

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of)	
)	
ADJUSTMENT OF RATES AND TERMS FOR)	Docket No. 2006-1 CRB DSTRA
PREEXISTING SUBSCRIPTION SERVICES)	
AND)	
SATELLITE DIGITAL AUDIO RADIO SERVICES)	
)	
)	
)	

WRITTEN DIRECT STATEMENT OF MUSIC CHOICE

Pursuant to 37 C.F.R. § 351.4 and the Copyright Royalty Board’s Order dated August 18, 2006, Music Choice, through its undersigned counsel, respectfully submits its written direct statement.

CONTENTS OF MUSIC CHOICE’S WRITTEN DIRECT CASE

TAB A: WITNESS TESTIMONY

Pursuant to 37 C.F.R. § 351.4(b)(1) and the Copyright Royalty Board’s Order dated August 18, 2006, Music Choice submits written direct testimony from the following expert and fact witnesses, included at Tab A:

(1) David J. Del Beccaro, the President and Chief Executive Officer of Music Choice, will testify concerning the business operations of Music Choice and the various reasons why a reduction in the royalty rate for pre-existing subscription services will further the policy objectives of the Section 114 license. Mr. Del Beccaro will further testify concerning Music Choice’s proposal for the Section 112 ephemeral license royalty rate.

(2) Damon Williams, Vice President of Programming and Production for Music Choice, will testify concerning the promotional effects of Music Choice, particularly how the service increases record sales and fosters the creation of new artistic works.

(3) George G. Strong, Jr., Managing Director and General Counsel for Cornerstone Research, will give his expert opinion as to the proper rates to be set in this proceeding.

TAB B: MUSIC CHOICE EXHIBITS

Pursuant to 37 C.F.R. § 351.4(b)(1) and the Copyright Royalty Board's Order dated August 18, 2006, Music Choice submits the following exhibits, included at Tab B:

Ex. No.	Sponsored By	Description	Restricted
MC 1	Del Beccaro	List of Speaking Engagements of David J. Del Beccaro	
MC 2	Del Beccaro	License Agreement between Digital Cable Radio Associates, L.P. ("DCR") and Sony Music Entertainment Inc. ("SONY") (January 21, 1993)	X
MC 3	Del Beccaro	License Agreement between Digital Cable Radio Associates, L.P. ("DCR") and EMI Music, Inc. (April 8, 1994)	X
MC 4	Del Beccaro	License Agreement between Digital Cable Radios Associates, L.P. ("DCR") and Warner Music Group Inc. ("WMG") (Jan. 21, 1993)	X
MC 5	Del Beccaro	Music Choice Europe Study (1995)	X
MC 6	Del Beccaro	Printout of current musical composition performance license rate and sound recording performance license rate from PRS and PPL websites	
MC 7	Del Beccaro	License Agreement between ASCAP and Music Choice (October 25, 2006)	X
MC 8	Del Beccaro	License Agreement between Broadcast Music, Inc., ("BMI") and Music Choice (January 1, 2006)	X
MC 9	Del Beccaro	License Agreement between SESAC and Music Choice (July 1, 2005)	X
MC 10	Del Beccaro	Federal Register Notice (Feb. 6, 2004)	
MC 11	Del Beccaro, Williams	2004 Arbitron Study PowerPoint	X

