

DATE May 12, 1981  
TO \_\_\_\_\_  
OFFICE \_\_\_\_\_



FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  CMP

MEMO

SUBJECT: CAPITOL PRODUCT DEFAULT PENALTY AGAINST APPLE (N.Y.) UNDER 9/1/69 AGREEMENT

The following material has been prepared at your direction.

1. Article II, paragraphs 6 and 7 (Pages 14 through 19) of the 9/1/69 Agreement required Apple to provide specified minimum numbers of product each contract year. However, if there was no default on a cumulative basis, there would be no default for that year even though no product might be delivered in that year. (The delivery requirements are attached as Exhibit B, pages 3 through 6.)
2. Capitol determined that there were defaults for the second and third years of the contract and so notified Apple.

See Exhibit A, 9/2/71, for second year.  
See Exhibit D, 9/1/72, for third year.

Apple did not comply and therefore penalties were due.

3. It was difficult to estimate the dollar amount of default and there is a potential problem in determining the base. This is explained in Exhibit C. The following were the estimates arrived at in Exhibit C:

	Per Capitol Definition of "Wholesale Price"	If "Wholesale Price" means "Dealer Price"
For Year Ended 8/31/71	\$241,000	\$104,000
For Year Ended 8/31/72	243,000	105,000
Total Penalty Due	<u>\$484,000</u>	<u>\$209,000</u>

These estimates did not include Canada. The figures were updated in June 1976 to include Canada (per Exhibit H), as follows:

For Year Ended 8/31/71	\$290,000	\$125,000
For Year Ended 8/31/72	273,000	118,000
Total Penalty Due	<u>\$563,000</u>	<u>\$243,000</u>

Capitol so advised Apple of the approximate \$560,000 (rounded) in Mr. Tillinghast's letter of June 15, 1976 (per Exhibit I).

4. As part of the proposed settlement of February 1973, Klein agreed to deliver two pick-up albums. It was not clear how these were to effect product delivery requirements and/or the previous defaults. See Exhibit E. When the settlement agreement was not accepted by Capitol, Mr. Tillinghast advised Apple on March 22, 1974 that the two pick-up albums applied to the 4th and 5th years pick-up delivery requirements (see Exhibit J).

SIGNED: \_\_\_\_\_



# MEMO

DATE May 12, 1981

TO \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  CMP

FROM \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  CMP

SUBJECT: CAPITOL PRODUCT DEFAULT PENALTY AGAINST APPLE (N.Y.) UNDER 9/1/69 AGREEMENT

5. Assuming the two March 1973 pick-up albums apply to the 4th and 5th years delivery requirements (see Exhibit G), it appeared there might be a default for the 6th year of the contract. However, Capitol failed to file a default notice on 9/1/75. This became of no significance, however, since Apple would have had until December 1, 1975 to comply and did, in fact, supply pick-up albums in October and November 1975.
6. A procedure for computing the Default Penalty accurately was written October 17, 1973. MIS was apparently not able to supply the needed information. (See Exhibit F)

LIST OF EXHIBITS

EXHIBIT

- A - 1 page - 9/2/71 Notice of Default for contract year ended 8/31/71
- B - 6 pages - 9/7/71 Memo re Product Delivery Requirements explains delivery default requirements
- C - 9 pages - 7/25/72 Memo re Delivery Default evaluates dollar amount of default penalty  
8/24/72 Request to explain and evaluate default amount  
8/29/72 Memo re problems in determining dollar amount of default
- D - 1 page - 9/1/72 Notice of Default for contract year ended 8/31/72
- E - 4 pages - 3/9/73 Questions effect of the March 1973 two pick-up albums on default penalty
- F - 6 pages - Procedure for computing default penalty
- G - 3 pages - Updated product delivery schedule through 1/26/76 (final year of contract)
- H - 2 pages - Updated to include Canada, 6/7/76
- I - 1 page - 6/15/76 Notice to Apple re amount of claim
- J - 2 pages - 3/22/74 Notice to Apple re effect of not accepting settlement agreement on default penalty

September 2, 1971

Registered Ail Mail  
Return Receipt Requested

Apple Records, Inc.  
c/o Abkco Industries  
1700 Broadway  
New York, New York 10020

Gentlemen:

You and Capitol Records, Inc. are parties to a contract dated September 1, 1969, being Capitol contract number 4971.

Pursuant to Paragraphs 6.a. and 6.f. of Article II of the aforesaid contract, notice is hereby given that you have failed to deliver the pick-up album called for during the period September 1, 1970 through August 31, 1971.

As a result there has been a delivery default within the meaning of said agreement and particularly Paragraph 6.f. of Article II thereof.

Pursuant to Paragraph 6.f. of Article II as aforesaid you have until December 2, 1971 to cure said delivery default.

Very truly yours,



MEMO

DATE September 7, 1971

TO \_\_\_\_\_  CI  CRI  ADI

OFFICE \_\_\_\_\_

FROM \_\_\_\_\_  CI  CRI  ADI

OFFICE \_\_\_\_\_

- SUBJECT:
1. PRODUCT DELIVERY REQUIREMENTS UNDER BEATLE 9-1-69 CONTRACT
  2. PROVISION FOR INCREASED ROYALTY RATE 9/1/72

The following remarks on the above subject were made in Len Wood's "Note for File" of 23rd August 1971 Re his meeting with Allen Klein on August 17, 1971:

1. Klein claimed that he could deliver new product in lieu of made-up (pickup) product in fulfilling the product delivery requirements under the contract.

We do not agree with this contention.

2. Wood thinks Klein took the position that the provision for increased royalties provided for in the contract at 9-1-72 become effective immediately upon delivery of a certain number of albums and that the delivery requirement will be met with the Madison Square Garden album. (This would make 10 albums; 7 new albums and 1 pick-up album already received plus the new Lennon and the Garden album would be 10.)

We do not agree with this contention either.

Our position is as follows:

1. Apple was required to deliver 4 new albums plus 2 pickup albums on a cumulative basis as of 8-31-71. They have delivered 7 new albums and 1 pickup album. They are therefore in default 1 pickup album. The contract requires Capitol to give Apple a request for compliance within 180 days after the date of default. Then Apple has 90 days to supply the missing pickup album.

If Apple does not provide the pickup album within the 90 day period, the default penalty goes into effect. This means that 1/3 of the increase in album royalty obtained under the new contract will be charged back to Apple for the term year of default (12 months ended August 31, 1971). (There will be no default penalty on the single record portion, since the single record delivery requirement has been met.)

Capitol has given Apple notice of the default (September 2nd). We should expect a pickup album sometime before December 3rd.

SIGNED: \_\_\_\_\_



**MEMO**

DATE September 7, 1971

TO \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

- SUBJECT:
1. PRODUCT DELIVERY REQUIREMENTS UNDER BEATLE 9-1-69 CONTRACT
  2. PROVISION FOR INCREASED ROYALTY RATE 9/1/72

Page 2

2. The contract provides for an increase in royalty rate effective 9-1-72 provided that "Capitol enjoys total net album sales under the agreement of at least 500,000 units of each of the last two new albums derived from Group III masters (new masters) which are released during the last year of the three year term."

The increased rate obviously does not go into effect until the start of the 4th year (9-1-72) and only then if the sales requirements of the last 2 albums released in the 3rd year are met.

(Wouldn't it be interesting for us if one of the last 2 albums released in the third year (9-1-71 thru 8-31-72 did not sell 500,000 units?)

I am attaching schedules showing the delivery agreement in the contract and the delivery performance to date. Also attached is a more detailed explanation of delivery requirements and the default penalty.

