission of their Pending Lists to CMRRA. In the most recent MLA, as discussed below, the record labels have agreed to work with CMRRA toward the establishment of a standard format, but that has not yet occurred. For now, each record label continues to provide its Pending List data in a unique format and often changes the format without prior notice to CMRRA. From time to time, certain record labels have simply stopped providing CMRRA with Pending List data for months at a time. This inconsistency has inhibited the ability of CMRRA to process the Pending Lists and make them available to our clients.

(iii) Poor Maintenance and Administration of Pending Lists

83. In my view, the record labels have also done a poor job of maintaining and administering their Pending Lists. Beyond the misidentification of works, they have routinely included works on their Pending Lists that should not be there at all, including some that have already been licensed in whole or in part (without any indication, in that case, of what percentage interest has in fact been licensed). This confuses matters and makes the Pending Lists even more difficult and expensive for CMRRA to analyze.

84. On numerous occasions, record labels have either lost or simply failed to sign and return mechanical licences sent to them by CMRRA, instead adding the works in question to their Pending Lists. For example, I am informed by Caroline Rioux and believe on that basis that Sony BMG had over 25,000 unsigned licences in its possession as of January 2008. Some of these licences related to products released 25 years ago or earlier.

85. The only significant attempt that any of the record labels has made to address the Pending List problem, to my knowledge, was made by Universal in 2006 and 2007, when it established its "Royalty Recovery Program." Universal hired John Redmond, an experienced former music publisher, to work through its Pending List and, among other things, flag songs that had been licensed by CMRRA in the past and might therefore involve royalties that could be released from the Pending List. In early 2006, Universal provided CMRRA with a list of 698 flagged line items, which resulted in the release of approximately \$415,000 in royalties. Universal increased the list to 6,635 line items in fall 2006.

86. The Royalty Recovery Program was fairly successful. It allowed us to recover over \$2,750,000 in royalties for CMRRA clients. However, in or around mid-2007, Universal ceased staffing the Royalty Recovery Program.

87. In general, I believe that the record labels have devoted insufficient resources to identifying and paying the owners of musical works on the Pending Lists. To my knowledge, none of them currently have dedicated personnel devoted to the Pending Lists; only Universal has ever had staff dedicated to this purpose, and then only in the context of the Royalty Recovery Program. Whenever we have attempted to encourage the record labels to devote increased resources to the Pending Lists, they have indicated to us that this would require them to reduce the number of staff assigned to the processing of current licences. Some labels have gone so far as to indicate to CMRRA in the past that, in their view, addressing the Pending Lists would simply be an unproductive use of their time.

(iv) *Economic Infeasibility of Complete Pending List Analysis by CMRRA*

88. Since at least 1995, CMRRA has generally had at least one full-time staff member devoted exclusively to Pending List research and licensing. We are aware that it would take a much larger dedicated work force to clear the

Pending Lists entirely. We simply do not have sufficient financial or human resources to allocate to the task. Since CMRRA is funded entirely on commission, we must give a higher priority to top-selling items, namely the current hits. Further, at present, we are only interested in the musical works in our repertoire, which appear to constitute less than 50% of all line items on the Pending Lists.

89. CMRRA performed a "time and motion" study in 2005, in which we put five of our best licensing administrators – those individuals most familiar with each of the major record labels and the content of their respective Pending Lists – to work for one full day (35 person-hours), without any interruptions, in order to research as many Pending List items as they could during that time. Of a random sample of 1,000 items per Pending List produced for this purpose, the team was able to research only 172 items by the end of the day.

90. Of the 172 line items analyzed, the licensing team determined that 22.31 of the musical works (or 13% of the total line items) were represented by CMRRA – and 6.57 of those had already been licensed but no royalties had been paid. The balance of the musical works were either not represented by CMRRA (80.34 items, or 46.7% of the total), subject to a dispute (five items, or 2.9% of the total), or either unverified, unlocatable, or unidentifiable within the time allocated (69.33 items, or 40.3% of the total). The total value of the line items that contained musical works represented by CMRRA was \$22,212.77, about 30.7% of the total royalties payable in relation to the 172 line items. In other words, for the equivalent of \$1,000 in salaries paid to that team for that day, plus an estimated \$2,000 in additional salary costs to issue mechanical licences and collect the resulting royalties, CMRRA realized only \$1,332.76 in commission at its then-current rate of 6%.

91. At the moment, CMRRA has no staff devoted full-time to the Pending List, primarily because several of the record labels have changed their Pending List formats and the new data cannot readily be accessed or

analyzed at this time. However, members of our licensing staff continue to devote time to researching and clearing items on older versions of the Pending Lists, among their other duties.

(v) *Non-Comprehensiveness of CMRRA Repertoire*

92. CMRRA has also been disadvantaged by its status as non-exclusive agent for less than all publishers whose works are in use. If our representation were comprehensive, as it is in many European jurisdictions (for example), we might be in a better position to persuade the record labels to pay the pending royalties to us and would then have more resources and strategies available to identify and pay the appropriate rightsholders.

IX. *Attempts to Address the Pending Lists Through Negotiation*

(i) *The 1990 MLA Negotiations*

93. Although, as I have already indicated, Pending Lists were very much a reality of the Canadian music industry even during the days of the statutory licence, they were not addressed in the 1988 MLA. There were no set policies or procedures governing the treatment of Pending Lists; they were simply dealt with in whatever way each individual record label wished and submitted to CMRRA in unpredictable formats and on an irregular basis.

94. In the negotiations leading to the 1990 MLA, which were the first MLA negotiations that I conducted on behalf of CMRRA, my goal was to codify as much about the relationship between CMRRA and the record labels as possible so that, going forward, there would be less reliance on undocumented "industry custom." In that context, Pending Lists were an important issue.

95. In these negotiations – which began near the end of 1989 and continued through 1992 – I found that CRIA and the record labels were unwilling to agree to provisions which could have had a positive impact on the

Pending Lists. As I recall, CMRRA made three substantive proposals to address the problem. Specifically, we proposed:

- (a) An advance on the payment of royalties accrued on the Pending Lists, which would have permitted us to dedicate more resources to identifying and clearing the works;
- (b) A commitment by CMRRA and each of the record labels each to hire one dedicated staff member to work exclusively on clearing the Pending Lists; and
- (c) A standard format for the submission of Pending Lists.

Each of these proposals was rejected by CRIA and the record labels.

96. In the end, however, CMRRA was able to secure the record labels' agreement to:

- (a) submit Pending Lists on a quarterly basis, rather than occasionally or irregularly, as had been the case until then;
- (b) include, in relation to each entry on the Pending Lists: (i) the title of the musical composition; (ii) the catalogue number of the recording on which the composition was reproduced; (iii) the cumulative number of units for which royalties were payable from the first distribution of the recording through the end of the quarterly period to which the Pending List relates; (iv) the applicable royalty rate; and (v) the total royalties payable in relation to the composition at issue;
- (c) provide the Pending Lists on nine-track computer tape or other mutually agreeable computer medium, with lists in paper format now optional; and

- (d) pay interest, at the Bank of Canada prime rate plus 2%, on royalties paid pursuant to compositions licensed by CMRRA where the label had either failed to apply for a mechanical licence, failed to provide the minimum information required in relation to its application, or simply withheld royalties payable pursuant to a mechanical licence and included it on the Pending List without just cause.

97. I find it difficult to understand why the record labels would not agree to provide, in relation to each item on the Pending List, at least the same information that they agreed to provide in relation to initial licence applications. This would include such basic information as the name of the album on which the composition appeared or the performing artist to whom the recording was credited. The only additional information that the labels were willing to consider providing was the name of the author of the composition, but only on an optional basis.

98. Following the execution of the 1990 MLA, we gradually began to receive the Pending Lists on nine-track computer tape and enter the data into our computer systems. I am advised by Anatole Banner and believe on that basis that this information was received from various record labels at various times between 1991 and 1997, and that some of the labels had begun to provide the data in this format even before the execution of the MLA.

(ii) The 1998 MLA Negotiations

99. Negotiations leading to a new MLA began toward the end of 1997. Pending List issues were on the table again.

100. By 1995, CMRRA had begun to develop software tools to analyze the Pending Lists. We had realized that a major reason for the proliferation of items on the lists appeared to be that the record labels, who were then in the practice of applying for mechanical licences by submitting "label copy" –

which, as I understand it, were essentially written transcriptions of the song identification material that appeared on each product's printed label – were not actually applying for licences until an average of six months (and sometimes up to two years) after the product's release. The record labels indicated that this was a function of their own difficulty obtaining label copy, something that I found difficult to understand. Either way, until a licence application was made, all songs contained on the product would appear on the record label's Pending List.

101. In the 1998 negotiations, CMRRA and the record labels agreed that, going forward, licence applications would be made by submitting copies of the actual products as released, rather than separate transcriptions of their label copy. We believed that this would significantly improve the timing of licence applications, and it has. However, it seems to have had little impact on the overall size and value of the Pending Lists.

102. Also in the 1998 MLA negotiations, agreement was reached on a standard format for the royalty statements submitted by the record labels. However, when we tried to secure agreement on a standard format for Pending Lists, the record labels refused. As a result, Pending Lists continued to be submitted in a wide variety of different formats. As I have explained above, this has compromised our ability to deal with the Pending Lists on a timely basis or at all, a problem that persists to this day.

(iii) Audit Negotiations

103. From time to time, CMRRA has exercised its right under the MLA to conduct audits of record labels, including the defendant record labels. As is common in any audit process, the process generally concludes with the settlement of various line items in which discrepancies are discovered. Typically, the labels agree to settle on some items while refusing to settle on others.

104. Each time we have audited one of the defendant record labels, we have attempted to reach a settlement of its Pending List by requesting an amount derived by multiplying the total amount of pended royalties by CMRRA's then-current estimated market share. These attempts have always been rejected with the explanation that the record labels are prepared only to pay the actual owner of copyright in each listed musical work.

(iv) The 2004 MLA Negotiations

105. During the negotiations leading to the 2004 MLA, which were conducted with the assistance of a mediator because of the tension that existed at that time between CMRRA, on one hand, and CRIA and the record labels, on the other, the Pending List was a very significant issue. This time, CMRRA hoped that it would be possible to achieve a settlement of the lower-value items on the Pending Lists – individual line items with a per-item value of less than a certain small amount – so that the parties could then focus on working together to clear the higher-value items individually.

106. By this time, CMRRA had conducted the analysis described above to determine how long it would likely take to clear individual Pending List items. Also as discussed above, we agreed during the negotiations that CMRRA and each record label would research randomly-generated selections of Pending List items. As I have already indicated above, results provided by Warner showed that:

- (a) On the products researched with a per-product value greater than \$10,000, 66.15% of the total royalty value related to musical works that were not represented by CMRRA, 5.73% related to works that had been licensed (either by CMRRA or otherwise) and for which royalties were about to be paid, and 0.98% related to works that were the subject of disputes about the ownership of rights. The balance (27.14%) related to works that were being

processed by CMRRA but had not yet been licensed successfully; and

- (b) Of the individual items researched with a per-item value less than \$100, 62% were not represented by CMRRA, 1% were in dispute, and 1% were charity releases that were not subject to royalties. The balance (36%) were being processed by CMRRA but had not yet been licensed successfully.

107. Based on the combination of our research and that of the record labels, CMRRA made a proposal to settle a portion of the Pending List as it then existed and to introduce a system that would reduce the proliferation of items on the Pending List and ensure payment to rightsholders going forward. The specifics of that proposal were already outlined in a letter that I sent to the mediator on April 4, 2005 (a copy of which is attached as **Exhibit Q** to this affidavit). In essence, the proposal involved:

- (a) The settlement of all items on the Pending List arising out of products released before 1998 by the payment by each record label of an amount equal to the aggregate royalties payable in relation to those items multiplied by CMRRA's average market share of that record label's mechanical licensing payments between 1990 and 1997, with CMRRA giving each record label a quitclaim and indemnity in relation to royalty claims on behalf of all CMRRA-represented publishers;
- (b) The introduction of a new standard industry format for Pending List data, with mandatory fields including, at minimum, song title, performer name, release date, catalogue number and unlicensed percentage interest for each item; and
- (c) An ongoing process by which CMRRA would continue to work with each record label to research remaining Pending List data in

two-year tranches, with an amount equal to CMRRA's market share of unreleased pending amounts being paid to CMRRA at the end of each two year-period.

108. Although CRIA objected to the notion that royalties paid pursuant to this mechanism might not be distributed to the proper rightsholders, we understood until late in the negotiations that the record labels were open to exploring this proposal. However, very late in the process, the labels finally indicated that they would not agree to the settlement unless CMRRA agreed never again to raise the prospect of settlement. They insisted that their change in position was due to their desire only to pay the actual owners of copyright in the works at issue, which I found difficult to understand. At any rate, this counterproposal was unacceptable to CMRRA and, as a result, there were no changes to the treatment of the Pending List in the 2004 MLA.

(v) *The 2007 MLA Negotiations*

109. The 2004 MLA had only a two-year term and was extended by mutual written agreement for an additional year. Negotiations toward a new MLA began in early 2007 and concluded in the fall of 2008.

110. Once again, the Pending List was on the agenda for these negotiations, which were conducted on behalf of CMRRA primarily by Veronica Syrtash, CMRRA's Director of Business Affairs. I am advised by Ms. Syrtash and believe on that basis that, at the outset of the negotiations, which began with discussions between CMRRA and each of the record labels individually, several of the labels seemed amenable to the idea of settling a portion of the lower-value items on their respective Pending Lists. As the negotiations progressed, and the record labels formed a joint negotiating committee that also involved CRIA, the notion was discussed again but was less well-received by the record labels. In the end, the record labels indicated that they would not agree to make a blanket payment to CMRRA to settle any portion of the

Pending Lists because they did not want CMRRA to hold any money that did not belong to CMRRA or its clients.

111. In the 2007 MLA, CMRRA was able to secure agreement on several matters related to the Pending Lists:

- (a) Going forward, each record label's Pending List is to include, with respect to each unlicensed musical work, at least the following information:
 - (i) the title of the musical work;
 - (ii) the catalogue number of the recording on which the work appears;
 - (iii) the cumulative number of units for which royalties are payable from inception of distribution of the recording until the end of the quarterly period that is the subject of the statement;
 - (iv) the applicable royalty rate;
 - (v) the total royalties payable in relation to the use of the musical work;
 - (vi) the title of the album containing the recording in question;
 - (vii) the name of each artist to whom the recording is credited;
 - (viii) the running time of the recording; and
 - (ix) the International Standard Recording Code (ISRC) number assigned to the recording, where the recording was released after January 1, 2007 (with best efforts required to obtain the ISRC number for recordings

acquired from another record label, under certain circumstances).

- (b) In addition, to the extent that any of the following data fields are either in the record label's royalty system or provided to an online music service licensed by the record label, they are also to be included in that record label's Pending List by no later than September 30, 2008:
- (i) the ISRC number assigned to the recording, where the Recording was released prior to January 1, 2007;
 - (ii) the name of the author(s) of the musical work;
 - (iii) the percentage interest in the work in respect of which the record label has not obtained a mechanical licence at the time the Pending List was prepared;
 - (iv) the unique track identifier assigned to the recording;
 - (v) the release date of the recording;
 - (vi) information respecting whether the product containing the recording is still active or has been discontinued;
 - (vii) the date on which the recording was deleted from the record label's catalogue of products offered for sale to its customers, if applicable;
 - (viii) information respecting whether the ISRC is valid or separately created by manufacturer;
 - (ix) the Universal Product Code (UPC) assigned to the album on which the recording appears;

- (x) the disc number associated by the record label with the recording; and
 - (xi) the track number of the recording on the album on which it appears.
- (c) To the extent that the following information is available in the record label's royalty system or provided by the record label to an online music service, the information may be included in the record label's Pending List:
- (i) the name of the music publisher(s) associated with the musical work;
 - (ii) the internal identification number assigned by the record label to such music publisher;
 - (iii) the internal identification number assigned by the record label to such musical composition;
 - (iv) the reason why the musical work was included in the Pending List;
 - (v) the contrivance (i.e., the type of physical medium) on which the product is distributed;
 - (vi) the calendar quarter applicable to the Pending List;
 - (vii) the International Standard Work Code (ISWC) of the musical work;
 - (viii) the label name associated with the recording; and
 - (ix) the distribution method (i.e., whether the product is distributed through normal retail channels or otherwise).

- (d) The parties agreed to form a working group, comprising qualified technical and operational personnel from CMRRA and each record label, to implement benchmarks for the electronic exchange of information. Among these benchmarks is a standard format for Pending Lists, which is to be agreed upon on or before February 28, 2009 and implemented within six months of reaching an agreed format.

- (e) CMRRA and each record label were to negotiate independently, diligently and in good faith to reach agreement, on or before September 30, 2008, either to arrive at a settlement of a portion of the label's Pending List or for each party to make "an increased dedicated effort" to clearing existing Pending Lists, with any settlement including an appropriate quit-claim and indemnity by CMRRA for the period in question for all claims, whether or not the claimant is represented by CMRRA. To the extent that any record label had already made a substantial increase in the dedication of resources within its company, since January 1, 2006, to work specifically on clearing its Pending List, that record label was to negotiate with CMRRA with a view to reaching agreement by September 30, 2008 for each party to maintain "an appropriate dedicated effort" to clearing existing Pending Lists. (The latter provision was added at the insistence of Universal in recognition of the Royalty Recovery Program in which it engaged between 2006 and 2007, as discussed above.)

112. While all of these developments are welcome, they fall short of an acceptable solution to the Pending List problem. Even if the record labels populate all of the required data fields, and do so in a standard electronic format (which remains to be agreed upon), it seems unlikely to me that they will be able to address the many gaps and inaccuracies in their current Pending Lists, which date back more than 35 years in some cases. I do not

believe that, at present, any of the record labels have available, or are prepared to commit, anywhere near the resources that would be required to address this task. In any event, I am advised by Caroline Rioux and believe on that basis that the most recent Pending List data, provided in relation to the third quarter of 2008, does not appear to contain the newly required data (except to the extent that certain record labels may already have been providing this information voluntarily).

113. Moreover, it is worth noting that, although the negotiations referred to in subparagraph 111(e) were to have been completed by September 30, 2008, the 2007 MLA was not actually signed until that date, so those negotiations have yet to begin. CMRRA was approached by Sony BMG on October 30, 2008 to commence negotiations, but has declined to do so at this time because of the pendency of the current litigation. None of the other record labels have indicated a desire to commence negotiations.

114. Further, I am advised by Veronica Syrtash, and believe on that basis, that, notwithstanding their formal agreement to consider either a settlement of a portion of their Pending Lists or an increased dedicated effort to clearing them, the record labels have made clear that they are not in fact willing to consider any settlement of the Pending Lists pursuant to the MLA at this time.

X. Internal Attempts by CMRRA to Address the Pending Lists

115. By 2000, there were seven different Pending Lists received periodically, in seven different formats, each containing different fields of information. By that time, CMRRA had developed customized computer software that allowed it to handle the different formats and incorporate the label information into a single database that could be used as a tool to assist in the research necessary to attempt to identify a song. Even then, however, each record label would unilaterally change the formats of its Pending List from time to time, without warning or notice to CMRRA. Each time a record label did this, it became necessary to reprogram the software to deal with the new format,

putting CMRRA to additional time and expense and frustrating our efforts to identify and clear songs on the lists.

116. During this period and ever since, CMRRA has devoted research resources on a continuing basis to attempt to positively identify items on the Pending Lists. We have engaged in a series of projects and studies, employing both human and information technology resources, to analyze the data and develop improved systems to process it. Some of these initiatives have included:

- (a) Creating sophisticated databases to house, review and categorize the Pending List data provided by the record labels;
- (b) Making Pending List information available to CMRRA clients via CMRRA Direct as of 2000, as discussed in detail below;
- (c) Requiring licensing staff to spend a certain number of hours per week researching Pending List items;
- (d) Hiring a dedicated Pending List administrator in 2003 to work extensively on the Universal Pending List, from highest to lowest value items, and work with CMRRA's IT staff to improve the accuracy of our automated "fuzzy matching" process; and
- (e) Undertaking, in 2004, 2005 and 2006, three extensive projects on behalf of Universal Music Publishing Canada to license works that they identified on the Universal Pending List;
- (f) Undertaking Pending List research each time a significant new music publisher joins CMRRA, in order to license the works in that publisher's catalogue and collect pending royalties;
- (g) Providing extensive lists of unsigned mechanical licences to the record labels in an effort to have them process those licences and release the corresponding royalties from the Pending Lists,

and advising the record labels of specific items for which royalties were still pended despite the existence of fully-executed mechanical licences;

- (h) Hiring dedicated staff to work through items flagged by Universal as part of its Royalty Recovery Program; and
- (i) On a quarterly basis, reviewing the top 50 products sold in Canada against the Pending Lists in order to ensure that all CMRRA licences have been issued and executed by the record labels and that royalties are not being pended unnecessarily.

