Orchard Enterprises, Inc.
Form 10-K
March 30, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Fiscal Year Ended December 31, 2008

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period from to

Commission File Number: 000-51761

THE ORCHARD ENTERPRISES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	20-3365526 (I.R.S. Employer Identification No.)

23 East 4th Street, 3rd Floor
New York, NY 10003

(Address of Principal Executive Offices, Including ZIP Code)

(212) 201-9280

(Registrant s Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Exchange on Which Registered
Common Stock, $0.01 par value	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Act: Yes o No x

Indicate by check if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act: Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes o No x

As of June 30, 2008, the aggregate market value of the registrant s common stock held by non-affiliates was $21,851,364 based on the closing sales price for the registrant s common stock, as reported on the NASDAQ Global Market System on such date.

As of March 26, 2009, the registrant had 6,276,609 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant s proxy statement for the 2009 Annual Meeting of Stockholders are incorporated by reference into Part II and Part III of this annual report on Form 10-K to the extent stated herein. The proxy statement will be filed within 120 days of the registrant s fiscal year ended December 31, 2008.

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FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as may, likely, will, should, expect, plan, anticipate, believe, estimate, predict, potential, continue or the negative of these terms or other comparable terminology. These forward-looking statements are subject to a number of risks that could cause them to differ from our expectations. These include, but are not limited to, risks relating to:

Our financial condition and results of operations, including expectations and projections relating to our future performance and ability to achieve profitability;

Our ability to capitalize on our business strategy, including shifting our revenue to a more diversified revenue mix, including physical distribution;

Our ability to take advantage of opportunities for revenue expansion, including through acquisitions, delivery of video content, organic growth in distribution and revenue growth from higher margin owned and controlled content;

Ongoing growth in our industry, particularly gaining market share in the growing digital music and mobile distribution markets, as well as the developing market for digital delivery of video;

Our ability to continue to acquire digital rights and market our value-added services to content owners;

Complexities involved in the payment and collection of royalties for digital distribution of copyrighted material and risks associated with availability of indemnities to protect us from liability for copyright infringement;

Distribution of our music and video content;

Music and video piracy;

Rapidly evolving and changing competitive and industry conditions in the digital media industry, including potentially significant additional competition for digital distribution; and

The impact of general economic recession and other market and economic challenges on our business.

You should not place undue reliance on these forward-looking statements, which are based on our current views and assumptions. In evaluating these statements, you should specifically consider various factors, including the foregoing risks and those outlined under Risk Factors. Many of these factors are beyond our control. Our forward-looking statements represent estimates and assumptions only as of the date of this annual report on Form 10-K. Except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date of this annual report on Form 10-K.

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PART I

Item 1. *BUSINESS*

Executive Summary

In this annual report on Form 10-K, all references to we, us, our, or the Company mean The Orchard Enterprises, Inc. and our consolidated subsidiaries, except where it is clear that the term means only The Orchard Enterprises, Inc., the stand-alone parent company formerly known as Digital Music Group, Inc., which we sometimes also refer to as DMGI. When we use the term Orchard NY we mean our principal operating subsidiary, *Orchard Enterprises NY, Inc., and its consolidated subsidiaries that we acquired in the Merger.*

The Merger

On November 13, 2007, we completed a business combination, sometimes referred to herein as the Merger, through the merger of our wholly-owned acquisition subsidiary with and into the former The Orchard Enterprises Inc. (a New York corporation now called Orchard Enterprises NY, Inc.). As a result of the Merger, the former shareholders of Orchard Enterprises NY, Inc. became the holders of a majority of the outstanding capital stock of our company and Orchard NY became our wholly-owned subsidiary. Although we were the acquiring entity for legal purposes, the Merger was accounted for as a reverse acquisition and for accounting purposes we were deemed to be the acquired entity in the Merger.

Accordingly, the historical financial results prior to the Merger are those of Orchard NY and its consolidated subsidiaries and replace the historical financial results of DMGI as it existed prior to the Merger. The results of operations for DMGI and its pre-Merger consolidated subsidiaries are included in the Company s consolidated financial results beginning on November 13, 2007.

