

Docket No. 2000-9 CARP DTRA1&2 11/2/01  
RIAA - Complete list of rebuttal exhibits and final time report

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NOV 2 2001

GENERAL COUNSEL  
OF COPYRIGHT

## REBUTTAL HEARING EXHIBITS

In the Matter of Digital Performance Right in Sound Recordings and  
Ephemeral Recordings, Docket No. 2000-9 CARP DTRA 1 and 2

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
<b>Cindy Charles, MTVi (10/15/01)</b>					
<i>Public</i>					
		101 RP-X	Undated	DiMA Website, "Member Letter," printed 10/13/01	Not admitted
		102 RP-X	11/07/98	Billboard Article, "Internet Radio Clash. (licensing of music played on Internet)"	Not admitted
<b>Charles Moore, RadioAMP (10/15/01)</b>					
<i>Public</i>					
		103 RP-X	08/30/01	Screenshot displaying results of a BitBop search for stations carrying material of N'Sync, the Backstreet Boys, Madonna, or Sting. (originally used as demonstrative in McIntyre cross 8/22/01)	Not admitted
		104 RP-X	09/28/01	Screenshot displaying results of a BitBop search for stations carrying material of N'Sync, the Backstreet Boys, Madonna, or Sting.	Not admitted
<b>Ron Gertz (Expert) (10/15/01)</b>					
<i>Public</i>					
		105 RP-X	Undated	MRI Website, "Company Profile," printed 10/09/01	Admitted
		106 RP-X	11/00/98	Film Music article, "Royalty Checks and Reality Checks: Direct and Source Licensing of the Performing Right – Part 2," printed 10/09/01	Not admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
<b>Bruce Bechtold, Cybertainment (10/16/01)</b>					
<i>Public</i>					
		SERV Rebuttal 1	06/12/01	Dun & Bradstreet report, Cybertainment Systems	Admitted
		SERV Rebuttal 2	12/25/97	(1) Vending Times article, Cybertainment's computer retrofit kit . . .;" (2) Cyberjukebox website, Cybertunes; (3) Netsales website, Cybertunes Home Jukebox	Not Admitted
		SERV Rebuttal 3	Undated	Cybertunes website, Cybertunes	Admitted
<b>David Mandelbrot, Yahoo! (10/16/01)</b>					
<i>Restricted</i>					
		Panel R1	10/15/01	Testimony of David Mandelbrot, Yahoo!, before Library of Congress, CARP	Admitted
<b>Michael Fine (Expert) (10/17/01)</b>					
<i>Public</i>					
		Fine Rebuttal 3A	Undated	Chart - Full Year 2000 Analysis Segmented by "New Artists"/"Established Artists" Pre-Release Detect Ratio vs. 1 <sup>st</sup> Week Sales Ratio	Admitted
		Fine Rebuttal 3B	Undated	Chart - First Half Year 2000 Releases Analysis Segmented by "New Artists"/"Established Artists" Pre-Release Detect Ratio vs. 1 <sup>st</sup> Week Sales Ratio	Admitted
		Fine Rebuttal 4A	Undated	Chart - Full Year 2000 Analysis Segmented by "New Artists"/"Established Artists" Total Detect vs. Total Sales	Admitted
		Fine Rebuttal 4B	Undated	Chart - First Half Year 2000 Releases Analysis Segmented by "New Artists"/"Established Artists" Total Detect vs. Total Sales	Admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
		107 RP-X	Undated	Graph – Garth Brooks: chart 1; Soundscan title report - Hat's Off: Tribute to Garth Brooks; corresponding Barnes & Noble Track list	Not Admitted
		108 RP-X	Undated	Graph – Garth Brooks: chart 2; Soundscan title report – New Friends in Low Places; corresponding Barnes & Noble Track list	Not Admitted
		109 RP-X	Undated	Graph – The Beatles; Soundscan title report – Tribute to the Beatles; corresponding Amazon.com Track lists	Not Admitted
		110 RP-X	Undated	Amazon.com track listing for Celine Dion's CD "These are Special Times."	Not Admitted
		111 RP-X	Undated	Amazon.com track listing for Reba McEntire's CD "Starting Over."	Not Admitted
		112 RP-X	Undated	Amazon.com track listing for Dave Matthews Band's CD "Recently."	Not Admitted

**William Fisher (Expert) (10/17/01)**

*Public*

		113 RP-X	05/17/83	Australian Law Reports, WEA Records PTY Ltd and Others v Stereo FM PTY Ltd	Admitted
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**Richard Seltzer (Expert) (10/18/01—10/19/01)**

