

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THE FOOTBALL ASSOCIATION PREMIER :
LEAGUE LIMITED, BOURNE CO. (together with :
its affiliate MURBO MUSIC PUBLISHING, INC.), :
CHERRY LANE MUSIC PUBLISHING :
COMPANY, INC., CAL IV ENTERTAINMENT :
LLC, ROBERT TUR d/b/a LOS ANGELES NEWS :
SERVICE, NATIONAL MUSIC PUBLISHERS' :
ASSOCIATION, THE RODGERS & :
HAMMERSTEIN ORGANIZATION, STAGE :
THREE MUSIC (US), INC., EDWARD B. :
MARKS MUSIC COMPANY, FREDDY :
BIENSTOCK MUSIC COMPANY d/b/a :
BIENSTOCK PUBLISHING COMPANY, ALLEY : 07 Civ. 3582 (LLS)
MUSIC CORPORATION, X-RAY DOG MUSIC, : (related case no. 07 Civ. 2103
INC., FÉDÉRATION FRANÇAISE DE TENNIS, : (LLS), the "Viacom action")
and THE MUSIC FORCE MEDIA GROUP LLC, :
THE MUSIC FORCE LLC, SIN-DROME :
RECORDS, LTD., on behalf of themselves and all :
others similarly situated, :
: :
Plaintiffs, :
: :
-against- :
: :
YOUTUBE, INC., YOUTUBE, LLC and GOOGLE :
INC., :
: :
Defendants. :
: :
----- X

**DECLARATION OF DANIEL HILL IN OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Daniel Hill, pursuant to 28 U.S.C. § 1746, declares as follows:

1. Daniel Hill, President of Cal IV Entertainment, LLC ("Cal IV"), respectfully submits this Declaration in support of class plaintiffs' opposition to defendants' motion for

summary judgment.

2. Cal IV currently uses Kobalt Music Services Limited (“Kobalt”) to license Cal IV compositions in various foreign territories throughout the world pursuant to a written agreement that allows Kobalt, “subject to [Cal IV’s] consent,” to grant synchronization licenses. *See* CAL00003968-CAL00003973, attached hereto as Exhibit A. Synchronization licenses are one of the types of licenses required before a musical composition can be reproduced and exploited in conjunction with visual material, such as uses on a site like YouTube.

3. On September 20, 2006, Kobalt and Cal IV modified their agreement to authorize Kobalt to undertake certain license arrangements without the prior approval of Cal IV. *See* CAL00003964-CAL00003966, attached hereto as Exhibit B. That modification, however, did not change the fact that Kobalt must seek Cal IV’s consent to issue synchronization licenses. In fact, it is the understanding between the parties and their current operational practice that Kobalt obtains Cal IV’s prior approval before issuing a synchronization license including, but not limited to, any synchronization license for exploitation of Cal IV content on websites such as YouTube.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29 day of April, 2010 in Nashville, Tennessee.



Daniel Hill, President, Cal IV Entertainment, LLC

Exhibit A

Administration Deal Memo

THIS DEAL MEMO SHALL FORM A HEADS OF AGREEMENT CONSTITUTING A BINDING CONTRACT UNDER ENGLISH LAW UNTIL SUPERCEDED BY A MORE FORMAL CONTRACT WHICH SHALL INCORPORATE THE TERMS BELOW AND WHICH BOTH PARTIES ACTING IN GOOD FAITH INTEND TO ENTER WITHIN A REASONABLE PERIOD OF TIME HEREAFTER

FROM: Cal IV Entertainment, LLC d/b/a Cal IV Songs (ASCAP), Hope-N-Cal Music (BMI)
And Cal Alexander Music (SESAC) 808 19th Avenue South, Nashville, Tennessee 37203 USA. (Owner)

TO: Kobalt Music Services Limited of 33 Glasshouse Street London W1B 5DG
(Administrator)

DATE: 8 May 2003

1 Territory

The World excluding the United States of America, Canada and South America., which is made up of the Kobalt Territories and the non-Kobalt Territories comprising:

(i) **Kobalt Territories:**

United Kingdom, Eire, Norway, Sweden, Denmark, Finland, France, Germany, Austria, Switzerland, Belgium, Netherlands and Luxembourg.

(ii) **Non-Kobalt Territories:**

The world excluding the Kobalt Territories and excluding the United States of America, Canada and South America.

Any country in which Administrator administers directly or via its affiliates hereafter shall be deemed a Kobalt Territory from the next accounting date and the royalty provisions under clause 5 below shall be computed accordingly in respect of such country thereafter.