NOTES ON PRODUCT DELIVERY REQUIREMENTS  
UNDER BEATLE CONTRACT OF  
9-1-69

A. First Three Years of Contract (9-1-69 Thru 8-31-71)

1. In consideration for an increase in royalty rates on all Beatle product sold after 9-1-69 (either existing product or new product) the Beatles were required to deliver certain quantities of product (as shown on the attached schedules).
2. The new royalty rate was to be paid immediately on the assumption that the delivery requirements would be met.
3. If Apple defaults in delivery, Capitol must request Apple to comply within 180 days after the end of the year in which the default occurs.
4. If Apple does not deliver the requested product within 90 days after notice of default, Capitol may charge back the default penalty on a percentage of compliance basis per a schedule in the contract.
5. The delivery requirements are on a cumulative basis.
  - a. Apple could deliver all the product in the first year and no default would ever occur. (However, the contingent further increase in royalty rate for sales after 9-1-72 would not go in effect--see below.)
  - b. If a default does occur, the default penalty applies only to the year of default. Therefore, if there is a default in the second year (which is not made up within 90 days after notice), the penalty applies only to the second year sales (not the first or third). The third year would be judged on its own and if the required product were delivered in the third year no penalty would apply even though the cumulative goal for the three years might not have been achieved.

B. Contingent Increase in Royalty on Sales After 9-1-72 (Start of 4th Year of Contract)

1. The contract provides that "Solely upon the conditions that Apple is not then in default under any of the exclusivity

provisions of this agreement and that Capitol enjoys total net album sales under this agreement of at least 500,000 units of each of the last two new albums derived from ... (new masters) ... which are released during the last year of the first three years of the term, then in respect of all of Capitol's sales of Apple records after the expiration of the third year of the term, the prices to be paid shall be those specified in Schedule B attached..."

2. The royalty rates applicable to the first three years apply to subsequent years, until the required sale of 500,000 units each of the last 2 albums released in the third year have been reached. If these sales are reached prior to 9-1-72, the new rate starts immediately at 9-1-72. If not, the old rates continue until the required sales are reached. If the required sales are reached (there is no time limit set for reaching them), the rate increase is retroactive to 9-1-72.
3. The basic default provisions of the contract for each of the years after 9-1-72 apply, except that the default penalty is a percentage of the increase in royalty rates effective 9-1-72 over those effective 9-1-69 apply (rather than the increase over the original contracts).

Consequently, if the sales of the last two new albums released in the third year reached a sale of 500,000 units each, the new royalty rate goes into effect as of 9-1-72. Once the new rate goes into effect, the penalty is merely a percentage of the difference between the 9-1-72 rate and the 9-1-69 rate. If no product were delivered in the 4th year and the cumulative delivery figure was not enough to reach the cumulative goal, the penalty would be the differences between the 9-1-72 and 9-1-69 rates. If, however, the cumulative delivery figure was sufficient, no default penalty would apply.

APPLE AGREES TO DELIVER

1. During each year of the term through 8-31-75
  - 2 new albums
  - 1 Pick-Up Album
  - 3 New Single Records
2. At any time during the first three years of the term,
  - 1 Additional Pick-Up Album
3. During the final year of the term:
  - 1 New Album
  - 2 New Single Records

Definitions:

1. A "New Album" is an album consisting entirely of new masters (i.e., not heretofore released in the U.S., Canada and Mexico-- except that the Hollywood Bowl masters are specifically designated as old masters) except that not more than two selections contained therein may have been released as selections contained in a new single within six months prior to the date Apple delivers the masters comprising a new album to Captiol.
2. The signed contract states a "Pickup album" is an album consisting in whole or in part of selections derived from Beatle masters other than new masters." The unsigned amendment states a "Pickup album" is an album consisting completely of selections derived from Beatle masters other than new masters."
3. A "new single" is a single record consisting entirely of new masters, except that the selections contained therein may have been released as selections contained in a new album within six months prior to the date Apple delivers or designates the masters comprising a new single to Capitol.
4. An album comprising more than one LP record shall nevertheless be deemed one album.

DELIVERY AGREEMENT

	<u>New Albums</u>	<u>Pick Up Albums</u>	<u>Single</u>
9-1-69 thru 8-31-70	2	1	3
9-1-70 thru 8-31-71	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-71	4	2	6
9-1-71 thru 8-31-72	2	1	3
Anytime Prior to 8-31-72	<u>        </u>	<u>1</u>	<u>        </u>
Cum. as of 8-31-72	6	4	9
9-1-72 thru 8-31-73	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-73	8	5	12
9-1-73 thru 8-31-74	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-74	10	6	15
9-1-74 thru 8-31-75	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-75	12	7	18
9-1-75 thru 1-25-76	<u>1</u>	<u>-</u>	<u>2</u>
Cum. thru 1-25-76	<u>13</u>	<u>7</u>	<u>20</u>

DELIVERY TO DATE

10-1 -69 SO 383 Abbey Road(Beatles)	1		
10-13-69 Single 2654 (Beatles)			1
2-19-70 SMAS 3363 (McCartney)	1		
2-23-70 SW 385 Hey Jude (Beatles)		1	
3-16-70 Single 2764 (Beatles)			1
4-24-70 SW 3365 Sent.Journ.(Starr)	1		
5-25-70 Single 2832 (Beatles)	<u>1</u>		<u>1</u>
Cum. as of 8-31-70	3	<u>1</u>	3
9-28-70 SMAS 3368 Beauc.Blues(Starr)	1		
10-19-70 Single 2969 (Starr)			1
11-23-70 Single 2995 (Harrison)			1
11-30-70 STCH 639 (Harrison)	1		
12-9 -70 SW 3372 (Lennon)	1		
1-4 -71 Single 1827 (Lennon/Ono)			1
2-8 -71 Single 1828 (Harrison)			1
3-1 -71 Single 1829 (McCartney)			1
3-29-71 Single 1830 (Lennon/Ono)			1
4-14-71 Single 1831 (Starr)			1
5-17-71 SMAS 3375 Ram (McCartney)	1		
8-9 -71 Single 1836 (Harrison)			1
8-9 -71 Single 1837 Uncle Albert			1
Cum. as of 8-31-71	<u>7</u>	<u>1</u>	<u>12</u>



**MEMO**

DATE July 25, 1972  
TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

- References: a) My Memo 9-7-71 Re "Product Delivery Requirements Under Beatle 9-1-69 Contract"  
b) My Memo 2-3-72 Re "Apple Default on Pick-Up Album"

1. Delivery Default for Contract Year Ended 8-31-71

- a. Apple failed to deliver 1 pick-up album.
- b. Capitol requested compliance.
- c. Apple did not comply within the time limit but protested verbally that they were not in default since they had substituted a new album for the pick-up album.
- d. Capitol replied verbally that the contract clearly did not permit Apple to substitute a new album.
- e. The default penalty would amount to approximately \$240,000.
- f. Capitol has not as yet attempted to collect the default penalty.

2. Probable Delivery Default for Contract Year Ending 8-31-72

- a. It seems unlikely that Apple will deliver the 2 pick-up albums due in the contract year ending 8-31-72.
- b. Request for compliance cannot be served until 9-1-72 (Tillinghast will do so at that time), and Apple has 90 days in which to comply (approximately December 1, 1972).
- c. Apple will most likely continue their claim that they have substituted new albums for the pick-ups. (There are sufficient new albums to do so if it were agreeable on Capitol's part to allow the substitution.)
- d. I have roughly estimated this default penalty to be in the neighborhood of \$250,000. (Larger than last year due to larger percentage of failure--50% instead of 33 1/3% though on a smaller volume.)