117. Whenever representation of a musical work by CMRRA can be verified following research, CMRRA will issue a mechanical licence and disburse the royalties when received.

118. However, CMRRA has found over the years that the process of identifying items on the pending list is extremely labour-intensive and costly, even where specialized information technology is employed in the identification process, as it is at CMRRA. Accordingly, CMRRA has generally focused its identification efforts and limited resources on the higher value pending list items.

(i) CMRRA Direct

119. Beginning in 2000, CMRRA has made its Pending List databases available to its music publisher clients for online searches via CMRRA Direct, a private password-protected area of the CMRRA website. That facility continues to today. If a music publisher locates a recording on the Pending List for which it holds the rights to the musical work, it can file a claim with CMRRA. If CMRRA verifies the match between the recorded song and the publisher's musical work, a license is issued and, if accepted by the record label, the royalties paid and distributed. Since 2002, our music publisher

clients have used CMRRA Direct to make claims worth just under \$10,725,000 in Pending List items.

120. The Pending List information available via CMRRA Direct is presented in two ways:

- (a) a search engine, which consists of four primary fields (Dollar Amount, Units, Catalogue Number and Song Title) plus up to three additional fields (Author/Composer, Album Title and Artist) where the information is available, and allows users to search all four defendant record labels' Pending Lists; and
- (b) four downloadable spreadsheets, each containing a single defendant record label's Pending List and containing the same four primary fields, which are intended to assist our clients to keep track of their findings while researching the main database using the search engine. The spreadsheets do not contain all of the information otherwise available on CMRRA Direct.

121. To my knowledge, CMRRA is the only collective society anywhere in the world that makes unlicensed product lists available to its clients in this fashion. Converting the data received from the record labels so that it can be presented in a relatively consistent format on CMRRA Direct requires a considerable amount of work, especially since the Pending Lists received from the record labels are not in a standard format and since the record labels often change their own formats from time to time without notice. CMRRA has invested a great deal of time and money in the creation of customized computer programming solutions for this purpose.

122. Because of these technical challenges, and because of the lack of a standard format for the delivery of Pending List data by the record labels, not all of the information received from the record labels is uploaded to CMRRA Direct. These factors also make it difficult to keep the lists completely up to

date. Every time one of the labels changes its Pending List format, the data conversion software needs to be reprogrammed, which is time-consuming and expensive.

123. The volume of claims made by our clients through CMRRA Direct has diminished in recent years. I expect that this the result of the factors described above, as well as the poor quality of the data provided by the record labels. I understand from CMRRA clients that it is difficult and time-consuming for them to decipher the fragmentary information that is provided.

124. CMRRA Direct is available only to CMRRA clients. We do not make our Pending List data available to the general public. To the best of my knowledge and information, the record labels have not made their Pending Lists available to the public, either. I understand that the record labels make their Pending Lists available to SODRAC and that, on occasion, certain record labels have made their Pending Lists available, in whole or in part, to certain music publishers at their request.

XI. CMRRA's Involvement in this Litigation

125. CMRRA first received notice of this litigation on August 25, 2008, when a copy of the issued statement of claim was sent to our outside counsel by Mr. Bates, counsel to the plaintiffs. We had no prior indication that the plaintiffs were considering a class action in relation to the Pending List and had not been consulted in relation to it.

126. Given our extensive efforts to address the Pending List problem, as discussed above, we were surprised and disappointed to be named as defendants in the action. However, following consultation with the plaintiffs' counsel, CMRRA management determined that it would be in the best interests of CMRRA to cooperate with the plaintiffs. CMRRA entered into a Cooperation Agreement with the plaintiffs and SODRAC on October 2, 2008. A copy of the Cooperation Agreement is attached as **Exhibit R** to this affidavit.

127. CMRRA neither asked nor consented to being joined as a party defendant to this proceeding. However, having been sued by the plaintiff in a proposed class proceeding, I and others at CMRRA were forced to consider, whether from CMRRA's perspective, a class proceeding might be an appropriate approach to the resolution of the Pending List problem. In my view, and from my experience at CMRRA, a class proceeding may be the best way to deal with the Pending List issues, for reasons set out in the following paragraphs. I am aware of no other avenue that would appear to be as or more effective in this regard.

128. First, there is no doubt that substantial amounts are owing in respect of Pending List items. For each musical work that is *properly* on the Pending List, there is no licence for reproduction of the work, and there will be an amount payable to the owner or owners of the copyright in that work. When I say "properly," I mean to exclude items that ought not to be on the Pending List in the first place, such as works that are in the public domain and works that have been licensed but have not been removed from the Pending List.

129. These royalties for Pending List items are owed in respect of musical works that are identifiable. For each work properly on the Pending List, there is a corresponding owner or owners of the musical work. Even if that owner is presently unidentified, there is available a recording by an identified artist or artists, and a physical product produced containing some information. There should be sufficient information either in the possession of the record labels, or ascertainable by the labels from those involved in the making of the recording, in respect of almost all of the items on the Pending List, for someone properly resourced to be able to investigate, identify, locate and pay the owner of the musical work.

130. Alternatively, that information available about the recording and the musical work, if made available and promoted to the songwriting and publishing community, should be sufficient for many owners of musical works

to become aware of the fact that their works are being used without licenses, and to be able to claim payment on past recordings sold.

131. The present system of mechanical licensing has proven to be inadequate to deal with the Pending List problem. I believe this to be the case notwithstanding the improvements contained in the most recent MLA. The fundamental problem is a structural one. The combination of:

- (a) the accepted practice of licensing musical works after the release of the physical product;
- (b) the fact that there is no comprehensive representative of the music publishers, or accepted default representative for unidentified musical works;
- (c) the fact that the overwhelming majority of the items on the Pending List are of relatively small value; and
- (d) the fact that the time and manpower required to properly investigate, identify, locate and pay the owner of the musical work can be significant

have all led to a situation where the incentive for the record labels to process and resolve Pending List items on a timely basis is extremely low.

132. Similarly, the same factors that limit the record labels' incentive to deal with pending list items, combined with the fact that CMRRA will only represent a portion of the items on the Pending List and will only be paid for a resolved Pending List item that it represents (and then only at a fixed commission rate without regard to the actual resources used to resolve the item), also limit the ability of CMRRA to deal with the Pending Lists comprehensively on its own.

133. CMRRA has been unable to arrive at a comprehensive solution to the Pending List situation by voluntary agreement with the record labels. Agreement on measures relating to the Pending List has been achieved only

incrementally, after extensive negotiation, and relate to information and processes rather than resolution of the list itself. Generally, any bolder proposal from CMRRA for resolution of all or a substantial portion of the Pending List has been summarily rejected by the record labels.

134. Given all of the above, there has likewise been no attempt to change the structure of the mechanical licensing process to ensure that the Pending List does not grow any further in the future.

135. In the end, I believe that a class proceeding may be the “missing piece” of the Pending List “puzzle,” in terms of providing a comprehensive vehicle to resolve the current items on the Pending List and a basis to revise the current process to ensure that the Pending List does not grow again. I am aware of no other avenue that would appear to be as or more effective in this regard.

XII. CMRRA’s Intervention in this Litigation

136. In the event that the Court allows the proposed representative plaintiffs’ motion to discontinue the proposed class action as against CMRRA and SODRAC, CMRRA wishes to intervene in the proposed class action.

137. Given the extensive efforts that CMRRA has made to deal with the Pending List issues over the years, as particularized above, and what appears to be a substantial amount of potential royalties or other compensation to which CMRRA clients are likely entitled as a consequence of the unlicensed use of works on the Pending Lists, I believe that the class proceeding, if certified, would have far-reaching implications for both CMRRA and its clients, as well as for songwriters and music publishers generally.

138. CMRRA believes that it should be granted leave to intervene because its clients have a substantial interest in this proceeding and they will be seriously affected by the outcome. CMRRA’s intervention would assist in the determination of the legal issues in the class proceeding because of its

expertise, special knowledge and separate and different perspective regarding the Pending Lists, all as described above.

139. With leave of the Court, CMRRA proposes to intervene in this proceeding to address many aspects of the Pending List. Over the last 20 years, CMRRA has gained extensive experience and expertise concerning the existence and growth of the Pending List. This experience, as well as the further knowledge and information gained through CMRRA's numerous attempts to resolve the underlying issues and reduce or eliminate the Pending List problem, would be of considerable assistance to the Court in its assessment of issues of fact and law.

140. CMRRA proposes to be an active party throughout the proceeding and to take part in the certification motion as well as the trial of common issues or, alternatively, in settlement approval hearings.

141. The proposed representative plaintiffs and the defendants would not be prejudiced if CMRRA were to be granted leave to intervene. On the contrary, CMRRA's involvement would assist all parties in the resolution of the issues in dispute.

142. If granted leave to intervene, CMRRA would serve and file its evidence and submissions at such times prescribed by the *Class Proceedings Act, 1992* and the *Rules of Civil Procedure* and/or directed by this Honourable Court, throughout the proceeding. The conduct of this proposed class action would not be delayed at all by CMRRA's involvement as an intervener.

SWORN BEFORE ME at the City of Toronto, on January 14, 2009.



Casey M. Chisick
Commissioner for taking affidavits



David A. Basskin

Court File No. CV 0800360651 00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

B E T W E E N :

**THE ESTATE OF CHESNEY HENRY "CHET" BAKER
JUNIOR BY ITS PERSONAL REPRESENTATIVE CAROL
BAKER, and CHET BAKER ENTERPRISES LLC**

Plaintiffs

- and -

**SONY BMG MUSIC (CANADA) INC., EMI MUSIC CANADA
INC., UNIVERSAL MUSIC CANADA INC., WARNER MUSIC
CANADA CO., and their Parent, Subsidiary and Affiliated
Companies, CANADIAN MUSICAL REPRODUCTION
RIGHTS AGENCY LTD. and SOCIETY FOR
REPRODUCTION RIGHTS OF AUTHORS, COMPOSERS
AND PUBLISHERS (SODRAC) INC.**

Defendants

**PROCEEDING UNDER THE
CLASS PROCEEDINGS ACT, 1992,
S.O. 1992, c.6**

**AFFIDAVIT OF DAVID A. BASSKIN
(sworn January 14, 2009)**

(Filed this » day of January, 2009)

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Counsel for the Defendants, CMRRA and SODRAC

Appendix 3

**CMRRA-
MANUFACTURER
Mechanical
Licensing
Agreement
(Independent Labels –
Model I-1)
as of January 1, 2013**

M E C H A N I C A L L I C E N S I N G A G R E E M E N T

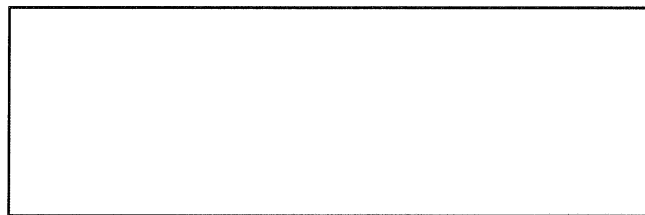
DATED as of January 1, 2013

B E T W E E N :

Canadian Musical Reproduction Rights Agency Limited, a Corporation incorporated pursuant to the laws of Canada having its principal offices at 56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3 (“CMRRA”) on behalf of its Affiliated Publishers,

O F T H E F I R S T P A R T

- A N D -



(“Manufacturer”)

O F T H E S E C O N D P A R T

WHEREAS CMRRA carries on business as a non-exclusive agent for certain music publishers which have engaged CMRRA to issue licenses for the mechanical reproduction of certain musical compositions to manufacturers, distributors and importers of Recordings (as hereinafter defined),

AND WHEREAS Manufacturer carries on business by way of the manufacture or authorizes the manufacture, importation and/or distribution in and into Canada of Recordings containing reproductions of certain copyrighted musical works which are owned and/or administered in Canada by CMRRA’s publisher principals,

AND WHEREAS CMRRA and Manufacturer acknowledge and agree that the prompt and efficient administration of this Agreement and of the licensing of musical compositions and accounting for and payment of royalties with respect thereto are of the utmost importance,

AND WHEREAS Manufacturer acknowledges and agrees that its prompt application for licenses hereunder, its prompt handling of licenses issued by CMRRA hereunder and its prompt and accurate entry of licensing data into its royalty accounting systems are of the essence of this

Agreement, and CMRRA acknowledges and agrees that its prompt handling of license applications and issuance of licenses hereunder are of the essence of this Agreement.

AND WHEREAS CMRRA and Manufacturer wish to enter into an Agreement for such purpose,

THEREFORE WITNESS that in consideration of the mutual covenants and warranties herein contained, and subject to all the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Definitions

In this Agreement, the following terms shall have the meanings indicated below:

Affiliated Publisher: A music publisher for which CMRRA acts as Agent for the mechanical licensing of Authorized Compositions (as hereinafter defined) in Canada and to carry on such licensing to Manufacturer pursuant to the terms hereof. CMRRA's Affiliated Publishers are set out on Schedule "A" hereto as may be amended by CMRRA from time to time.

Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher, which publisher has engaged and instructed CMRRA to act as its agent for the mechanical licensing of such musical composition.

CD: A digitally recorded audio compact disc of any size or format but specifically excluding any digitally recorded and reproduced audio-visual disc of any size or format.

Digital Recording: A digitally recorded disc, tape or other contrivance, excluding CD's ("DR").

Due Date: That date which is forty-five (45) days after the end of each calendar quarter, specifically, February 15, May 15, August 15 and November 15 in each year of the Term (as hereinafter defined).

LP: An analogue vinyl record of any size or playing speed.

Manufacturer: the corporation that is the party of the Second Part to this Agreement, engaged in the business of manufacturing or authorizing the manufacture, importing and/or distributing Recordings in or into Canada.

MC: An analogue audio cassette tape, related analogue or other related audio tape format, but specifically excluding any audio-video tape in any format.

Mechanical License: A license issued by CMRRA to Manufacturer subject to the terms hereof and pursuant to section 2 hereof.

Musical Work: A “musical work” as defined in section 2 of the *Copyright Act*, R.S.C. 1985, c. C-42 (the “Act”), with reference to any Musical Work including any fractional share of the copyright in that work.

Non-Authorized Composition: A musical composition owned and/or administered in whole or in part by an Affiliated Publisher which said Affiliated Publisher has instructed CMRRA to exclude from the scope of this Agreement as listed on Schedule “B” hereto.

Non-Affiliated Publisher: A music publisher which has engaged CMRRA to act as its agent for the mechanical licensing of musical compositions to Manufacturers in Canada on terms and conditions at variance with those set out herein as listed on Schedule “B” hereto.

Prior License: A Mechanical License issued by CMRRA to Manufacturer prior to the effective date hereof.

Promotional Product: A Recording containing a reproduction or reproductions of Authorized Compositions, manufactured especially for promotional purposes, including “Radio CD’s” “Dance Pool Products” or any like configuration, including Recordings available for sale to the general public through Manufacturer’s customary distribution and retail channels, when such Recording are distributed free in Canada by Manufacturer to promote the sale thereof, provided that either the words “Promotional Copy Not For Sale” or words having the same effect are marked on each Recording so distributed or on the packaging thereof, or that each Recording so distributed is cut or drilled or otherwise marked by Manufacturer to indicate same.

Recording: The reproduction of a sound recording on LP, MC, CD, and/or DR, manufactured, imported or distributed by or on behalf of Manufacturer in or into Canada, but specifically excluding any audio-visual recording.

Release Date: The date on which Manufacturer releases a Recording for sale to the general public through its customary distribution and retail channels. Where a Recording is deleted by Manufacturer and subsequently reissued in any format, the Release Date for such Recording will be the date of such re-release for all purposes herein, including the determination of applicable Royalty Rates pursuant to sections 3 and 7 herein.

Royalty or Royalties: The amount(s) payable by Manufacturer to CMRRA pursuant to Mechanical Licenses issued under this Agreement and calculated pursuant to the rates set out herein.

Term: The term of this Agreement shall commence upon January 1, 2013 and conclude upon December 31, 2013.

Track: An audio-only sound recording embodying, subject to subsection 2(a), one or more Musical Works.

(b) *Schedules*: The following are the schedules to this Agreement, each of which forms an integral part of this Agreement:

Schedule “A” - Affiliated Publishers

Schedule “B” - Non-Affiliated Publishers and Non-Authorized Compositions

Schedule “C” - CMRRA Standard Royalty Format (Structured Data File Format)

Schedule “D” - CMRRA Standard Royalty Format (Microsoft Excel Format)

Schedule “E” - Standard Format for Publisher Summary

Schedule “F” - Unlicensed Recording List Information

Schedule “G” - License Application Information

2. Scope of Agreement

(a) *Applicability of Agreement*: This Agreement applies only to the mechanical licensing in Canada of Authorized Compositions owned and/or administered in whole or in part by Affiliated Publishers to Manufacturer.

(b.1) *Affiliated Publishers*: Upon request by Manufacturer, CMRRA shall provide Manufacturer with a list of all Affiliated Publishers, and shall provide Manufacturer with timely advice of all music publishers which become Affiliated Publishers and all music publishers which cease to be represented by CMRRA. Such list will form Schedule “A” to this Agreement and may be provided by CMRRA either in printed or electronic form. Subsequent to the date of execution hereof, and for the duration of the Term, CMRRA shall represent and issue licenses on behalf of Affiliated Publishers to Manufacturer for the uses set out herein, only pursuant to the terms hereof. Where an Affiliated Publisher ceases to be represented by CMRRA during the Term, it will no longer be bound by the terms hereof respecting the mechanical licensing of its musical compositions to Manufacturer in Canada subsequent to the date on which it ceased to be represented by CMRRA, but all Mechanical Licenses issued by CMRRA to Manufacturer while said Affiliated Publisher was represented by CMRRA will continue in full force and effect until the conclusion of the Term. Subsequent to the execution hereof, CMRRA may amend Schedule “A” by providing Manufacturer with a notice in the form attached hereto as Exhibit “B” and the provision of such notice will be deemed to be an amendment to Schedule “A”. CMRRA may revise or replace the form of Schedule “A” and Exhibit “B” at any time by providing notice of same to Manufacturer.

(b.2) *Non-Affiliated Publishers*: Prior to the execution hereof, CMRRA shall provide Manufacturer with a list of all Non-Affiliated Publishers. Such list will form Schedule “B” to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Affiliated Publishers, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Affiliated Publisher on the basis of instructions at variance

with the terms hereof, CMRRA shall continue to so represent such Non-Affiliated Publisher and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Non-Affiliated Publisher thereof has given, or may subsequently give, to CMRRA.

(c) *Notification of Non-Authorized Compositions:* Upon the execution hereof, CMRRA will provide Manufacturer with a list of all Non-Authorized Compositions. Such list will form Schedule “B” to this Agreement. During the Term hereof, CMRRA will not undertake the representation of any further Non-Authorized Compositions, provided that in any case where, prior to the date hereof, CMRRA has undertaken the representation of a Non-Authorized Composition on the basis of instructions at variance with the terms hereof, CMRRA shall continue to so represent such Non-Authorized Composition and shall issue licenses with respect thereto exclusively in accordance with such instructions as the Publisher thereof has given, or may subsequently give, to CMRRA.

(d) *Individual Licensing of Works:* This Agreement does not constitute a license.