2 Term

- (i) For a period of three (3) years from the date hereof or if the last day of the Term shall not otherwise fall on 31 March, 30 June, 30 September or 31 December then the Term shall be deemed extended until the next such date. There shall be a Collection Period for one (1) year following the expiry of the Term.
- (ii) In relation to each Composition recorded during the Term and which qualifies as a Cover, the Administrator shall be granted the exclusive rights hereunder solely for such Cover for the Rights Period. Wherever possible the Administrator shall obtain a distinguishing title from the Owner for the subject Composition to be used solely with respect to the Cover and the Owner

shall provide all reasonable assistance in this regard. Where the 'Cover' represents the first release on a record during the Term under a first use mechanical licence (including a new translation of such Composition) then such change of name shall not be deemed necessary and the Composition as originally titled shall be deemed the qualifying Cover. In any other case both parties shall make necessary arrangements for the Administrator to continue to be entitled to monies arising from the exploitation of the Cover version for the Rights Period.

The Rights Period shall mean the Term with an additional consecutive two (2) year period. All provisions relating to the Term under this Agreement shall be deemed to include reference to the Rights Period in respect of such Covers to the extent that the meaning and context permits.

3 Subject Matter

The Compositions written prior to and/or during the Term (including those that may be unfinished) including without limitation those set out in the attached Schedule.

The **Composition** shall mean that portion of each musical composition in which Owner has acquired or shall acquire during the Term. Nothing herein contained shall prevent the Owner from acquiring an interest in compositions which are at the time of such acquisition and thereafter administered and/or controlled by a third party and which consequently do not fall under this agreement.

The **Writer** shall mean the writer and composer of each Composition.

4 Grant of Rights

- (i) The Owner hereby exclusively grants and licences to the Administrator the full and entire copyright and all other rights of whatever kind and nature in the Compositions throughout the Territory for the Term.
- (ii) Without limiting clause 4(i) the Administrator shall have the right to register the copyright in the Compositions solely for the length of the Term in the name of the Administrator; to grant mechanical licences; subject to the Owner's consent (not to be unreasonably withheld or delayed) to grant synchronisation licences in respect of any and all audio-visual media; subject to any and all rights of the applicable public performance societies throughout the Territory to license the public performance and broadcast of the Compositions "live" and in any and all media; and to collect and receive during the Term and thereafter during the Collection Period one hundred per cent (100%) of moneys arising from the exploitation of the Compositions (whether the exploitation of the Compositions takes place before or during the Term) throughout the Territory. Notwithstanding the foregoing, Administrator shall not grant any licences for use of a Composition without the Owner's consent, except with respect to mechanical licences under customary terms and conditions and with regard to so-called blanket industry licences or licences otherwise granted under national law and/or regulation as may be applicable in each country in the Territory.
- (iii) In no event shall the Administrator grant any licence or allow any use of the Compositions with the express intent or in a manner designed to conceal the source of any income that may arise therefrom or prevent or prejudice the ability to identify a royalty stream that may arise therefrom.

5 Royalties

- (i) Royalties are to be computed on an **At Source** basis where provided below.

At Source Revenue shall mean one hundred per cent (100%) of all moneys which are directly and identifiably attributable to the exploitation of the Compositions after deduction only of:

- (a) local bona fide arm's length performing rights or mechanical rights society commissions (or the equivalent thereof); and
- (b) VAT and any other taxes properly required to be deducted in any part of the Territory; and
- (c) any amounts paid by way of remuneration to arrangers, adaptors and translators which are either approved by the Owner hereunder or otherwise governed by industry rules and/ or regulations and/or industry agreements and / or national laws .

- (ii) In consideration of the rights granted Administrator shall pay the Owner the following royalties and fees based on the exploitation of the Compositions in the Territory:

- (a) **Sheet Music:** ninety per cent (90%) of At Source Revenue from licences granted in respect of the Kobalt Territories and eighty-five per cent (85%) of At Source Revenue from licences granted in respect of the Non-Kobalt Territories.

(b) **Mechanicals (Originals):**

- (i) In connection with the manufacture of records, CDs, tapes and all other mechanical devices (whether embodying sound alone or sound synchronised with visual images) for sale to the public, ninety per cent (90%) of At Source Revenue where in all instances such royalties are initially collected in the Kobalt Territories.
- (ii) In connection with the manufacture of records, CDs, tapes and all other mechanical devices (whether embodying sound alone or sound synchronised with visual images) for sale to the public, eighty-five per cent (85%) of At Source Revenue where in all instances such royalties are initially collected in the Non-Kobalt Territories.