SIGNED: \_\_\_\_\_



**MEMO**

DATE July 25, 1972

TO \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

3. Problem in Determining Exact Amount of Default Penalty

- a. The default penalty is a percentage of the difference in royalty due as computed under the current contract and the previous contracts. (Different previous contracts apply to certain product.)
- b. The largest volume of sales will apply to product falling under the wholesale contract dated 1/26/67.
- c. Under the wholesale contract, the royalty is a percentage of "such licensee's wholesale price". Capitol had determined the "wholesale price" to be the average price (on a quarterly basis) which CRDC realized for this type of product from its customers. Since it was an average, it changed every quarter due to the mix of business between various classes of accounts (dealers, sub-distributors, etc.). Should it be necessary to compute the actual default penalty, it will be necessary to go back and compute the average price for the years of default (by quarters?).
- d. Klein had contested Capitol's definition of "wholesale price" but agreed not to contest "the past" (prior to 9-1-69) as a condition to getting the 9-1-69 contract. It is possible (probable?) that Klein will protest the "wholesale price" used in determining a base for the default penalty (since this is a period after 9-1-69).

I am attaching an updated schedule of "Delivery Requirements" and "Delivery to Date" together with the "Notes on Product Delivery Requirements" which were attached to my original memo of 9/7/71.

DELIVERY AGREEMENT

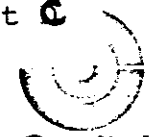
SCHEDULE Exhibit C

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	<u>New Albums</u>	<u>Pick Up Albums</u>	<u>Single</u>
9-1-69 thru 8-31-70	2	1	3
9-1-70 thru 8-31-71	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-71	4	2	6
9-1-71 thru 8-31-72	2	1	3
Anytime Prior to 8-31-72	<u>1</u>	<u>1</u>	<u>1</u>
Cum. as of 8-31-72	6	4	9
9-1-72 thru 8-31-73	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-73	8	5	12
9-1-73 thru 8-31-74	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-74	10	6	15
9-1-74 thru 8-31-75	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-75	12	7	18
9-1-75 thru 1-25-76	<u>1</u>	<u>-</u>	<u>2</u>
Cum. thru 1-25-76	<u>13</u>	<u>7</u>	<u>20</u>

DELIVERY TO DATE

10-1 -69	SO 383 Abbey Road (Beatles)	1		
10-13-69	Single 2654 (Beatles)			1
2-19-70	SMAS 3363 (McCartney)	1		
2-23-70	SW 385 Hey Jude (Beatles)		1	
3-16-70	Single 2764 (Beatles)			1
4-24-70	SW 3365 Sent. Journ. (Starr)	1		
5-25-70	Single 2832 (Beatles)			<u>1</u>
Cum. as of 8-31-70		<u>3</u>	<u>1</u>	<u>3</u>
9-28-70	SMAS 3368 Beauc. Blues (Starr)	1		
10-19-70	Single 2969 (Starr)			1
11-23-70	Single 2995 (Harrison)			1
11-30-70	STCH 639 (Harrison)	1		
12-9 -70	SW 3372 (Lennon)	1		
1-4 -71	Single 1827 (Lennon/Ono)			1
2-8 -71	Single 1828 (Harrison)			1
3-1 -71	Single 1829 (McCartney)			1
3-29-71	Single 1830 (Lennon/Ono)			1
4-14-71	Single 1831 (Starr)			1
5-17-71	SMAS 3375 Ram (McCartney)	1		
8-9 -71	Single 1836 (Harrison)			1
8-9 -71	Single 1837 Uncle Albert			<u>1</u>
Cum. as of 8-31-71		<u>7</u>	<u>1</u>	<u>12</u>
10-4- 71	Single 1840 (Lennon)			1
10- 71	SW 3379 Imagine (Lennon)	1		
12- 71	Single 1842 (Lennon/Ono)			1
12- 71	SW 3386 Wild Life (Wings)	1		
3-13-72	Single 1847 (Wings)			1
4- 3-72	Single 1849 (Starr)			1
5- 8-72	Single 1848 (Lennon/Ono)			1
6- 5-72	Single 1851 (Wings)			1
6- -72	SVBB 3392 Sometime in N.Y. (Lennon & Ono)	<u>1</u>		
Cum. as of 7-25-72		<u>10</u>	<u>1</u>	<u>18</u>
12-8 72	Single 1857 (Wings)			1
Cum as of 3 1 73		<u>10</u>	<u>1</u>	<u>19</u>



Capitol,  
A Capitol Industries Company

**MEMO**

DATE August 24, 1972  
TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

With reference to your memo dated July 25, 1972, please ensure that all necessary legal papers are duly served on Apple with respect to their probable delivery default of two pick-up albums due in the contract year ending August 31, 1972. Based on your assessment of the default penalties with respect to the last two years, we now have a claim on this account totaling approximately \$500,000. I think it is essential that you compute as accurately as possible the exact amount of default penalty based both on our definition of "wholesale price" and on Klein's different interpretation.

DATE August 25, 1972

TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

Both Mr. Tillinglast and I have it on our calendar to send Apple a notice on September 1, 1972 requesting compliance with the provision of the contract that they are in default on two pick-up albums due for the third year of the contract ended August 31, 1972. They have then 90 days in which to correct the default with no penalty to them.

Per your request, I will compute an estimate of the default penalty under our definition of wholesale price and on Klein's different interpretation.



**MEMO**

DATE August 29, 1972  
TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

As requested in your memo of 8/24/72 I have recomputed the delivery default penalty based on Capitol's definition of "wholesale price" and on a less favorable interpretation.

The results are as follows:

	<u>Capitol Definition of Wholesale Price</u>	<u>If Wholesale Price Means "Dealer" Price</u>
For Year Ended 8/31/71	\$241,000	\$104,000
For Year Ending 8/31/72	<u>243,000</u>	<u>105,000</u>
Total Penalty	<u>\$484,000</u>	<u>\$205,000</u>

To my knowledge, Klein has never specifically said what he thinks is the correct wholesale base. In true Klein fashion he merely said verbally, never in writing, Capitol had underpaid the Beatles by about two million dollars under the wholesale contract, due partly to using the wrong price and partly to other things. Remember, he did not have to support any of this at the time since he was merely using it as a wedge to get the new 9-1-69 contract. In return for the 25% increase in royalty over what Capitol had been paying under the wholesale contract, he agreed to waive his verbal claim for the two million dollars. A clause was then inserted in the "Artists' Acknowledgment" (Paragraph 3) that in consideration for entering into the new 9/1/69 contract they waived claims to royalty bases with respect to records manufactured and distributed prior to 9/1/69.

The problem as to what the base should be arises from the fact that the wholesale contract was with EMI and covered the entire world. In paragraph 5 it says the royalty shall be "...calculated on EMIR's English wholesale prices (i.e. price to dealers)...."

Note the "(i.e. price to dealers)".

However, it is the next paragraph #6 which deals with the U.S., Canada and Mexico. It starts out:

"Notwithstanding any other provisions of this Agreement the Artists shall be entitled to the following royalties with respect to such records made hereunder and sold by a licensee of EMIR in the U.S.A. and/or Canada, and/or Mexico ...."

SIGNED: \_\_\_\_\_

Capitol  
A Capitol Industries Company

MEMO

DATE August 29, 1972

TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

Page 2

From this opening sentence it should be pretty clear that paragraph 6 supersedes anything else as far as sales in the U.S.A., Canada and Mexico are concerned. Paragraph 6 then goes on to say "Royalties shall be based on such licensee's wholesale price for replacement records (less any applicable tax and computed in accordance with licensee's prevailing accounting practice for its top artists)..."

Please note the following from the previous quote:

- 1) the wholesale price is for replacement records (i.e., excludes package).
- 2) the bracketed explanation apparently attempts to define wholesale as "computed in accordance with licensee's prevailing accounting practice for its top artists".

When I asked Messrs. Livingston and Scott what they meant by this, they said this meant using the same wholesale base which Capitol used for its top artists. I pointed out to them that the wholesale price for Capitol's top artists (in fact for all artists having wholesale contracts) was the inter-company price (i.e. the price at which CRI sold to CRDC) for record and package. I informed them we did not have any wholesale contracts where the royalty was figured on the replacement record except the Beatle contract.