The presentation of Consolidated Statements of Stockholders Equity (Deficit) and Redeemable Preferred Stock reflects the historical stockholders equity of Orchard NY through November 12, 2007. The effect of the issuance of shares of DMGI common stock and DMGI Series A Preferred Stock in connection with the Merger and the inclusion of DMGI s outstanding shares of common stock at the time of the Merger is reflected from November 13, 2007 through the year ended December 31, 2007.

In connection with the Merger, our board of directors declared a one for three reverse stock split of our common stock effective November 14, 2007, and we changed our trading symbol on the NASDAQ Global Market from DMGI to ORCD. We also began conducting our business under the trade name The Orchard and, on February 9, 2008, we officially changed our legal entity name from Digital Music Group, Inc. to The Orchard Enterprises, Inc.

Asset Acquisition

On July 3, 2008, we acquired substantially all of the assets of TeeVee Toons, Inc. s record label business operations (TVT) in a bankruptcy auction. The assets we acquired included, but are not limited to, master recordings, artists agreements, certain inventory, accounts receivable and a real property lease. In addition, we assumed certain liabilities relating to the assets. For accounting purposes, the acquisition was treated as a business combination and the results of operations are included in our consolidated financial results beginning July 3, 2008.

Business Overview

We are a global leader in digital media services, controlling and distributing more than 1,340,000 music and audio recordings and approximately 4,000 titles of video programming and other materials through hundreds of digital stores (*e.g.,* Amazon, eMusic (which is controlled by our majority shareholder, Dimensional), Hulu, iTunes, Rhapsody, YouTube) and mobile carriers (*e.g.*, China Mobile, Orange, Telefonica, Verizon, 3) worldwide. We generate income for our label, retailer, brand and agency clients by making these music and audio recordings and videos available for purchase at online stores and through innovative marketing and promotional campaigns, branded entertainment programs, film, advertising, gaming and television licensing and other related services.

Today, our core business is derived from the retail sale (through digital stores) and other forms of exploitation of our controlled, licensed music catalogue; this core business represents 89% of our total revenues for the year ended December 31, 2008. Two customers, Apple iTunes Music Service, or iTunes, and eMusic, account for a significant portion of our total revenue and related accounts receivable. For the year ended December 31, 2008, iTunes and eMusic represented 55% and 8%, respectively, of our total revenue and at December 31, 2008, accounts receivable from iTunes and eMusic represented 26% and 8%, respectively, of our total accounts receivable. It is generally expected that digital music products will overtake and surpass physical music products (*i.e.,* the compact disc) and become the primary means of retail music consumption. We believe that this trend away from physical music products will be sustained, long term, and irreversible. We believe that the purchase of music content in digital format offers many advantages to consumers over physical form including larger selection, the ability to sample before purchasing and to purchase single tracks rather than entire albums, 24-hour access and portable format. We expect to derive revenue growth as a result of this trend.

However, currently most successful labels continue to generate the majority of their sales revenue from physical music products. In order to better compete with distributors who are primarily in the physical business but who insist on the inclusion of digital rights in their deals with labels, we have expanded our menu of services by repurposing TVT s existing physical distribution infrastructure to provide physical distribution in the United States for select labels.

We believe we will achieve growth through:

- Increased sales on our existing catalogue as the market continues to shift to digital exploitation;
- Increased sales as new entrants develop additional sales channel opportunities through existing and prospective retail business models;
- Comprehensive cross-channel opportunities exploiting digital and physical sales;
- Continued improvements in our marketing and promotion effectiveness; and
- Exploiting new content made available by existing clients, new clients who have yet to make their content available for digital exploitation and new clients that we win from our competitors.

We believe we are differentiated and well positioned as a digital music marketer and distributor relative to our competition. We have developed an effective global organization of employees, consultants and companies operating in 27 countries worldwide that not only source local repertoire within their local territories for distribution by us but also expand and service our network of digital entertainment service partners and provide our ancillary services and products within their local territories. We believe the combination of a functional organization and orientation with strong local delivery capabilities is a powerful and advantageous combination for us and unique in the industry.