*Public*

		142 DP-X	2000	Reference Manual on Scientific Evidence, "Reference Guide on Survey Research"	Admitted
		SERV Rebuttal 4	Undated	Correlation Coefficients (RSEL 0001-0003)	Admitted
		SERV Rebuttal 5	Undated	Seltzer data map (RSEL 0071)	Admitted
		SERV Rebuttal 6	Undated	1999 Sales (RSEL 0075-0100)	Admitted
		SERV Rebuttal 7	Undated	Database spreadsheet [oversized paper] (originally produced as RSEL 0073—74)	Admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
		SERV Rebuttal 8	Undated	Political Methodology article, "Sponsorship Effects in an Attitudinal Survey," by Rick Seltzer	Admitted
		SERV Rebuttal 9	Undated	AIDS & Public Policy Journal article, "Question-Order Effects on Attitudes Toward AIDS: A Research Note," by Seltzer and Stroman	Admitted
<b>Jonathan Zittrain (Expert) (10/19/01)</b>					
<i>Public</i>					
		114 RP-X	10/17/01	Jupiter Media Metrix press release: Over 40 Percent of the US Online Households to Connect via Broadband by 2006"	Not Admitted
		115 RP-X	Undated	Four Bitbop screenshots	Admitted
<b>Adam Jaffe (Expert) (10/19/01—10/20/01)</b>					
<i>Public</i>					
		116 RP-X	Undated	Quotations from notes to Jaffe demonstrative "Reasons why RIAA negotiated agreements. . ."	Not Admitted
<i>Restricted</i>					
		SERV Rebuttal 10	Undated	Disney Movies Documents (XJAF Rebuttal 0332-0413)	Admitted
		SERV Rebuttal 11	Undated	Disney Television Documents (XJAF Rebuttal 0414-0482)	Admitted
		001 RR-X	Undated	Spreadsheet listing Jaffe study songs excluded and reasons for exclusion and listing of all songs included and excluded.	Admitted
<i>Unmarked</i>					
			Undated	Demonstrative: "Reasons why RIAA negotiated agreements are not valid benchmarks"	Not Admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
<b>Wolfgang Spegg, musicmusicmusic (10/22/01)</b>					
<i>Public</i>					
		SERV Rebuttal 12	10/02/00	Wall Street Transcript, excerpts from interview with Wolfgang Spegg	Admitted
		SERV Rebuttal 13	Undated	Promotional document: "Music on the trading floor, musicmusicmusic"	Admitted
		SERV Rebuttal 14	08/30/99	Berliner Effektenbank, "Equity Research: musicmusicmusic"	Not Admitted
		SERV Rebuttal 15	Undated	Musicmusicmusic website, "Musicmusicmusic, inc and RIAA Ink Historic Agreement"	Admitted
		SERV Rebuttal 16	05/04/99	RIAA website, "RIAA Signs Inaugural Webcasting License Agreement"	Admitted
		SERV Rebuttal 17	01/21/99	Toronto Star, "Facing the Music"	Not Admitted
		SERV Rebuttal 18	02/24/01	Ottawa Citizen Interview with Spegg	Not Admitted
		SERV Rebuttal 19	04/19/00-01/23/01	Series of Musicmusicmusic website Press Releases dated 04/19/00 through 01/23/01	Admitted
		SERV Rebuttal 20	08/14/01	Yahoo Press Release: musicmusicmusic inc. readies subscription-based On-Demand streaming music site.	Admitted
<b>Scott Purcell, OnAir (10/22/01)</b>					
		SERV Rebuttal 21	02/17/00	Industry Standard Website article, "MTVi in Copyright Dispute with Sony, EMI"	Not Admitted
		SERV Rebuttal 22	02/16/00	RAIN Website article, "WWW.com's deal with RIAA give teh surprising freedom"	Not Admitted
		SERV Rebuttal 23	Undated	WWW.com website, Who We Are, printed 6/12/01	Admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
<b>John Heilbronn, Cablemusic (10/22/01)</b>					
<i>Public</i>					
		SERV Rebuttal 24	Undated	Lomasoft Corporation, Cablemusic.com Concepts: A description of cablemusic.com plans for consideration by the music industry, printed 8/23/01, (estimated creation date: 1999)	Admitted
<b>Matthew Hackett, Kickradio (10/23/01)</b>					
<i>Public</i>					
		SERV Rebuttal 25	Undated	Kickworks Website: About Us; Partners; Our Vision; Press; Customers; printed 10/12/01	Admitted
		SERV Rebuttal 26	04/18/01	Newmediamusic Website, "[RIAA] and Kickworks Crank Up Internet Radio – Agreement Allows Legal Internet Broadcast of All RIAA Music"	Not Admitted
		SERV Rebuttal 27	04/18/01	Wired.com Website, "Net Startup Lets You Be the DJ"	Not Admitted
		SERV Rebuttal 28	04/19/01	CNET News Website, "RIAA conposes Net radio license for start-up"	Not Admitted
		SERV Rebuttal 29	04/19/01	Newsbytes Website, "RIAA Licensing Deal Lets You Be an Online DJ"	Not Admitted
		SERV Rebuttal 30	04/19/01	CNNfn, "Maverick of the Morning: Kickworks – Founder Rhonda Schaffler, Jim Waggoner"	Not Admitted
<b>Thomas Nagle, Expert (10/23/01)</b>					
<i>Public</i>					
		SERV Rebuttal 31	10/19/01	RAIN Website article, "RadioWave negotiating 11 <sup>th</sup> hour deals, gives staff 2 weeks notice"	Not Admitted
		SERV Rebuttal 32 (full doc adm - 44 DR-X)	04/01	XACT Radio Network, Business Plan	Not Admitted