I was then instructed to use what would be the wholesale price (CRI to CRDC) for replacement records. About this time Len Wood got into the act and said he was very worried about using the inter-company price and stated he felt we might have to use "Dealer Price".

After much discussion, I was instructed to use the average wholesale price (the mix between dealer price and sub-distributor price) since this would represent fairly what Capitol (CRDC) actually took in from outsiders. Now we actually did not know the mix for Beatle product between dealer and sub-distributor, so we computed each quarter what the total mix for pop product was between dealer and sub-distributor and assumed the Beatle product mix would be the same. (We had reason to feel that this favored the Beatles since all sub-distributors took Beatle product and therefore a larger percentage of Beatle product was probably sold through sub-distributors than

SIGNED:



Capitol  
A Capitol Industries Company

MEMO

DATE August 29, 1972  
TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT: BEATLE CONTRACT - DELIVERY DEFAULT

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for the total pop product since many sub-distributors bought very little catalog product.)

It is my opinion that the base we used was in the spirit of the wording of paragraph 6 (U.S.A.) but I don't know what the judge might think of my opinion!

COMPUTATION OF DEFAULT PENALTY

	<u>2nd Contract Year</u> <u>Ended 8-31-71</u>	<u>3rd Contract Year</u> <u>Ending 8-31-72</u>
Total Beatle Royalties	\$4,218,000	\$2,681,803.05
Less Singles	<u>598,000</u>	<u>250,782.33</u>
Album Royalties (125%)	\$3,620,000	\$2,431,020.72
Est. Alb. Roy. at Old Rate(100%)	<u>2,896,000</u>	<u>1,944,816.58</u>
Increase in Album Royalties	<u>\$ 724,000</u>	<u>\$ 486,204.14</u>
Default Penalty	33 1/3% <u>\$ 241,333</u>	50% <u>\$ 243,102.07</u>

Royalties thru 7-31	\$2,639,803.05
Est. for August	<u>42,000.00</u>
Total Est.	<u>\$2,681,803.05</u>

If "Wholesale" price were  
"dealer" price, royalty  
would be:

Total Royalties at 125%	\$3,620,000	\$2,431,020.72
at 100%	\$2,896,000	\$1,944,816.58
Add 14.2%	<u>411,232</u>	<u>274,163.95</u>
	<i>80</i> <i>136</i> <i>91.36</i>	<u>2,220,980.53</u>
Increase in Album Royalty	<u>\$ 312,768</u>	<u>\$ 210,040.19</u>
Default Penalty	33 1/3% <u>\$ 104,256</u>	50% <u>\$ 105,020.10</u>

*Delivery Default*

Exhibit D

September  
1st  
1972

REGISTERED AIR MAIL  
RETURN RECEIPT REQUESTED

Apple Records, Inc.  
c/o Abkco Industries  
1700 Broadway  
New York, New York 10020

Gentlemen:

You and Capitol Records, Inc. are parties to a contract dated September 1, 1969, being Capitol Contract Number 4971.

Pursuant to Paragraphs 6.a., 6.b. and 6.f. of Article II of the aforesaid contract, notice is hereby given that you have failed to deliver the pick-up album called for during the period September 1, 1971 through August 31, 1972, (per Paragraph 6.a.) and the additional pick-up album called for during the period September 1, 1969 through August 31, 1972 (per Paragraph 6.b.).

As a result, there has been a delivery default within the meaning of said agreement and particularly Paragraph 6.f. of Article II thereof.

Pursuant to Paragraph 6.f. of Article II as aforesaid you have until December 1, 1972 to cure said delivery default.

Very truly yours,

Capitol  
A Capitol Industries Company

MEMO

DATE March 9, 1973

TO \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT: EFFECT OF THE TWO NEW BEATLE PICK-UP ALBUMS ON PRODUCT DELIVERY REQUIREMENTS

Apple is in default in delivery of one pick-up album each year for the 2nd and 3rd years of the contract ending August 31, 1971 and 1972, respectively. They were served proper notice to which they did not comply, and therefore the delivery default penalty was in order for each year.

It is my understanding that the above default penalties are being given up in return for certain things. I think we had better clarify for what.

For instance, if the two currently in process pick-up albums are being accepted to make up for the prior years' deficiency, Apple must still deliver a pick-up album for the current term year (the 4th year) ending this August 31. If my "for instance" is correct and they do not deliver another pick-up album by August 31, 1973, we would serve notice on September 1, 1973 and Apple would have until December 1, 1973 to comply without a default penalty being due. (Incidentally, I might mention at this point that the contract is very specific that a multiple disc set constitutes only 1 album for product delivery requirements. Therefore, although each of the two currently in process pick-up albums comprise two discs, each set constitutes only one album.)

Unless the settlement language is very clear, Apple may later argue that the two new pick-up albums are in fulfillment of pick-up requirements for the years ending August 31, 1973 and 1974!

There is no product delivery problems with singles or new albums since they have already met the singles requirement through 8-31-75 and the new album requirement through 8-31-74.

The attached is Schedule "A" showing the delivery requirements and delivery to date.

DELIVERY AGREEMENT

	<u>New Albums</u>	<u>Pick Up Albums</u>	<u>Single</u>
9-1-69 thru 8-31-70	2	1	3
9-1-70 thru 8-31-71	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-71	4	2	6
9-1-71 thru 8-31-72	2	1	3
Anytime Prior to 8-31-72	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-72	6	4	9
9-1-72 thru 8-31-73	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-73	8	5	12
9-1-73 thru 8-31-74	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-74	10	6	15
9-1-74 thru 8-31-75	<u>2</u>	<u>1</u>	<u>3</u>
Cum. as of 8-31-75	12	7	18
9-1-75 thru 1-25-76	<u>1</u>	<u>-</u>	<u>2</u>
Cum. thru 1-25-76	<u>13</u>	<u>7</u>	<u>20</u>

DELIVERY TO DATE

10-1 -69	SO 383 Abbey Road (Beatles)	1		
10-13-69	Single 2654 (Beatles)			1
2-19-70	SMAS 3363 (McCartney)	1		
2-23-70	SW 385 Hey Jude (Beatles)		1	
3-16-70	Single 2764 (Beatles)			1
4-24-70	SW 3365 Sent. Journ. (Starr)	1		
5-25-70	Single 2832 (Beatles)			1
Cum. as of 8-31-70		<u>3</u>	<u>1</u>	<u>3</u>
9-28-70	SMAS 3368 Beauc. Blues (Starr)	1		
10-19-70	Single 2969 (Starr)			1
11-23-70	Single 2995 (Harrison)			1
11-30-70	STCH 639 (Harrison)	1		
12-9 -70	SW 3372 (Lennon)	1		
1-4 -71	Single 1827 (Lennon/Ono)			1
2-8 -71	Single 1828 (Harrison)			1
3-1 -71	Single 1829 (McCartney)			1
3-29-71	Single 1830 (Lennon/Ono)			1
4-14-71	Single 1831 (Starr)			1
5-17-71	SMAS 3375 Ram (McCartney)	1		
8-9 -71	Single 1836 (Harrison)			1
8-9 -71	Single 1837 Uncle Albert			1
Cum. as of 8-31-71		<u>7</u>	<u>1</u>	<u>12</u>
10-4- 71	Single 1840 (Lennon)			1
10- 71	SW 3379 Imagine (Lennon)	1		
12- 71	Single 1842 (Lennon/Ono)			1
12- 71	SW 3386 Wild Life (Wings)	1		
3-13-72	Single 1847 (Wings)			1
4- 3-72	Single 1849 (Starr)			1
5- 8-72	Single 1848 (Lennon/Ono)			1
6- 5-72	Single 1851 (Wings)			1
6- -72	SVBB 3392 Sometime in N.Y. (Lennon & Ono)	<u>1</u>		
Cum. as of 7-25-72		<u>10</u>	<u>1</u>	<u>18</u>
12 8 72	Single 1857 (Wings)			1

March 13, 1973

X

X

APPLE NEW YORK & APPLE CALIFORNIA - SETTLEMENT

I have carefully read the letters you wrote (both dated February 27) regarding Apple New York and Apple California settlements. I believe that except for changes in the albums to which the higher royalty is to be applicable after February 28, 1973 they do what we tried to accomplish with perhaps one reservation:

I do not know how many of the pickup albums we intended to waive in this negotiation.

