

DATE April 9, 1981

TO _____

OFFICE _____

CI CRI CMP

FROM _____

OFFICE _____

CI CRI CMP



MEMO

SUBJECT: APPLE (N.Y.) AUDIT CLAIM FOR AFM FEES WITHHELD

The following material has been prepared at your direction.

APPLE'S POSITION:

The current Apple audit contains a claim for AFM liability withheld from royalties through June 30, 1979 of \$552,849.80 (U.S. & Canada) on the grounds that "No provision could be found in any of your agreements giving Capitol or EMI the right to withhold AFM fees from payments otherwise due Apple Records." Apple's position is that Capitol is responsible for any AFM fees. (Exhibit A)

CAPITOL'S POSITION:

Capitol's position is that Apple is responsible for the AFM liability and is based on the following:

1. An oral agreement between Allen Klein and Len Wood covering sales in all territories. (Exhibit B)
2. Section 7 of the EMIR license to Apple which provides that "...Licensee shall also be responsible for the discharge of all liability to any artist or any third party arising out of the manufacture, sale, use and publication in the territory...." (Exhibit C) (The third party provision would apply to the AFM.)

BEATLE U.S. RECORDINGS

The Beatles never recorded as a group in the U.S. for record making purposes. (Tapes made of the 1965 and 1966 live concert in the Hollywood Bowl were released as records in May 1977. See comments re this later on.) It was not until the individuals began recording solo product in the U.S. that the AFM problem arose. (The first product recorded in the U.S. was released in September 1970 - Ringo Starr's "Beaucoup of Blues" album and a single therefrom.) Prior to this time the recordings were recorded at EMI with EMI's full knowledge and approval. Beginning in 1970, the individuals began to record when and where they liked, often informing EMI after the fact. Abkco, as Apple's manager, would pay those bills where immediate payment was necessary and then seek reimbursement from EMI. If payment for the bill could be delayed it was sent directly to EMI for payment. (In the case of McCartney, McCartney Productions, rather than Abkco, would handle.)

After Akbco was terminated (February 1973) as the manager of Apple, the bills were sent to Capitol for payment. (At first

SIGNED: _____

DATE April 9, 1981
TO _____
OFFICE _____ CI CRI CMP
FROM _____
OFFICE _____ CI CRI CMP



MEMO

SUBJECT: APPLE (N.Y.) AUDIT CLAIM FOR AFM FEES WITHHELD

Page 2

Capitol transmitted the bills to EMI for payment, but, because of long delays, EMI requested that Capitol pay them on behalf of EMI and transmit the paid bills to EMI for reimbursement.) (See Note, Page 4)

HISTORY OF AFM WITHHOLDING:

As of June 6, 1974 and reconfirmed May 25, 1976, EMI advised Capitol that it had

1. Been withholding the amount of the potential AFM liabilities from the Beatle royalties for world-wide sales (including U.S. and Canada),
2. So informed the Receiver for the Beatles, and
3. Set up an EMI reserve in the event EMI must pay the AFM and could not recoup from the Beatles (Exhibits D 1 and 3).

The amount withheld for the U.S. and Canada, however, was only from the royalties which Capitol had been permitted to remit to EMI (through June 1974 royalties). Beginning with the royalties for the month of July 1974, Capitol was instructed by the State of New York to hold all monies due Apple Records, Inc. (N.Y.). In May 1975, Capitol was directed to pay the monies withheld to the Sheriff of New York and all future monies due Apple until the full amount of the attachment had been remitted. (Exhibit D-2)

At first, the entire withheld monies were remitted to the Sheriff. Shortly thereafter, the interpretation of the attachment was changed (or the attachment altered) to allow Capitol to recover from future payments the total amounts due to third parties. Capitol subsequently recovered the full amount of the potential AFM liability up to date, as well as the McCartney solo royalties through December 31, 1974. (Exhibit E)

When EMI terminated the Beatle license with Apple (N.Y.) as of 4/30/76 and licensed Capitol as of 5/1/76, Capitol continued to withhold the AFM liability from subsequent royalties. However, effective May 1, 1976 Capitol began including Beatle sales on those albums recorded in the U.S. on its regular AFM reports and payments (Exhibit F) since Capitol became the U.S. manufacturer at that date.

RESERVE FOR AFM LIABILITY:

In addition to the withholding, a special reserve was maintained to safeguard against the possibility that Capitol or EMI might

SIGNED: _____

DATE April 9, 1981
TO _____
OFFICE _____ CI CRI CMP
FROM _____
OFFICE _____ CI CRI CMP



MEMO

SUBJECT: APPLE (N.Y.) AUDIT CLAIM FOR AFM FEES WITHHELD

Page 3

have to reimburse the Beatles for the money withheld for the AFM liability. This reserve was subsequently reduced by the amount withheld for the McCartney solo albums through December 31, 1974 due to the subsequent release signed by MPL. (Exhibits G and H)

CAPITOL'S ANSWER TO AFM INQUIRIES:

Capitol's reply to the AFM re the liability prior to 5/1/76 has been that it is the responsibility of Apple and all questions should be directed to Apple. (Exhibit I)

NOTE: RE BEATLES HOLLYWOOD BOWL LIVE CONCERT ALBUM:

It was decided that the Hollywood Bowl Live Concert album was subject to AFM fees and that it is not recoverable from the Beatle royalties "since it was recorded prior to 9/1/69" (Exhibit J) and neither the later oral agreement nor the EMIR license to Apple of 9/1/69 would apply. Capitol has, therefore, paid the AFM on sales of this album and no AFM has been withheld from the Beatles royalties.

TWO ALBUMS REQUIRING ADJUSTMENTS:

1. George Harrison's "Extra Texture" Album (Exhibit K)

There is an agreement with Loka Productions of August 22, 1975 which provides that a royalty of so much, less any amount due Apple under the 9/1/69 agreement, shall be paid to Loka Productions. Paragraph 8 of that agreement reads: "8. You agreed to be responsible for all payments, if any, which may have to be made to the AF of M Special Payments Fund or Music Performance Trust Fund in connection with sales of the album regardless of where such sales take place." (The AFM liability as of March 31, 1979 was \$24,540.00.) This amount has been included in the amount withheld from Beatle royalties. If it should be decided that Apple is not responsible for the AFM, Capitol could recover it from Loka Productions and/or George Harrison. It was therefore not included in the special reserve.

