Testimony of

Mr. David Mandelbrot

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Yahoo is a leading provider of comprehensive online products and services to consumers and businesses worldwide. Yahoo reaches more than 237 million individuals worldwide each month.

Between March 2000 and August 2000, I was personally responsible on behalf of Yahoo for the negotiation and execution with representatives of the Recording Industry Association of America of the voluntary "Webcasting Performance and Ephemeral License Agreement" for Yahoo's public performance of sound recordings by noninteractive nonsubscription webcasting.

In July 1999, Yahoo had acquired broadcast.com inc., a publicly traded company specializing in broadcasting audio and video over the Web. Broadcast.com was a leading aggregator of streaming audio and video, making available from its Website thousands of special events, several hundred local radio stations, local television stations and video networks, concerts, and Internet-only music channels. Over the two years following the acquisition of broadcast.com, Yahoo integrated the broadcast.com services into the Yahoo network.

With the acquisition of broadcast.com, Yahoo also became an aggregator of music programming created by third parties. Specifically, Yahoo offered its audience the opportunity to listen to music performances in two ways. First, radio stations transmitted their signals by phone line to Yahoo servers, which servers then originated the retransmission of those radio station signals to the Internet. Second, programmers created Internet-only channels or Internet-only programming, which was not transmitted over ordinary radio station signals and which Yahoo also made available to the public. At that time, radio retransmissions constituted approximately 90 percent of Yahoo's performances that were covered by the statutory license; Yahoo's Internet-only performances constituted the remaining 10 percent.

As of the time when Yahoo completed its acquisition of broadcast.com, Yahoo had several reasons for considering a voluntary license rather than taking advantage of the statutory license available following arbitration:

First, it would enable Yahoo to offer certainty of a negotiated RIAA license to Yahoo customers. By entering into a license agreement with the RIAA, Yahoo could offer a service to our radio station and third party music programming entities by saving them the expense and burden of arbitration or independent negotiation with the RIAA.

Second, Yahoo would avoid the costs of arbitration. As one of the largest Internet webcast transmission services, we would incur very high litigation costs if we were to participate in the arbitration. In addition, litigation would drain time and resources from Yahoo personnel whose efforts would bring much greater value if directed toward development and execution of our site-wide streaming media implementation. Moreover, Yahoo was aware that these arbitrations could repeat every two years. In light of these factors, Yahoo was willing to enter into a voluntary license in order to avoid these litigation burdens and costs. Yahoo ultimately decided that we would much rather invest fewer resources settling than invest more resources arbitrating.

Third, Yahoo would avoid the uncertainty of the CARP rate. By negotiating a voluntary license, Yahoo could potentially quantify and control its costs. We were concerned that an unacceptably high royalty rate arrived at by the CARP could force us to stop offering particular types of content. Negotiating the fee reduced the risk of an adverse judgment inherent in any arbitration or litigation. In addition, given that radio retransmissions constituted approximately 90 percent of Yahoo's music performances, we believed that our interests were different from the other participants in the CARP; and we wanted to establish a separate and lower rate for radio retransmissions.

Fourth, Yahoo wanted to build goodwill with the record labels. We believed that by settling early, we would engender goodwill with RIAA member recording companies. We hoped that this goodwill would lead to better revenue opportunities in the future.

In light of these factors, our primary concern was the overall cost of the license, that is, the "effective rate" that we would pay for all performances based on our mix of radio retransmissions and Internet-only performances. Based on what we projected as the ratio of retransmissions to Internet-only transmissions, the radio retransmission fee was a much more significant factor to us.

Although we were aware that our license could be used as a precedent prospectively, our main interest was in striking a deal that had an acceptable bottom line impact for the term of the agreement. To the extent that an arbitration resulted in lower fees going forward, we would be able to avail ourselves of that lower rate in the renewal periods or following the expiration of our Agreement with RIAA. If our license was deemed to be an industry precedent and the arbitration resulted in the same rates, we would be on an even plane with our competitors, and the Internet-only rate was not of great concern to us at that time. Either way, we looked to the costs we would save by not participating in the arbitration in agreeing to our license.

Not surprisingly, our interest was in doing what was best for our business and our business model. At that time, because of our mix of 90 percent radio retransmissions and 10 percent Internet-only transmissions, we were hoping to achieve a lower rate for radio retransmissions which would produce a lower effective rate and have a far greater financial impact on our business than the rate for Internet-only transmissions.

The fees ultimately set by the CARP in its recent report were considerably higher than any fair market outcome or any reasonable construction of the economics of the Yahoo-RIAA Agreement. The Panel did not appropriately address the unique facts and circumstances surrounding the Yahoo-RIAA Agreement, yet the Panel explicitly used certain terms of that Agreement as a benchmark for industry rate-setting. The result is that a single specific agreement based upon the unique situation of an individual company whose business model was atypical of Internet webcasters in general, has been misapplied to set excessive rates for an entire industry.