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

In The Matter Of:	:	
	:	Docket No. 2005-1 CRB DTRA
Digital Performance Right in Sound Recordings and Ephemeral Recordings	:	

WITNESS STATEMENT OF KARYN ULMAN

1. My name is Karyn Ulman. I have been in the business of clearing and licensing music rights for almost 30 years. My bio is attached as Exhibit A. I offer this testimony insofar as it may be helpful to the Copyright Royalty Board in this proceeding.

2. I began my career at the Taft Entertainment Company in 1978. There I pioneered and implemented music licensing procedures for the company and eventually served as Senior Vice President of Music, where I was in charge of the music supervision, music clearance and music publishing departments. From 1988 to 1994, I worked as a consultant specializing in music publishing administration for film and record companies. This work included deal development and contract negotiations on behalf of music publishers. From 1995 to 2002, I was Senior Vice President for DIC Entertainment, LLC and DIC Music, LLC, where my responsibilities included overseeing all the licensing and music business affairs related to recording, producing and licensing compositions and sound recording masters for inclusion in television and home video projects and soundtrack albums.

3. In 2002, I became Vice President for Licensing at Music Reports, Inc. and Senior Vice President at Copyright Clearinghouse, Inc. There I represented clients in various

licensing transactions with music publishers and record labels to secure reproduction and performance right licenses. In 2004, I moved to eMusic.com, as the Vice President for Music Licensing, where I trained and supervised a ten-person team in Internet music research and licensing of digital media rights. In October 2005, I returned to Music Reports, Inc.

4. My career has exposed me to many facets of the music rights and licensing marketplace, both from the perspective of rights holders and licensees. I am very familiar with the considerations involved – on both sides of the table – in arriving at license fees for the use of musical compositions and sound recordings, as well as their comparative values in various types of contexts (film, television, online, etc.)

5. I have been asked by the Digital Media Association ("DiMA") what relationship, if any, there exists as between the fees that one would expect to observe in the licensing market for what are known as "synch" rights licenses and "master use" licenses associated with the use of the same tracks in a given theatrical film or tv show. Both types of licenses are required when a producer chooses to use a prerecorded sound recording in a film or tv show: the "master use" license governs the reproduction of sound recording into the film/tv show; and the "synch" (or synchronization) license governs the reproduction into the film/program of the underlying musical work (i.e. the composition) embodied in that same sound recording.

6. The synch right and master use right are independent rights controlled by different rights owners or their agents: the master use right typically is controlled by a record company and the synch right is owned by a music publisher. The movie/tv producer seeking licenses must conduct separate negotiations with each of the sound recording owner and the publisher.

7. Although these negotiations occur independently, the license fees payable for master use rights and sync rights associated with their simultaneous use in a motion picture or TV show almost invariably are of the same (or substantially the same) amount. While there are some exceptions every now and then, it is almost always the case that the licensing fee paid to a record company for the master use license is substantially the same as the fee paid to the music publisher for the corresponding synch license to the underlying musical work.

8. Indeed, over the last several years, this result has been effectively ensured by the common use of most-favored-nation ("MFN") clauses in these types of music licensing transactions by record companies and publishers alike. It is now common for a publisher of a musical composition to demand that the producer/licensee agree that, if the producer later agrees to pay more for a master use license for the corresponding sound recording than it agreed to pay for the associated composition, it must retroactively pay the same amount for use of the composition (so the synch fee is "no less" than the master use fee). Meanwhile, it is also now typical for the licensor of master use rights to demand reciprocal MFN treatment (thus ensuring that if a producer agrees to pay more for a synch license, the producer will have the obligation to adjust the master use fee up to the same amount).

9. I have reviewed the witness statement of Dr. Adam Jaffe submitted as written rebuttal testimony in the prior copyright arbitration proceedings involving the same subject matter as is presently before this Copyright Royalty Board. Specifically, he addressed the parity in treatment that record labels and music publishers typically seek with respect to the sound recording and the underlying musical work in the course of licensing master use and synch rights in the television and motion picture industries. Based on my years of experience in this area, and based on information available to me regarding current practices, I can confirm that Dr.

Jaffe's testimony on this subject was accurate and consistent with industry practices in 2001, and that there has been no material change in those practices since then. Indeed, the regular use of MFN clauses as between master rights holders (record labels) and synch rights holders (the music publishers) effectively ensures that result.

I declare under the penalty of perjury that the foregoing is true and correct.

Karyn Ulman