2. Ringo Starr's "Blast From Your Past" Album (Exhibits K and L)

There is a signed but undated Agreement with R. Starkey re this album which states in Paragraph 5: "You and Capitol agree that Capitol shall withhold from monies otherwise payable hereunder .0344 for each copy of the album sold to be applied in satisfaction of any obligation to the AFM

SIGNED: _____

DATE April 9, 1981
TO _____
OFFICE _____ CI CRI CMP
FROM _____
OFFICE _____ CI CRI CMP



MEMO

SUBJECT: APPLE (N.Y.) AUDIT CLAIM FOR AFM FEES WITHHELD

Page 4

Special Payments Fund and/or Music Performance Trust Fund in connection with this album." Unfortunately, the .0344 was not quite enough to cover the AFM liability. Consequently, the .0344 is deducted from the royalty (netted against) on this specific album, while the difference between the actual AFM less the .0344 is included in the amount withheld from Beatle royalties.

RESERVES REQUIRED:

There are currently two reserves required as follows:

1. The potential AFM liability at 4/30/76. This is the actual amount that may be due to the AFM. (It would include the McCartney solo albums through December 31, 1974 as well as the actual AFM liability on "Extra Texture" and "Blast From Your Past".)

This amount will not change after 4/30/76, since beginning May 1, 1976 on Capitol actually reported sales from May 1, 1976 on.

2. The reserve for the claim for withholding from Apple up to the current month. If it has been correctly computed it should be made up of the following:

The actual AFM liability at 4/30/76 plus the AFM paid or accrued by Capitol after that date, less

- 1) McCartney (through 12/31/74)
- 2) \$.0344 per album on Ringo Starr
- 3) "Extra Texture" actual AFM liability.

NOTE: I scanned the first few session reports (U.S.) which were forwarded to Capitol to pay and note that Apple Records, Inc. was shown as the company on the AFM forms (Exh. M).

Thus, with the exception of the AF of M fees withheld and the legal fees incorrectly deducted, all amounts reported by Capitol were paid to Apple by EMI.

AF OF M FEES (UNITED STATES AND CANADA)

Capitol Records, Inc. is a signatory to the 1977 American Federation of Musicians (AF of M) Phonograph Record Labor Agreement and Special Payments Fund Agreement in the United States and Canada. These contracts require that certain fees be paid by Capitol to the "Music Performance Trust Fund" and the "Phonograph Record Manufacturer's Special Payments Fund" on recordings made by union members based upon the number of units sold worldwide. Examination of the royalty payments due Apple (New York) which were actually paid by Capitol Records to EMI, and then by EMI to Apple Records in England, revealed that from September 1, 1970 to July 31, 1974 EMI deducted an amount equivalent to the aforementioned fees from the payments otherwise due Apple in connection with the recordings by the individual group members. These monies were not paid to the union funds, but were retained in the EMI Earnings Suspense Account until January 20, 1977, when EMI transferred these funds, amounting at the time to 167,792, back to Capitol Records at the then equivalent dollar value of \$389,723.90. Since that date Capitol Records has withheld additional amounts equivalent to AF of M fees from its payments to EMI on your behalf, amounting to an additional \$163,125.90 based on sales in the United States and Canada. It should be noted that EMI followed a similar practice on sales outside the United States and Canada, and appropriate claims are included in our London office's report on the current examination of EMI.

We asked Capitol to provide us with documentation to determine if any payments were actually made by them, to the appropriate union fund, but they refused to provide this information and indicated that it was outside the scope of our examination. We did check Capitol's computations of the AF of M fees on a test basis and found them to substantially correct.

No provision could be found in any of your agreements giving Capitol or EMI the right to withhold AF of M fees from payments otherwise due Apple Records. Accordingly, we have summarized the amount of AF of M fees incorrectly withheld by Capitol from payments otherwise due Apple Records from September 1, 1970 to June 30, 1979. Our

summary representing the AF of M withholdings from earnings otherwise payable in both the United States and Canada appears in Schedule 6 and totals \$552,849.80.

It should be noted that Capitol did not withhold AF of M fees from payments otherwise due Nemperor Holdings Limited. Therefore, Nemperor is not entitled to 5% of the AF of M fees withheld from Apple from April 1, 1972 to January 25, 1976, when and if such withholdings are paid to Apple by Capitol.

FREE GOODS

Article III, Section 8(a) of your September 1, 1969 Agreement states that:

"... Apple agrees to sell to Distributor at a discount a quantity not in excess of ten (10) single records for every one hundred (100) such records purchased by Distributor at regular prices. The amount of discount hereunder shall be set forth on Schedule 'A'..."

We have confirmed with Capitol, however, that Schedules "A" and "B" do not include any discount prices. Capitol has classified some of its sales as "free goods" or so-called "no charge" records even though all of these records are meant for resale to the consumer. In practice, CRI did not charge Apple a pressing fee, nor did it provide Apple with the necessary pricing information to bill CRDC for any of these records, taking the position that the discounted price to which CRDC was entitled was equivalent to CRI's price to Apple. Assuming that Capitol's position was correct, and that the records in question were in fact distributed at "no-charge", The Agreement limits these records to singles (45 RPM), and then to 10 singles for each 100 purchased at regular prices. In practice, Capitol occasionally exceeded the 10 on 100 limitation. We found that no albums were distributed as "free goods" in the United States.

"No-charge" records were consistently shipped by CRDC in direct proportion to quantities "sold", regardless of the size of the order and throughout the life of a record. For example, if Capitol ships 110 records, they bill for 100 at, say, \$.55 and ship 10 at "no-charge" for a total invoice of \$55.00. They could just as well have billed for 55 at \$1.00 and shipped 55 at "no-charge" for the same total invoice of \$55.00. The real economics of the transaction is that they have sold 110 records at \$.50 for a total invoice



Capitol.