(1) were we in effect saying that the 2-2 disk sets released in 1973 would make up for the 3 albums defaulted on in 1971 and 1972? And that the obligation for pickup albums due in the year September 1, 1972 - August 31, 1973 and in following years remain unaffected?

or

(2) were we waiving the 1971 and 1972 defaults so that these 2 would fulfill obligations for the pickup albums due in the years:

September 1, 1972 - August 31, 1973

September 1, 1973 - August 31, 1974?

What was written probably does "(2)".

By copy of this memo I am requesting Mr. Menon to indicate what he thought we were doing. After the Klein rewrite is received we can make revisions if it does what we did not intend to do.

---

Capitol  
A Capitol Industries Company

MEMO

DATE March 15, 1973  
TO I  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
FROM \_\_\_\_\_  
OFFICE \_\_\_\_\_  CI  CRI  ADI   
SUBJECT: APPLE NEW YORK & APPLE CALIFORNIA - SETTLEMENT

On March 13 I discussed with Mr. Menon the contents of my memo to you of that date same subject (copy attached).

1. Menon intended that we should do No. (1) in that memo - allow the 2-2 disk pickup albums (to be released in 1973) to make up for the 3 pickup albums defaulted in 1971 and 1972.

2. Without admitting that what is written in the letter probably does No. (2) if the chips were down in a negotiation he would accede to No. (2).

3. If Klein's rewrite of your letters is extensive and additional negotiations are thus made necessary we should try to go back to the concept in No. (1). But otherwise stay with No. (2) and we will argue about what it means when and if the need arises. If it means that Apple only owes one more pickup (i.e. the one for September 1, 1974 - August 31, 1975) so be it.

4. Menon thinks that (i) after using 48 tracks for these 4 disks there is not much of value in the remaining tracks, (ii) because the Hollywood Bowl concert is a rehash of things some of which are twice released it would not be of any great value and (iii) the quality of the recording of the Shea Stadium concert is so poor that the 4 men would probably never agree to its being released.



MEMO

DATE October 17, 1973

TO \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

FROM \_\_\_\_\_

OFFICE \_\_\_\_\_  CI  CRI  ADI

SUBJECT:

PROCEDURE FOR COMPUTING DEFAULT PENALTY UNDER BEATLE CONTRACT OF 9/1/69

In consideration for an increase in royalty rates on all Beatle product sold after 9/1/69 (either product in release at 8/31/69 or product released after 8/31/69) Apple was required to deliver certain quantities of product each year per Exhibits A (Singles) and Exhibit B (Albums) attached. You will note Apple has complied as follows:

<u>Term</u>	<u>Singles</u> (Exhibit A)	<u>Albums</u> (Exhibit B)
1st year - 9/1/69 thru 8/31/70	100%	100%
2nd year - 9/1/70 thru 8/31/71	100%	66 2/3%
3rd year - 9/1/71 thru 8/31/72	100%	50%
4th year - 9/1/72 thru 8/31/73	100%	100%

The contract provides that in case of a default in delivery, a charge-back shall be made of a percentage of the increase in the royalty paid under the 9/1/69 contract over that which would have been paid under the contracts (2) in effect prior to 9/1/69. Since there is a default on albums delivery for the 2nd and 3rd years of the contract (there is no default on singles), we should compute the penalty on album royalties paid for those two years and charge back to Apple.

The default penalty will be as follows:

- 9/1/70 thru 8/31/71 - 1/3 of the increase in album royalty
- 9/1/71 thru 8/31/72 - 1/2 of the increase in album royalty

In order to determine the increase in royalty, it will be necessary to recompute the royalty at the rates that would have been in effect if the 9/1/69 contract had not been made. Prior to 9/1/69 there were two contracts in effect (see Exhibit C attached).

- Original Beatle contract (Covering 7 albums and their tape counterparts).
- 7/1/65 Wholesale Contract (Covering 7 albums and their tape counterparts).

There were two albums that combined masters from both contracts.

In addition, the albums released after 9/1/69 are deemed to be covered by the 7/1/65 wholesale contract for purpose of determining what the rate would have been under the prior contract.

SIGNED:



**MEMO**

DATE October 17, 1973  
 TO \_\_\_\_\_  
 OFFICE \_\_\_\_\_  CI  CRI  ADI   
 FROM \_\_\_\_\_  
 OFFICE \_\_\_\_\_  CI  CRI  ADI   
 SUBJECT: \_\_\_\_\_

PROCEDURE FOR COMPUTING DEFAULT PENALTY UNDER BEATLE CONTRACT OF 9/1/69

Page 2

The following are some notes about the contracts:

1. The Original Contract (1964)

Under the original contract Capitol submitted the gross sales units to EMI each quarter, and EMI billed Capitol for the royalties due. The rates were, I believe, flat rates and applied to some percentage (85 or 90%) of the gross sales. I have talked to Mr. Hawe and he is verifying this and will determine the cent rates and the percentage of gross sales units to be used. (Under the 9/1/69 contract we pay on net sales units. Consequently, the sales units will be different in computing the royalty under the original contract.) (Also, the billing from EMI is in £ and Schillings and so there is a conversion exchange problem!)

2. The Wholesale Contract 7/1/65

Under the 7/1/65 wholesale contract, the royalty is 10% on the first 30,000 units and 17½% on the balance of the average wholesale price of the bare record in disc albums. (The tape album counterparts receive the same cent royalty as the disc.)

The royalty was payable quarterly and was based on the average wholesale price of the bare disc for the quarter and consequently the cents varied every quarter. It also varied within the quarter if the dealer price changed during the quarter.

The average wholesale price was computed as follows. I have shown the actual prices so computed for the quarter ended 6/30/69 for an ST prefix album:

Total List Price	\$4.98
Less Package	.54
Total Bare Record Price	<u>\$4.44</u>
Less Dealer Discount (37½%)	1.66
Dealer Price (of Bare Record)	<u>\$2.78</u>
Less Album Discount (Average) 12%	.3336
Less Trade Discount (Average) 5%	.1390
Less Disc Discount (Average) .2%	.0056
Less Bulk Discount 3.3%	<u>.0917</u>
Net Before Cash Discount	<u>\$2.2101</u>
Less Cash Discount 1.7%	.0376
Net Wholesale Price (Average)	<u><u>\$2.1725</u></u>

SIGNED:



**MEMO**

DATE October 17, 1973

TO \_\_\_\_\_  CI  CRI  ADI

OFFICE \_\_\_\_\_

FROM \_\_\_\_\_  CI  CRI  ADI

OFFICE \_\_\_\_\_

SUBJECT: PROCEDURE FOR COMPUTING DEFAULT PENALTY UNDER BEATLE CONTRACT OF 9/1/69

It will therefore be necessary to compute the net wholesale price for each prefix sold during the following default periods:

- |                         |                                 |
|-------------------------|---------------------------------|
| Sept. (1 Mo. only) 1970 | July 1 to Sept. 30 1971         |
| Oct. 4 to Dec. 31 1970  | Oct. 1 to Dec. 31 1971          |
| Jan. 1 to Mar. 31 1971  | Jan. to Mar. 31 1972            |
| Apr. to June 30 1971    | Apr. 1 to Jun. 30 1972          |
|                         | Jul. 1 to Aug. 31 1972 (2 Mos.) |

Mr. Isaacson is investigating whether the net wholesale price for each prefix can be determined as in the above example for the periods in question. If not, an acceptable alternative will have to be developed.