(i.a) *Applications for Mechanical Licenses:* Manufacturer shall make application to CMRRA for Mechanical Licenses for all Recordings sold or otherwise distributed in Canada by Manufacturer where such Recordings contain reproductions of musical works. Such application will be made by way of Manufacturer providing CMRRA with one (1) copy of each CD, LP, MC or DR version of each Recording which it releases for sale to the public in the ordinary course of its business (“Sample Product”). Manufacturer will, at the same time, provide CMRRA with information respecting the Musical Works reproduced on such Recordings as set out in Schedule “G” hereto. Manufacturer’s application will include all information which is indicated as “Mandatory” on the said schedule and may include information which is indicated as “Conditional”. More specifically, “Conditional” information is information that must be provided to CMRRA if it is available to Manufacturer.

Manufacturer may, at its election, provide CMRRA with printed label copy as an accompaniment to, but not in place of, the copy of each Recording provided herein by way of application for licenses.

(i.b) *Controlled Compositions:* Where Manufacturer intends to rely upon the terms of a controlled composition clause in the determination of the Royalty Rate respecting any Mechanical License, it shall advise CMRRA of such intention in writing at the time such Recording is provided to CMRRA hereunder.

(i.c) *Directly Licensed Works:* Upon request by CMRRA, Manufacturer will advise CMRRA of any Mechanical Licenses which have been issued directly to Manufacturer at any time during the Term by one or more publishers or copyright owners with respect to musical works reproduced on the Recording. Manufacturer acknowledges that CMRRA has no responsibility or liability for the accuracy or sufficiency of any such directly issued

license and that Manufacturer at all times bears the risk associated with obtaining and complying with the terms of such licenses.

(ii) *Disposal of Sample Products*: CMRRA will not sell any Sample Product provided to it by Manufacturer pursuant to this section but will be under no obligation to return such Product to Manufacturer.

(iii) *Compilation Products*: Where a Recording contains Tracks performed by different performers, Manufacturer's application(s) respecting such Recording will wherever reasonably possible disclose the name(s) of the performer(s) of each composition contained therein.

(iv) *Identical Programs*: Where an LP, CD, MC or DR contains a sequence of recordings of Authorized Compositions ("Program") and such Program is reproduced more than once on such LP, MC, CD or DR, then CMRRA shall issue a Mechanical License only respecting the first such recording of each such Authorized Composition in such Program on the LP, MC, CD or DR and Manufacturer shall not be obliged to make application for a Mechanical License or pay Royalties for such Authorized Compositions in such other Program(s).

(v) *Issuance of Licenses*: Subject to the terms and conditions hereof, in response to applications received from Manufacturer pursuant to subsection (i) herein, CMRRA shall, on behalf of Affiliated Publishers, grant individual Mechanical Licenses to Manufacturer on a use-by-use basis authorizing the mechanical reproduction of Authorized Compositions on Recordings manufactured by or on behalf of Manufacturer in Canada or imported by or on behalf of Manufacturer into Canada, and authorizing the distribution thereof in Canada.

Mechanical Licenses issued hereunder may, at CMRRA's election, be provided to Manufacturer in the form of licenses individually issued with respect to one or more ownership interests in musical works or in the form of reports setting out the terms of each license. Such licenses will be subject to the terms and conditions of this Agreement. Manufacturer agrees to be bound by such licenses at the time they are issued by CMRRA. Manufacturer shall be permitted to reject a Mechanical License only by reason of a deficiency in the Mechanical License itself and shall disclose its reason for doing so with the rejection of the Mechanical License.

Each Mechanical License issued by CMRRA to Manufacturer hereunder will include the information set out on Exhibit "A" and will be deemed to include the following terms and conditions:

1. *Grant of License*: At the request of Licensee and in its capacity as agent for the Copyright Owner/Administrator, CMRRA hereby grants to Licensee a non-exclusive license to reproduce the Musical Work described above on the Recording described in the Mechanical License and to distribute and sell such Recording in

Canada for private use by the public, subject to the terms and conditions which follow. Such grant right is limited to the Percentage of Copyright owned or administered by the Copyright Owner/Administrator.

2. *Arrangement or Alteration of Musical Work:* Licensee may arrange the Musical Work for the limited purpose and to the limited extent necessary to conform it to the style or manner of interpretation of the Artist/Group involved, subject to section 2(e) of the Mechanical Licensing Agreement, but shall have no right to insert new words into the existing lyrics, to alter the basic melody or to otherwise arrange the music, or generally to change the fundamental character and unity of the Musical Work. Licensee may not claim any ownership or other interest in, or register, any arrangement permitted under this section as a work under the *Copyright Act*, R.S. 1985, c. C-42.

3. *Label and Jacket Information:* Licensee shall use best efforts to imprint the Title of the Musical Work followed by the name(s) of the Composer/Author and Copyright Owner/Administrator on the label, jacket or container of every Recording made under this License where the production of the printed matter associated with a Recording is beyond its control and where the printed matter associated with a Recording is within the Licensees control it will imprint the Title of the Musical Work followed by the name(s) of the composer/Author and Copyright Owner/Administrator on the label, jacket or container of every recording made under this License.

4. *Limitations on Use:* All reproduction or other use of the Musical Work not specifically authorized by this Mechanical License, or by the written consent of CMRRA, is prohibited.

5. This Agreement is subject to and incorporates the terms and conditions of the Mechanical Licensing Agreement (Independent Labels) dated as of January 1, 2013 between CMRRA and Licensee.

CMRRA will issue such Mechanical Licenses as soon as possible after its receipt of applications therefore from Manufacturer, provided that where Manufacturer has notified CMRRA that it relies upon the terms of a controlled composition clause as being applicable to determination of the Royalty Rate for any Mechanical License, CMRRA will refrain from issuing such license until Manufacturer has provided CMRRA with the recording agreement excerpts set forth in section 7(d) herein, or until the expiry of the time periods set out in section 7(e) herein, whichever shall first occur.

(e) *Applicability of Agreement:* This Agreement is not applicable to any of the following uses except to the extent that the same has been authorized by the Affiliated Publisher:

- (i) visual reproduction or printing of lyrics or music of any Authorized Composition;
- (ii) the use of an Authorized Composition in a medley or a mashup;
- (iii) the use of an Authorized Composition, in whole or in part, as a “sampled” use, whether the “sampling” is effected digitally or otherwise in any medium or through the use of any technology now or hereafter known;
- (iv) any parody or translation of the lyrics of an Authorized Composition.
- (v) any rental of a Recording by Manufacturer, or sale by Manufacturer of a Recording for the intentional purpose of rental;
- (vi) any commercial use of the Recording other than for distribution and sale in the Territory for private use by the public (whether for background music, disk jockey or broadcast use), unless such distribution or sale is made with the express limitation that the user is not authorized to reproduce the Recording without the express prior written consent of CMRRA or the Affiliated Publisher(s) involved;
- (vii) any reproduction of an Authorized Composition in any audio-visual recording;
- (viii) any reproduction of an Authorized Composition by way of any contrivance not specifically authorized herein;
- (ix) any reproduction of a musical composition for which Manufacturer has obtained a direct license from an Authorized Publisher.

Manufacturer may make separate application to CMRRA for the purpose of obtaining licenses for any of the above purposes, the terms and conditions of which licenses, if granted, shall be expressly subject to individual negotiation between Manufacturer and CMRRA on behalf of the Affiliated Publisher(s) involved.

(f) *Renewal of Prior Licenses:* All Prior Licenses, if any, are deemed to be and hereby are renewed for the Term hereof. The terms and conditions appearing on the back of Prior Licenses are hereby replaced by those set out in Section 2(d)(v) of this Agreement.

(g) *Amended and Reprinted Prior Licenses:* CMRRA may, where reasonable, at its discretion, amend any Mechanical License or Prior License. Such amendment may occur upon any material change in the ownership of the Authorized Composition (or partial interest therein), to replace a missing or lost license, or at the request of the Affiliated Publisher(s) involved or of the Manufacturer. The amended license will be binding upon the parties hereto respecting the Authorized Composition licensed thereby.

(h) *Provision of Retailer Materials:* Manufacturer will provide CMRRA with copies of all release announcements or notifications, deletion announcements or notifications, product catalogues which it customarily provides to its retail customers, at the same time at which such materials are provided to such retailers.

(i) *Distributed Labels:* Manufacturer acknowledges that it may, from time to time, enter into licensing, distribution or other agreements with persons, firms or corporations in the music business (“Third Parties”) for the manufacture and/or distribution of Recordings which may contain reproductions of Authorized Compositions, but that the terms of such agreements put the onus and responsibility of licensing such reproduction on such Third Parties. Likewise, Manufacturer acknowledges that it may, from time to time, enter into agreements with Third Parties by which Manufacturer acquires the right to sell or otherwise distribute Recordings produced by or on behalf of such Third Parties which may contain reproductions of Authorized Compositions. Manufacturer recognizes CMRRA’s interest in ensuring that such reproduction of Authorized Compositions is carried on pursuant to licenses duly issued by CMRRA to such Third Parties, and that royalties are paid by such Third Parties to CMRRA pursuant thereto. Accordingly, Manufacturer will, upon receipt of written authorization from any such Third Party, provide CMRRA, in the course of CMRRA’s administration of licensing agreements with such Third Parties with such reasonable assistance and provision of information as CMRRA may from time to time request including, without limiting the foregoing, such information as CMRRA may reasonably require to conduct copyright royalty examinations of the books and records of such Third Parties. Manufacturer agrees that it will be jointly and severally liable with Third Parties to CMRRA for the payment of all royalties payable pursuant to licenses issued with respect to Recordings dealt within this paragraph and that CMRRA may at its discretion seek payment of all such royalties in the event of failure or refusal of Third Parties to pay same.

(j) *Security:* Before this Agreement takes effect, Manufacturer agrees to deposit an amount to be mutually agreed between it and CMRRA, which shall be held in trust by CMRRA as security for the proper performance by Manufacturer of all the terms and conditions of this Agreement. During the term hereof, CMRRA may apply the deposit or any part thereof towards the payment of any Royalty due or other charges by Manufacturer by reason of any default of Manufacturer in complying with the terms hereof. The deposit shall accrue interest at current bank rates on short-term deposits which shall be held in trust by CMRRA pending full and complete performance of the terms and conditions herein. CMRRA may additionally require Manufacturer to deposit further amounts with CMRRA during the term hereof for the same purpose. The amount of the initial deposit payable hereunder and any additional deposit(s), the due date(s) for payment

thereof and such other terms and conditions as CMRRA may require shall be embodied in one or more amendments to this Agreement.

3. Royalty Rate

(a) *Royalty Rate*: Subject to the provisions of sections 2, 7, 8 and 9 hereof, Manufacturer will pay Royalties pursuant to this Agreement on a quarterly basis by no later than the Due Date following the conclusion of each calendar quarter during the Term at the following royalty rate (“Royalty Rate”): for all Recordings sold or otherwise distributed during the Term, the Royalty Rate shall be, for each reproduction of an Authorized Composition,

(i) where the running time of the Recording is five (5) minutes or less, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording

(ii) where the running time of the Recording is longer than (5) minutes, eight and three-tenths cents (\$0.083) per Authorized Composition per Recording for the first five (5) minutes of such Authorized Composition and one and sixty-six one-hundredths cents (\$0.0166) per additional minute or part thereof of such Authorized Composition per Recording.

(b) *Royalty Rate for Prior Periods*: Manufacturer’s obligation to account for and pay Royalties will be determined pursuant to the terms hereof. Manufacturer will account for and pay Royalties at the applicable Royalty Rate during each Period in which Recordings were or are sold or otherwise distributed. The applicable Royalty Rate for prior periods are as follows:

<i>Prior Period</i>	<i>Royalty Rate</i>	<i>Per. Min. Rate</i>
Prior to October 1, 1988	0.02	0.004
From October 1, 1988 to September 30, 1990	0.0525	0.0105
From October 1, 1990 to December 31, 1991	0.059	0.0118
From January 1, 1992 to December 31, 1993	0.0625	0.0125
From January 1, 1994 to December 31, 1995	0.0647	0.0129
From January 1, 1996 to December 31, 1997	0.066	0.0132
From January 1, 1998 to December 31, 1999	0.071	0.0142
From January 1, 2000 to December 31, 2001	0.074	0.0148
From January 1, 2002 to June 30, 2007	0.077	0.0154
From July. 1, 2007 to December 31, 2009	.081	0.0162
From January 1, 2010 to December 31, 2012	0.083	0.0166

4. Payment of Royalties

(a) *Obligation to Pay Royalties*: Subject to the provisions of this Agreement, royalties shall be due on all Recordings sold or otherwise distributed. All royalty payments will be net of all bank charges, Goods and Services or any other applicable tax.

(b) *Interest on Overdue Quarterly Payments*: Where Manufacturer’s regular quarterly payment of Royalties is made to CMRRA later than the relevant Due Date, Manufacturer shall pay

interest on the full amount of royalties due for that quarter at that rate which is equal to the prime rate as set by the Bank of Canada prevailing on the Due Date plus two per cent (2%), calculated on a daily basis. Such interest shall be due and owing upon the day on which the overdue payment is made to CMRRA. Where Manufacturer's regular quarterly payment includes an overpayment made by Manufacturer, CMRRA shall return such amounts to Manufacturer. Such payment will be made by CMRRA either upon CMRRA's discovery of Manufacturer's overpayment or upon Manufacturer's request thereof and will not be deducted by Manufacturer from any amount otherwise payable to CMRRA hereunder in the absence of such request. If CMRRA does not make such payment to Manufacturer within thirty (30) days after CMRRA's receipt of Manufacturer's notice to CMRRA or CMRRA's discovery as the case may be, CMRRA shall in addition pay interest on such returned amount, calculated in the manner set out above. Royalty payments related to the return of Recordings subsequent to the liquidation of Manufacturer's reserve pursuant to section 11 herein will not constitute an overpayment as set out in this section.

(c) *Royalty Statements:* With respect to each quarterly period of the Term hereof, Manufacturer's payment of Royalties shall be accompanied by separate, accurate royalty statements for each Mechanical License issued by CMRRA to Manufacturer.

Such royalty statements shall be delivered to CMRRA in electronic form conforming to one of two formats: either as the format outlined in Schedule 'C' attached hereto for the submission of a structured data file, or as Schedule 'D' attached hereto for the submission of a Microsoft Excel file or such other data file agreed to in advance by CMRRA. The royalty statements will include all data which is indicated as 'Mandatory' on the said format and may include data which is indicated as 'Conditional'. More specifically, 'Conditional' data is data that must be provided to CMRRA if it is available to Manufacturer. Manufacturer will include all Conditional data for all new licenses issued by CMRRA to Manufacturer after the date of execution thereof and Manufacturer will use its best efforts to include the Conditional data for licenses issued prior to this date.

Manufacturer shall work with CMRRA in good faith to ensure that the chosen electronic format is implemented properly. Such efforts to ensure proper implementation shall include Manufacturer's submission of test electronic files to CMRRA in a timely manner, for approval by CMRRA.

In addition, Manufacturer's payment of Royalties and electronic royalty statements shall be accompanied by accurate printed and electronic summaries of the total amounts payable to each Affiliated Publisher, in the format attached hereto as Schedule 'E'. Any adjustment appearing on a statement must be accompanied by sufficient reasonable information to explain the purpose for which such adjustment was made.

The number of units for which Royalties are being paid in each quarterly period shall be adjusted to indicate any reserve(s) claimed by Manufacturer pursuant to section 11 of this Agreement, whether the reserves are withheld or liquidated. For greater clarity, each line item on Manufacturer's royalty statement shall indicate the number of units payable, accounting for any reserve. A reserve cannot be accounted for by reducing or increasing the royalty amount payable for

each line item, or by reducing or increasing the total amount of royalties payable either to an Affiliated Publisher or Non-Affiliated Publisher, or the total amount of royalties payable to CMRRA.

(d) *Unlicensed Recording Lists*: Each quarterly payment of Royalties will be accompanied by an accurate cumulative listing of all Recordings sold or otherwise distributed by Manufacturer up to the end of the quarterly period prior to the Due Date, in respect of which Royalties have not been paid by Manufacturer or Mechanical Licenses have not for any reason been obtained for any ownership interest in any musical compositions reproduced therein (“Unlicensed Recording List”). Manufacturer shall provide CMRRA with the Unlicensed Recording List in the format set out in Schedule “F” or in an electronic format mutually agreeable to CMRRA and Manufacturer. The Unlicensed Recording List will include all data which is indicated as “Mandatory” on the said format and may include data which is indicated as “Conditional”. More specifically, “Conditional” data is data that must be provided to CMRRA if it is available to Manufacturer.

(e) *Licensing and Payment of Royalties on Unlicensed Recordings*: CMRRA shall, upon its receipt of an Unlicensed Recording List, review such list and identify any musical compositions which are Authorized Compositions or Non-Authorized Compositions and will issue Mechanical Licenses to Manufacturer with respect thereto pursuant to this Agreement. Manufacturer will, upon receipt of same, execute each Mechanical License and return such Mechanical License to CMRRA. Payment of all accumulated Royalties respecting such Authorized Compositions or Non-Authorized Compositions and Royalty statements respecting such payment in like form to that set out in section 4(d) herein shall be delivered to CMRRA on the following Due Date.

(f) *Interest on Unlicensed Recording*:

(i) *No Application Made*: Where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and no proof of application for such license can be provided respecting such Recording, then interest will be payable upon the payment of Royalties with respect thereto, such interest to be calculated pursuant to section 4(g) herein from the next Due Date subsequent to the Release Date of the Recording to the date of payment.

(ii) *Where Application Made – Insufficient Information*: where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and an application was received from Manufacturer respecting such Recording, but CMRRA advised Manufacturer that such application did not disclose at least the title of the musical composition, the name(s) of the author(s) or the publisher(s) to enable CMRRA to identify the composition, then interest will be payable upon the payment of Royalties with respect thereto, such interest to be calculated pursuant to section 4(g) herein from the

next Due Date subsequent to the Release Date of the Recording to the date of payment, excluding the period of time commencing upon the date of application to CMRRA and concluding sixty (60) days after the date of CMRRA's response to Manufacturer with respect to such application ("Interest-Free Period"). In the event that Manufacturer supplied additional information to CMRRA within such sixty (60) day period in an effort to identify the composition or the ownership thereof and such information does not enable CMRRA to do so, the conclusion of the Interest-Free Period shall be extended to that date which is sixty (60) days after which CMRRA advises Manufacturer that it remains unable to identify the composition in question. The Interest-Free Period may likewise be extended by the provision of further information by Manufacturer to CMRRA.

(iii) *Where Application Made - Unrepresented Publisher:* where CMRRA identifies a composition and issues a Mechanical License pursuant to section 4(e) herein respecting a Recording containing a reproduction of an Authorized Composition represented by an Affiliated Publisher and an application was received from Manufacturer respecting such Recording, but CMRRA advised Manufacturer that it did not represent the Publisher thereof at the time of such application, but that the publisher had become affiliated with CMRRA subsequent to such application, then no interest will be payable upon the payment of Royalties with respect thereto.

(iv) *Royalties Withheld:* Where, notwithstanding the issuance of a Mechanical License by CMRRA, Manufacturer withholds the payment of Royalties without just cause and includes such royalties on an Unlicensed Recording List, Manufacturer will pay all such Royalties to CMRRA on the next subsequent Due Date together with interest to be calculated pursuant to section 4(g) herein from the next Due Date subsequent to the Release Date of the Recording to the date of payment. CMRRA's receipt of such Royalties will not impair or diminish its remedies arising from such withholding of Royalties. Where a manufacturer withholds payment of Royalties pursuant to this subsection, it will notify CMRRA with same and its reasons for such withholding.

(g) *Calculation of Interest:* Where interest is payable pursuant to section 4(f) herein, it shall be calculated on the basis of a rate which is equal to the prime rate as set from time to time by the Bank of Canada plus two percent (2%) on a quarterly basis during the period in which interest is to be calculated pursuant to section 4(f) herein.

5. Free Goods

Except as provided in sections 6 and 7 herein, royalties will be paid quarterly on Recordings distributed on a free or no charge basis, on the same rates and terms that apply to Recordings otherwise sold.

6. Promotional Copies

(a) *Allowance*: No royalties will be payable on Promotional Products, as that term is defined herein, up to a maximum of two thousand (2,000) units (all formats combined).