TO

DATE October 23, 1974

FROM

TITLE

SUBJECT BEATLES

Malcolm Brown called and said Aspinall had approached him concerning settlement of the Yoko Ono part of Beatle and non-Beatle records. Aspinall said he hoped to get the overall Beatle settlement agreement signed by the end of November and indicated a desire to straighten out the whole Apple relationship with EMI/Capitol. In this connection, Malcolm stated he was going to be in New York next week and suggested that I come to New York and we together review the whole Apple situation.

I suggested that instead, he should come to Los Angeles since Capitol's files are here as are Burdick and other people to whom we may wish to direct questions while Brown is here. He said he would check with Len Wood tomorrow and let me know.

Brown also stated EMI is contemplating suing the Beatles for the AF of M fees. He stated that it would be his and Len Wood's oral testimony as to what Klein had said which would be the only evidence of an agreement for Apple to pay the AF of M fees.

He further said George Martin has now sued EMI for 54,000 pounds as his share of the "LET IT BE" royalties.

As a result of Brown's conversation, I did some checking and ascertained that the Prager & Fenton audit is not yet finished. Jim Cavanaugh is to provide additional information, and Prager & Fenton have raised additional questions with Lloyd Hawe.

November
9th
1971

REGISTERED AIR MAIL
RETURN RECEIPT REQUESTED

Apple Records, Inc.
c/o ABKCO Industries, Inc.
1700 Broadway
New York, New York 10019

Re: "IMAGINE"/John Lennon

Gentlemen:

We have been advised that John Lennon's album "IMAGINE" was recorded in the United States and as in the case of the "RAM" album, Capitol is therefore withholding fees required to be paid to the AFM. This procedure with respect to the "RAM" album was agreed to between Mr. Allen Klein and Mr. Robert Carp.

Please advise us if the information concerning the place of recording the "IMAGINE" album is erroneous.

Very truly yours,



EMI Limited
20 Manchester Square
London W1A 1ES

Telephone 01-486 4488
Telex No 22643

Exhibit B
3 of 9

cc cc Mr. L.G. Wood
Mr. R.H. White
Mr. P. Howard
Mr. C.H. Tillinghast

PVIS ✓
BM
EC

01230/NCB/KS

Mr. James D. Spooner,
Messrs. Dixon, Wilson, Tubbs & Gillett
Dixon, Wilson & Co.,
55 Basinghall Street,
London EC2V 5LA.

4th November 1971

Dear Mr. Spooner,

PAUL MCCARTNEY

Whilst this letter refers specifically to Paul McCartney, the implications also apply to the other individual Partners.

The recordings reproduced on the record "RAM" were made in the United States of America, and therefore attract a liability to pay a royalty to the American Federation of Musicians, and Special Payments Trust Fund. That royalty, whilst being slightly variable, is usually expressed as 1½% of the retail selling price. The payment is obligatory and as you will deduce is the result of an agreement between what amounts to the Musicians Union and the record production companies.

The particular recordings were made in America without our prior approval and we have made it clear on several occasions that we could not be responsible for this payment should any such liability arise. I am advised that a liability will arise, and indeed has already arisen. Capitol will therefore be making arrangements to pay the appropriate amount either directly or via Apple Records Inc. whose primary liability it is, and that amount will therefore be deducted from the gross royalties earned from the sales of the record. The liability also attaches to "single" records in the same way.

Further, the liability is not restricted to sales of the records in the United States of America. The liability is world-wide. It follows therefore that when the amount can be calculated, provision will have to be made for that payment. I would therefore suggest that you make provision in your accounts now using 1½% as the basis of this provision. I would be grateful if you would confirm your acceptance of the procedure.

Yours sincerely,

Nov

May
10th
1 9 7 1

John L. Eastman, Esquire
Eastman & Eastman
39 West 54th Street
New York, New York 10018

Re: "RAM"

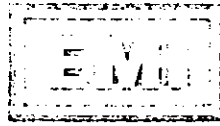
Dear John:

In reply to your letter of April 22, 1971 to Stan Gortikov, I understand that the recordings were made under Forms B signed by McCartney Productions, Inc. and that that company is a signatory to the AFM and AFTRA codes.

Accordingly Capitol will make appropriate arrangements with Apple Records, Inc. for payment of whatever AFM fees are due in connection with sale of the "RAM" album and if Capitol makes such payments directly, Capitol will deduct the amount of such payments from the payments Capitol otherwise makes to or on behalf of Apple Records, Inc.

Best regards.

Sincerely yours,



EMI Limited
20 Manchester Square
London W1A 1ES

Telephone 01-486 4488
Telex No. 22643
Cables Emiworld London W1
Telegrams: Emiworld London Telex

01230/MCB/KS

Capitol Records Inc.,
Hollywood & Vine,
Hollywood,
California 90028,
U.S.A.

26th April 1971

Dear Mr. Gortikov,

Mr. Wood is away this week on holiday and therefore I am letting you have my reaction to John Eastman's letter of the 22nd April regarding AF of M payments.

It has always been our view that this liability should be borne by McCartney. Please therefore do not agree with Eastman that you will pay this.

The same point has of course arisen with some other recordings and Klein has always said that he would "pick up" the AF of M payments. Obviously they have all got to be treated in the same manner.

Yours sincerely,

EASTMAN & EASTMAN
ATTORNEYS

cc: S. Adick
W. J. ...
Cherem
Magg
Deven
Dilligant

212 LT 1-1330
CABLE EASTMANAID, N.Y.
39 WEST 54TH STREET
NEW YORK, N.Y. 10019

April 22, 1971

Capitol Records
1750 N. Vine Street
Hollywood, California 90028

20 Manchester Square
London, W.1, England

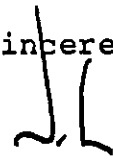
Dear Stanley and Len:

As you know, Paul McCartney's latest, proposed album RAM and his recent single "Another Day" were recorded in New York and Los Angeles under AFofM auspices.

You will, of course, arrange to have the requisite AFofM pension fund and other payments made by Capitol and E.M.I.

My best.