3. Canada

The above notes apply to Canada as well as to the U.S. I suggest we complete the U.S. and review before starting the Canadian.

I am in the process of preparing a step by step procedure and planned to attach it to this memo. However, inasmuch as I cannot complete the procedure until I have the answer to a few fundamental questions raised in this memo, the procedure will follow at a later date.

APPLE DELIVERY REQUIREMENT & COMPLIANCE UNDER  
9-1-69 BEATLE CONTRACT

<u>Contract Period</u>	<u>SINGLES</u>		<u>Compliance</u>		<u>Default</u>
	<u>Requirement</u>		<u>Year</u>	<u>Cum.</u>	
<u>1st Year 9-1-69 Thru 8-31-70</u>					
10/13/69 2654 (Beatle)			1		
3/16/70 2764 (Beatle)			1		
5/25/70 2832 (Beatle)			1		
Total as of 8/31/70	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>0</u>
<u>2nd Year 9-1-70 Thru 8-31-71</u>					
10/19/70 2969 (Starr)			1		
11/23/70 2995 (Harrison)			1		
11/30/70 1827 (Lennon/Ono)			1		
2/08/71 1828 (Harrison)			1		
3/01/71 1829 (McCartney)			1		
3/29/71 1830 (Lennon/Ono)			1		
4/14/71 1831 (Starr)			1		
8/09/71 1836 (Harrison)			1		
8/09/71 1837 (McCartney)			1		
Total as of 8/31/71	<u>3</u>	<u>6</u>	<u>9</u>	<u>12</u>	<u>0</u>
<u>3rd Year 9-1-71 Thru 8-31-72</u>					
10/04/71, 1840 (Lennon)			1		
12/--/71 1842 (Lennon/Ono)			1		
3/13/72 1847 (McCartney/Wings)			1		
4/03/72 1849 (Starr)			1		
5/08/72 1848 (Lennon/Ono)			1		
6/05/72 1851 (McCartney/Wings)			1		
Total as of 8/31/72	<u>3</u>	<u>9</u>	<u>6</u>	<u>18</u>	<u>0</u>
<u>4th Year 9-1-72 Thru 8-31-73</u>					
12/08/72 1857 (McCartney/Wings)			1		
4/16/73 1861 (McCartney/Wings)			1		
5/14/73 1862 (Harrison)			1		
6/18/73 1863 (McCartney/Wings)			1		
Total as of 8/31/73	<u>3</u>	<u>12</u>	<u>4</u>	<u>22</u>	<u>0</u>
5th Year 9-1-73 Thru 8-31-74	<u>3</u>	<u>15</u>			
6th Year 9-1-74 Thru 8-31-75	<u>3</u>	<u>18</u>			
7th Year 9-1-75 Thru 1-25-76	<u>2</u>	<u>20</u>			

**APPLE DELIVERY REQUIREMENT & COMPLIANCE UNDER  
9-1-69 BEATLE CONTRACT**

Contract Period	ALBUMS				Compliance				Default		
	Requirement		Cum.		Year		Cum.		New	P.U.	%
	Year	New P.U.	New P.U.		New P.U.	New P.U.	New P.U.	New P.U.			
<u>1st Year 9-1-69 Thru 8-31-70</u>											
10/1/69 SO 383 (Beatles)					1						
2/19/70 SMAS 3363 (McCartney)					1						
2/23/70 SW 385 (Beatles)						1					
4/24/70 SW 3365 (Starr)					1						
Total as of 8/31/70	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>0</u>	<u>0</u>	
<u>2nd Year 9-1-70 Thru 8-31-71</u>											
9/28/70 SMAS 3368 (Starr)					1						
11/30/70 STCH 639 (Harrison)					1						
12/09/70 SW 3372 (Lennon)					1						
5/17/71 SMAS 3375 (McCartney)					1						(B)
Total as of 8/31/71	<u>2</u>	<u>1</u>	<u>4</u>	<u>2</u>	<u>4</u>	<u>0</u>	<u>7</u>	<u>1</u>	<u>0</u>	<u>1</u>	1/3
<u>3rd Year 9-1-71 Thru 8-31-72</u>											
10/--/71 SW 3379 (Lennon)					1						
12/--/71 SW 3386 (McCartney)					1						
6/--/72 SVBB 3392 (Lennon/Ono)					1						(B)
Total as of 8/31/72	<u>2</u>	<u>2</u>	<u>6</u>	<u>4</u>	<u>3</u>	<u>0</u>	<u>10</u>	<u>1</u>	<u>0</u>	<u>2</u>	1/2
<u>4th Year 9-1-72 Thru 8-31-73</u>											
3/--/73 SKBO 3403 (Beatles)						1					
3/--/73 SKBO 3404 (Beatles)						1					
4/--/73 SMAL 3409 (McCartney)					1						
5/--/73 SMAS 3410 (Harrison)					1						
Total as of 8/31/73	<u>2</u>	<u>1</u>	<u>8</u>	<u>5</u>	<u>2</u>	<u>2</u>	<u>12</u>	<u>3</u>	<u>0</u>	<u>0</u>	
5th Year 9-1-73 Thru 8-31-74	<u>2</u>	<u>1</u>	<u>10</u>	<u>6</u>							
6th Year 9-1-74 Thru 8-31-75	<u>2</u>	<u>1</u>	<u>12</u>	<u>7</u>							
7th Year 9-1-75 Thru 1-25-76	<u>1</u>	<u>0</u>	<u>13</u>	<u>7</u>							

NOTES: A. One pick-up album was required in each of the first 3 years of the contract plus one additional pick-up album at any time prior to 8/31/72. Since the additional pick-up album was not delivered during the first 2 years of the term, two pick-up albums were required in the 3rd year of the term.

B. The default penalty is a percentage of the increase in album (disc and tape) royalty paid under the 9/1/69 contract over what would have been paid in album royalty (disc & tape) under the contracts in effect prior to 9/1/69.

The penalty percentage is computed as follows:	<u>2nd Yr.</u>	<u>3rd Yr.</u>
Required Delivery:		
New Albums	2	2
Pick-ups...	<u>1</u>	<u>2</u>
Total	<u>3</u>	<u>4</u>
Default:		
Pick-ups	1	2
Percentage of Default to Requirement	<u>1/3</u>	<u>1/2</u>

(Note: The extra new albums cannot be substituted for the default in pick-ups.)

BEATLE ALBUMS

Beatles albums released prior to 7-1-68 were on the Capitol label. Beatle albums released after 7-1-68 were on the Apple label, although Capitol series selection numbers continued to be used through February 1970. After February 1970 new Beatle albums were issued in the Apple 3300 series. Prior to 9-1-69 sales were accounted for in accordance with terms of contract in effect at time album was recorded. After 9-1-69 all sales were accounted for under terms of the 9-1-69 contract.