<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
		SERV Rebuttal 33 (full doc adm - 65 DR-X)	08/01	Live365 Internet Radio & Audio Publishing	Not Admitted
		SERV Rebuttal 34	01/01	Live365 Business Plan for a Radio Revolution	Not Admitted
<b>Steven Marks, RIAA (10/24/01—10/25/01)</b>					
	<i>Public</i>				
		SERV Rebuttal 36	10/05/01	RIAA Website Press Release, "Summary of the Agreement between RIAA, NMPA and HFA"	Admitted
	<i>Restricted</i>				
		SERV Rebuttal 35	10/05/01	Agreement between RIAA, NMPA and HFA regarding licensing of digital music services	Admitted
		SERV Rebuttal 42	09/26/01	Westlaw, Rodgers and Hammerstein Org v. UMG Recordings, Memorandum Opinion and Order	Not Admitted
		20 RR (Misabeled as 19 RR) <sup>1</sup>	02/16/00	Email from Marks to Vidich re: yahoo term sheet [Unredacted version] (RIAA N14540A)	Admitted
	<i>Unmarked</i>				
			Undated	Demonstrative: Comparison of Terms Proposed by Broadcasters/Webcasters and Copyright Owners & Performers	Not Admitted
<b>Jim Junkala, Multicast (10/25/01)</b>					
	<i>Public</i>				
		SERV Rebuttal 37	06/19/01	Dun & Bradstreet Business Information Report, Multicast Technologies	Not Admitted
		SERV Rebuttal 38	Undated	Multicast website, Venture Capital, Company Profile, 3 distinct pages, printed 6/11/01	Admitted

<sup>1</sup> Pursuant to the Panels' October 2, 2001 Order, the Warner Music Group/MTV agreement of January 1, 2001 was filed with the Copyright office on October 24, 2001 as RIAA Exhibit No. 19RR.



<i>Witness</i>	<i>Exhibit Type</i>	<i>Exhibit</i>	<i>Date</i>	<i>Description</i>	<i>Status</i>
		SERV Rebuttal 39	05/09/01	Multicast website Press Release: Radio Express Joins forces with Multicast Technologies to Form a One-Stop Traditional and Internet Radio Syndication Powerhouse.	Admitted
		SERV Rebuttal 40	08/20/01	Yahoo website Press Release: Multicast Technologies and AudioSonix Team up to Provide Unrivaled Internet based Automated Digital File Delivery Services.	Admitted
		SERV Rebuttal 41	06/XX/00	Multicast website Press Release: On-the-i.com Set to Launch July 4, 2000 After Signing Agreement with RIAA, printed 06/15/00	Admitted

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# ARNOLD & PORTER

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## Memorandum

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To: Copyright Arbitration Royalty Panel

NOV 2 2001

From: Thomas Harding  
(Senior Legal Assistant)

GENERAL COUNSEL  
OF COPYRIGHT

Date: November 2, 2001

Re: Final Rebuttal Case Timekeeping for CARP DTRA 1& 2

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Conforming to the new timekeeping rules and as confirmed with Nicola Carpenter, the designee of the Webcasters'/Broadcasters' counsel, the total amount of time used to present the rebuttal case is as follows:

	<u>Copyright Owners and Performers</u>	<u>Services</u>	<u>Panel</u>
10/15	3'28"	1'15"	55"
10/16	1'35"	1'10"	1'22"
10/17	2'42"	1'45"	26"
10/18	1'55"	4'42"	15"
10/19	2'12"	4'22"	12"
10/20	2'16"	13"	1'57"
10/22	46"	4'30"	1'09"
10/23	1'44"	3'30"	30"
10/24	2'39"	4'13"	03"
10/25	50'	3'40"	1'05"

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Total	20 hours 16 minutes	29 hours 20 minutes	7 hour 54 minutes
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November 2, 2001

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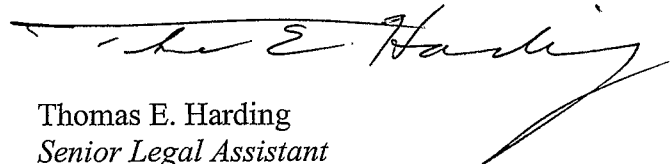
Gina Giuffreda  
Copyright Arbitration Royalty Panel Specialist  
U.S. Copyright Office  
Library of Congress  
Department 17  
Washington, DC 20540

Re: Exhibit List and Timekeeping report

Dear Ms. Giuffreda:

Enclosed please find an original and five copies of the complete list of exhibits referenced during the Rebuttal Case hearings. Also Enclosed is an original and five copies of the final time report. These documents were prepared in consultation with representatives for the Services and reflect the parties' agreement as to their contents.

Sincerely,

  
Thomas E. Harding  
*Senior Legal Assistant*

cc: Adam I. Cohen, Esq.  
Bruce G. Joseph, Esq.  
Sandra M. Aistars, Esq.  
Arthur J. Levine, Esq.  
Barry I. Slotnick, Esq.  
Patricia Polach, Esq.  
Denise Leary, Esq.