We believe that we have changed traditional notions of distribution by pioneering a broad suite of client services in addition to our primary music distribution and marketing business. These services range from placing a music recording for use in film, TV and advertising programming (referred to as synchronization), to co-marketing initiatives with leading consumer brands (for example, creating a digital music promotion that is redeemable by consumers who purchase an electronics item), to global publishing administration (whereby we research and administer the publishing copyright royalties on behalf of master recording owners). Historically, we have often been first to market these types of new, nontraditional services to our clients and to make independent music that is not controlled by the four major music companies (Sony, Universal Music Group, EMI and Warner Music Group) available in new digital music retail services. For example, when Nokia, a world leader in mobility, launched its Comes with Music services, we were the premier independent launch partner and represented the only independent music in the service when it first became available to end consumers. Further, in 2008 we were among the first independent music providers to license our catalogue to MySpace music.

Our business requires limited capital expenditure and is highly scalable in terms of operating expenses. We believe we are operating at scale in terms of our staffing, organization and technology and operations infrastructure and can support substantial revenue growth with minimum incremental costs. We expect there to

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be a positive impact on our earnings over time as we participate in the strong market growth of the digital music sector, provide physical distribution on a select basis, participate in the anticipated market growth in the video sector and continue to improve our capabilities and win new clients.

We also believe that our technology platform, marketing expertise and client services capabilities are directly applicable across a broad array of other entertainment media, particularly video, and that we can capture material incremental growth by moving into additional digital entertainment licensing areas when and as those sectors emerge as attractive investment opportunities.

Market Context

The digital segment of the worldwide recorded music market, which includes use of the internet and wireless, cable and mobile networks to select and download purchased music, is growing rapidly. For 2008, the International Federation of the Phonographic Industry (IFPI), an industry trade organization, has estimated digital sales of recorded music at 20% of the total market. According to the PricewaterhouseCoopers Global Entertainment & Media Outlook: 2008 2012, global spending on digital recorded music will reach $18.8 billion in 2012, up from an estimated $7.3 billion in 2007, a 20.8% compound annual gain, and digital sales will overtake physical (*i.e.,* compact disc) sales in 2011. The pervasive and steady consumer adoption of digital music as a widely accepted format has created new opportunities for both content owners and digital entertainment services.

iTunes, which was launched in 2003, remains the dominant internet-based digital music retailer and offers consumers a pay-per-download service. However, other digital music retailers such as Verizon, Amazon, eMusic, RealNetworks and Napster offer consumers additional choices, with some offering broad access to content on various types of subscription bases. Consumers are also purchasing digital music in new ways, such as via the purchase of full-track digital music downloads for music-enabled mobile phones.

The global television and film video industry, like the music industry in 2003, appears to be experiencing the early stages of a transition from sales and rentals in physical formats such as digital video discs (or DVDs) and consumption through subscription cable services and ad-supported broadcast television to digital consumption through the internet, mobile-based downloading and on-demand subscription services. iTunes introduced television episode downloads in late 2005 and began offering feature-length film downloads in 2006. In addition to iTunes, a number of other significant digital video retailers, including YouTube, Netflix, Hulu and Amazon, have launched video download and streaming services. While the emergence of the digital video marketplace is nascent, we believe that it will offer us material revenue opportunities over time, in the form of permanent ownership downloads, subscription services providing access to large catalogues of video content and advertising-supported free viewing.

Business Description

We perform four basic business activities:

- License or acquire digital rights to music and video content from labels and other content providers;
- Ingest, manage and deliver this content to our digital retail and other clients;
- Develop and manage a global digital retail channel network to exploit our controlled catalogue and then proactively market to this channel network; and
- Drive additional value to our content suppliers, digital retailers and other clients through innovative new means to generate income.