<u>SEL.</u>	<u>DISC</u>	<u>CASS.</u>	<u>CART.</u>	<u>TITLE</u>	<u>RELEASE DATE</u>
<u>Selections Recorded Under Original Contract:</u>					
2047	(S)T	4XT	8XT	Meet the Beatles	1- 64
2080	(S)T	4XT	8XT	The Beatles 2nd Album	4- 64
2108	(S)T	4XT	8XT	Something New	7- 64
2222	(S)TBO	-	-	The Beatles Story	11- 64
2228	(S)T	4XT	8XT	Beatles 65	12- 64
2309	(S)T	4XT	8XT	The Early Beatles	3- 65
2358	(S)T	4XT	8XT	Beatles VI	6- 65
<u>Selection Recorded 1/12 Under Pence; 6/12 Under Wholesale; 5/12 Non-Beatle:</u>					
2386	(S)MAS	4XT	8XT	Help	8- 65
<u>Selections Recorded 1/3 Under Pence &amp; 2/3 Under Wholesale:</u>					
358	-	4X3T	8X3T	Deluxe Tape Pack Containing 2047, 2553 & 2835	9- 69
<u>Selections Recorded Under Wholesale Contract of 7-1-65:</u>					
2442	(S)T	4XT	8XT	Rubber Soul	12- 65
2553	(S)T	4XT	8XT	Yesterday & Today	6- 66
2576	(S)T	4XT	8XT	Revolver	8- 66
2653	(S)MAS	4XT	8XT	Sgt. Peppers' Lonely Heart	6- 67
2835	(S)MAL	4XT	8XT	Magical Mystery Tour	12- 67
101	SWBO	4XWB	8XWB	The Beatles	11- 68
153	SW	4XW	8XW	Yellow Submarine	1- 69
<u>Selections Recorded Under 9-1-69 Contract:</u>					
383	SO	4XT	8XT	Abbey Road- The Beatles	10-01-69
385	SW	4XT	8XT	Hey Jude - The Beatles	2-23-70
3363	SMAS	4XT	8XT	McCartney - Paul McCartney	2-19-70
3365	SW	4XW	8XW	Sentimental Journey - Ringo Starr	4-24-70
3368	SMAS	4XT	8XT	Beaucoups of Blues - Ringo Starr	9-28-70
639	STCH	4XWB	8XWB	All Things Must Pass - Geo. Harrison	11-30-70
3372	SW	4XW	8XW	John Lennon/Plastic Ono. - John Lennon	12-09-70
3375	SMAS	4XW	8XW	Ram - Paul & Linda McCartney	5-17-71
3379	SW	4XW	8XW*	Imagine - John Lennon	9- 71
3386	SW	4XW	8XW	Wings Wild Life - Paul McCartney	12- 71
3392	SVBB	4XAB	8XAB	Sometime in New York - John & Yoko	6- 72
3403	SKBO	4X2K	8XKB	1962-1966 - The Beatles	3- 73
3404	SKBO	4X2K	8XKB	1967-1970 - The Beatles	3- 73
3409	SMAL	4XW	8XW	Red Rose Speedway - Paul McCartney	4- 73
*Also Q8W - Quadraphonic Tape					
3410	SMAS	4XW	8XW	Living in the Material World-Harrison	5- 73
3413	SWAL	4XW	8XW	Ringo - Ringo Starr	10- 73
3414	SW	4XW	8XW	Mind Games - John Lennon	10- 73

Revised 10/2/73



Capitol,  
A CAPITOL INDUSTRIES EMI Company

**MEMO**

DATE January 21, 1976  
 TO \_\_\_\_\_  
 OFFICE \_\_\_\_\_  CI  CRI  ADI   
 FROM \_\_\_\_\_  
 OFFICE \_\_\_\_\_  CI  CRI  ADI   
 SUBJECT: \_\_\_\_\_

FULLFILLMENT OF PRODUCT DELIVERY REQUIREMENTS AND DEFAULT PENALTIES

Attached is a schedule showing the product delivery requirement and actual delivery under the Beatle 9/1/69 contract (Apple-N.Y.).

You will note there was no default in the delivery of new albums or singles.

The default in delivery of pick-up albums is as follows:

	<u>Required</u>	<u>Delivered</u>	<u>Default</u>		<u>Penalty</u>
			<u>Year</u>	<u>Cum.</u>	<u>Due</u>
1st Year (9/1/69 - 8/31/70)	1	1	--	--	
2nd Year (9/1/70 - 8/31/71)	1	0	1	1	X
3rd Year (9/1/71 - 8/31/72)	2	0	2	3	X
4th Year (9/1/72 - 8/31/73)	1	2	(1)	2	
5th Year (9/1/73 - 8/31/74)	1	--	1	3	
6th Year (9/1/74 - 8/31/75)	1	--	1	4	X
7th Year (9/1/75 - 1/26/76)	--	2	(2)	2	
<b>Total</b>	<u>7</u>	<u>5</u>	<u>2</u>		

It seems to me default penalties are due for 2nd, 3rd and 6th years of term, assuming the two pick-ups delivered in the 4th year of term satisfy the 4th and 5th years of term.

FULLFILLMENT OF PRODUCT DELIVERY REQUIREMENTS  
BEATLE 9/1/69 CONTRACT

Rel. Date	Product	New Albums			Pick-up Albums			Singles		
		Req.	Del.	Def.	Req.	Del.	Def.	Req.	Del.	Def.
10-01-69	SO 383 Abbey Road (Beatles)		1							
10-13-69	Single 2654 (Beatles)								1	
2-19-70	SMAS 3363 (McCartney)		1							
2-23-70	SW 385 Hey Jude (Beatles)					1				
3-16-70	Single 2764 (Beatles)								1	
4-24-70	SW 3365 Sent. Journ. (Starr)		1							
5-25-70	Single 2832 (Beatles)								1	
Cum. as of 8/31/70		<u>2</u>	<u>3</u>	<u>-</u>	<u>1</u>	<u>1</u>	<u>-</u>	<u>3</u>	<u>3</u>	<u>-</u>
9-28-70	SMAS 3368 Beauc. Blues (Starr)		1							
10-19-70	Single 2969 (Starr)								1	
11-23-70	Single 2995 (Harrison)								1	
11-30-70	STCH 639 (Harrison)		1							
12-09-70	SW 3372 (Lennon)		1							
2-04-71	Single 1827 (Lennon/Ono)								1	
2-08-71	Single 1828 (Harrison)								1	
3-01-71	Single 1829 (McCartney)								1	
3-29-71	Single 1830 (Lennon/Ono)								1	
4-14-71	Single 1831 (Starr)								1	
5-17-71	SMAS 3375 Ram (McCartney)		1							
8-09-71	Single 1836 (Harrison)								1	
8-09-71	Single 1837 Uncle Albert								1	
Cum. as of 8/31/71		<u>4</u>	<u>7</u>	<u>-</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>6</u>	<u>12</u>	<u>-</u>
10-04-71	Single 1840 (Lennon)								1	
10- 71	SW 3379 Imagine (Lennon)		1							
12- 71	Single 1842 (Lennon/Ono)								1	
12- 71	SW 3386 Wild Life (Wings)		1							
3-13-72	Single 1847 (Wings)								1	
4-03-72	Single 1849 (Starr)								1	
5-08-72	Single 1848 (Lennon/Ono)								1	
6-05-72	Single 1851 (Wings)								1	
6- 72	SVBB 3392 Sometime in N.Y. (Lennon & Ono))		1							
Cum. as of 8/31/72		<u>6</u>	<u>10</u>	<u>-</u>	<u>4</u>	<u>1</u>	<u>3</u>	<u>9</u>	<u>18</u>	<u>-</u>
12-08-72	Single 1857 (Wings)								1	
3- 73	SKBO 3403 1962-64 (Beatles)					1				
3- 73	SKBO 3404 1967-70 (Beatles)					1				
4- 73	SMAL 3409 Red Rose (McCartney)		1							
4-16-73	Single 1861 (McCartney)								1	
5-14-73	Single 1862 (Harrison)								1	
5- 73	SMAS 3410 Living in Mat. World (Harrison)		1							
6-18-73	Single 1863 (Wings)								1	
Cum. as of 8/31/73		<u>8</u>	<u>12</u>	<u>-</u>	<u>5</u>	<u>3</u>	<u>2</u>	<u>12</u>	<u>22</u>	<u>-</u>