(b) Manufacturer shall provide CMRRA with one (1) copy of each such Promotional Product for CMRRA's inspection at the same time at which such Promotional Product is distributed by Manufacturer. CMRRA will not sell or otherwise distribute any Promotional Products provided to it hereunder. To the extent that any Promotional Product contains any Authorized Composition, the provision of a copy of such Promotional Product to CMRRA is deemed to be an application for a Mechanical License with respect thereto, and each Authorized Composition reproduced therein is deemed to be licensed pursuant to the terms hereof, and no royalties are payable with respect thereto.

7. Controlled Compositions

(a) *Definitions*: In this Section, the following terms shall have the meanings indicated below:

Recording Agreement: A written agreement between Manufacturer and a recording artist for the production of master recordings or a like agreement between Manufacturer and a third party by which the rights granted in such agreement are assigned or licensed to Manufacturer by such recording artist or third party.

Controlled Composition: A musical composition which is wholly or partially owned or controlled by any person, firm or corporation which has granted or authorized the granting of rights thereto in a Recording Agreement.

Controlled Composition Clause: Any provision of a Recording Agreement that grants or authorizes the granting of Mechanical Licenses at a rate with respect to a Controlled Composition.

(b) *Non-Controlled Compositions*: Any Authorized Composition or partial ownership interest therein that is not subject to such control, ownership or other form of interest as would make it subject to the provisions of a Controlled Composition Clause will be payable at the applicable Royalty Rate as set out in section 3.

(c) *Licensing of Controlled Compositions*: Subject to section 7(f) herein, Manufacturer will apply to CMRRA for Mechanical Licenses for the reproduction of Controlled Compositions in Recordings pursuant to the terms hereof. The Royalty Rate payable for a Controlled Composition shall be determined solely in accordance with the Controlled Composition Clause, provided however that:

(c.1) *Pre-October 1, 1988*: Where the Release Date of a Recording occurred prior to October 1, 1988;

- (i) *Definition:* The terms “statutory rate”, “industry rate” or any term having a similar effect in a Recording Agreement shall be deemed to refer to the applicable royalty rate below (“Base Royalty Rate”) as of the Release Date, for the first five minutes of playing time (or less) of an Authorized Composition:

<i>Release Date</i>	<i>Royalty applicable on that date</i>
Jan. 1, 1924 - Dec. 31, 1977	2 cents
Jan. 1, 1978 - Jun. 30, 1981	2 3/4 cents
Jul. 1, 1981 -Dec. 31, 1982	4 cents
Jan. 1, 1983-Jun. 30, 1984	4 1/4 cents
Jul. 1, 1984- Dec. 31, 1985	4 1/2 cents
Jan. 1, 1986-Sept. 30, 1988	5 cents

- (ii) *Playing Time Exceeds Five Minutes:* Where the playing time of a Recording of a Controlled Composition exceeds five (5) minutes, the Base Royalty Rate shall be increased by one fifth of its value for each minute (or part thereof) of additional playing time;
- (iii) *Minimum Per-Composition Rate:* In no case shall the Royalty Rate payable for a musical composition be less than two (2) cents;
- (iv) *Payment of Royalties:* Royalties will be paid by Manufacturer pursuant to the terms of section 4 of this Agreement.

(c.2) October 1, 1988 - September 30, 1990: Where the Release Date of a Recording of a Controlled Composition occurred on or after October 1, 1988 and on or before September 30, 1990,

- (i) *Definition:* The terms “statutory rate”, “industry rate” or any term having a similar effect in a Recording Agreement shall be deemed to refer to the Royalty Rate for Recordings applicable during each Period as set out in section 3 herein for a Recording of five (5) minutes playing time or less.
- (ii) *Royalty Rate Percentage:* Where the Percentage [hereinafter defined in section 7(c.2)(iii)] is less than seventy five percent (75%), it will be deemed to be equal to seventy-five percent (75%). Where the Percentage in the Controlled Composition Clause is higher than seventy-five (75%), the Percentage will be equal to that number set out in the Controlled Composition Clause.
- (iii) *Cap Provisions:* Where a Controlled Composition Clause limits the total Royalties which a Manufacturer will pay with respect to all musical compositions reproduced on an LP, MC, CD or DR, by setting a maximum amount (“Cap”) which is determined by multiplying a whole number (“Multiplier”) by a percent-age (“Percentage”) of the Royalty

Rate, such provision will be given full force and effect in the determination of the Royalty Rate for any Controlled Composition to which this section 7(c.2) applies, provided that in no event shall the royalty rate payable for a musical composition be at a rate which is less than fifty percent (50%) of the Royalty Rate for a Recording with a playing time of less than five (5) minutes which is applicable during each Period as set out in section 3 herein.

(iv) *Free Goods*: Where a Controlled Composition Clause provides that Royalties may be paid on less than one hundred percent (100%) of all Recordings sold, Royalties shall be paid on the proportion of all Recordings on which Manufacturer is obliged to pay Royalties which is set out in the Controlled Composition Clause, or upon eighty-five percent (85%) of all Recordings sold whichever amount is greater.

(c.3) *Post-October 1, 1990*: Where the Release Date of a Recording of a Controlled Composition occurred or occurs on or after October 1, 1990,

(i) *Definition*: The terms “statutory rate”, “industry rate” or any term having a similar effect in a Recording Agreement shall be deemed to refer to the Royalty Rate for Recordings applicable during each Period as set out in section 3 herein for a Recording of five minutes playing time or less.

(ii) *Royalty Rate Percentage*: Where the Percentage [as hereinafter defined in section 7(c.3)(iii)] is less than seventy five percent (75%), it will be deemed to be equal to seventy-five percent (75%). Where the Percentage in the Controlled Composition Clause is higher than seventy-five (75%), the Percentage will be equal to that number set out in the Controlled Composition Clause.

(iii) *Cap Provisions*: Where a Controlled Composition Clause limits the total Royalties which a Manufacturer will pay with respect to all musical compositions reproduced on an LP, MC, CD or DR, by setting a maximum amount (“Cap”) which is determined by multiplying a whole number (“Multiplier”) by a percentage (“Percentage”) of the Royalty Rate, such provision will be given full force and effect in the determination of the Royalty Rate for any Controlled Composition to which this section 7(c.3) applies, provided however that the number of compositions shall be determined as follows:

(1) *Albums*: With respect to an LP, MC, CD, or DR, containing no less than eight (8) musical compositions, where the Multiplier in the Controlled Composition Clause is less than twelve (12), it will be deemed to be equal to twelve (12). Where the Multiplier in the Controlled Composition Clause exceeds twelve (12), the Multiplier will be equal to that number.

(2) *Multiple-Album Configurations*: With respect to a multiple set consisting of more than one LP, MC, CD or DR, the Multiplier shall be as follows:

<i>Number of LP's, MC's, CD's or DR's in Multiple Set</i>	<i>Multiplier</i>
2	20
3	28
4	36
5	44
each additional	add 8

(3) *Singles and Other Formats*: With respect to singles, cassette-singles CD singles and all other non-album and non-multiple album formats, the Multiplier shall be that number set out in the Controlled Composition Clause.

(iv) *Multiple Mixes*: Where a CD single or cassette single or “extended play” product contains multiple versions of a Controlled Composition, CMRRA will issue a Mechanical License and Royalties will be payable at the full Royalty Rate by Manufacturer only with respect to the Recording of such Controlled Composition with the longest running time. Such Mechanical License will be deemed to include all other versions of such Controlled Composition reproduced on such product. In no event will this section apply to the reproduction of Non-Controlled Compositions, provided that Manufacturer may make an application to CMRRA on behalf of the Affiliated Publisher of a Non-Controlled Composition for a Royalty Rate which is at variance from that otherwise applicable pursuant to the terms of this Agreement.

(v) *Minimum Per-Composition Rate*: Notwithstanding the application of any Cap Provision, as modified by this section 7(c.3), in no event shall the royalty rate payable for a musical composition be at a rate which is less than fifty percent (50%) of the royalty rate for a Recording with a playing time of less than five (5) minutes which is applicable during each Period as set out in section 3 herein.

(vi) *Free Goods*: Where a Controlled Composition Clause provides that Royalties may be paid on less than one hundred percent (100%) of all Recordings sold, Royalties shall be paid on the proportion of all Recordings on which Manufacturer is obliged to pay Royalties which is set out in the Controlled Composition Clause, or upon eighty-five percent (85%) of all Recordings sold whichever amount is greater.

(d) *Recording Agreement Excerpts*: No Mechanical License will be issued in respect of a Controlled Composition unless and until Manufacturer provides CMRRA with excerpts from the applicable Recording Agreement which contains the Controlled Composition Clause relied upon by Manufacturer and which discloses the following information:

- (i) The date of the Recording Agreement;

- (ii) the names of all parties to the Recording Agreement;
- (iii) the Controlled Composition Clause;
- (iv) any defined terms set out in any of the above excerpts; and,
- (v) the signed and dated signature page.

Notwithstanding the foregoing, nothing contained herein shall derogate from the validity or enforceability of any Controlled Composition Clause relied on by the Manufacturer as between Manufacturer and any party other than CMRRA or an Authorized Publisher.

(e) *Failure to Provide Excerpts:* In the event that the excerpts from the applicable Recording Agreements set out in section 7(d) herein are not provided to CMRRA within sixty (60) days of the Release Date of a Recording, CMRRA may provide Manufacturer with thirty (30) days' written notice of its intention to issue a Mechanical License in respect thereof at the full Royalty Rate. If Manufacturer has not provided said excerpts within said notice period, CMRRA may issue a Mechanical License respecting such Recording at the full Royalty Rate ("Full-Rate License"). Subsequent production by Manufacturer of said excerpts will retroactively cure any prior failure to provide same. On the provision of said excerpts, CMRRA will amend the Full-Rate License to conform to the applicable provisions of this section 7. Manufacturer will be entitled to make adjustments for any overpayment of Royalties which occurs pursuant to this section 7(e).

(f) *Challenge to Controlled Compositions:* It is understood and agreed that nothing in this section shall influence or affect any challenge by any persons, in any forum, of the validity or effect of any Controlled Composition Clause or part thereof.

8. Deletes

(a) *Deletion:* Where Manufacturer deletes a Recording containing reproductions of Authorized Compositions licensed to Manufacturer hereunder from its catalogue of products offered for sale to its customers ("Deleted Recordings"), it will provide CMRRA with written notice of such deletion on a quarterly basis. Manufacturer may, for this purpose, provide CMRRA with a copy of the deletion notice which it provides to its customers.

(b) Royalty:

(i) *Destruction of Deleted Recordings:* Where Manufacturer destroys Deleted Recordings, no royalty shall be payable to CMRRA with respect thereto. Manufacturer will maintain reasonable records and documentation of such destroyed goods which shall be made available to CMRRA upon request.

(ii) *Sale of Deleted Recordings:* Where Manufacturer sells Deleted Recordings, the Royalty payable will be as follows:

(A) Where Deleted Recordings are sold at or below three dollars and fifty cents (\$3.50) each, Manufacturer will pay a Royalty equal to fifteen per cent (15%) of the proceeds of such sale.

(B) Where Deleted Recordings are sold for greater than three dollars and fifty cents (\$3.50) each, Manufacturer will pay the Royalty Rate otherwise applicable pursuant to this Agreement.

(iii) *Payment of Royalty:* The amount and payment of Royalties referred to in subsection 8(b)(ii) herein will be payable on the next Due Date and will take into account CMRRA's share of market as agreed upon between CMRRA and Manufacturer. Manufacturer will maintain records of the proceed of sale of Deleted Recordings and submit such information to CMRRA along with its payment of Royalties

(c) *Cancellation of Licenses:* Where Manufacturer has provided CMRRA with notice of Deletion as set out in section (a) herein, CMRRA will cancel all Mechanical Licenses issued to Manufacturer respecting such Deleted Recording, provided that all rights (except for the right to manufacture further Recordings), representations, warranties, covenants, indemnifications and obligations shall survive the cancellation thereof.

9. Royalty Reduction for Budget Recordings

(a) *Definition:* In this section,

(i) *"Best Selling Price"* means the price in effect to the largest-volume dealers purchasing Recordings from Manufacturer;

(ii) *"Full Line Product"* means the product line released by Manufacturer containing most of Manufacturer's new releases;

(iii) *"Budget Recording"* means a Recording, the Best Selling Price of which is fifty-five percent (55%) or less of the Best Selling Price for Full Line Product offered for sale by Manufacturer.

(iv) Where Manufacturer does not sell or otherwise distribute Full Line Products, "Budget Recording" means a CD whose Best Selling Price is less than three dollars and fifty cents (\$3.50) and an MC whose Best Selling Price is less than two dollars (\$2.00). If, during the Term hereof, Manufacturer begins selling Full Line Products, "Budget Recording" shall, from and after the date on which Manufacturer commences to sell or

otherwise distribute such Full Line Products, be determined according to the terms of subsection (iii) herein.

(b) *Budget Rate*: Manufacturer may apply to CMRRA for, and CMRRA shall issue, Mechanical Licenses for Authorized Compositions reproduced on Budget Recordings on the basis of three-quarters (3/4) of the Royalty Rate which would otherwise be applicable pursuant to section 3 during each Period (“Budget Reduction”). Where, pursuant to section 7 herein, Manufacturer is entitled to a Royalty Rate which would be lower than that set out in this section, Manufacturer may make application for, and CMRRA shall issue Mechanical Licenses for Authorized Compositions on such basis, provided that the Budget Reduction and any Royalty Rate reduction pursuant to section 7 herein are mutually exclusive.

(c) *Restriction*: The Budget Reduction is applicable only to Budget Recordings that contain at least either eight (8) musical works or, in the case of classical or serious music, at least thirty (30) minutes of playing time.

(d) *Mid-Line Recordings*: Recordings known in the trade as “mid-line” Recordings are specifically excluded from the Budget Reduction.

(e) *Provision of Pricing Information*: Manufacturer shall submit to CMRRA current price list information to qualify for the Budget Reduction.

(f) *Instructions of Affiliated Publishers*: The Budget Reduction is subject to the individual instructions of the Affiliated Publishers, and nothing in this section precludes Affiliated Publishers from negotiating individually a lower rate or other terms for Budget Recordings.

10. Exports

Unless otherwise agreed by the parties hereto, Recordings exported by Manufacturer will be licensed by and royalties will be paid to the mechanical rights society and/or responsible publisher(s) in the country to which the Recordings are exported, and that Manufacturer will not be liable to CMRRA for the payment of Royalties on such exported Recordings to the extent that such Recordings are otherwise subject to Mechanical Licenses issued to Manufacturer by CMRRA hereunder (“Export Exemption”). Manufacturer will provide CMRRA with advice on a timely basis of all Recordings manufactured pursuant to Mechanical Licenses issued hereunder for which exemption from Royalty payment is claimed by Manufacturer on the grounds of export, including quantity, catalogue number and identification of purchaser by name and country.

It is understood and agreed that the Export Exemption is intended to apply only to Recordings in respect of which all applicable mechanical licenses are obtained and applicable royalties are paid in the territory into which they have been exported, and that the Export Exemption is not intended to provide Manufacturer or the importer or purchaser of such exported Recordings with the opportunity to export or obtain Recordings free of any royalty payments or obligations.

In addition, Manufacturer will, upon request by CMRRA, provide representatives of CMRRA with reasonable proof that mechanical licenses have been obtained and applicable royalties have been paid on exported Recordings in the territories into which they have been exported. If Manufacturer is unable to provide CMRRA with such proof for any Recordings in respect of which it claims the benefit of this section, Manufacturer will be obliged to obtain Licenses and pay Royalties as provided hereunder in respect of such Recordings

11. Reserves and Returns

(a) *Reserve Allowance:* Manufacturer shall be entitled to a reasonable reserve against the return of Recordings sold or otherwise distributed, save and except for “one-way sales” of Recordings where such Recordings are sold or otherwise distributed by Manufacturer where the purchaser thereof is not entitled to return same. Amounts held in reserves will be paid out on a regular quarterly basis, over a maximum period of five (5) calendar quarters, whereby any amount entering the reserve shall be fully liquidated no later than five (5) calendar quarters after such amount entered the reserve.

(b) *Reserve Accounting:* The number of units for which Royalties are paid shall be adjusted to indicate any reserve(s) claimed by Manufacturer pursuant to Section 11(a) above, whether the reserves are withheld or liquidated. For greater clarity, Manufacturer’s reserve shall be withheld or liquidated only by adjusting the number units payable and not by reducing or increasing the Royalty amount payable for each line item, or by reducing or increasing the total amount of Royalties payable, either to an Affiliated Publisher, Non-Affiliated Publisher or CMRRA.

(c) *Returns in Excess of Reserves:* Royalties associated with returned Recordings in excess of the reserve held by Manufacturer shall be carried forward as a negative credit balance for the applicable Musical Work or share thereof, and shall not be recouped against royalties otherwise payable to CMRRA.

12. Termination

(a) Termination of Agreement:

(i) *Insolvency of CMRRA:* This Agreement shall terminate in the event that CMRRA is voluntarily wound up or becomes insolvent, makes or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage the affairs of CMRRA. In the event of such termination, all Mechanical Licenses issued by CMRRA to Manufacturer will remain in full force and effect directly between Affiliated Publishers and Manufacturer for the remainder of the Term hereof.

(ii) *Insolvency of Manufacturer:* CMRRA may terminate this Agreement in the event that Manufacturer is voluntarily wound up, or is the subject of an assignment in bankruptcy or if a receiver is appointed to manage its affairs. In the event of such termination, all licenses issued to Manufacturer by CMRRA hereunder will be terminated

forthwith and Manufacturer will render an accounting and payment to CMRRA of all royalties due and owing thereunder.

(iii) *Breach of Agreement by Manufacturer*: CMRRA may terminate this Agreement in the event of any material breach of its terms or of the terms of any Mechanical License issued by CMRRA to Manufacturer. Prior to effecting such termination, CMRRA shall give Manufacturer written notice of its intention to terminate in the manner set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days following the date of such notice, then this Agreement and all Mechanical Licenses issued hereunder shall terminate on the thirty-first (31st) day following such notice. Upon such termination, Manufacturer will forthwith render an accounting and payment to CMRRA of all Royalties due pursuant to this Agreement.

(b) *Termination of Individual Mechanical Licenses*: Subject to the provisions of Exhibit “A” hereto, CMRRA may terminate any individual Mechanical License issued hereunder upon Manufacturer’s material breach of any of the terms thereof by giving written notice of such breach as set out herein. If Manufacturer fails to take reasonable steps to cure such breach within thirty (30) days following the date of receipt of such notice, then the said Mechanical License shall terminate on the thirty-first (31st) day following the receipt of such notice. Upon any such termination of a Mechanical License, Manufacturer will render an accounting and payment to CMRRA of all Royalties due and owing thereunder in the course of its next quarterly Royalty accounting.

13. Arbitration

Disagreements regarding the interpretation of the terms of this Agreement shall first be the subject of discussion between CMRRA and Manufacturer. Failing resolution of the disagreement by such discussion, it shall be referred to arbitration pursuant to the provisions of the *Arbitrations Act*, S.O. 1991, c.17, as amended from time to time. The reference to arbitration shall be to one arbitrator, if the parties agree upon one arbitrator, otherwise to three arbitrators, one of whom shall be chosen by each party to the dispute and the third by the two so chosen and the third arbitrator so chosen shall be the Chairman. The award may be made by the majority of the arbitrators. Pursuant to s.45(3) of the said Act, the award may be appealed by either party to a Court on a question of fact or on a question of mixed fact and law.

14. Amendment and Severability

This Agreement may only be amended in writing signed by the parties hereto. A waiver by either party hereto of any term or condition of this Agreement or of any individual Mechanical License incorporating this Agreement by reference shall not be deemed or construed as a waiver of any condition or term hereof for the future or of any subsequent breach thereof. All remedies contained in this Agreement and in any individual Mechanical License incorporating the terms of this Agreement by reference shall be cumulative and none of them shall be in limitation of any other remedy. To the extent that any provision hereof may be judicially or administratively determined to

be illegal or otherwise void, other than articles 2 and 7 herein, it is severed herefrom and will not otherwise affect or otherwise derogate from any other term hereof.