License or Acquire Rights and Service Our Supplier Clients

We license or acquire the digital rights to music and video content from record labels, artists, television and film production companies and other content owners. As of December 31, 2008, we had over 1,340,000 individual music and audio recordings (or tracks) for sale. Our music catalogue has been sourced from over 91 countries, encompasses thousands of labels and covers a broad and deep array of music genres and historical eras. Additionally, we control approximately 5,000 titles of video content and other materials. In 2007, we began making a portion of our video content available for sale. In 2008, we increased the number of video

titles available for sale and we expect this trend to continue as the digital entertainment market evolves and new video services emerge. As of December 31, 2008, we had approximately 4,000 titles of video programming and other materials available for sale.

We acquire digital rights to music and video content as follows:

Shorter-Term Distribution Rights. We obtain shorter-term digital rights for music and video content through distribution agreements with content owners that typically have terms of three to five years, often with renewal opportunities. Unless renewed, we do not retain any continuing rights upon expiration of the agreement. We pay a fixed revenue sharing percentage to the content owner upon receipt of revenue from digital entertainment services or other services. In certain instances, we may pay a fixed sum of money in the form of an advance against future sales royalties or fees to be paid to the content owner. After we recoup our initial payment, we generally pay the fixed revenue sharing percentage to the content owner;

Longer-Term License. We obtain longer-term licenses to digital rights for music and video content from content owners that currently have terms of five to ten years, typically with renewal options. Similar to short-term distribution arrangements, we retain no continuing rights after the term of the license. In exchange for longer-term licenses, we generally pay a fixed sum of money in the form of an advance against future sales royalties or fees to be paid to the content owner. After we recoup our initial fixed payment, we generally continue to pay revenue sharing fees to the content owner in accordance with the terms of our agreements;

Purchase of Digital Rights. In exchange for the purchase of digital rights of music and video content, we generally pay a fixed sum of money as the purchase consideration. We retain all revenue received, less payment of any required artist and statutory publishing royalties; and

Purchase of Master Recordings. When we acquire master music recordings, we pay a fixed cash sum and receive all rights to such recordings. We retain all revenue received less payment of any required artist and statutory publishing royalties.

For the year ended December 31, 2008, we generated approximately 23% of our revenues from music content we owned or licensed under long-term licenses (representing 77% of total digital agreements) and approximately 77% of our revenues from music content licensed under short-term licenses (representing 23% of total digital agreements). We consider a long-term license to have a term of five years or more.

We seek to obtain the broadest territorial distribution rights from our clients. From time to time, however, we enter into digital rights agreements with less than worldwide distribution rights (generally due to pre-existing rights restrictions on the part of the client), which we factor into the contractual terms that we negotiate with the content owner. Digital rights agreements for which we have exclusive worldwide rights represented approximately 87% of our digital revenues and 78% of our total digital and mobile revenues for the year ended December 31, 2008. We have exclusive worldwide rights in 97% of the total distribution agreements at December 31, 2008.

We seek to maximize sales by meeting our record label clients product release dates (*i.e.*, the date on which the album is scheduled to be released for sale physically and/or digitally) with wide availability and visibility across our global network of digital and mobile entertainment service partners. We maintain a company-wide release schedule that is reviewed on an ongoing basis to manage our priorities and targets and to make adjustments in our marketing and promotion programs as warranted. In connection with our review and maintenance of our release schedule, we also monitor the progress of previously issued tracks and albums through a review of SoundScan™ data regarding total album/track sales and the ratio of physical to digital sales, placements and promotions programs achieved, online press coverage and other means. We also engage with our record label contacts to adequately manage time, resources and expectations with regard to the sales and performance of a given product. This management includes managing our internal resources to ingest, encode and deliver an album to digital and mobile stores and managing said stores to ensure that the album is available on the clients product release date. Generally, the release of an album will be accompanied by a marketing and promotional plan developed and executed by the label and its physical distributor. We may also develop and manage a comprehensive digital marketing plan and, if we are providing physical distribution,

our marketing plan will cover the release in all forms. We keep our clients informed of merchandising achieved on their behalf by way of screenshots of merchandising placement or promotions and/or bi-weekly or monthly reports of online press, reviews, blog entries, stream and/or MP3 postings.