Sincerely,



John L. Eastman

JLE:gl

APR 26 1971

DATE March 26, 1971

TO _____

OFFICE _____

CI CRI ADI

FROM _____

OFFICE _____

CI CRI ADI



MEMO

SUBJECT: TRUST AND SPECIAL PAYMENTS FUND FEES

References:	Wood to Klein	February 24
	Klein to Wood	February 26
	Wood to Klein	March 15

1. In his February 24 letter Wood asked Klein to give answers to

"c) Your acknowledgement that if any payments, in respect of any of the recordings, are due by us to the American Federation of Musicians or to a Producer not authorized by us in advance then such payments will be deducted by us from any royalty which we may be due to pay to Apple Corps Ltd. or anyone else in respect of sales of such recordings."

Klein's response was

"(3) With respect to item c) of your letter, I think it would be best if we can have a meeting as soon as possible since I do not agree with the position you have suggested with respect to the McCartney recordings."

Wood responded

"I note you do not agree with (c) of my letter, but I really cannot see why.

I shall be happy to discuss the position with you as soon as possible."

It is apparent that Klein has something up his sleeve--he does not want the Apple companies to have to pay the 1-1/2% to the Trust and Special Payment Funds and he will be looking for something.

CHT will please examine CRI's legal position under the September 1, 1969 agreement. He will also look at the Apple, Inc. - EMI license which may cover this point.

Mr. J. B. ...
Capitol Records Inc.,
Hollywood & Vine,
Hollywood,
California 90028,
U.S.A.

26th April 1971

Dear Mr. ...

Mr. Wood is away this week on holiday and therefore I am letting you have my reaction to John Eastman's letter of the 22nd April regarding AF of M payments.

It has always been our view that this liability should be borne by McCartney. Please therefore do not agree with Eastman that you will pay this.

The same point has of course arisen with some other recordings and Klein has always said that he would "pick up" the AF of M payments. Obviously they have all got to be treated in the same manner.

Yours sincerely,

Capitol Records
1750 N. Vine Street
Hollywood, California 90028

E.M.I. Limited
20 Manchester Square
London, W.1, England

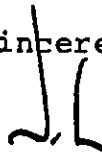
Dear Stanley and Len:

As you know, Paul McCartney's latest, proposed album RAM and his recent single "Another Day" were recorded in New York and Los Angeles under AFofM auspices.

You will, of course, arrange to have the requisite AFofM pension fund and other payments made by Capitol and E.M.I.

My best.

Sincerely,



John L. Eastman

JLE:gl

APR 21 1971

APR 26 1971



Capitol
A Capitol Industries Company

MEMO

DATE April 7, 1971
 TO _____
 OFFICE _____ CI CRI ADI
 FROM _____
 OFFICE _____ CI CRI ADI
 SUBJECT: BEATLES RECORDINGS - AFM FEES

Section 7. of EMIR license to Apple provides:

"THE LICENSEE (Apple) shall be solely responsible for the fulfillment of all copyright obligations arising out of the manufacture and sale of the records hereunder and except as otherwise expressly provided herein LICENSEE shall also be responsible for the discharge of all liability to any artists or any third party arising out of the manufacture, sale, use and publication in the territory of the recordings save and except any royalty payable by EMIR pursuant to an Agreement dated 1st September 1965 as amended and made [with AIR London and George Martin et al]."

By this clause responsibility for AFM fees as between EMI and Apple is placed squarely on Apple.

The closest the Apple CRI agreement gets to imposing this obligation on Capitol is Section 5. of Article III which provides:

"All costs and expenses in connection with Distributor's activities with respect to the distribution, advertising and exploitation of Apple's records pursuant to this Agreement shall be the responsibility of Distributor."

It is normally the owner of the records being sold who has responsibility for AFM fees. The AFM agreement in Section 2 of Addendum A to the Special Payments Fund provides:

"2. Each First Party shall make payments to the Administrator in the amounts computed as stated below, with respect to the sale during the period specified in 6 below of phonograph records, produced from master

SIGNED: _____



Capitol
A Capitol Industries Company

MEMO

DATE April 7, 1971
TO File
OFFICE _____ CI CRI ADI
FROM _____
OFFICE _____ CI CRI ADI
SUBJECT: BEATLES RECORDINGS - AFM FEES (Cont.)

records containing music which was performed or conducted by musicians covered by, or required to be paid pursuant to, a collective bargaining agreement with the Federation known as Phonograph Record Labor Agreement (April, 1969) (but specifically excluding services solely as arranger, orchestrator or copyist) where such phonograph records are sold during said period by such First Party, or, subject to the provisions of paragraph 1(e) of the main text of this Agreement, by purchasers, lessees, licensees, transferees, or other users deriving title, lease, license, or permission thereto, by operation of law or otherwise, by, from or through such First Party." (Underlining added)

Capitol, as distributor, derives its title etc. from Apple, or "First Party", or primary obligor under the AFM agreement.

Paragraph 9(b) of Article V of the September 1, '69 agreement provides in part:

"Apple shall indemnify and hold Capitol harmless against loss, damage, cost or expense ... arising out of any lien, levy, attachment or other encumbrance levied on or asserted against Capitol or any property of Capitol by reason of any ... breach or alleged breach on the part of Apple [of representations and warranties] or by reason of any act performed or material furnished by Apple under this Agreement." (Underlining added)

I believe that the language of Section 5, Article III quoted above was not intended to include AFM fees. In my opinion Apple is responsible for those fees (and agreed to hold Capitol harmless therefrom) whether or not Apple (N.Y.) is a signatory to the AFM agreement.



Capitol.
A CAPITOL INDUSTRIES-EMI Company

MEMO

DATE May 25 1976
TO _____
OFFICE _____

FROM _____
OFFICE _____

SUBJECT: _____

CI CRI ADI

 CI CRI ADI

AFM CONTINGENCY ON BEATLE U.S. RECORDINGS

I. Beatles (Including McCartney Thru 12/31/74)

A. Mr. Mothersole confirmed on the telephone today that he has

1. Withheld from payments to Apple an amount to cover the entire contingency for the world including U.S. and Canada. (Clarification: In the case of U.S. and Canada, he has only withheld on the portion applicable to the monies sent to him by Capitol. In other words, he has not withheld anything from the royalties he has not received, i.e. held by Capitol or paid to the Sheriff.)
2. Reserved for the contingency on EMI's books for the entire world excluding U.S. and Canada.