15. Audit

(a) *Audit Right:* Manufacturer hereby agrees that CMRRA, on behalf of its Affiliated Publisher(s) and those listed on Schedule “B” hereto, shall have the right, not more than once in any twelve (12) month period, to conduct, at its own expense, a Copyright Royalty Examination (“Audit”) of Manufacturer’s books and records as the same relate to the use of the Authorized Compositions and those listed on Schedule “B” hereto, which are the subject of Mechanical Licenses incorporating this Agreement, provided that CMRRA provides Manufacturer with reasonable written notice of its intent to conduct an Audit not less than twenty (20) business days prior to such Audit, and provided further that no such Audit shall take place within thirty (30) days prior to any Due Date. The Audit right may be exercised only once during any calendar year with respect to royalty statements rendered within two (2) years of CMRRA’s receipt of said statements.

(b) *Books and Records to be Kept:* Without limiting the generality of the foregoing, such books and records shall include books of account and supporting documentation relating to the manufacture, sale or other distribution and return of Recordings sold or otherwise distributed by Manufacturer. Such books and records shall be maintained in a manner consistent with such Generally Accepted Accounting Principles as are and may be established from time to time by the Canadian Institute of Chartered Accountants.

(c) *Access to Information:* Without limiting the generality of the foregoing, Manufacturer shall advise CMRRA and its agents, upon request thereof, where such records, books and supporting documentation are kept and shall provide CMRRA and its agents with such information. CMRRA and its agents shall have the right to take hand-written extracts and to make photocopies and computer reports of such records, books and supporting documentation as CMRRA and its agents determine are reasonably necessary and convenient for the efficient conduct of the Audit.

(d) *Verification by Third Party:* in lieu of exercising the Audit Right herein, CMRRA may, in its sole discretion, accept the findings of a mutually acceptable examiner engaged by and at the cost of Manufacturer, including but not limited to an auditing or accounting firm, for the purpose of verifying the accuracy of Manufacturer’s records and payments made pursuant to this Agreement.

16. Applicable Law

This Agreement shall be interpreted and governed by and pursuant to the laws of the Province of Ontario.

17. Notice

Any notice or other communications hereunder will be in writing and must be delivered by personal service, facsimile or by pre-paid registered mail to CMRRA and Manufacturer at the addresses set out in this Agreement, and such notice or communication will be deemed to be received in the case of personal service on delivery, or if by facsimile on the day of transmission, or if mailed on the fifth business day following its mailing. Either party may change its address for notice provided above by giving notice to the other party. Notwithstanding the foregoing, notice of material breach of any term or condition of this Agreement shall be by prepaid registered mail and shall be deemed received on the date of actual receipt by the addressee.

18. Entire Agreement

This Agreement and the Schedules and Exhibits attached hereto constitute the entire agreement between the parties and neither party hereto is bound by any representation or inducement not set forth herein.

19. Titles

Section titles herein are merely for identification and will be of no effect whatsoever in the application and construction of this Agreement or its provisions.

20. Currency

All royalties paid pursuant to Mechanical Licenses issued hereunder shall be calculated and paid in Canadian funds.

21. Assignment

Neither this Agreement nor any Mechanical License issued by CMRRA to Manufacturer hereunder may be assigned by Manufacturer in whole or in part without the express prior written consent of CMRRA, save and except for any assignment necessitated by a change in control or ownership of Manufacturer occasioned by the acquisition of a substantial controlling interest in the shares thereof or through the merger of Manufacturer with another firm, in which case assignment will be subject to immediate notification to CMRRA, provided that the assignee in such case is a party hereto.

22. Representation and Warranty by CMRRA

CMRRA represents and warrants that its Affiliated Publishers and Non-Affiliated Publishers own and/or control the reproduction rights in the Authorized Compositions and Non-Authorized Compositions pursuant to the terms and conditions of this Agreement and that they have authorized CMRRA to enter into this Agreement with Manufacturers and to grant Mechanical Licenses to Manufacturers as set out herein.

In the event that the above representation and/or warranties is or are breached with respect to any Composition licensed hereunder, and Manufacturer is found liable or settles any claim for damages as a result thereof, CMRRA will indemnify Manufacturer against and hold Manufacturer harmless from any and all claims, demands, liabilities and losses (including reasonable legal fees, interest and court costs) arising out of or in any way related to such breach. CMRRA agrees that Manufacturer may withhold such sums due CMRRA or Affiliated Publisher pursuant to the provisions of section 4(f)(iv) herein, in such amounts reasonably related to such claims until such time as such claims are reduced to a final judgment by a court of competent jurisdiction or are settled.

CMRRA agrees that during the Term it shall maintain, in good standing, an errors and omissions insurance policy with coverage in an amount sufficient to indemnify Manufacturer(s) for any breach of representation and/or warranty as set out above.

23. Confidentiality

Either party hereto may disclose the existence of and the terms of this Agreement to any person, firm or corporation. However, all transactions carried on pursuant to this Agreement, including the application for any Mechanical License by Manufacturer, the issue of such Mechanical License by CMRRA, the payment of royalties thereunder by Manufacturer to CMRRA and the contents of any correspondence or dealings between the parties hereto respecting such applications, Mechanical Licenses or Royalty payments shall at all times be treated in a confidential manner by both parties hereto and shall not be disclosed by either party to any other person, or to any firm or corporation without the express prior written consent of the other, save and except for such disclosure as may be reasonably necessary to either party's directors, officers, auditors (including CMRRA's auditors in the course of their conduct of any audit of Manufacturers hereunder), subsidiaries or parent firms or corporations.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**CANADIAN MUSICAL REPRODUCTION
RIGHTS AGENCY LTD.**

Name: Caroline Rioux

Title: President

Date: _____

[Name of Manufacturer]

Name: _____

Title: _____

Date: _____

EXHIBIT “A” Standard CMRRA Mechanical License

Each Mechanical License issued by CMRRA to Manufacturer hereunder will set out on its face the following information:

License Number
Name of Manufacturer
Address of Manufacturer
Title of Authorized Composition
Composer(s), Author(s) and Arranger(s) of Authorized Composition
Owner/Administrator of Copyright
Percentage of Copyright owned or administered by Owner/Administrator
Featured Artist/Group performing Authorized Composition on Recording
Release Date of Recording
Playing Time of Recording
The Recording's Universal Product Code (UPC)
Manufacturer's Catalogue Number for the Recording
Contrivance
Album Title (where applicable)
Date of Issue

EXHIBIT “B” Notification of New Affiliated Publisher

TAKE NOTICE that Schedule “A” to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer is hereby amended to add the following persons, firms and/or companies as Affiliated Publishers:

Name of Affiliated Publisher

Date: _____

SCHEDULE “A”: Affiliated Publishers

The following music publisher affiliates of CMRRA are hereby added as Affiliated Publishers to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

(computer printout)

SCHEDULE “B”: Non-Affiliated Publishers and Non-Authorized Compositions

The following music publishers are Non-Affiliated Publishers pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer:

Name of Non-Affiliated Publisher
Abkco Music Inc.
Ashtray Music
Axe Music
Black Ice Magic Publishing
Legs Music Inc.

The following Musical Works are Non-Authorized Compositions pursuant to the Mechanical Licensing Agreement dated as of January 1, 2013 between CMRRA and Manufacturer :

Musical Work	Author(s)	Publisher
“White Christmas”	Irving Berlin	Irving Berlin Music Corp. c/o Williamson Music

SCHEDULE "C": Standard Royalty Format

Generalized Royalty Input file for submission of Royalty data to CMRRA rev 1.01 (as of May 11, 1999)

Note: all numeric fields are implicitly zoned numeric

<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>	
Header Record - Company and period Identifier			1 per file	
	Record code	2a	Yes	HC
*	Company Name	50a	Yes	left justified
	Period start	8a/n	Yes	yyyymmdd
	Period end	8a/n	Yes	yyyymmdd
	Transmission date	8a/n	Yes	yyyymmdd
Publisher Header Record - Publisher information			1 per publisher- precedes song information details	
	Record code	2a	Yes	HP
	Publisher number	10a	Yes	left justified
	Publisher name	50a	Yes	left justified
Publisher Balance Forward Detail Record			1 or more per publisher - precedes song information details	
	Record code	2a	Yes	DP
	Publisher number	10a	Yes	left justified
	Transaction amount	13,2n	Yes	Signed field
*	Transaction description	50a	No	left justified
<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>		
Song Header Record			1 per song within publisher	
	Record code	2a	Yes	HS
*	Publisher number	10a	Yes	left justified
	Song Number	20a	No	left justified
	Song Title	50a	Yes	left justified
**	ISWC Code	20a	No	
	Writer(s),Arranger(s)	100a	No	left justified: delimited by '~'

<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>
**** Record code	2a	Yes	DS
Transaction code	2a	Yes	left justified Values: N = Normal (default) NC = Normal Controlled NB = Normal Budget A = Adjustment Normal AC = Adjustment Controlled AB = Adjustment Budget B = Balance Fwd Normal BC = Balance Fwd Controlled BB = Balance Fwd Budget
Publisher number	10a	Yes	matches 'P' record
* Song Number	20a	No	song number left justified (if available) (matches 'S' record) left justified - required if song number absent
Song Title	50a	Yes	
Catalogue number	15	Yes	left justified
CMRRA license #	15	No	left justified, concatenation of prefix, suffix
Net Units	13,0n	Yes	Signed field
Rate type code	1a	Yes	Values: 'P' = rate + percent ownership provided 'B' = blended rate i.e. rate x percent ownership
Rate paid	15,9n	Yes	
Percent ownership	7,4n	No	(if available) - see Rate type code
Net amount	13.2n	Yes	signed field
Timing	6,0n	No	(if available)Hhmmss (if available) includes check digit
UPC code	20a	No	(EAN code for imports)
ISWC code	20a	No	(if available)
Distribution method	5a	No	(if available) left justified
Song Trailer Record			1 per song
Record code	2a	Yes	TS
Publisher number	10a	Yes	matches 'P' record

	<i>Field Name</i>	<i>Type</i>	<i>Mandatory</i>	<i>Detail</i>
*	Song Number	20a	No	song number left justified (if available) left justified - required if song number absent
*	Song Title	50a	Yes	hash total
	Units	13,0n	Yes	payable amount
***	Amount	13,2n	Yes	
	Record count	6,0n	Yes	
Publisher Trailer Record				1 per publisher
	Record code	2a	Yes	TP
*	Publisher number	10a	Yes	matches 'P' record
	Units	13,0n	Yes	hash total
***	Amount	13,2n	Yes	payable amount
	Record count	6,0n	Yes	
Company Trailer Record				1 per file
	Record code	2a	Yes	TC
*	Company Name	50a	Yes	left justified
	Units	13,0n	Yes	hash total
***	Amount	13,2n	Yes	payable amount
	Record count	6,0n	Yes	

Legend:

- * = added to record definition
- ** = changed relative position in record
- *** = changed description or definition
- **** = code changed

FILE NAMING CONVENTION:

Manufacturer's Royalty Statements will be named in accordance with the following convention:

Manufacturer Name_CMRRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRRA.
- Type being Royalty Statement.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Royalty Statement_20130331.xls

SCHEDULE “D”: Standard Royalty Format

Pursuant to Section 4(c) of this Agreement Manufacturer's royalty statements will be delivered to CMRRA in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields that must appear in each file and a description of each data field. The data fields represent individual columns in the spreadsheet.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA's licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system, so long as such identification number is only ever used to identify one specific Copyright Owner account and is not re-used to identify a different Copyright Owner account.	Mandatory
(iii)	License # Prefix	The License Number Prefix as provided by CMRRA.	Mandatory
(iv)	License # Suffix	The License Number Suffix as provided by CMRRA.	Mandatory
(v)	Song Number	The Musical Work's identification number as stated on CMRRA's licenses or as used in Manufacturer's own accounting system.	Mandatory
(vi)	Song Title	The title of the Musical Work as stated on CMRRA's licenses in respect of which Royalties are being paid.	Mandatory
(vii)	Writer Name(s)	The name of the authors and composers of the Musical Work.	Mandatory
(viii)	Unique Product Identifier	The catalogue number assigned to the Recording by Manufacturer.	Mandatory
(ix)	Contrivance	The configuration type of the Recording (contrivance).	Mandatory
(x)	Royalty Rate	The applicable Royalty Rate as per Section 3 or Section 9 of this Agreement. This value should be stated in dollars, for example, as .083	Mandatory
(xi)	Ownership Percentage	The ownership Percentage of the Copyright Owner as stated on CMRRA's licenses. Must appear as a percentage amount (33.33) without the percent symbol.	Mandatory
(xii)	Units	The number of units for which Royalties are paid in the quarterly period, net of reserves, which is the subject of the statement. Must not include comma separator.	Mandatory
(xiii)	Royalty Amount	The total Royalties paid respecting the share of the Musical Work that is the subject of the Mechanical License. Amount is rounded to two decimal places and must not include a dollar sign.	Mandatory
(xiv)	Calendar Quarter	The quarterly period that is the subject of the statement. Must be indicated as YYQQ. YY represents the last two digits of the applicable year. The second Q represents the applicable calendar quarter. For example, 12Q4 represents the 4 th calendar quarter of the year 2012.	Mandatory

SCHEDULE “D”: Standard Royalty Format (continued)

As mentioned above, the data fields represent different columns of data that must appear in your Microsoft Excel report. It is of critical importance that the column sequencing is presented in exactly the same order as in the above table and that the Data Fields cannot be merged in a single column. It is essential that you do not add or remove a column.

The column width may vary; however, CMRRA requires that it be submitted in a 'flat file' format. This entails that each cell in each column is filled, even if the information is repeated from prior rows of data (i.e. publisher name). The desired result is that each row is self-sufficient and independent from the others.

Your spreadsheet must be free of embedded formulas and 'grand totals' for each column.

Manufacturer will ensure that its royalty statements conform to said format and will not make any changes thereto save and except for those which are approved in advance by CMRRA.

FILE NAMING CONVENTION:

Manufacturer's Royalty Statements will be named in accordance with the following convention:

Manufacturer Name_CMRRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer's identification number as provided by CMRRA.
- Type being Royalty Statement.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Royalty Statement_20130331.xls

SCHEDULE “E”: Standard Format for Publisher Summary

Pursuant to Section 4(c) of this Agreement, Manufacturer's will deliver to CMRRA a summary of the total amounts payable to each Affiliated Publisher, in a Microsoft Excel file, or such other data file as agreed to in advance by CMRRA, in accordance with the format and data requirements below. The following table lists the required data fields in each summary and a description of each field. The data fields are to be presented as individual columns in the spreadsheet, with the exception of the last data field in the table below.

No.	Data Fields	Description	Requirement
(i)	Publisher Name	The name of the Copyright Owner as stated on CMRRA’s licenses.	Mandatory
(ii)	Publisher Number	The Copyright Owner identification number, as stated on CMRRA's licenses or as used in Manufacturer's own account system so long as such identification number is only ever used to identify one specific Copyright Owner account and is not re-used to identify a different Copyright Owner account.	Mandatory
(iii)	Total Payable to Publisher	The total Royalties payable to each Copyright Owner.	Mandatory
(iv)	Grand CMRRA Total	The grand total payable to CMRRA. Must be indicated at the end of column (iii) above.	Mandatory

The data fields represent the different columns of data that must appear in your report with the exception of (iv) which is a sum of column (iii).

FILE NAMING CONVENTION:

Manufacturer’s Publisher Summary will be named in accordance with the following convention:

Manufacturer Name_CMRRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRA Manufacturer ID being the Manufacturer’s identification number as provided by CMRRA.
- Type being Publisher Summary.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

For example: 123 Records_456_Publisher Summary_20130331

SCHEDULE "F": Unlicensed Recording List Standard Format

Pursuant to Section 4(g) of this Agreement, Manufacturer's Unlicensed Recording List will be delivered to CMRRA in a Microsoft Excel file in accordance to the format and data requirements below. The following table lists the required data fields that must appear in each file with respect to each unlicensed Musical Work, or share thereof, and a description of each data field. The data fields are to be presented as individual columns in the spreadsheet.

Data fields marked as "Conditional" must be provided to CMRRA to the extent such information is available to Manufacturer, or where such information is provided by Manufacturer to an online music service.

No.	Data Fields	Description	Requirement
(i)	Song Title	The title of the Musical Work.	Mandatory
(ii)	Catalogue Number	The catalogue number of the Recording as assigned by Manufacturer.	Mandatory
(iii)	Cumulative Units	The cumulative number of units for which Royalties are payable from inception of distribution of the Recording until the end of the quarterly period which is the subject of the statement.	Mandatory
(iv)	Royalty Rate	The applicable Royalty Rate. Should appear as dollar amount (.083).	Mandatory
(v)	Total Payable	The total Royalties payable for the Musical Work as embodied on the specific Recording.	Mandatory
(vi)	Product Title	The title of the Recording embodying the Musical Work.	Mandatory
(vii)	Performing Artist	The name of each artist to whom the Track is credited.	Mandatory
(viii)	Timing	The running time of the Track, in minutes and seconds.	Mandatory
(ix)	ISRC	ISRC number assigned to the Recording, where such Recording was released after January 1, 2007. The field is Conditional where such Recording is released prior to January 1, 2007.	Mandatory for Post-2006 Recordings. Conditional for Pre-2007 Recordings
(x)	Writer Name(s)	The name of the author(s) and composer(s) of the Musical Work.	Conditional
(xi)	Unlicensed Percentage	The percentage interest therein in respect of which Manufacturer has not obtained a Mechanical License or has not paid Royalties at the time such Unlicensed Recording List was prepared. Should appear as a percentage amount (33.33).	Conditional
(xii)	Release Date	The release date of the Recording.	Conditional

(xiii)	Recording Deletion Status	Information indicating whether the Recording is still active or has been discontinued. Expected values are the following: DR for Recordings that have been discontinued AR, for active Recordings that have not been discontinued	Mandatory
(xiv)	Deletion Date	The date on which the Recording was deleted from Manufacturer's catalogue of products offered for sale to its customers.	Conditional
(xv)	UPC Number	The Universal Product Code assigned to the album on which the Track appears.	Conditional
(xvi)	Disc Number	The disc number associated with the Track such as in a box set.	Conditional
(xvii)	Track Number	The track number of the Track on the album on which it appears.	Conditional
(xviii)	Publisher Name	The name of the music publisher(s) associated with the Musical Work.	Conditional
(xix)	Publisher Number	Manufacturer's internal identification number assigned to the music publisher.	Conditional
(xx)	Song Number	Manufacturer's internal identification number assigned to the Musical Work.	Conditional
(xxi)	Unlicensed Reason	The reason for which the Musical Work is on the Unlicensed Recording List. Expected values are the following: DISPUTE , for copyright ownership conflict of the Musical Work NO LICENSE , for Musical Works, or share thereof, for which you have not received a Mechanical License For all other reasons, you are required to provide a brief explanation.	Conditional
(xxii)	Configuration	The contrivance or format of the Recording (CD, LP, CS, etc..)	Conditional
(xxiii)	Calendar Quarter	The calendar quarter applicable to the Unlicensed Recording List.	Conditional
(xxiv)	ISWC	The International Standard Work Code of said musical composition.	Conditional
(xxv)	Label Name	Label name associated with the Recording. This relates to Manufacturers that handle Recordings for multiple labels.	Conditional
(xxvi)	Transaction Type	Identifies the method used by the Manufacturer to distribute the product. One of the following values is expected: RS , for Regular Sales FG , for Free Goods PR , for Promotional Goods	Conditional

SCHEDULE “F”: Unlicensed Recording List Standard Format (continued)**FILE NAMING CONVENTION:**

Manufacturer’s Unlicensed Recording List will be named in accordance with the following convention:

Manufacturer Name_CMRRRA Manufacturer ID_Type_YYYYMMDD.xls

- Manufacturer Name being the name of the manufacturer.
- CMRRRA Manufacturer ID being the Manufacturer’s identification number as provided by CMRRRA.
- Type being Unlicensed Recording List.
- YYYYMMDD being a sequence with YYYY indicating the year, MM indicating the month and DD indicating the day of the applicable royalty period end date.