Rel. Date	Product	New Albums			Pick-up Albums			Singles				
		Req.	Del.	Def.	Req.	Del.	Def.	Req.	Del.	Def.		
10-01-73	Single 1865 (Starr)									1		
10-11-73	Single 1868 (Lennon)									1		
10- 73	SWAL 3413 Ringo (Starr)			1								
10- 73	SW 3414 Mind Games (Lennon)			1								
11-05-73	Single 1869 (McCartney)									1		
5 11- 73	SO 3415 Band on Run (McCartney)			1								
12-03-73	Single 1870 (Starr)									1		
1-28-74	Single 1871 (McCartney)									1		
2-18-74	Single 1872 (Starr)									1		
4-08-74	Single 1873 (McCartney)									1		
Cum. as of 8/31/74		<u>10</u>	<u>15</u>	<u>-</u>	<u>6</u>	<u>3</u>	<u>3</u>	<u>15</u>	<u>29</u>	<u>-</u>		
9-23-74	Single 1874 (Lennon)									1		
9- 74	SW 3416 Walls&Bridges (Lennon)			1								
11-04-74	Single 1875 (McCartney)									1		
11-11-74	Single 1876 (Starr)									1		
11-18-74	Single 1877 (Harrison)									1		
11- 74	SW 3417 Goodnight Vienna (Starr)			1								
6 12-16-74	Single 1878 (Lennon)									1		
12-23-74	Single 1879 (Harrison)									1		
12- 74	SMAS 3418 Dark Horse (Harrison)			1								
1-27-75	Single 1880 (Starr)									1		
3-10-75	Single 1881 (Lennon)									1		
3- 75	SK 3419 Rock 'N' Roll (Lennon)			1								
6-02-75	Single 1882 (Starr)									1		
6-02-75	Single 1883 (Lennon)									1		
Cum. as of 8/31/75		<u>12</u>	<u>19</u>	<u>-</u>	<u>7</u>	<u>3</u>	<u>4</u>	<u>18</u>	<u>39</u>	<u>-</u>		
9-15-75	Single 1884 (Harrison)									1		
9- 75	SW 3420 Extra Texture (Harrison)			1								
10- 75	SW 3421 Shaved Fish (Lennon)						1					
11- 75	SW 3422 Blast from Past (Starr)						1					
12-08-75	Single 1885 (Harrison)									1		
Cum. as of 1/26/76		<u>13</u>	<u>20</u>	<u>-</u>	<u>7</u>	<u>5</u>	<u>2</u>	<u>20</u>	<u>41</u>	<u>-</u>		



Capitol  
A CAPITOL INDUSTRIES EMI Company

MEMO

DATE June 7, 1976

TO OFFICE  CI  CRI  ADI

FROM OFFICE  CI  CRI  ADI

SUBJECT: APPLE (NEW YORK) AND (CALIF.)

- (1) BEATLE CONTINGENT RATE INCREASE
- (2) DEFAULT PENALTY, AND
- (3) PLASTIC ONO BAND CLAIM

Attached are the following schedules (U.S. & Canada):

Contingent Increase in Beatle Royalties  
Computation of Default Penalty  
John Lennon Albums and Singles (Plastic Ono Band Claim)

They may be summarized as follows:

	Sept. 1, 1972 to April 30, 1976 On All Product	March 1, 1973 to April 30, 1976 Excluding 2 Pick-ups
Contingent Increase in Beatle Roy. <u>\$3,940,000</u>		<u>\$2,650,000</u>
Default Penalty 2nd Yr. \$290,000		
3rd Yr. <u>270,000</u>	<u>\$ 560,000</u>	
 Plastic Ono Band		
At Apple (Calif.) Rate \$3,940,000		
At Apple (N.Y.) Rate <u>1,690,000</u>		
Gain to Apple <u>\$2,250,000</u>		
Recovery of Pressing		
Fee from EMI <u>240,000</u>		
Net Cost to Capitol <u>\$2,010,000</u>		
 If the claim for Plastic Ono Band were honored, it would reduce the contingent increase in Beatle royalty		
	<u>\$ 26,000</u>	<u>\$ 30,000</u>

COMPUTATION OF DEFAULT PENALTY  
(APPROXIMATE)

	2ND CONTRACT YEAR			3RD CONTRACT YEAR		
	ENDED 8-13-71			ENDED 8-31-72		
	U.S.	CANADA	TOTAL	U.S.	CANADA	TOTAL
Total Beatle Royalties	\$4,218,000	\$477,000	\$4,695,000	\$2,762,000	\$286,000	\$3,048,000
Less Royalties on Singles	<u>291,000</u>	<u>48,000</u>	<u>339,000</u>	<u>288,000</u>	<u>29,000</u>	<u>317,000</u>
Album Royalties	\$3,927,000	\$429,000	\$4,356,000	\$2,474,000	\$257,000	\$2,731,000
Est. Alb. Roy. at Old Rates (80%)	<u>3,142,000</u>	<u>343,000</u>	<u>3,485,000</u>	<u>1,979,000</u>	<u>206,000</u>	<u>2,185,000</u>
Increase in Album Royalties	<u>\$ 785,000</u>	<u>\$ 86,000</u>	<u>\$ 871,000</u>	<u>\$ 495,000</u>	<u>\$ 51,000</u>	<u>\$ 546,000</u>
Default Penalty	33 1/3%	33 1/3%	33 1/3%	50%	50%	50%
	<u>\$ 262,000</u>	<u>\$ 28,000</u>	<u>\$ 290,000</u>	<u>\$ 248,000</u>	<u>\$ 25,000</u>	<u>\$ 273,000</u>
If "Wholesale" price under previous contract was "dealer" price, penalty would be:						
Total Royalty	\$3,927,000	\$429,000	\$4,356,000	\$2,474,000	\$257,000	\$2,731,000
Est. Alb. Roy. based on dealer price (91.36%)	<u>3,588,000</u>	<u>392,000</u>	<u>3,980,000</u>	<u>2,260,000</u>	<u>235,000</u>	<u>2,495,000</u>
Increase in Album Royalty	<u>\$ 339,000</u>	<u>\$ 37,000</u>	<u>\$ 376,000</u>	<u>\$ 214,000</u>	<u>\$ 22,000</u>	<u>\$ 236,000</u>
Default Penalty	<u>\$ 113,000</u>	<u>\$ 12,000</u>	<u>\$ 125,000</u>	<u>\$ 107,000</u>	<u>\$ 11,000</u>	<u>\$ 118,000</u>

June  
15th  
1976

Apple Records, Inc.  
C/O Apple Corps Limited  
29-30 St. James Street  
London SW1 1HB, England

Attention: Mr. N.S. Aspinall

Gentlemen:

Contemporaneously herewith Capitol is responding to the audit claim submitted by you in January of 1976.

Under Sections 6 and 7 of Article II of the agreement of September 1, 1969, Capitol has a claim for non-delivery of two pick-up albums which claim is in the sum of \$560,000.00.

Capitol will expect that any payment due pursuant to the aforesaid audit would be applied against this claim and the balance remitted to Capitol.

Very truly yours, ;

March  
22nd  
1 9 7 4

Apple Records, Inc.  
54 St. James' Street  
London SW1  
ENGLAND

Gentlemen:

You and Capitol Records, Inc. are parties to a contract dated September 1, 1969 under which Capitol presses and distributes your records being Capitol's Contract No. 4971.

Pursuant to Paragraphs 6.(a), (b), and (f) of Article II of Contract 4971, by letters dated September 1, 1971 and September 1, 1972, (copies attached) Capitol gave you notice of default of ~~for~~ failure to deliver the three pick up albums called for.

In the proposed settlement agreement drafted in February and March of 1973, Capitol had agreed to waive said delivery default in exchange for the delivery of the two pick up albums which were released in April of 1973.

This is to advise you that if the settlement agreement is consummated Capitol is entitled to receive from you one pick up album for each of the years 1973, 1974, and 1975.

If the settlement agreement is disregarded, the default notices stand and you owe Capitol a pick up album for the year ending September, 1975.

Apple Records, Inc.

-2-

March 22, 1974

EXHIBIT J  
2 of 2 pages

The settlement agreement not having been signed by you to this date, Capitol's position is that the two pick up albums delivered in 1973 count for 1973 and 1974 respectively.

Sincerely yours,

CAPITOL RECORDS, INC.

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