B. R & L keeps a running worksheet for the contingency on U.S. and Canadian sales and Fitzgerald and Willms decide if there is enough in the unallocated reserves to cover it.

II. McCartney (1/1/75 On)

Accounting deducts the amount for the contingency from the McCartney statements and holds in a reserve account.

III. Harrison & Starr Special Agreements

A. Starr - "Blast From Your Past" Agreement

The agreement recognizes Starr is responsible for any AFM contingency and an amount is deducted from the net increased royalty to cover it. However, this deduction is treated as a reduction in royalty. The AFM contingency is recognized as part of I.B. above.

B. Harrison - "Extra Texture" Agreement

The agreement acknowledges that Harrison is responsible for AFM, but no specific deduction is authorized or withheld. The AFM contingency is recognized as part of I.B. above.

DATE June 20, 1975
TO _____
OFFICE _____ CI CRI ADI
FROM _____
OFFICE _____ CI CRI ADI
SUBJECT: RE: TRUST ETC. FEES ON BEATLE RECORDS



Capitol.
A CAPITOL INDUSTRIES-EMI Company

MEMO

Earlier we had computed the Trust fees and Special Payments Fund fees on the Beatle records, which include masters recorded in the U.S. and we "laid it aside" from the end of 1974 when we ceased sending funds to U.K. (July fees).

Klein's attachment stripped us of those funds. All sums owed (except the McCartney new contract fees on sales after 12/31/74) were paid to the Sheriff of New York County in latter part of May, 1975.

Wood computed trust etc. fees on the sales made for which we sent funds to U.K. June, 1974 and prior. Fortunately, he never was able to return those amounts, although before the attachment I had asked him to do so.



TO

DATE June 6, 1974

FROM

TITLE

SUBJECT AFM SPECIAL PAYMENTS &
TRUST FUNDS/THE BEATLES

Malcolm Brown advises that with respect to Beatle recordings in the United States, EMI has done the following:

1. Held back from the Receiver the AFM fees for world-wide sales (including United States and Canada)
2. Informed the Receiver of the potential liability and of the fact of holdback.
3. Set up an EMI reserve in the event EMI must pay the AFM and cannot recoup from the Beatles.

January 21, 1975

X

X

1. At the present time CRI is holding all Beatles royalties, rather than transmitting them to EMI pursuant to the direction from Apple Records, Inc. which was in effect since the inception of the 1969 contract with ARI.

2. Some of the post 1969 masters were recorded in the USA and therefore the records are subject to AFM Trust fees.

3. With Burdick's assistance we should immediately identify those masters and compute the Trust fees applicable to those records (i) from release date to the last month we transmitted royalties to EMI and (ii) from the latter date forward.

4. If, as and when we resume transmitting funds to EMI we will withhold the AFM Trust fees described in 3.(ii) above.

5. We will also notify Wood of the Trust fees resulting from the computations in 3.(i) above and he will endeavor to obtain Bank of England approval to transmit these funds back to CRI.



September 1, 1976

EMI Limited
The Quadrangle, Westmount Centre
Hayes Bridge, Uxbridge Road
Hayes, Middlesex UB4, OHB

Dear Geoff:

Re: Reserve for AFM on Beatle
Sales - U.S. & Canada

Attached are the detail working papers showing the computation of AFM fees deducted from Beatles' royalties through June 30, 1976, as follows:

U.S.	\$505,501.19
Canada	<u>56,787.03</u>
Total	<u><u>\$562,288.22</u></u>

These papers support the reserve for \$562,288.22 shown on the schedule of "Monies Payable to EMI with Respect to Beatle Recordings" as of June 30, 1976 previously sent to you on August 23, an additional copy of which is attached.

Sincerely,

MONIES PAYABLE TO EMI WITH RESPECT TO
BEATLE RECORDINGS (GROUP & SOLO) DISTRIBUTED IN
U.S. & CANADA AS OF JUNE 30, 1976 - WITHELD AND/OR PAID TO SHERIFF