- For example: 123 Records_456_Unlicensed Recording List_20130331

SCHEDULE “G”: License Application Information

Pursuant to section 2.(d) of this Agreement, Manufacturer’s license application must disclose at least the following mandatory information for each Track:

- (i) Name and address of the Manufacturer;
- (ii) Performing artist to whom the Track is credited;
- (iii) Title of the Recording;
- (iv) Release date of the Recording;
- (v) Configuration type(s) of the Recording;
- (vi) Manufacturer’s unique catalogue number for each Recording configuration;
- (vii) Title of Musical Work, as well as the title of each individual Musical Work contained in a medley, mash-up or used as a sample;
- (viii) Name of each author and composer of the Musical Work(s);
- (ix) Running time of the Track as well as the running time of each individual Musical Work contained in a medley;

The following is a list of Conditional data that must be provided to CMRRA if it is available to Manufacturer:

- (i) Name of the music publisher(s) for each Musical Work;
- (ii) Where the Musical Work is a translation or adaptation of another Musical Work, the title of such original Musical Work;
- (iii) UPC (Universal Product Code);
- (iv) ISRC (International Standard Recording Code);
- (v) ISWC (International Standard Work Code);
- (vi) The wholesale price of the Recording;
- (vii) Rate Category for the Recording (Budget Rate or Full Rate);
- (viii) Number of individual Tracks on the Recording;

Appendix 4

CMRRA

Canadian Musical Reproduction Rights Agency Limited

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

Phone: (416) 926-1966

Fax: (416) 926-7521

email: crioux@cmrra.ca

Web Site: www.cmrra.ca

Caroline Rioux, Ext. 234
President

Welcome to CMRRA!

We're in the client service business at CMRRA. How can we serve you?

Dear Music Publisher,

Thank you for considering affiliation with CMRRA, Canada's largest music licensing agency. What has made CMRRA the choice of every multinational music publisher and thousands of independents? **Service.**

It's the classic business school question: "What business are you in?" Well, CMRRA isn't really in the music business ... or the database business ... or the licensing, royalties or money businesses. **We're in the client service business.**

Whether you're a publisher with multiple catalogues or a songwriter who owns your songs, you want them registered accurately and promptly, your licences issued on time, and your royalties to be collected effectively and paid without delay. CMRRA can handle all of your royalty needs, from mechanical and online licensing, or collecting revenues for Broadcast Mechanicals or the Blank Media Levy. You want to be confident that licensees are going to be regularly audited, that questions are going to be answered without delay and that you're dealing with a professional, responsive team of experts. That's what our clients expect – and that's what we deliver. Client service is, and will always be, the name of the game.

CMRRA's strength comes from its clients. With no statutory licence, we speak most effectively, and negotiate best, when we've got as many music publishers on board as possible.

I invite you to read each section of our affiliation package for detailed information on all of our services. Part I outlines each individual affiliation offered by CMRRA as well as a checklist to specify the affiliations for which you would like to register. Part II contains the general terms and conditions of the affiliation agreement, and, separately, the terms and conditions specific to each individual affiliation. Part III contains all the other forms we use to help serve you better.

If you have any questions or want to discuss any of these matters, we'd be very happy to hear from you. For fastest response, please call (416) 926-1966 and ask for our Membership Services Department.

Sincerely,



CMRRA**Canadian Musical Reproduction
Rights Agency Limited**

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

Phone: (416) 926-1966 Fax: (416) 926-7521 <http://www.cmrra.ca>

PUBLISHER AFFILIATION AGREEMENT KIT

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Attention Publisher:

- ✓ Please complete and sign **Part I** (Affiliation Selection Checklist and CMRRA Direct Registration Form) of this Agreement and return to CMRRA. We will return a countersigned copy to you.
- ✓ Please keep **Part II** for your records. Ensure you read all Terms and Conditions contained in Part II prior to completing and/or signing Part I of this Agreement.
- ✓ **Part III** may be completed as needed.

All copies may be returned to CMRRA by email at registrations@cmrra.ca. For assistance, please call CMRRA at (416) 926-1966 and ask for Membership Services.

PART I: AFFILIATION SELECTION CHECKLIST

Publisher Information

Name of Publisher: _____

CAE/IPI Number: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

*** For each affiliation requested, Publisher must initial and date the corresponding boxes. CMRRA shall only act on behalf of Publisher for those Affiliations so initialled and dated.**

AFFILIATIONS	INITIAL HERE	DATE (MM/DD/YYYY)
Mechanical Licensing & CMRRA Direct – as defined by the Terms and Conditions outlined in Part II, Schedules ‘A’ and ‘B’ (Please complete Part I, Forms ‘A’, ‘A.2’ and ‘B’)		
Online Music Distribution and Webcasting – as defined by the Terms and Conditions outlined in Part II, Schedule ‘C’		
Broadcast Mechanical – as defined by the Terms and Conditions outlined in Part II, Schedule ‘E’		
Blank Media Levy – as defined by the Terms and Conditions outlined in Part II, Schedule ‘F’		
Reprographic Reproduction – as defined by the Terms and Conditions outlined in Part II, Schedule ‘G’		

Publisher and CMRRA hereby enter into and accept the terms of the Publisher Affiliation Agreement, as defined in Part II, section 1 of the General Terms and Conditions, including all applicable Terms and Conditions as outlined in Part II, Schedules ‘A’ through ‘G’, as indicated in the Affiliation Selection Checklist .

Publisher’s Signature

Name and Title (Please Print)

Date

CMRRA Ltd.

Caroline Rioux, President
Name and Title

Date

Form 'A': Payment and Mailing Instructions

*Fields marked * are mandatory. All other fields are optional and should be completed if possible. Areas in grey are for CMRRA office use only.*

A. Publisher Name & Address:	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
B. Issue Licenses in name of (leave blank if same as Section 'A'):	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
C. Send licenses to (leave blank if same as Section 'A'):	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
D. Issue cheques in name of (leave blank if same as Section 'A'):	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
E. Send cheques to (leave blank if same as Section 'A'):	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
F. PUBLISHER SIGNATURE	
*Signed: _____	Date: _____

Form 'A.2': Electronic Funds Transfer Authorization Form

The information provided below about your organization's financial institution will be used by CMRRA to make electronic funds transfer payments of your royalties.

PLEASE PRINT CLEARLY. ALL FIELDS ARE REQUIRED TO BE FILLED IN TO COMPLETE ELECTRONIC FUNDS TRANSFER SETUP. **YOU MUST ALSO ATTACH A VOIDED CHEQUE COPY TO CONFIRM THE ACCOUNT INFORMATION.**

PAYEE INFORMATION

Name of Publisher Payee (CMRRA Account):		Telephone Number:
Name Registered on Bank Account:		Fax Number:
Address: (P.O. Boxes are not acceptable)		Email address:
City:	Province/State:	Postal/Zip Code:

FINANCIAL INSTITUTION INFORMATION

Name of Financial Institution:		Telephone Number:
Address:		
City:	Province/State:	Postal/Zip Code:

ACCOUNT INFORMATION

Select one only:

CAD \$ Account in Canada USD \$ Account in Canada

<input type="text"/>	<input type="text"/>	<input type="text"/>
Bank Code/Inst. No	Transit/Branch Number	Account Number

USD \$ Account in USA

<input type="text"/>	<input type="text"/>
ABA Routing Number	Account Number

Account Type (USA Only): DCC = Demand Credit PDC = Savings Credit

Note: Demand Credit typically represents a business account while Savings Credit represents a personal account.

AUTHORIZING SIGNATURE: *By signing this document, you are authorizing payments made to Payee by CMRRA to be sent to the above account via electronic funds transfer.*

Print Name: _____ Signature: _____

Title: _____ Date Signed: _____

Form 'B': CMRRA Direct Registration Form

Please complete this form in order to gain access to CMRRA Direct. A completed copy of the Registration Form will be returned to Publisher indicating CMRRA's acceptance of Publisher's application. CMRRA will create and supply Publisher an Administrator Access Code to be used by Publisher for creating, deleting and managing Publisher Access Codes. **Fields marked * are mandatory.** All other fields are optional and should be completed if applicable. Areas in grey are for CMRRA office use only.

A. Company Information (MUST be the same company as indicated on Form 'A', Section C)

*Name:		PUB #
Contact Person:		
*Address:	Email:	
	*Phone:	
*City:	Fax:	
*Province/State:		
*Country:	*Postal Code/ZIP:	

B. Administrator Information

The administrator is the person at your company who will be responsible for maintaining your CMRRA Direct account. This person will have the authority to add and delete users and change passwords, and will have access to all data related to your company on CMRRA Direct.

*Full Name:	Email:
*Title:	Department:
*Phone (if different from above):	Fax (if different from above):
*Personal Email (if different from above):	

C. PUBLISHER SIGNATURE

*Signed: _____ *Date: _____

CMRRA USE ONLY

Entered By: _____ Date: _____

CMRRA

**Canadian Musical Reproduction
Rights Agency Limited**

56 Wellesley Street West, Suite 320, Toronto, Ontario Canada M5S 2S3
Phone: (416) 926-1966 Fax: (416) 926-7521 <http://www.cmr.ca>

PART II: AFFILIATION INFORMATION – TERMS & CONDITIONS

PUBLISHER AFFILIATION AGREEMENT GENERAL TERMS & CONDITIONS

1. **Definitions:** In this Agreement, the following terms have the meanings set out below:
 - “Catalogue” means one or more musical works customarily owned and/or administered in common by or on behalf of a single person, firm or corporation or group thereof and whose ownership and/or administration is customarily identified by a common name.
 - “CMRRA” means the Canadian Musical Reproduction Rights Agency, Ltd., a corporation pursuant to the laws of Canada, having its head office in Toronto, Ontario.
 - “Publisher” means a single person, firm or corporation or group thereof who owns or administers the copyright of a given Repertoire.
 - “Publisher Affiliation Agreement” means all terms and conditions contained in **Parts I, II and III** of this document, as agreed upon between Publisher and CMRRA.
 - “Repertoire” means the copyrighted musical works, taken individually or collectively, including music and lyrics, lyrics alone or music alone, of which Publisher is or may become the copyright owner or in respect of which Publisher is or may become authorized to administer the reproduction right in Canada.
 - “Term” means the period commencing upon the execution hereof and terminating upon notice either by Publisher or CMRRA as set out herein.
 - “Work” means a copyrighted musical work in the Repertoire.
2. **Engagement of CMRRA:** Publisher hereby engages CMRRA as its non-exclusive licensing agent during the Term to provide the services set out herein, and such other services as Publisher may specifically instruct CMRRA to undertake from time to time during the Term. Notwithstanding this section, certain services provided by CMRRA to Publisher as outlined in **Schedules ‘A’ through ‘G’** herein require Publisher to engage CMRRA as the exclusive agent for those services, as set out therein.
3. **Royalty Collection:** Publisher authorizes CMRRA, as its agent, to collect all monies due for the use of the Repertoire by licensees of CMRRA.
4. **Verification of Royalties Due:** CMRRA shall have the right to verify monies due to Publisher by examination of the books and records of licensees of CMRRA and, in the absence of express instructions from Publisher to the contrary, to enter into settlement agreements with such licensees on Publisher’s behalf.
5. **Payment of Royalties:** CMRRA shall account for and pay all monies received by it on Publisher’s behalf from all sources, less its Administrative Fee as defined below and without payment of any interest thereon. CMRRA shall make such payments as soon as possible after receipt thereof from its licensees in accordance with service standards and subject to such cost recoveries as may be set and approved from time to time by CMRRA’s Board of Directors.
6. **Legal and Other Action:** CMRRA may take such steps or undertake such legal actions which, in its sole judgement, may be necessary or advisable to enforce the terms of the MLA and licenses issued by CMRRA (including the withholding or termination of licenses, litigation, negotiation, settlement or abandonment of claims, disputes and other matters relating hereto), for the purpose of collecting monies that may be due to Publisher and to generally protect and enforce Publisher’s rights in Canada.

In no event will any legal action be commenced by CMRRA in Publisher’s name without Publisher’s express written consent. Publisher hereby appoints CMRRA as its agent for the purpose of filing and obtaining registrations of any Work with the Canadian Intellectual Property Office or any successor body thereto. All

costs of such legal and other action, including counsel fees, will be borne by CMRRA unless Publisher specifically agrees to do so in advance of the commencement of such action.

7. **Third Party Claims:** Where CMRRA receives a notice of a claim by a third party to any Work or to entitlement to monies received by CMRRA on Publisher's behalf, CMRRA shall provide Publisher with written notice of the details of such claim and shall place the disputed monies in an interest-bearing escrow account until the status of the third party claim has been resolved as between Publisher and the third party claimant. Upon the resolution of such claim, CMRRA shall pay out such monies with accumulated interest in accordance with the terms of such resolution.
8. **Limitation of Liability:** Publisher agrees to not hold CMRRA responsible for any indirect, special, incidental, consequential or other damages whatsoever and howsoever caused, whether in an action of contract, warranty, negligence or other tortious action, even if CMRRA has been informed of the possibility thereof, arising out of or in connection with this Agreement or dealings between Publisher and CMRRA including those conducted through CMRRA Direct. CMRRA's total liability under this Agreement shall be limited to commissions received by CMRRA pursuant to the Publisher Affiliation Agreement. Any protection granted to CMRRA shall also apply to CMRRA employees, officers, directors, partners, agents and contractors and CMRRA may hold the benefit of such protection in trust for those parties.
9. **Indemnification:** Publisher agrees to indemnify CMRRA in the event that CMRRA suffers any damages or losses due to Publisher's negligence, fraud, unauthorized act or breach of the Publisher Affiliation Agreement.
10. **Jurisdiction:** The laws of the Province of Ontario and the laws of Canada applicable herein shall govern as to the interpretation, validity and effect of the Publisher Affiliation Agreement notwithstanding any conflict of laws provisions or Publisher's domicile, residence or physical location. CMRRA and Publisher hereby consent and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario or, where applicable, the Federal Court of Canada, in any action or proceeding related to or arising out of this Agreement.
11. **Administration Fee:** In consideration of the services provided by CMRRA to Publisher herein, CMRRA shall be entitled to retain a commission of eight percent (8%) from monies received by CMRRA on Publisher's behalf for Mechanical Licenses (hereinafter defined in Schedule 'A'). The commission rates for all other affiliations are defined in each Schedule, attached hereto as **Schedules 'B' through 'G'**. The amount of such commissions may be changed from time to time by CMRRA's Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days' written notice of any such change.
12. **Repertoire Information:** Publisher acknowledges that the effective administration of the Repertoire by CMRRA depends upon Publisher providing CMRRA with full, accurate and up-to-date information with respect thereto and agrees to provide CMRRA with such information as CMRRA requires to allow it to maintain its databases, books and records with respect thereto, and to respond on a timely basis to CMRRA's queries with respect thereto. Absent specific notification, CMRRA assumes Publisher has the right to administer and/or assign the specific affiliations and/or services outlined in **Schedules 'A' through 'G'**, and shall act accordingly. Without restricting the generality of the foregoing, Publisher undertakes to provide CMRRA with timely notice of any change to the Repertoire with respect to Canada during the term hereof.
13. **Termination:** Either party may terminate the Publisher Affiliation Agreement on the provision or written notice to the other, in which case the effective date of termination shall be the last day of the next full calendar quarter which commences after the date of such notice. Any licenses issued by CMRRA on Publisher's behalf pursuant to the Publisher Affiliation Agreement shall not be affected by such termination but shall continue in full force and effect until their individual termination dates. Notwithstanding this section, certain services provided by CMRRA to Publisher as outlined in **Schedules 'A' through 'G'** are subject to specific termination terms and conditions, as set out in such Schedules.
14. **Superseding Terms:** The terms and conditions contained in **Part II, Schedules 'A' through 'G'**, supersede the General Terms and Conditions contained herein.
15. **Affiliations:** In order for the terms and conditions contained in each Schedule of **Part II** to be in force and of effect, Publisher must indicate such intent as per **Part I** of this Agreement, by initialling and dating each affiliation for which Publisher is contracting with CMRRA. CMRRA shall only act on behalf of Publisher for those Affiliations so initialled and dated.
16. **Entire Agreement:** This Agreement and the Schedules, Affiliation Selection Checklist and Forms attached hereto constitute the entire agreement between CMRRA and Publisher, and neither party hereto is bound by any representation or inducement not set forth herein.

Schedule 'A': Mechanicals

Every time a Musical Work is mechanically reproduced on a physical product, such as on a CD or LP, the copyright owner of that Work is entitled to *mechanical royalties*.

Until 1988, Canada's copyright law held mechanical royalties down to just two cents per copy. Through vigorous lobbying, we helped end that punitive rate and opened the door to direct negotiations between music publishers and record companies. CMRRA's efforts lead to the new industry standard: the CMRRA *Mechanical Licensing Agreement* (MLA) – a comprehensive code of rates and rules that has increased royalties and greatly improved record companies' performance of their obligations. The MLA also deals with administrative provisions such as reporting requirements, reporting formats, as well as the treatment of, reserves, free goods, promotional copies, controlled composition clauses, deletes, and more. The MLA has been signed by each of the major record companies and many independent labels doing business in Canada.

In 2010, the settlement of a class action dealing with unpaid mechanical and video royalties by the major record labels further changed the licensing landscape in Canada. The settlement calls for the implementation of new mechanical licensing systems and processes to avoid the accumulation of unpaid royalties in the future, and to promote the timely payment of royalties to all rightsholders.

All newly released physical audio recordings by the major record companies as of **January 1, 2013** will be licensed by CMRRA by way of this new system. To optimize the efficiency of the system, CMRRA is using sophisticated standard electronic formats to exchange musical work, recording and licensing information with its licensees. For further information regarding the Canadian mechanical licensing process, please visit CMRRA's website at www.cmr.ca. Furthermore, CMRRA is leveraging this new information system to bring multiple efficiencies to the licensing and royalty distribution process related to products released by independent labels.

As a CMRRA mechanical royalties affiliate, you will receive your royalties in the fastest possible way and you will have access to all available information online via CMRRA Direct, such as work registration, licence and royalty statement data. Consider CMRRA's expert staff, and the fact that CMRRA's mechanical licensing commission rate is one of the lowest in the world: eight percent, and then ask yourself: *can you deliver faster, more effective service for only eight percent of your Canadian mechanical royalties?*

Terms & Conditions - Mechanicals

1. The Terms and Conditions in this Schedule 'A' form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. **Definitions:** In this Agreement, the following terms have the meanings set out below:

“Mechanical License” means a non-exclusive license to reproduce a Work on a contrivance by means of which a musical work may be mechanically reproduced, including but not limited to compact discs and audiocassettes.

“MLA” means the Mechanical Licensing Agreement negotiated by CMRRA with the music industry in Canada as may be in force from time during the Term hereof.
3. **Engagement of CMRRA:** Publisher hereby instructs CMRRA, for the Term of the Publisher Affiliation Agreement, and for the purposes set out herein, to grant Mechanical Licenses to persons, firms or companies doing business in Canada on terms which are current for the music industry in Canada as may be approved from time to time by CMRRA's Board of Directors, including but not limited to the terms of the MLA. Publisher may, upon prior written notice to CMRRA, instruct CMRRA to refrain from issuing Mechanical Licenses to any such person, firm or company where Publisher wishes to grant such license directly thereto.
4. **Administration Fee:** In consideration of the services provided by CMRRA to Publisher in regards to Mechanical Licenses, CMRRA shall be entitled to retain a commission of eight percent (8%) from monies received by CMRRA on Publisher's behalf. The amount of such commission may be changed from time to time by CMRRA's Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days' written notice of any such change.
5. **CMRRA Direct:** Publisher hereby agrees to register with CMRRA for CMRRA Direct, as per the Terms and Conditions outlined in **Part II, Schedule 'B'** of the Publisher Affiliation Agreement.

Schedule 'B': CMRRA Direct

As a CMRRA client you can have access to *CMRRA Direct* at no additional cost. *CMRRA Direct* is our online application from which you can review your song registrations as well as the details of the licences we've issued on your behalf. You can also view and download your royalty statements as needed. CMRRA is committed to moving virtually all client services online using *CMRRA Direct*. Join us now and get the full benefit of this valuable online communication and research tool.