(c) **Synchronisation Fees (Originals):**

- (i) Ninety per cent (90%) of At Source Revenue in respect of the use and synchronisation of the Compositions in connection with any film and/or visual images where in all instances such fees arise from licences granted in respect of productions originating in the Kobalt Territories.
- (ii) Eighty-five per cent (85%) of At Source Revenue in respect of the use and synchronisation of the Compositions in connection with any film and/or visual images where in all instances such fees arise from licences granted in respect of productions originating in the Non-Kobalt Territories.

(d) **Any other income (Originals):** (excluding performance royalties)

- (iii) Ninety per cent (90%) of At Source Revenue (other than performing right fees) directly and identifiably from any other source whatsoever from use and/or exploitation of the Compositions where such royalties are initially collected in the Kobalt Territories.

- (iv) Eighty-five per cent (85%) of At Source Revenue (other than performing right fees) directly and identifiably from any other source whatsoever from use and/or exploitation of the Compositions where such royalties are initially collected in the Non-Kobalt Territories.
- (e) **Covers:** in lieu of 5(ii)(b), (c) and (d) above - 80% (eighty per cent) of At Source Revenue directly and identifiably from use and / or exploitation of the Cover.

Cover(s) shall mean

- (i) any Composition recorded by a local recording artist and released for general sale to the public on record or by way of digital download or electronic methods or means which recording has been procured by the direct efforts of the Administrator and/or its licensees and/or sub-publishers and/or agents acting on its behalf; and/or
- (ii) any Composition licensed for synchronisation usage which synchronisation licence has resulted from the direct efforts of the Administrator and/or its licensees and/or sub-publisher and/or agents acting on its behalf.

For the avoidance of doubt At Source Revenue from the use of a Composition other than arising from the form described in (e)(i) and (e)(ii) above shall not be governed by this sub – clause (e).

- (f) **Performance Fees:** The Writer's share shall be fifty per cent (50%) and Administrator's share shall be fifty per cent (50%) and the Writer's share shall be paid to the Writer by the applicable performing society directly. Administrator shall receive the publisher's share and shall pay the Owner eighty per cent (80%) of such At Source Revenue share hereunder arising in the Kobalt Territories and seventy per cent (70%) of such At Source Revenue arising in the Non-Kobalt Territories save where Administrator can positively and conclusively identify performing right fees and royalties arising from the public performance and broadcast of Covers Administrator agrees to credit the Owner's royalty account with sixty per cent (60%) of such At Source Revenue.

Notwithstanding the foregoing with respect to the Composition "Breathe" the aforesaid percentages shall be increased to ninety per cent (90%) with respect to the Kobalt Territories and to eighty per cent (80%) with respect to the Non – Kobalt Territories.

6 Accounting

Quarterly annual accounting and payment of royalties within 60 days of the end of 30 March, 30 June, 30 September and 31 December provided however that in the event that as a matter of company policy the Administrator shall account on a monthly basis hereafter then Administrator shall automatically account and pay Owner on such basis from such time onwards. Administrator shall only account for moneys received (or credited against a previously received advance) wholly identifiable and attributable to the exploitation of the Compositions hereunder (subject to withholding taxes). Owner shall have the right of audit once per annum on giving reasonable notice at the Owner's cost and expense, however if the audit discloses an underpayment in respect of the period audited of ten per cent(10%) (representing not less than £5,000) then the Administrator shall reimburse the Owner the reasonable costs of such audit (excluding travel, accommodation and subsistence).

All accountings shall be in such specificity as to show on a Composition by Composition basis the source and category of the At Source Revenue and the manner in which Owner's royalties were computed subject only to the accounting information that may be made available to Administrator from its licensees and the relevant collecting societies throughout the Territory.

7. Warranties

(A) The Owner hereby warrants that:

- (i) Owner is free to enter this agreement and make these grants herein contained free and clear from all liens claims and encumbrances and gives all necessary consents under the Copyright, Designs and Patents Act 1988.
- (ii) The Compositions are unencumbered and original copyright works and are neither defamatory nor obscene and will not infringe the rights or copyright of any third party.
- (iii) Administrator shall be entitled to use Writer's name, approved likenesses and approved biographies throughout the Territory in connection with the exploitation of the Compositions.
- (iv) The Writer hereby waives any and all so-called moral rights arising under this Agreement.
- (v) The Owner shall fully indemnify the Administrator on an indemnity basis for any loss or damage or cost or expense suffered by Administrator resulting directly or indirectly from a breach of the grant of rights and warranties provided herein by the Owner.

(B) The Administrator warrants that it has full power and authority to enter this agreement.