BEATLE GROUP

SOLO ALBUMS

	Pre 11/30/66	Total	Post 11/30/66 80%	20%	Harrison	Lennon	McCartney	Starr	Misc. Charrebacks	TOTAL
Paid to Sheriff	\$ 825,278.89	\$ 1,223,519.51	\$ 978,815.61	\$ 244,703.90	\$499,265.32	\$760,338.37	\$382,473.68	\$476,307.28	\$(481.25)	\$4,166,701.4
Witheid as of 4/30/76	698,750.47	1,090,950.64	872,760.51	218,190.13	312,114.13	208,124.79		185,525.46	(108.35)	2,495,357.1
Total Roy. Pd. to Sheriff	\$1,524,029.36	\$2,314,470.15	\$1,851,576.12	\$462,894.03	\$811,379.45	\$968,463.16	\$382,473.68	\$662,832.74	\$(589.60)	\$6,663,058.5
of Witheid										
Roy. May & June 1976	1,448,728.55	752,332.36	601,865.89	150,466.47	(34,528.92)	(24,379.04)		(29,386.66)		2,112,766.2
Canadian Roy.-2nd Qtr. '76	91,628.07	66,942.30	53,553.84	13,388.46	(5,141.01)	3,374.77		(4,247.15)		152,556.4
Total Roy. Pd. to Sheriff	\$3,064,385.98	\$3,133,744.81	\$2,506,995.85	\$626,748.96	\$771,709.52	\$947,458.89	\$382,473.68	\$629,198.93	\$(589.60)	\$8,929,382.2
of Witheid										
Less Amt. Due Third Parties:										
Nemperor	\$ 62,938.75	\$ 95,223.26	\$ 76,178.62	\$ 19,044.64	\$ 45,813.66	\$ 50,706.29	\$ 19,123.68	\$ 35,923.30		\$ 309,728.5
Richard Perry					37,850.47	239,674.03	122,177.50	162,586.22		88,510.11
Reserve for AFM Fees	\$ 62,938.75	\$ 95,223.26	\$ 76,178.62	\$ 19,044.64	\$ 83,664.13	\$ 290,380.32	\$ 141,301.18	\$ 287,019.63		\$ 562,298.2
Total Due 3rd Parties	\$ 125,877.50	\$ 190,446.52	\$ 152,357.24	\$ 38,089.28	\$ 129,478.26	\$ 791,060.64	\$ 362,474.86	\$ 479,625.15		\$ 1,059,916.9
Bal. After Deduction for Amts. Due Third Parties	\$3,001,447.23	\$3,038,521.55	\$2,430,817.23	\$607,704.32	\$688,045.39	\$657,078.57	\$241,172.50	\$142,179.30	\$(589.60)	\$7,957,515.2
RECAP:										
Due EMI for Onward Transmission to: Apple Corps Ltd.	\$3,001,447.23	\$2,430,817.23	\$607,704.32	\$688,045.39	\$657,078.57	\$241,172.50	\$142,179.30	\$(589.60)		\$5,431,674.4
Harrison			\$151,926.08	\$151,926.08						839,971.4
Lennon			\$151,926.08	\$151,926.08						809,004.6
McCartney			\$151,926.08	\$151,926.08						393,093.5
T Starr			\$19,044.64	\$19,044.64						494,105.3
Nemperor	62,938.75	76,178.62	45,813.66	50,706.29	19,123.68	35,923.30	88,510.11	88,510.11		309,728.5
Richard Perry										88,510.11
Res. for AFM Fees										542,254.2
Total	\$3,064,385.98	\$3,506,995.85	\$626,748.96	\$771,709.52	\$947,458.89	\$382,473.68	\$629,198.93	\$(589.60)		\$8,929,382.2
Paid Sheriff										\$4,166,701.4
Additional Due Sheriff by 8/31/76										\$2,495,357.1
Total to Sheriff										\$6,663,058.5
Witheid										\$1,059,916.9
Total Witheid or Paid to Sheriff										\$7,722,975.4



Capitol

A CAPITOL INDUSTRIES-EMI Company

MEMO

DATE September 1, 1976

TO _____

OFFICE _____

 CI CRI ADI

FROM _____

OFFICE _____

 CI CRI ADI

SUBJECT:

AFM ON BEATLES

The following is a summary of the AFM status on (1) the Beatles (group and solo) and (2) Paul McCartney after 1/1/75.

We have withheld the following amounts from royalties as of 6/30/76:

- | | |
|---|--------------|
| 1) Beatle Royalties (U.S. & Canada) | \$562,288.22 |
| 2) MPL Communications, Inc. (U.S. & Canada) | \$104,815.32 |

(McCartney solo albums are included in 1) above through 12/31/74 and in 2) above thereafter.)

As the result of a meeting attended by Burdick, Culotta, Hawe, Tillinghast, Wisner and Willms, the Royalty Department was instructed to start reporting sales from May 1, 1976 on* to the AFM of Beatle product, due to the change in EMI's license as of that date from Apple to Capitol. (Sales of MPL Communications, Inc. product was not included in the instructions and they have not been reported on the AFM reports.)



MEMO

DATE April 5, 1979

TO _____

OFFICE _____ CI CRI CMP

FROM _____

OFFICE _____ CI CRI CMP

SUBJECT: RESERVES FOR AFM LIABILITY ON McCARTNEY SOLO PRODUCT SALES (U.S. & CANADA) THROUGH DECEMBER 31, 1974 (PRODUCT RECORDED IN U.S. ONLY)

McCartney solo product prior to 1/1/75 was recorded and sold under terms of the 9/1/69 Apple Records, Inc. N.Y. (Beatles) Agreement. As of that date, EMI sold all of its McCartney solo masters to MPL Communications, Inc. and from that date on sales were made in accordance with the MPL Communications, Inc. 1/1/75 Agreement. MPL was to be responsible for any AFM payments due on sales after that date. They instructed us in a letter to deduct the AFM liability from the quarterly royalty payments to MPL and to prepare the AFM reports and pay the AFM on MPL's behalf. This we have been doing regularly and should continue to do. I mention this only to clearly distinguish it from what has happened and what is to be done about the AFM liability on McCartney solo sales prior to 1/1/75.

Under the 9/1/69 Apple (N.Y.) Agreement it was Capitol's and EMI's understanding that Apple (N.Y.) would be responsible for any AFM liability should the Beatles record in the U.S. As it turned out, each of the Beatles did record solo product in the U.S. after that date. When we were unsuccessful in getting Apple to report and pay the AFM liability, we withheld the amount of the probable liability from Beatle royalties. Mr. Willms reserved a like amount so that we would be covered in any eventuality.

When the Apple (N.Y.) Agreement came to an end as of 4/30/76, and EMI began to license Capitol for Beatle product, we continued to deduct the AFM liability from the Beatles but from that date actually paid to the AFM the amounts becoming due after 5/1/76. The Royalty Department was supposed to keep reserving a like amount in the "safety" fund originated by Mr. Willms. We did not pay the AFM for the liability existing as of 4/30/76 and should continue to keep the liability on our books.

Attached to this memo is my memo of July 12, 1977 to Mr. Tillinghast that shows the AFM liability by individual Beatles as of that date. While it is not up to date as far as the other Beatles are concerned, it is, of course, up to date as far as McCartney is concerned since the figures were fixed as of 12/31/74. You will note we have the

SIGNED: _____

DATE April 5, 1979

TO _____
OFFICE _____ CI CRI CMP

FROM _____
OFFICE _____ CI CRI CMP

SUBJECT:

RESERVES FOR AFM LIABILITY ON McCARTNEY SOLO PRODUCT SALES (U.S. & CANADA) THROUGH DECEMBER 31, 1974 (PRODUCT RECORDED IN U.S. ONLY) Pg. 2

Exhibit G
2 of 2



MEMO

following liability for Paul McCartney solo recordings (both are on U.S. books):

U.S.	\$111,465.00
Canada	10,712.50
Total	<u>\$122,177.50</u>

There would be a like amount for McCartney product in the special reserve started by Mr. Willms.