Terms & Conditions – CMRRA Direct

WHEREAS, in order to facilitate web site communication between CMRRA and Publisher identified on the CMRRA Direct Application form attached hereto as **Form 'B'**, in **Part I** of this Agreement, upon acceptance by CMRRA of the application made by Publisher ("Application"),

NOW, THEREFORE, Publisher and CMRRA agree as follows:

1. The Terms and Conditions in this Schedule 'B' form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. CMRRA will make available to Publisher through its world wide web site (the current URL of which is <http://www.cmrra.ca>) certain services ("CMRRA Direct") including, but not limited to, systems allowing Publisher to provide CMRRA with information and to request information from CMRRA in the ordinary course of Publisher's business with CMRRA pursuant to the Publisher Affiliation Agreement. CMRRA will use its best efforts to make CMRRA Direct available during ordinary business hours but Publisher recognizes that the availability of CMRRA Direct may be interrupted for the purposes of maintenance or upgrading by CMRRA or through factors beyond the control of CMRRA.
3. Publisher represents and warrants that all information it provides to CMRRA through CMRRA Direct shall be true and accurate.
4. Publisher shall be responsible for creating and maintaining their user identification codes ("UserIDs") and associated passwords ("Passwords") to be used by its employees ("Publisher Access Codes"). Publisher, and all persons issued Publisher Access Codes, shall keep same confidential and protect same from disclosure to others. Publisher shall immediately notify CMRRA and shall change any Publisher Access Code that has been lost, stolen, misused or may have become known to anyone other than the person to whom it was issued by Publisher.
5. CMRRA shall be entitled to rely upon any message, instruction or notification ("Messages") sent by a person who has authenticated himself or herself using a Publisher Access Code and Publisher agrees to assume the risks inherent in such dealings. Any such Messages shall be effective as if executed and delivered by Publisher as an original signed document. Except and unless due to the negligence of CMRRA, Publisher shall be bound by and responsible for any such written Messages received by CMRRA from a person using a Publisher Access Code, whether actually authorized by Publisher or not. Publisher acknowledges that Messages may now or may in the future include advice relating to new releases or notification of changes to song ownership, royalty payment and mailing instructions.
6. Publisher acknowledges that beyond initially confirming Publisher's identity through the issuance of a confidential Publisher confirmation code, CMRRA is under no obligation to confirm the actual identity or the authority of any user of a Publisher Access Code. CMRRA may decline or delay acting upon any instruction or executing any transaction for any reason, including, but not limited to, ambiguous or incomplete instructions, or concerns about the authenticity of the instructions received by CMRRA.
7. From time to time, Publisher may be asked to signify its agreement to an on-line contract by clicking on a specified button (such as one marked "AGREE" or "ACCEPT") located on an applicable form on CMRRA Direct. CMRRA may rely upon such action as equivalent to Publisher's signed written agreement to such a contract with equivalent legal force and effect.
8. Notwithstanding **Part II, section 13** of the Publisher Affiliation Agreement, CMRRA may terminate any product or service, or Publisher's access to any product or service, located on CMRRA Direct at any time without having to provide written notice to that effect.
9. CMRRA may provide any notices associated with this Agreement to Publisher through CMRRA Direct.

10. Publisher agrees that CMRRA's records of electronic communications will be admissible in any legal, administrative or other proceeding as equivalent to original written documents and shall be conclusive proof of the information contained in such electronic communications.
11. Publisher acknowledges that the Internet is a rapidly evolving technology and that CMRRA cannot ensure the privacy or authenticity of any information or instructions that Publisher sends or are sent to Publisher over the Internet.
12. Publisher shall provide CMRRA with all requested information and materials as outlined in the **CMRRA Direct Registration Form**, attached hereto as **Form 'B'**, in **Part I** of this Agreement. If Publisher does not submit the aforementioned information and materials, Publisher will not have access to CMRRA Direct.

A completed copy of the CMRRA Direct Registration Form will be returned to Publisher indicating CMRRA's acceptance of Publisher's application. CMRRA will create and supply Publisher an Administrator Access Code to be used by Publisher for creating, deleting and managing Publisher Access Codes.

Schedule 'C': Online Music Distribution and Webcasting

The pace of change keeps getting faster and is nowhere more apparent than in the online world. Tens of millions of songs are being downloaded and streamed every year from a growing number of sources. Each time a song is streamed or downloaded, whether to a home computer or a portable device, a permanent or temporary copy of that song is created. And just like the reproduction of musical works on physical copies, the copyright owner is entitled to royalties for these digital reproductions.

Because most online music services offer a large variety of songs and recordings, they often cannot license each musical work before offering it for sale on their site. In addition, the licensing of such a large quantity of works cannot be done effectively from multiple sources. In order to streamline their operation, the online music services look to CMRRA to obtain licences for the largest number of musical works possible at a standard royalty rate. For this reason, CMRRA, together with SODRAC (Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada), jointly license their repertoires to the online music services under the umbrella of CMRRA-SODRAC Inc. (CSI).

If you want your songs to be licensed for online distribution in Canada, we urge you to sign up with CMRRA. CMRRA is here to license these uses through CSI, and collect royalties generated from the ever-growing popularity of online music distribution. For further information on the royalty rates applicable in Canada for online music distribution, please visit CSI's website at www.cmrrasodrac.ca.

Terms & Conditions – Online Music Distribution and Webcasting

1. The Terms and Conditions in this Schedule 'C' form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. **Definitions:** In this Agreement, the following terms have the meanings set out below:
 - (a) "Permanent Download" means the electronic digital transmission of a musical work, which transmission results in the creation of a copy of the musical work on a user's local storage device (including, but not limited to, the hard drive of the user's computer, whether in random access memory or otherwise, and any recordable medium, whether or not embedded in a portable device), where such copy is available for listening at any time;
 - (b) "Limited Download" means the reception of an electronic digital transmission of a musical work, which transmission results in the creation of a copy of the musical work on a user's local storage device (including, but not limited to, the hard drive of the user's computer, whether in random access memory or otherwise, and any recordable medium, whether or not embedded in a portable device), where such copy is only available for listening for a limited time or for a limited number of times;
 - (c) "Reproduction" means the fixation of a musical work by any analog, digital, or other process now or hereafter devised, on any recording medium in any format or material form now known or hereafter devised including, but not limited to, the random-access memory (RAM) or hard disk of a computer and/or the random-access memory (RAM) or hard disk of a computer (including a server) at a remote location;
 - (d) "Stream" means an electronic digital transmission of a musical work, which transmission is designed so as not to result in the creation of a copy of the musical work on a user's local storage device (including but not limited to the hard disk of the user's computer, whether in random-access memory, read-only memory, or otherwise, and any recordable medium, whether or not embedded in a portable device), which copy could be available for listening other than at substantially the same time as the original transmission, and includes, for greater certainty: (i) a stream of one or more musical works selected by the user, which stream may be listened to at a time chosen by the user (an "On-Demand Stream"); (ii) a stream of a series of musical works selected by the transmitter of the stream, which stream can be listened to only at a time chosen by the transmitter (a "Non-Interactive Stream"); and, (iii) the streaming of musical works by a Webcasting Service;
 - (e) "Webcasting Service" means a service that provides continuous streaming of original audio programming, which programming: (i) consists in whole or in part of musical works; (ii) may be themed by genre or otherwise; and, (iii) is not subject to advance knowledge of or control by the user as to the sequence or timing of transmission of the musical works included in the program;

- (f) "Musical work" includes, for the purposes of the definitions in Subparagraphs 2(a), 2(b), and 2(c) above, a musical work embodied in a sound recording; and any terms defined in the Publisher Affiliation Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Publisher Affiliation Agreement.

3. **Engagement of CMRRA:** Publisher hereby authorizes CMRRA, for the Term of the Publisher Affiliation Agreement, and for the purposes set out herein, to act as its non-exclusive agent to authorize, by way of licenses granted by CMRRA on Publisher's behalf ("Online Licenses"), the reproduction of copyrighted musical works in the Repertoire by persons, firms or corporations doing business in Canada (collectively, the "Online Music Services") for the purposes of any type of Permanent Download (as defined in this Schedule 'C'), and as its exclusive agent for the purposes of any type of Stream or Limited Download (each as defined in this Schedule 'C') that either originates from a source in Canada or is transmitted to a computer (which for purposes of this Schedule 'C' includes, but is not limited to, all types of recording media, storage media, and receiving devices now known or hereafter devised, including portable devices) in Canada.

Publisher hereby authorizes CMRRA to grant Online Licenses to Online Music Services in Canada on terms which are current for the music industry in Canada as may be approved from time to time by CMRRA's Board of Directors, or pursuant to Tariffs filed by CMRRA before the Copyright Board of Canada.

4. **Administration Fee:** In consideration of the services provided by CMRRA to Publisher in regards to Online Licenses, CMRRA shall be entitled to retain a commission of ten and one half percent (10.5%) from monies received by CMRRA on Publisher's behalf. The amount of such commission may be changed from time to time by CMRRA's Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days' written notice of any such change.
5. **Termination:** Notwithstanding **Part II, section 13** of the Publisher Affiliation Agreement, Publisher may terminate the authorization granted to CMRRA under this Schedule 'C', with respect to any catalogue of works in the Repertoire, at any time upon six (6) months' written notice to CMRRA. CMRRA may terminate this agreement if it elects to entirely cease carrying on business with respect to Online Licensing, but in no case shall CMRRA give Publisher less than six (6) months' notice of such termination.

Schedule 'E': Broadcast Mechanical

Several years ago, CMRRA began licensing the reproduction of musical works made by commercial and satellite radio stations in the course of their operations. Radio broadcasters create databases using digital copies of songs, allowing them to find songs faster, create programming easier and generally make their business more efficient. Making digital copies has increased profits for broadcasters, and copyright owners are entitled to a *broadcast mechanical royalty*, as a result of that copying.

Canada's Copyright Act makes this a "license it or lose it!" proposition. Unlike mechanical licensing, you can't collect broadcast mechanical royalties on your own. The only way to collect this money is through a copyright collective, so we urge you to sign up with CMRRA. If you don't licence this right through a collective such as CMRRA, you will miss out on this significant source of revenue.

Commercial and satellite radio stations are licensed pursuant to tariffs certified by the Copyright Board of Canada. In addition, CMRRA has entered into licensing agreements with pay-audio music services and with the public-owned Canadian Broadcasting Corporation (CBC), and we're pursuing the licensing of other non-commercial radio stations, such as campus and community radio stations. These broadcasters may be the subject of one or more separate tariffs or licensing agreements in the future. Your participation in this program will ensure that you are signed up to benefit from all future licensing activities of a similar nature.

Terms & Conditions – Broadcast Mechanical

WHEREAS the *Copyright Act* of Canada ("Act") has been amended to create certain exceptions to the right of reproduction of copyrighted musical works, allowing broadcasting undertakings to make certain reproductions of copyrighted musical works without the authorizations of their respective owners,

AND WHEREAS "broadcasting undertaking" has the meaning as defined in section 30.9(7) of the Act,

AND WHEREAS the effect of the said exceptions is nullified where a license to make such reproductions is available from a collective society,

AND WHEREAS CMRRA qualifies as a collective society for the purposes of the Act.

AND WHEREAS CMRRA has filed a series of Tariffs with the Copyright Board of Canada ("Board") setting rates for Broadcast Mechanical royalties,

AND WHEREAS Publisher and CMRRA intend to benefit from the nullification of the said exceptions and, in this regard, intend to make licenses available to broadcasting undertakings authorizing them to make reproductions for the purpose contemplated in the above-enumerated sections of the Act, and otherwise,

NOW, THEREFORE, Publisher and CMRRA agree as follows:

1. The Terms and Conditions in this Schedule 'D' form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. **Assignment to CMRRA:** Publisher hereby assigns to CMRRA, for the Term of the Publisher Affiliation Agreement, and for the purposes set out herein, the exclusive right to authorize broadcasting undertakings in Canada to fix or reproduce any and all musical works presently included in those catalogues which Publisher has engaged CMRRA to represent for the purposes of mechanical licensing, as well as any new works that may be added to such catalogues during the term hereof and any further catalogues and musical works contained therein which Publisher engages CMRRA to represent for the purposes of mechanical licensing during the term hereof. Notwithstanding **Part II, section 2** of the Publisher Affiliation Agreement, the assignment of rights outlined in this Schedule 'D' is exclusive.
3. **Limitations:** Publisher's assignment of such right to CMRRA is limited to the right to authorize reproductions of such musical works by such broadcasting undertakings in the ordinary course of their broadcasting activities and the right to authorize audio reproductions of such musical works by such broadcasting undertakings on an open-ended, blanket basis for use in their broadcasts but does not include the right to authorize such broadcasting undertakings to reproduce such musical works in commercials produced by or on behalf of broadcasting undertakings.
4. **Administration Fee:** In consideration of the services provided by CMRRA to Publisher in regards to Broadcast Mechanical royalties, CMRRA shall be entitled to retain a commission of eight percent (8%) from monies received by CMRRA on Publisher's behalf. The amount of such commission may be changed from time to time by CMRRA's Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days' written notice of any such change.

5. **Termination:** Notwithstanding **Part II, section 13** of the Publisher Affiliation Agreement, Publisher may terminate this agreement at any time upon six (6) months' written notice to CMRRA at the above address. CMRRA may terminate this agreement if it elects to entirely cease carrying on business with respect to the collection of royalties for broadcasting undertakings in Canada but in no case shall CMRRA give Publisher less than twelve (12) months' notice of such termination.

Schedule 'F': Blank Media Levy

Since 1997, Canada's copyright law has provided for the collection of a levy on the sale of blank media such as recordable CD's. Every time a CD or other blank media is sold, publishers are entitled to a part of that revenue. According to the legislation, the only way for publishers to collect this easy and excellent source of income is through a collective society. CMRRA collects royalties from the Blank Media Levy as a member of the CPCC (Canadian Private Copying Collective), and passes them on to its publishers.

Remuneration for private copying began in 2000. Since information is not available concerning exactly what tracks of recorded music are copied, CPCC has used – as proxies – the two most comprehensive available sources of information – data indicating the recorded music that is sold in retail outlets in Canada and data concerning the recorded music that is broadcast by commercial radio stations and CBC. Airplay and Sales data are believed to provide the best available indication of the titles that Canadians typically copy for private use, and are weighed equally. You cannot collect these royalties on your own, so we urge you to sign up with CMRRA to collect them for you – don't miss out on this source of revenue!

Terms & Conditions – Blank Media Levy

WHEREAS the *Copyright Act* of Canada ("Act") has been amended by the addition of Part VIII to create a levy on the sale of blank audio recording media by copyright collectives,

AND WHEREAS CMRRA qualifies as a collective society for the purposes of the Act and the above-enumerated sections thereof,

AND WHEREAS CMRRA has filed a series of Tariffs with the Copyright Board of Canada ("Board") setting rates for the said levy and has joined together with other collectives to form the Canadian Private Copying Collective ("CPCC") and the Board has certified the Tariffs of CMRRA and CPCC,

AND WHEREAS Publisher wishes to engage CMRRA to collect said levy on its behalf,

NOW, THEREFORE, Publisher and CMRRA agree as follows:

1. The Terms and Conditions in this Schedule 'E' form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. **Assignment to CMRRA:** Publisher hereby assigns to CMRRA, for the Term of the Publisher Affiliation Agreement, and for the purposes set out herein, **all** rights of remuneration for private copying for the term hereof with respect to any and all musical works presently included in those catalogues which Publisher has engaged CMRRA to represent for the purposes of mechanical licensing, as well as any new works that may be added to such catalogues during the term hereof and any further catalogues and musical works contained therein which Publisher engages CMRRA to represent for the purposes of mechanical licensing during the term hereof. Notwithstanding **Part II, section 2** of the Publisher Affiliation Agreement, the assignment of rights outlined in this Schedule 'E' is exclusive.
3. **Administration Fee:** In consideration of the services provided by CMRRA to Publisher in regards to the Blank Media Levy, CMRRA shall be entitled to retain a commission of eight percent (8%) from monies received by CMRRA on Publisher's behalf. The amount of such commission may be changed from time to time by CMRRA's Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days' written notice of any such change.
4. **Termination:** Notwithstanding **Part II, section 13** of the Publisher Affiliation Agreement, Publisher may terminate this Addendum at any time upon six (6) months' written notice to CMRRA. CMRRA may terminate this agreement if it elects to entirely cease carrying on business with respect to the collection of the private copying levy in Canada but in no case shall CMRRA give less than twelve (12) months' notice of such termination.

Schedule 'G': Reprographic Reproduction

The print version of musical works has long been reproduced in a variety of contexts, such as photocopies of sheet music and lyrics in elementary and secondary schools. Every publicly-funded school in Canada (outside Quebec) is subject to the Access Copyright Elementary and Secondary School Tariff. Recently, Access Copyright expanded the scope of this tariff to include permission to reproduce musical works published in print.

CMRRA and Access Copyright have entered into an agreement whereby Access Copyright will collect royalties generated from the use of this reprographic right, and CMRRA will distribute those royalties to the appropriate copyright owners. If you want the print versions of your musical works to be licensed for reprographic uses, we urge you to sign up with CMRRA so that the applicable royalties may be collected and distributed to you.

Terms & Conditions – Reprographic Reproduction

WHEREAS Access Copyright, The Canadian Copyright Licensing Agency (“Access Copyright”) has filed a proposed tariff with the Copyright Board of Canada for, inter alia, the reproduction of musical works published in print (the “Access Copyright Elementary and Secondary School Tariff, 2010-2012”) and plans to file additional proposed tariffs to cover the reproduction of works by the same sector in the future (collectively, the “Tariffs”);

AND WHEREAS Access Copyright and CMRRA have entered into an agreement in which Access Copyright is designated and appointed the “collecting body” for CMRRA with respect to the royalties payable for the reproduction of musical works published in print, pursuant to the Tariffs (the “Access Copyright Mandate Agreement”);

AND WHEREAS the Access Copyright Mandate Agreement provides that CMRRA shall, among other things, distribute to certain music publishers the royalties payable for the reproduction of musical works published in print, pursuant to the Tariffs;

NOW, THEREFORE, Publisher and CMRRA agree as follows:

1. The Terms and Conditions in this Schedule ‘F’ form an Appendix to the General Terms and Conditions in Part II of the Publisher Affiliation Agreement, and together form a single executed document.
2. Definitions: In this Agreement, the following terms have the meanings set out below:
 - a. “Published Musical Works” means any works of music or musical composition, with or without words and includes any compilation thereof, protected by copyright in Canada, or a part of such work, of which print copies have been issued to the public with the consent or acquiescence of the copyright owner.
3. Engagement of CMRRA: Publisher hereby assigns to CMRRA, for the Term of the Publisher Affiliation Agreement, and for the purposes set out herein, the exclusive right to exercise and manage the Publisher’s reprographic reproduction rights for Published Musical Works in the Repertoire through collective licensing pursuant to the Tariffs, and to authorize Access Copyright to do the same on behalf of CMRRA as its collecting body. For clarity, this authorization authorizes Access Copyright to license persons to use Published Musical Works pursuant to the Tariffs.
4. Royalty Collection: Publisher authorizes CMRRA, as its agent, to collect all monies received for the use of Published Musical Works in the Repertoire pursuant to the Tariffs.
5. Administration Fee: In consideration of the services provided, CMRRA shall be entitled to retain a commission of eight percent (8%) from monies received by CMRRA on Publisher’s behalf from Access Copyright for the use of Published Musical Works in the Repertoire pursuant to the Tariffs. The amount of such commission may be changed from time to time by CMRRA’s Board of Directors, but CMRRA shall provide Publisher with no less than ninety (90) days’ written notice of any such change.
6. Termination: Notwithstanding Part II, section 13 of the Publisher Affiliation Agreement, Publisher may terminate the authorization granted to CMRRA under this Schedule ‘F’, with respect to any catalogue of works in the Repertoire, at any time upon six (6) months’ written notice to CMRRA. CMRRA may terminate this agreement if it elects to entirely cease carrying on business with respect to the collection of royalties for reprographic reproduction, but in no case shall CMRRA give Publisher less than six (6) months’ notice of such termination.