Ex. No.	Sponsored By	Description	Restricted
MC 12	Del Beccaro, Williams	2005 Arbitron Study spreadsheets (Perceptual User data)	X
MC 13	Del Beccaro, Williams	Music Choice on-screen layouts	
MC 14	Del Beccaro	Music Choice Channel Lineup Listing	
MC 15	Del Beccaro	Music Choice spreadsheet of financial results and projections	X
MC 16	Del Beccaro	RIAA 2005-Year End Statistics	
MC 17	Del Beccaro	SoundExchange schedule of current webcasting rates	
MC 18	Williams	List of Speaking Engagements of Damon Williams	
MC 19	Williams	Photographs of RIAA certified plaques presented to Music Choice	
MC 20	Williams	E-mails from record labels and artists' management seeking airplay on Music Choice	
MC 21	Williams	E-mails and faxes from record labels and artists thanking Music Choice for promoting their records	
MC 22	Williams	List of recent visits by artists and record label representatives to Music Choice (as of October 19, 2006)	
MC 23	Williams	Promotional e-mail blast from Joey Scoleri (Hollywood Records) (August 2, 2006)	
MC 24	Williams	Internal Music Choice studies of Shadows Fall promotion	X
MC 25	Williams	Internal Music Choice study of God Forbid	
MC 26	Williams	Internal Music Choice study of Trapt promotion Summary	
MC 27	Williams	Internal Music Choice study of Disturbed promotion	
MC 28	Williams	Representative list of Music Choice promotions (September 13, 2004 – September 5, 2006)	
MC 29	Williams	Examples of on-screen advertising panels	
MC 30	Williams	License Agreements between Music Choice and various record labels	
MC 31	Strong	Curriculum Vitae, George J. Strong, Jr.	
MC 32	Strong	Documents Considered by George J. Strong, Jr.	
MC 33	Strong	Music Choice Royalty Rate Using 25% Rule, 2001-2005	X
MC 34	Strong	Music Choice Royalty Rate Using 25% Rule, 2008-2010	X
MC 35	Strong	Music Choice Royalty Rate Using 25% Rule & Downside Projections, 2008-2010	X
MC 36	Strong	Calculation of Monthly Revenue Per Customer	X
MC 37	Strong	Music Choice Residential Profit Using New Subscription Services Royalty Rate, 2001-2005	X
MC 38	Strong	Analysis of Music Choice ROE, 2008-2010	X

TAB C: DESIGNATED TESTIMONY

Pursuant to 37 C.F.R. § 351.4(b)(2) and the Copyright Royalty Board's Order dated August 18, 2006, Music Choice submits the following designated testimony and exhibits, included at Tab C:

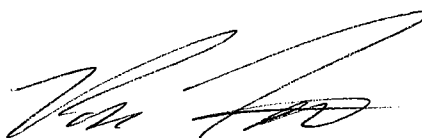
No.		In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings Docket No. 2005-1 CRB DTRA
1		Adam B. Jaffe
a		Written Direct Testimony
b		Live Direct Testimony (June 28, 2006)
2		Karyn Ulman
a		Written Direct Testimony
b		Live Direct Testimony (June 29, 2006)
No.		In the Matter of Digital Performance Rights in Sound Recordings and Ephemeral Recordings Docket No. 2000-9 CARP DTRA 1&2
3		Adam B. Jaffe
a		Written Direct Testimony
	Exhibit 1	Sound Recording Royalty as a Fraction of Musical Work Royalty by Country
	Exhibit 2	Comparison of Promotional Values to Musical Works and Sound Recordings from Over-the-Air-Radio
b		Live Direct Testimony (August 27-28, 2001)
c		Written Rebuttal Testimony
	Exhibit 1a	ASCAP Webcaster Agreement License and Rate Schedules
	Exhibit 1b	BMI Internet License
	Exhibit 1c	SESAC Internet/New Media License
	Exhibit 2a	ASCAP Over-the-Air Radio Licenses
	Exhibit 2b	BMI Single Station Radio Blanket License Agreement
	Exhibit 2c	SESAC Radio Royalty Rates Agreement
	Exhibit 3	<i>United States v. BMI, In the Matter of the Application of Music Choice</i>
	Exhibit 4	Report of the Copyright Arbitration Royalty Panel Docket No. 96-5 CARP DSTRA
	Exhibit 5	Decision of the Copyright Board of Canada, Public Performance of Sound Recordings 1998-2002
	Exhibit 7	Final Rule of the Copyright Royalty Tribunal Docket No. CRT 80-1, 46 Fed. Reg. 884,889 (Jan. 5, 1981)
d		Live Rebuttal Testimony (October 19-20, 2001)

PROPOSED RATE FOR MUSIC CHOICE

Pursuant to 37 C.F.R. § 351.4(b)(3), Music Choice proposes that the Section 114 sound recording performance license rate for Music Choice be reduced to 2.6 percent of gross revenues as that term is currently defined. Because the ephemeral copies made by Music Choice have no independent economic value and recent agreements covering the ephemeral right have folded the ephemeral copy license into the performance fee, Music choice proposes that the Section 112 ephemeral license be included within the 2.6 percent royalty rate. If any additional value is ascribed to the ephemeral license, Music choice proposes that the Section 112 rate be set no higher than 4 percent of the Section 114 performance license payment and that the royalty be broken out separately from the Section 114 rate so that Music Choice has the option of changing the operation of its service to avoid the ephemeral license fee.

Dated: October 27, 2006

Respectfully submitted,

By 

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