Mr. Tillinghast has advised me that by the recent release of audit claims given by MPL, MPL has in effect acknowledged the correctness of the Capitol view that MPL and/or McCartney is liable for the AFM payments and Capitol is not. Accordingly, the \$122,177.50 in the Willms reserve is no longer required. We must, of course, keep the liability account until such time as a decision is made about paying.



MEMO

DATE June 20, 1979

TO _____

OFFICE _____ CI CRI CMP

FROM _____

OFFICE _____ CI CRI CMP

SUBJECT:

BEATLE - AFM

1. As of April 30, 1976, we had deducted from Beatle Royalties the following amounts:

	<u>McCartney</u>	<u>Lennon</u>	<u>Starr</u>	<u>Harrison</u>	<u>Total</u>
US	\$111,465.00	\$216,857.03	\$146,911.66	\$38,181.67	\$513,415.36
CAN	10,712.50	24,954.80	18,009.18	4,110.81	57,787.29
Total	<u>\$122,177.50</u>	<u>\$241,811.83</u>	<u>\$164,920.84</u>	<u>\$42,292.48</u>	<u>\$571,202.65</u>

This amount has not been paid to the AFM.

2. We instructed R & L to set up an additional reserve for a like amount, less the amount Ringo had specifically agreed to pay in the "Blast From Your Past" Agreement:

Total	\$571,202.65
Less "Blast From Your Past" amount	11,109.03
Net Reserve set up	<u>\$560,093.62</u>

3. Since that time, the additional reserve has been reduced by the McCartney portion due to the McCartney release:

Net Reserve set up	\$560,093.62
Less McCartney portion	122,177.50
Current Additional Reserve	<u>\$437,916.12</u>

4. We have continued to deduct the AFM amounts from the Beatle Royalties since April 30, 1976, and have reported the "sales" to the AFM beginning with May 1, 1976 on. The "sales" have been net negatives, so we have in effect added back some \$19,490.31 to subsequent Beatle Royalties, and recovered \$19,490.31 from the AFM against other artists sales.

5. Summary - We have the following two reserves:

- #1. \$571,202.65 with which to pay the AFM thru April 30, 1976 (Paragraph 1 above).
- #2. \$437,916.12 with which to reimburse the Beatles (other than for the McCartney solo albums) if they are not responsible for the AFM (Paragraph 2 & 3 above)



Capitol

A Capitol Industries Company

MEMO

DATE April 21, 1976

TO _____
OFFICE _____ CI CRI ADI FROM _____
OFFICE _____ CI CRI ADI

SUBJECT:

RAY PHILLIPS CONVERSATION WITH ME CONCERNING APPLE

Phillips, who is the principal auditor for the AFM, asked the following question:

Who is responsible for payments to the AFM on Apple Product?

My response to that was that the responsibility was Apple's.

Question: Most of their product was recorded in England and is not subject to the AFM agreement with Capitol.

Answer: I believe so, but believe your audit of Apple will clarify the matter.

DATE July 18, 1977

TO _____
OFFICE _____ CI CRI CMP

FROM _____
OFFICE _____ CI CRI CMP

SUBJECT: AFM LIABILITY ON BEATLES HOLLYWOOD BOWL CONCERT ALBUM
SMAS (4XW, 8XW) 11638



Capitol.
A CAPITOL INDUSTRIES/EMI Company

MEMO

I have been advised by Mr. Tillinghast that the Beatles Hollywood Bowl Concert album is subject to AFM fees. The expense is to be borne by the company selling the albums. It is not recoverable from Beatle royalties since it was recorded prior to 9/1/69.

30th May 1977.

Capitol Records, Inc.
1750 North Vine Street,
Hollywood,
California 90028,

Dear

Reserve for AFM on Hollywood Bowl Album

Thank you for sending me a copy of the letter you addressed on this subject to Geoff Mothersole on 26th May.

In view of the fact that the live recording was carried out by Capitol as distinct from E.M.I. Records I can understand the apprehension in regard to AFM although one must not forget that Capitol only carried out the recording at the request of and on behalf of E.M.I. Records Limited.

With regard to the very last sentence of your letter of the 26th May I find it difficult to think of a good reason for claiming that, if indeed AFM dues are payable, we could recover ~~it~~ from Beatles Royalties. There is no provision in the Beatles contract for us to make such a charge and as the recording was carried out at our request and not at the specific request of the Beatles it becomes even more difficult to see how we could justify the charge back, much as I would like to be able to!

Kindest regards,



Capitol.

COMMUNICATIONS REQUEST - TWX/TELEX

Exhibit K
1 of 3

TO: _____ DATE: June 25, 1979

LOCATION: Attn: _____

EMI Limited, London - Telex: (851) 22643

MESSAGE: Re Blast From Past Agreement. Signed by R. Starkey
(TYPE OR PRINT) but not dated. Paragraph 5 reads:

"5. You shall be solely responsible for any payments due

Mr. Richard Perry or any Artist other than you performing on the Album.

You and Capitol agree that Capitol shall withhold from moneys otherwise payable hereunder \$0.0344 for each copy of the Album sold to be applied

in satisfaction of any obligation to the AFM Special Payments Fund

and/or Music Performance Trust Fund in connection with the Album."

Note: The .0344 was not quite enough to cover AFM contingency. The

royalty on this album of .7384 is higher than the Beatle Schedule A

rates but not as high as Schedule B rates. Paragraph 4 reads as follows:

"4. If Schedule "B" to the Contract becomes operative, Capitol shall

be obligated to pay the higher of the amount provided in Schedule "B"

or the amount called for in this agreement."

Re Extra Texture Loka Productions Agreement of August 22, 1975. Signed

by EMI, Loka, Ganga, Harrison and Capitol. Paragraph 8 reads: "8. You

agreed to be responsible for all payments, if any, which may have to be

made to the AF of M Special Payments Fund or Music Performance Trust

Fund in connection with sales of the album regardless of where such

sales take place." The AFM deduction as of 3/31/77 was \$26,674.52.