PART III: ADDITIONAL INFORMATION

Appendix 'A': Song Registrations

Upon affiliation with CMRRA, you may submit your song registrations. There are four methods by which you can register your songs with CMRRA. All of them require that you provide the following information:

- **Song title:** We require the original song title as well as any alternate title for the song. This will speed up the licensing process in the event a license application is submitted for the alternate title. An alternate title is often referred to as an AKA which stands for "also known as".
- **Writer(s)/Arranger(s):** We require the full name of all writers for each song. If you are notifying us of a copyrighted arrangement of a composition in the public domain, please provide the full name of the original authors and composers if known as well the name of the arranger(s).
- **Publisher and Share Information:** We require the name of the publisher and the total percentage administered by such publisher. The total percentage should incorporate both the writer and publisher shares. If you are a songwriter that has not entered into an agreement with a publishing company, you can consider yourself the publisher of your songs. Please review the examples provided below to help you determine what percentage you should indicate on your registration.
- **IPI Number:** The IPI number is the Interested Party Identifier. This number serves to identify all rights holders, such as authors, composers and publishers, within the music industry. Each number is assigned and tracked in a global system operated by SUIISA. Although the IPI number is not mandatory to register your songs with CMRRA, it would be helpful for you to provide this information when available. For more information on the IPI number, please visit www.ipisystem.org.

Example of Publisher and Share Information:

Example 1: You and a co-writer have written a song. You both agree to divide the ownership in half and individually collect the mechanical royalties for your respective share. Since you are entitled to collect half the song, the total percentage for your share would be 50%.

Example 2: You have co-written a song with several writers. All of you have agreed to divide the ownership of the song between each writer but you also agree that only one of you will collect the mechanical royalties for everyone's share. Once collected, that person will be responsible for distributing the income to the individual writers. If you are the person entitled to collect for all shares, your registration should indicate a share of 100%.

Example 3: You are a publisher who has entered into a publishing agreement with a writer. According to this agreement, you are entitled to collect both the publisher and the writer shares. If the song you want to register with CMRRA was solely written by your writer, your registration should indicate a share of 100%. **Important: Please do not register your ownership as "50/50"!** We are unable to add such information to our database.

Song Registration Methods: You can register your songs with CMRRA either electronically or on paper (by mail or fax). The preferred method is to file electronically using the following formats:

1. The best electronic means of registering songs with CMRRA is by using the Common Works Registration (CWR) format. The purpose of CWR is to provide mid to large sized publishers and societies with a standard format for the registration of works. It allows publishers to create one registration file and send it to participating societies around the world resulting in significant savings in time and resources. For more information on the CWR format, please visit www.commonworksregistration.com. If you are equipped to register your songs in CWR format, please contact's CMRRA Membership Services Department to set up the proper channels to deliver your files.
2. The second best alternative for all publishers is to register songs by emailing an electronic spreadsheet, such as Microsoft Excel to registrations@cmrra.ca An Excel template is available for song registrations upon request.
3. The next best alternative is to register your songs by typing the necessary information in an email and forwarding it to registrations@cmrra.ca
4. If the first three options are not available to you, you may send your registrations in paper format, either by mail or fax. CMRRA has a form available for this purpose although the use of this form is not mandatory as long as your registration contains all the above information. Please contact CMRRA to obtain a copy of this form entitled "Advice of Copyright Information".

If you have any questions regarding the registrations of your songs or catalogue information, please contact us at 416-926-1966 and ask for our Membership Services Department. We're here to help!

Appendix 'B': Advice of Canadian Release

Please use this form to provide information regarding the recordings you wish CMRRA to license on your behalf. Fields marked * are mandatory. All other fields are optional and should be completed where applicable. Areas in grey are for CMRRA office use only. **NOTE: The use of this form is not mandatory – you are at liberty to provide CMRRA with this information in a different format. If you choose to use this form, please complete a separate form for each song/recording. If you have any questions about this form, please refer to the enclosed instructions or call CMRRA's Membership Services Department.**

A. Publisher Information	
*Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
B. Musical Work	
*Song Title:	PUB #
a.k.a.:	
*Composer(s):	
Arranger(s):	
*Publisher Name and Share:	% PUB #
_____	_____
_____	_____
_____	_____
_____	_____
C. Recording	
*Record Company Name:	PUB #
Contact Person:	
*Address:	Email:
	*Phone:
*City:	Fax:
*Province/State:	
*Country:	*Postal Code/ZIP:
*Artist:	
___ Vocal Version ___ Instrumental Version ___ Used in a Medley	
*Album Title:	
Release Date:	Running Time: ___ Min. ___ Sec.
Contrivance:	Catalogue No. :
CD ___ Digital ___	_____
Other: _____	
D. PUBLISHER SIGNATURE	
*Signed: _____	*Date: _____

INSTRUCTIONS FOR THE COMPLETION OF CMRRA'S "ADVICE OF CANADIAN RELEASE" FORM

SECTION A - Publisher Information: In this section, we are seeking information about you, the publisher of the musical work in question.

SECTION B - Musical Work: In this section, we are seeking all pertinent information regarding the compositions you own or administer.

Song Title and AKA: Please indicate the complete song title in the space provided. Please list any alternate titles to the song (AKA's) as well. This will speed up the licensing process in the event we receive a license application for an AKA title.

Composer(s)/Arranger(s): Please indicate the full name of all writers for each song. If you are notifying us of a copyrighted arrangement of a composition in the public domain, please indicate the full name of the arranger(s).

Publisher Name and Share (%): Please indicate the name of the publisher and the total percentage administered by such publisher. The total percentage should incorporate both the writer and publisher shares. If you are a songwriter that has not entered into an agreement with a publishing company, you can consider yourself the publisher. Please refer to Part III, Appendix A "Song Registrations" of CMRRA's Affiliation Kit for further information on Publisher and Share requirements.

SECTION C - Recording: In this section, we are seeking all pertinent information respecting the recording of the musical work(s) you wish CMRRA to license on your behalf.

NOTE - "In-House" Releases: Where a person or entity is producing/manufacturing a recording on which the musical works are fully owned/administered by this same person/entity, we consider this an "in-house" recording, where everything is handled under one roof. Because the person making the recording is also the copyright owner of the musical composition(s), licenses from CMRRA are not necessary. As such, you do **not** need to complete the Advice of Canadian Release form to inform us of in-house recording information, unless the song has been released digitally.

Record Company: Provide the full name of the record company releasing the recording as well as its address, contact name, phone and fax information.

Artist: Provide the full name of the artist or group performing the composition of the recording.

Vocal Version/Instrumental Version/Used in Medley: Indicate which version of the composition is performed (vocal or instrumental) and if it is performed as part of a medley.

Album Title: Provide the full title of the album.

Release Date: Indicate the date at which the product is/was released for sale or give away, if known.

Running Time: Provide the running time of the composition as embodied in the recording, if known.

Contrivance and Catalogue No.: Provide the format of the recording (CD, digital, etc.) and catalogue number assigned by the record company for each contrivance. (A catalogue number identifies a product and is often located on the product itself and/or accompanying printed matter.)

Appendix 5

**Copyright Board
Canada**

**Commission du droit
d'auteur Canada**

CMRRA/SODRAC Inc.
Reproduction of Musical Works (CSI - Online Music Services)/
Reproduction d'œuvres musicales (CSI - Services de musique en ligne)
2005-2007

BEFORE/DEVANT:

Mr. Justice William J. Vancise
Mr. Stephen J. Callary
M^{re} Francine Bertrand-Venne

Chairman / Président
Member / Membre
Member / Membre

BOARD STAFF/PERSONNEL DE LA COMMISSION:

Me Claude Majeau

Secretary General of the Board /
Secrétaire général de la Commission

Me Mario Bouchard

General Counsel /
Avocat général de la Commission

Mr. Gilles McDougall

Director of Research /
Directeur de la recherche

Mme Nadia Campanella

Registry Officer / Agente au Greffe

HELD AT:

Copyright Board
Hearing Room
8th Floor
56 Sparks Street
Ottawa, Ontario

TENUE À:

Salle d'audience de la
Commission du droit d'auteur
8^e étage
56, rue Sparks
Ottawa (Ontario)

September 12, 2006

Le 12 septembre 2006

Volume 5

StenoTran

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AFFIRMED: MARK JONES	
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1 the Board's question 23, the question is generally
2 directed at provisions normally found in
3 mechanical licensing agreements that tend to
4 reduce the actual royalty rate.

5 Does the MLA contain
6 provisions that tend to reduce the actual
7 royalty rate payable to CMRRA on behalf of
8 publishers and songwriters?

9 MR. BASSKIN: Yes, it does. The
10 MLA contains four areas which may result in the
11 royalty rate being paid, which is less than the
12 basic rate we showed on the slide a moment ago.

13 Those areas refer to distributions
14 of product for promotional purposes; ad hoc
15 reductions, meaning instances where a specific
16 request is made by a label for a reduced rate and
17 is considered individually by the publisher; a
18 reduction of the royalty rate applicable to budget
19 goods; and the provisions respecting controlled
20 composition clauses.

21 MR. CHISICK: All right. Well,
22 looking first at promotional distributions,
23 Mr. Basskin, can you explain how those affect the
24 payment of royalties?

25 MR. BASSKIN: Yes. The record

1 television, Dance Mix 98, 20 Top Hits, and so on,
2 where the products were created by record labels,
3 both CRIA members and independent labels.

4 They would essentially shop for
5 songs. They would come to us, say we would like
6 to license the following songs at a reduced rate.

7 Typically, they would say we would
8 like to pay three-quarters of the otherwise
9 applicable rate. In exchange for that we are
10 prepared to pay cash up front, a non-recoupable
11 advance based on, for the sake of argument, 10,000
12 or 20,000 or 50,000 copies, meaning that the
13 licensee would not have to pay any more for those
14 copies, and if it sold more than the advance
15 amount, if it sold more than the 10,000 copies, it
16 could account thereafter on the basis of
17 75 percent, and if it failed to sell 10,000
18 copies, that was the licensee's risk.

19 When we receive applications like
20 that, we convey them to our publisher client, on a
21 case-by-case basis, and get the publisher's
22 instructions. As an agent, we rely in cases like
23 that on the instructions of our publishers, who
24 are our principals. If they tell us, "Okay, we
25 will take the deal," we get back to the licensee

1 company, the licensee, is permitted under the
2 mechanical licensing agreement to distribute up to
3 2,000 copies of any release -- that is any
4 combination of formats though today it is largely
5 a CD world -- up to 2,000 copies of any release,
6 provided they are marked as promotional, not for
7 resale, to parties such as disk jockeys, reviewers
8 and others for the purpose of promoting the
9 existence of a new product for sale.

10 So that is 2,000 copies over the
11 entire history of the product. That is not 2,000
12 copies per quarter or per year.

13 MR. CHISICK: Beyond that
14 2,000 copies, what royalties are payable for
15 promotional goods?

16 MR. BASSKIN: Well, they would
17 be the royalties payable otherwise under the
18 agreement.

19 MR. CHISICK: Okay. Ad hoc rate
20 reductions, can you describe those please?

21 MR. BASSKIN: Well, there can be
22 any number of reasons why a record label might
23 wish to have a lower rate in a given instance.
24 Historically -- we don't see so much of it any
25 more -- there were products advertised on

1 and say, "All right, you have a three-quarter rate
2 for this."

3 The difference between such
4 licences and regular mechanical licences is that
5 the advance amount is payable upon execution of
6 the licence, rather than on a quarterly basis
7 after the licence has been issued.

8 We don't see all that many ad
9 hoc requests for reductions any more, but it is
10 always open to a licensee, for whatever reason it
11 cares to, to seek a reduced rate, and it is up to
12 the publisher to decide whether it will accept
13 that offer.

14 MR. CHISICK: Thank you,
15 Mr. Basskin.

16 Can you describe now what you mean
17 by "Budget Goods"?

18 MR. BASSKIN: Section 9 of the
19 Mechanical Licensing Agreement provides for an
20 across-the-board three-quarter rate -- in other
21 words, three-quarters of what would otherwise be
22 applicable -- where the product falls into the
23 "Budget Goods" category.

24 This category is defined by
25 Section 9 to be products which have a wholesale

B

This is **Exhibit "B"** to the Affidavit of Mario Bouchard
sworn before me this 27 day of August, 2015



Commissioner for Taking Affidavits

*JOHN DENYS GOSS, Barrister & Solicitor &
Notary Public, Province of Ontario, Canada
Goss, McCorrison, Stel, 203-2430 Bank Street
Ottawa, Ontario K1V 0T7*

MARIO BOUCHARD*927-2660 Norberry Crescent**Ottawa, Ontario, K1V 6N2**(613) 738-0177 (work)**PROFESSIONAL QUALIFICATIONS*

LL.M. (Laval, 1981), LL.L. (Montréal, 1974). Member of the Québec Bar since 1975.

RELEVANT PROFESSIONAL EXPERIENCE

General Counsel Copyright Board Canada 1990 –2013

Director of Legal Services Immigration and Refugee Board 1988 - 1990

Coordinator, Administrative Law Project, Law Reform Commission of Canada 1981 - 1986

Past member, external advisory board, Canadian Internet Policy and Public Interest Clinic, University of Ottawa.

Member, external advisory board, Intellectual Property Law and Technology Program, Osgoode Hall Law School.

AREAS OF EXPERTISE

- research
- copyright law
- collective administration
- Copyright Board
- administrative law and procedure
- operations and decision-making processes of tribunals

RECENT PUBLICATIONS AND COMMUNICATIONS

“Collective Management in Canada”, in Daniel Gervais, ed., *Collective Management of Copyright and Related Rights* (3d ed.), Netherlands, Kluwer Law International BV, (forthcoming, 2015).

Tratamiento de los problemas de las obras huérfanas: el régimen canadiense y los enfoques europeos, *Revista Iberoamericana de Derecho de Autor* No 13 (2013) 66-87.

“Orphan Works: Problems and Possible Solution”, National Seminar on Copyright and Orphan Works, Department of Intellectual Property, Ministry of Commerce, Thailand, Bangkok, April 2,

2013.

“Copyright Issues Faced by Libraries in the Digital Age”, National Seminar on Copyright and Orphan Works, Department of Intellectual Property, Ministry of Commerce, Thailand, Bangkok, April 2, 2013.

“The Canadian Unlocatable Copyright Owners Regime”, in The Copyright Board of Canada: Bridging Law and Economic for twenty years, (Blais 2011), 137.

“Extended Collective Rights Management as a Possible Solution to Current Copyright Dilemmas,” in *Competences in Culture*, Expert Conference of the Polish Presidency, July 18-20, 2011, Post Conference Publication 446. (Keynote Address)

“Orphan Works: Solutions Already in Place”, ALAI Study Days, Dublin, July 1, 2011.

Alternatives to Collective Management, “What are the solutions to orphan works in the picture industry?” CEPIC, Istanbul, May 20, 2011.

La gestion collective au Canada, in Développements récents en droit du divertissement, volume 339 (Blais 2011).

Canada’s “Orphan Works” Regime: Unlocatable Copyright Owners and the Copyright Board, (2010) 10 *Oxford University Commonwealth Law Journal* 215 (with Jeremy deBeer).

Making Orphan Works Available: a Licensing Solution? Canadian Experience, Global Meeting on Emerging Copyright Licensing Modalities - Facilitating Access to Culture in the Digital Age World Intellectual Property Organization, Geneva, November 4-5, 2010.

Le régime canadien des titulaires de droits d’auteur introuvables, (2010) 22 “Cahiers de propriété intellectuelle” 483.

An Essai on Monetising Copyright over the Internet, (2010-11) 11 “Internet and E-Commerce Law in Canada” 45.

“Collective Management in Commonwealth Jurisdictions: Comparing Canada with Australia”, in Daniel Gervais, ed., *Collective Management of Copyright and Related Rights* (2d ed.), Netherlands, Kluwer Law International BV, (2010).

“Abécédaire du droit d’auteur pour un monde numérique”, Formation permanente, Barreau du Québec, (May 30, 2009).

“Can Fair Be Clear? Some Musings about *CCH*”, Law Society of Upper Canada, Entertainment, Advertising and Media Law Symposium, April 18, 2009.

“An *Essai* on Monetising Copyright over the Internet”, Keynote Opening Address, Law Society of Upper Canada, Entertainment, Advertising and Media Law Symposium, April 17, 2009.

“Developments in the Individual and Collective Management of Copyright in the Digital Environment”, Nordic Visual Artist Copyright Conference, Reykjavík, Iceland, September 11, 2008.

“The Copyright Board of Canada”, Faculty of Law, Tel Aviv University, June 6, 2008.

“Orphan Works Legislation in Canada; Strengths and Weaknesses as a Working Example for the European Community”, Intellectual Property Rights and Metadata Conference, Malta, June 4, 2008.

“Fair Dealing/Use – Virtues, Vices, and Fate of open-ended exceptions,” Copyright Exceptions and Limitations, Cardozo Law School Copyright Conference – New York, March 30-31, 2008.

“The Evolution of Collective Management in Canada: The Last Decade”, WIPO Conference on Collective Management of Copyright and Related Rights in North America, Nashville, Nashville (TN), October 17-19, 2007.

C

This is **Exhibit "C"** to the Affidavit of Mario Bouchard
sworn before me this 27th day of August, 2015



Commissioner for Taking Affidavits

JOHN DENYS GOSS, Barrister & Solicitor &
Notary Public, Province of Ontario, Canada
Goss, McCorrison, Stel, 203-2430 Bank Street
Ottawa, Ontario K1V 0T7

COMPETITION TRIBUNAL

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

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

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

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

B E T W E E N:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

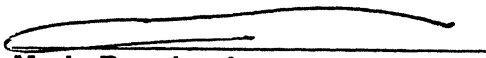
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD., ABKCO MUSIC & RECORDS, INC., CASABLANCA MEDIA PUBLISHING, SONY/ATV MUSIC PUBLISHING CANADA CO., SONY MUSIC ENTERTAINMENT CANADA INC., UNIVERSAL MUSIC PUBLISHING GROUP CANADA, and UNIVERSAL MUSIC CANADA INC.

Respondents

CERTIFICATE CONCERNING CODE OF CONDUCT FOR EXPERT WITNESSES

I, Mario Bouchard, having been named as an expert witness by the applicant Stargrove Entertainment Inc., certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* and agree to be bound by it.

August 27, 2015



Mario Bouchard
927-2660 Norberry Crescent
Ottawa, ON
K1V 6N2

Tel: 613-738-0177
mario.bouchard@outlook.com

GENERAL DUTY TO THE COURT

1. An expert witness named to provide a report for use as evidence, or to testify in a proceeding, has an overriding duty to assist the Court impartially on matters relevant to his or her area of expertise.

2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

EXPERTS' REPORTS

3. An expert's report submitted as an affidavit or statement referred to in rule 52.2 of the *Federal Courts Rules* shall include

- (a) a statement of the issues addressed in the report;
- (b) a description of the qualifications of the expert on the issues addressed in the report;
- (c) the expert's current *curriculum vitae* attached to the report as a schedule;
- (d) the facts and assumptions on which the opinions in the report are based; in that regard, a letter of instructions, if any, may be attached to the report as a schedule;
- (e) a summary of the opinions expressed;
- (f) in the case of a report that is provided in response to another expert's report, an indication of the points of agreement and of disagreement with the other expert's opinions;
- (g) the reasons for each opinion expressed;
- (h) any literature or other materials specifically relied on in support of the opinions;
- (i) a summary of the methodology used, including any examinations, tests or other investigations on which the expert has relied, including details of the qualifications of the person who carried them out, and whether a representative of any other party was present;
- (j) any caveats or qualifications necessary to render the report complete and accurate, including those relating to any insufficiency of data or research and an indication of any matters that fall outside the expert's field of expertise; and
- (k) particulars of any aspect of the expert's relationship with a party to the proceeding or the subject matter of his or her proposed evidence that might affect his or her duty to the Court.

4. An expert witness must report without delay to persons in receipt of the report any material changes affecting the expert's qualifications or the opinions expressed or the data contained in the report.

EXPERT CONFERENCES

5. An expert witness who is ordered by the Court to confer with another expert witness

(a) must exercise independent, impartial and objective judgment on the issues addressed; and

(b) must endeavour to clarify with the other expert witness the points on which they agree and the points on which their views differ.

File No. CT-2015-

COMPETITION TRIBUNAL

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

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

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

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

BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

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

Respondents

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COMPETITION TRIBUNAL

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BETWEEN:

STARGROVE ENTERTAINMENT INC.

Applicant

- and -

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

Respondents

**APPLICATION RECORD – VOLUME 2
(Application for Leave Pursuant to Section 103.1 of the
Competition Act and Application for Interim Order Pursuant
to Section 104 of the *Competition Act*)**

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