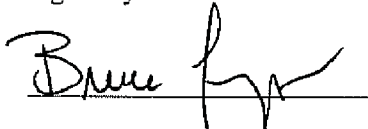
The Administrator shall fully indemnify the Owner on an indemnity basis for any loss or damage or cost or expense suffered by Owner resulting directly or indirectly from a breach of the Administrator's obligations or warranties provided herein by the Administrator.

8. Miscellaneous

- (i) This Agreement shall be governed by English law and the English courts shall be the courts of jurisdiction.
- (ii) No third party shall be deemed hereunder to have enforceable rights solely by virtue of the Contracts (Rights of Third Parties Act) 1999.
- (iii) This Agreement may not be assigned in whole or in part by the Administrator without the prior written consent of Owner. Nothing in this clause or in this Agreement shall serve to prevent or restrict the Administrator from assigning or licensing the rights granted to it under this Agreement in the Compositions in the ordinary course of business. The Owner shall not assign in whole or in part this Agreement without the prior written consent of the Administrator and nor shall it otherwise licence or transfer rights which would prejudice impair or diminish the rights granted by the Owner hereunder or in any way purport to effect the Owner's obligations or liabilities hereunder.

The above terms have been read and agreed by each of the parties set out below:-

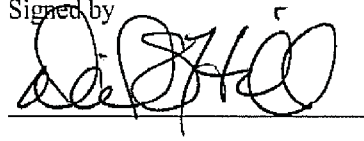
Signed by



for and on behalf of

Kobalt Music Services Limited

Signed by



for and on behalf of

Cal IV Entertainment, LLC

Exhibit B

20 September 2006

For Your Kind Attention

Writer Approvals

As digital technology develops so do the ways in which music can be exploited. We are receiving an increasing number of requests to license the songs in our catalogue for use in various digital distribution services both via the internet and mobile networks and so we have decided to streamline the way in which we seek writer approvals so we can maximize the royalties we collect on your behalf.

We would like to suggest you granting pre-approval of your catalogue for a range of digital uses (see below) which would mean we could license these uses without needing to obtain your approval every time. At the same time we would also like to take this opportunity to obtain pre approval for certain other more traditional uses (see below) such as print and karaoke.

By obtaining pre-approval from you for the various digital uses we will be able to actively promote your songs and license them direct to digital music services in territories such as North America and SE Asia (in most of the rest of the world such rights are licensed by the collection societies under their blanket licences and so we do not need to obtain your prior approval to such uses). Increasingly licencees are looking to licence rights in our whole catalogue of songs (particularly for digital and print uses) as it makes their operations more efficient and it would be great if your songs could be part of this.

Rest assured that when we negotiate the licences for the uses which you have pre-approved we always use our best efforts to secure the highest royalty rates/licence fees as possible and to ensure that we are on "most favoured nations" with the other publishers/co publishers licensing their songs to the applicable licensee.

Please find enclosed a pre-approval list setting out the various types of use (besides synchronization for which we would always obtain your prior approval) that we regularly receive. Further details of certain of the newer uses which you might not be familiar with can be found in the footnotes to the pre-approval list. Please would you review the pre-approval list and indicate your pre-approval to particular uses by ticking the applicable box.

Please return the list to me at the address below within the next 14 days and by the very latest 2nd October 2006. If we fail to hear from you by that deadline we will not be able to include your songs in licences that we grant for our whole catalogue which may mean that your songs will not be exploited as much as they might be.

If you have any questions regarding this, or would like clarification on any of these points, please feel free to contact me.

I look forward to hearing from you soon.

All the best,

Lisa Holewik
Legal & Business Affairs / Synch & Digital Media
Phone: +44 (0) 20 7401 5526
Fax: +44 (0) 20 7401 5501
lisa@kobaltnmusic.com

LICENSING PRE-APPROVALS LIST	YES	NO
<p>1. Please indicate by ticking the YES / NO column those types of use that you pre-approve. 2. Please sign below and return this list to me by 2nd October 2006. 3. Any pre-approved uses shall become effective as from 16th October 2006. 4. Please note that we may have previously asked you by email to pre approve exploitation of your compositions as ringtones but as we are seeking pre approval from you now for certain other forms of exploitation using this form which you are being asked to sign below we would like to reconfirm the pre approvals for exploitation of your compositions as ringtones.</p>		
<p>LICENSE TYPES</p>		
<p><u>PRINT :</u> Sheet Music Lyric re-print for both books and magazines Digital lyric / music reproduction services e.g. Gracenote¹</p>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
<p><u>DIGITAL DISTRIBUTION Audio / Audio visual including without limitation:</u> Full track downloads Streaming Embedding in audio/audio visual devices²</p>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
<p><u>RINGTONES / VIDEOTONES³:</u> i) Ringtones (including without limitation, Monophonic, Polyphonic, Realtones, Mastertones, Truetones and Ringbacks) ii) Videotones / Videoringers (iii) Ringtones / videotones embedded within mobile handsets Moral Right/Adaptation Right for ringtones⁴</p>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
<p><u>KARAOKE / BLUE SCREEN USAGE</u></p>	<input checked="" type="checkbox"/>	
<p><u>ZOOM⁵</u></p>		<input checked="" type="checkbox"/>