We also advise our independent record label clients on new digital and mobile outlets that we add to our distribution network, monitor delivery and availability status of their catalogue (*i.e.*, compliance checks), and assist in analyzing digital sales data. The majority of this information is available to our label clients in an online account interface, a proprietary, sophisticated administration and analytical tool set branded as the Artist/Label Workstation℠ (or ALW℠). The ALW℠ offers our artist and label clients with web-based administration and reporting tools and a new level of control over catalogue and new release management, digital marketing reporting and analysis, accounting administration and royalty analysis. The ALW℠ offers a one-stop resource for our clients to manage their participation in the various services we offer, such as automatic feeds for interactive marketing campaigns and other promotional programs to enable us to easily support our agency and brand clients non-traditional marketing campaigns. As we identify Web 2.0 feature sets that may allow our clients to exploit their catalogues, we can deploy such features through ALW℠. For example, from within the ALW℠, labels can order promotional and retail download cards through Drop Cards among other features and functions.

We believe we provide a high level of personalized service and attention to our clients and view this service orientation (as opposed to a product or technology provider orientation) as a major strategic advantage. We consider our focus on service to be a key factor behind our ability to achieve and maintain licensing terms that we believe may be materially higher than the industry average and why, even when presented with terms that are more economically attractive, many label clients nevertheless choose us over the competition. In addition, by providing physical distribution within the United States to select labels, we believe we can provide a one-stop shop for such labels distribution needs.

Ingest, Manage and Deliver Our Assets to Our Revenue Channel Partners

We have developed a proprietary system to receive, process, store, manage and deliver content to digital music retailers and other digital entertainment services. This system is branded as V.E.C.T.O.R.™ (Very Efficient Conduit To Our Retailers) and is used for content delivery to both internet-based and mobile-based retailers, among other clients. V.E.C.T.O.R.™ enables the digital encoding of content into multiple formats for distribution to digital entertainment services operating over the internet and over wireless, cable and mobile networks. End consumers can then listen to, view and purchase the content for use on their personal computers, digital music and video players, and music and video-enabled mobile phones. We continue to work to improve and further develop V.E.C.T.O.R.™. In the first quarter of 2008, we launched a proprietary video delivery component of V.E.C.T.O.R.™ with the goal of managing all video deliveries internally without reliance on third-party technology providers (unlike, to our knowledge, most of our competitors). We believe that this will provide a competitive advantage with respect to our exploiting our large video catalogue.

We believe that our proprietary V.E.C.T.O.R.™ delivery system has had a positive impact on label relations with our content owners and the digital entertainment services we supply by considerably reducing time to market which helps to ensure that new releases from labels are available on the internet in conjunction with the physical and/or digital product release date. We believe, based upon historical data, that meeting this deadline (typically referred to as a music recording s release date) has a positive impact on sales of those recordings.

As of December 31, 2008, V.E.C.T.O.R.™ was integrated directly with content management systems of 115 internet retailers and 54 mobile operators, and these delivery points in turn powered a total of over 619 discrete retail storefronts in over 59 countries. We regularly add digital entertainment services and expand our delivery capabilities and believe that we will not be constrained with respect to the number and types of services.

During 2008, we transacted a total of approximately 54.8 million track deliveries via V.E.C.T.O.R.™, which supported an average of approximately 260,000 daily deliveries during the month of December 2008. Even taking into account the full integration of all of our music, audio and video assets as part of integration activities after our Merger, we do not currently anticipate ingestion, storage or delivery constraints for at least the next two years.

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Develop Global Sales Channels and Proactively Market to Them

After we distribute our music and video content to leading digital entertainment services worldwide, we then sell and promote our content to consumers. We design and execute global marketing and promotion programs locally, with experts in major music territories managing initiatives tailored to each country s unique market characteristics and dynamics. We currently offer digital music and video for sale in 59 different countries, although the United States remains our largest market. For the year ended December 31, 2008, approximately 75% of our revenue was generated in the United States, with the remaining 25% coming from outside the United States.

