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January 4, 2007

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Michael Posner, Esq.  
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3600 Wilshire Blvd.  
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Dear Mr. Posner:

This letter responds to your December 8, 2006 letter to President Tom Lee of the American Federation of Musicians ("AFM"). That letter made two assertions on behalf of the Recording Musicians Association's ("RMA") regarding the promulgation of an alternative Video Game Agreement ("Agreement") by the AFM International Executive Board ("IEB"). The first assertion is that the IEB violated the AFM Bylaws because it did not submit the Agreement to the AFM membership for ratification. The second assertion is that the Agreement amounts to a substantive breach of the AFM's duty of fair representation. Both assertions are incorrect.

The relevant AFM Bylaw provision is Article 5, Section 33. By its terms, that provision only requires ratification of agreements that are "negotiated" with employers or employer groups. The Agreement was not negotiated with any employer; it was simply created by the IEB and made available to any employer in the video game industry who desires to score a video game with union musicians. In that regard, it is no different from countless other AFM promulgated "agreements," including but not limited to the Basic Cable, Telethon, Syndicated Radio (Non-Symphonic), Cruise Ships, and Industrial Films "agreements." None of those promulgated "agreements" has ever been subject to membership ratification. They are plainly outside the scope of Article 5, Section 33.

As for the assertion that the terms of the Agreement somehow constitute a breach of the AFM's duty of fair representation, assuming *arguendo* that the duty even attaches under these circumstances, that assertion is also incorrect. Unions have a broad scope of discretion when acting in their role as bargaining agents. A unions does not violate the duty of fair representation by taking actions that displease some members, as long as, in determining its course of action, it has weighed and considered the varied views of those it represents. See *ALPA v. O'Neill*, 499 U.S. 65 (1991). I can assure you that the IEB carefully considered all of the multiple and

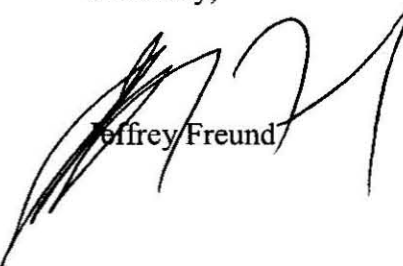
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competing interests of its varied and international membership and took those interests into account when it promulgated the Agreement. Finally, I remind you that the Agreement is to be in effect only for one year, after which the IEB will review its effectiveness in increasing Union employment in the video game industry. Based on that review, the AFM will determine whether to extend it, modify it or abandon the Agreement.

I want to make two further points in closing. First, as your letter appears to be a "lawyers' letter" contemplating litigation, it seems appropriate for me to remind you of the provisions of Rule 11 of the Federal Rules of Civil Procedure. I have successfully recovered sanctions against lawyers whose submissions have violated that Rule and I can assure you that I would advise the AFM to request Rule 11 sanctions in the event you choose to file what, in my view, would be an entirely baseless lawsuit. Second, I would like your guidance on the scope of my ability to communicate directly with Phil Ayling regarding electronic media issues generally during whatever period of time that you represent him in connection with both this matter and his information request (a subject I am still reviewing). In the normal course of my representation of the AFM, I regularly consult with Phil and find his input on electronic media issues to be quite helpful. However, I am reluctant to discuss any electronic media issues with him while he is represented by counsel unless I can have some precise assurance that you authorize those discussions. I regret this, but I am afraid that the Rules of Professional Conduct leave us with no other choice given the fact that both of your letters written on his behalf touch on issues central to the AFM's electronic media jurisdiction.

Please feel free to contact me if you have any questions concerning this letter.

Sincerely,



Jeffrey Freund

cc: Tom Lee  
IEB