Footnotes

1. *Gracenote* is one of the leading technology companies in the digital music industry. They provide services to virtually every major online music and mobile provider and are launching a lyric reproduction & printing service by the year's end. This will provide legitimate lyrics for online music entities, consumer electronics manufacturers and others who provide devices that play digital media. For detailed information on their range of services see www.gracenote.com

2. *Embedding* means that your compositions will be embedded within various audio/audio-visual products (please note that your compositions would not be used as a 'premium' use where they are embedded in a product on their own as a commercial tie in with such product but would only be licensed along with the majority of other songs in our catalogue) and stored on a hard drive within the product i.e. mobile phone handset.



3. Ringtones (including without limitation all other forms of ringtones now known or hereafter devised):

(i) A Monophonic Ringtone is a new recording of the composition that plays a single note melody line. A Polyphonic Ringtone is a new recording of the composition which plays a multiple note melody line. A Realtone/Mastertone/Truetone is where the master recording of the original composition is licensed by the record label as a ringtone. A Ringback tone is an audible ringing tone consisting of the master recording of the composition that is heard by the calling party after dialing and prior to the call being answered.

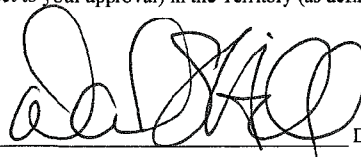
(ii) A Videotone / Videoringer is a short video clip of the video made by the record label that releases the master recording that will play and announce each incoming call with the callers' name displayed on the handset.

(iii) We may be asked to approve the use of your compositions in TV advertising/spots promoting ringtones of your compositions. Such TV advertising/spots usually features the video which was made to promote the master recording of your composition playing whilst the user is given the numbers to text to purchase the ringtones. Please note that this TV advertising/ spots will always be approved by record labels/owners of the master recording/videos when they licence them to the ringtone providers. Please note all publishers will agree to the same terms and the adverts should help to boost ringtone sales.

4. If you pre-approve this right type we would be able to maximize your income by collecting an additional royalty in respect of the right to make your compositions into ringtones. This royalty may be available if your compositions are exploited as ring tones in Germany, Croatia, Serbia, Slovenia and Bulgaria as the courts in these territories have ruled that such exploitation cannot take place unless the writer waives their moral rights in respect of the making of their compositions into ringtones and gives his/her consent to the adaptation of their compositions to make ringtones and for which we are able to secure a significant additional license fee over and above the mechanical royalty paid in respect of the exploitation of your compositions as a ring tones. Please note that the "adaptation" of your compositions just entails rerecording them for Monophonic/Polyphonic ringtones (see above) or time editing a master recording of your compositions for Realtones/Mastertones/Truetones (see above). Should you approve such ringtone exploitation then you also grant us a power of attorney to commence litigation on your behalf, but in Kobalt's name against any third parties for a claim for discontinuance, and/or damages in respect of unauthorized uses of your compositions.

5. ZOOM is a unique project hoping to launch in September 2006 which will allow approximately 7500 Videographers in the US to legally register, license and use your compositions in their wedding video productions. Currently no other legal licensing process of this nature exists in the United States, so by approving this use an additional income stream will be available to you. Please note that your compositions may already be being used for these purposes at the moment but without your consent for such use, so it makes sense to become part of this legitimate licensing scheme. For further information see www.weva.com and www.zoomlicense.com (which is currently under construction).

By Signing this form below you are agreeing to an amendment to your administration agreement with Kobalt Music Services Limited/ Kobalt Music Services America Inc to the effect that we can exercise the above rights (which are already included in the administration agreement but are subject to your approval) in the Territory (as defined in the administration agreement) without the need to obtain your approval.

Signed  Date 9/20/06

Client / Catalogue Cal III Entertainment, LLC (AGR1116)

PLEASE PRINT CLIENT/ CATALOGUE NAME ABOVE.