Due to returns since then it has been reduced to approximately

Amount debited from *Whitell* *Trust*
 For *U.S. and Harmon Extra Feature*

A.F.M. Completion	2		3		4		5		6		7		8		Total
	U.S.	CAN	Total	U.S.	CAN	U.S.	CAN	U.S.	CAN	U.S.	CAN	U.S.	CAN		
Thru 3/31/77	2180330	222517	2402847	202895	25776	25776	25776	25776	228671	35748	466	35748	466	2667452	
6/30/77	(116745)	(15177)	(130522)	(2548)	(41)	(2630)	(41)	(2630)	(2630)	(822)	(34)	(896)	(34)	(134052)	
9/30/77	(26753)	(8824)	(25777)	(954)	(37)	(991)	(37)	(991)	(420)	(46)	01	(45)	(45)	(36813)	
12/31/77	(35264)	(3385)	(38569)	(384)	(31)	(420)	(31)	(420)	(367)	(115)	14	(101)	(101)	(39090)	
3/31/78	(28579)	(1474)	(30053)	(389)	22	(367)	22	(367)	(28)	(125)	17	(108)	17	(30528)	
6/30/78	(10010)	39048	29038	-	28	28	28	28	(2)	(63)	(02)	(05)	(05)	29071	
9/30/78	(2515)	83	(1662)	472	34	(108)	34	(108)	(108)	(09)	13	04	04	(1766)	
12/31/78	(2400)	2087	(313)	(108)	102	(66)	102	(66)	(180)	(11)	(01)	(12)	(12)	(331)	
3/31/79	1173	(261)	912	(60)	(120)	(180)	(120)	(180)	223945	(18)	(12)	(30)	(12)	102	
	1959067	230262	2195329	198265	25730	223945	25730	223945	34259	34259	462	34259	462	2454051	

PH
6/25/79
Referred to London
CHT:m
6/25/79

DATE April 26, 1977

TO _____
OFFICE _____ CI CRI CMP

FROM _____
OFFICE _____ CI CRI CMP

SUBJECT: AFM LIABILITY ON RINGO STARR "BLAST FROM YOUR PAST" ALBUM
REFERENCE: MY MEMO TO MR. TILLINGHAST, 4/4/77

Exhibit L
1 of 3



Capitol.
A CAPITOL INDUSTRIES/EMI Company

MEMO

I have been informed by Legal that we should do the following:

1. Continue to deduct the .0344 from the royalty to Apple per the "Blast From Your Past" agreement and credit the reserve.
2. Deduct the actual AFM fees, less the .0344, from the total Beatle royalties and credit the reserve.

This will eliminate the duplication.

An adjustment will now have to be made retroactive to the release of the album.



Capitol.
A CAPITOL INDUSTRIES EMI Company

MEMO

DATE April 4, 1977

TO _____ CI CRI CMP

FROM _____ CI CRI CMP

SUBJECT: AFM LIABILITY ON RINGO STARR "BLAST FROM YOUR PAST" ALBUM

Paragraph 5 of the contract between Ringo Starr and Capitol Records, Inc. states "You and Capitol agree that Capitol shall withhold from moneys otherwise payable hereunder \$0.0344 for each copy of the Album sold to be applied in satisfaction of any obligation to the AFM Special Payments Fund and/or Music Performance Trust Fund in connection with the Album."

We have been deducting the \$0.0344 from the royalty to Apple. This album is also covered by our AFM deduction that we withhold from payments to Apple. This has resulted in a double deduction. The \$0.0344 stated in the contract was an approximation. The actual AFM, of course, varies depending on the configuration, type of sale (regular or PX) and location (U.S. or Canada). The deduction provided for in the contract is, through September 31, 1976, \$3,318.00 short of the actual AFM liability (per sheet attached).

Question: Obviously, we cannot make the two deductions. Because of the wording in the contract, are we limited to the smaller amount rather than the actual AFM liability.

Until we hear from you, I have instructed Accounting to make no adjustment for the double deduction.

Kingo STAR AFM on Selection 3422

Start from Year Past 3422 11/75

	11-1-75 TO 9/31/76	U. S.		Canada			
		L. P.	TAPER	L. P.	TAPER		
		Reg	Px	Reg	Px	L. P.	TAPER
1	List Price	\$ 698	\$ 450	\$ 798	\$ 550	\$ 729	\$ 798
2	Less Pkg	105	67	200	137	TAX - 1.34	TAX - .33
3	Base Record	593	383	5985	413	1.04	1.90
4	AFM Rate	.116	.116	.01	.01	.116	.01
5	AFM	.0688	.0444	.0599	.0413	.0686	.0569
6	Applicable	7/10	7/10	7/10	7/10	7/10	7/10
7	* Rate	.0482	.0311	.0419	.0289	.0480	.0398
8							
9							
10	Sales 11/75 TO 9/76	163499	9960	76977	2224	25425	11545
11	* AFM Rate	788065	30976	322534	6427	122040	45947
12	Ringo .0344 AFM	562437	34262	264801	7651	87462	39715
13							
14	DIFF.	225628	< 3286 >	57733	< 1224 >	34578	6239
15							
16	DIFF owed CRI	\$ 319663					
17							
18							
19							
20							
21							
22	10-1-76 TO 12-31-76					\$ 798	\$ 898
23						TAX 37 TR	4
24						Pkg	
25						Base 647	640
26						.0116	.01
27						.0750	.0641
28						7/10	7/10
29	AFM-CRI Rates	.0482	.0311	.0419	.0289	.0525	.0449
30							
31	Sales 10/76 TO 12/76	6925	12	1771	19	< 663 >	84
32							
33	CAPITAL Payment	33379	37	7420	55	< 3481 >	37
34	Ringo .0344	23822	41	6092	65	< 2281 >	289
35							
36	DIFF	9557	< 04 >	1328	< 10 >	1200	88
37							
38	10-76 TO 12/76 DIFF owed CRI	12159					
39	11/75 TO 9/76	319663					
40		\$ 221822					