Our digital entertainment service partners sell to end consumers via two primary business models: permanent copies of entire albums, individual recordings or mastertones on a pay-per-download basis; or broad access to a substantial quantity of content in various manners on a subscription basis. We receive revenue from the digital entertainment services based on the number of times our supplied content is downloaded or streamed by end consumers. Our digital entertainment service partners include: iTunes, eMusic, Amazon, Hulu, Rhapsody, YouTube, Verizon, China Mobile, Orange, Telefonica, 3 and many others.

In 2008, we gathered market statistics from 2007 video sales to form a distribution strategy focused on premium content services. iTunes opened its Film/TV section to independents and we were included in the initial batch of deals. We employed a complex technology project to expand our current encoding, delivery and information management structure to include long-form video. The improved and automated systems and new infrastructure will enable higher volume of video delivery to more services in 2009. During 2008, many of our ad-supported video service partners, also in their early stages of video entertainment, shifted consumer-facing strategies in search of revenue. In response, we focused resources on expanding successful retail models and reducing resources directed at speculative, low revenue services.

We believe we have strong business relationships with iTunes and other digital entertainment services to which we provide content. Historically, we have been able to obtain premium placement for some of our distributed content on the digital entertainment services, and we intend to continue to work closely in partnership with our digital retail clients to achieve optimum placement and generate sales of our content.

Because of the flexibility of the digital format, we are able to market our music content in creative ways by mixing-and-matching our individual recordings to create new digital music albums. This permits us to target our music content to consumers of a particular lifestyle or age group or related to an event type, holiday or live music concert. We believe our expertise in this activity is a competitive advantage.

Our digital entertainment retailers operate across multiple business models, which continue to evolve as the market develops. We seek to maximize revenue across our digital entertainment service providers by working to increase the availability and visibility of our distributed content across the principal models from which we generate revenues, including the following:

A-la-carte Download Services on the Internet. These digital entertainment services offer consumers the ability to download individual recordings or albums for permanent use for a fixed price. Examples of these services include iTunes, Amazon, Virgin, and Musicload. In such models, we typically receive either a fixed wholesale price per track or album downloaded or a percentage of the consumer retail price.

Subscription Download Services on the Internet. These services offer consumers the ability to download up to a certain number of recordings each month for a fixed subscription fee. One example of these services is eMusic. In such models, we typically receive a percentage of the total revenue pool generated by the service, after costs and deductions, based on our share of total downloads in the service during the billing period.

Subscription Streaming Services on the Internet. These services offer consumers the ability to stream unlimited content on their computers for a fixed monthly fee. Example services include Napster and Rhapsody. In such models, we typically receive a percentage of the total revenue pool generated by the service, after costs and deductions, based on our share of total streams in the service during the billing period.

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To-go Subscription Services on the Internet. These services offer consumers the ability to carry unlimited quantities of content on portable devices for a fixed monthly fee. On termination of the subscription, the files on the portable devices expire and the consumer no longer has access to that content. Example services include Napster and Rhapsody. In such models, we typically receive a percentage of the total revenue pool generated by the service, after costs and deductions, based on our share of total tracks played by consumers on their devices during the billing period.

A-la-carte Full Track Download on Mobile. These services offer consumers the ability to download individual music recordings or albums over wireless networks onto mobile devices for permanent use for a fixed price. Some services allow consumers to download the tracks purchased on their mobile device to computers. Example services include Verizon, Sprint, 3 and Orange. In such models, we typically receive either a fixed wholesale price per track or album downloaded or a percentage of the consumer retail price.

Full Track Subscription on Mobile. These services offer consumers the ability to download unlimited music content on their mobile devices for a fixed monthly fee. The content remains live on their devices for the period their subscription is active. Examples of these services include Napster and Bell Canada. In such models, we typically receive a percentage of the total revenue pool generated by the service, after costs and deductions, based on our share of total plays in the service during the billing period.

A-la-carte Mastertones on Mobile. These services offer consumers the ability to download unlimited mastertone content to their mobile device. Example services include Verizon, Sprint and Zed. In such models, we typically receive either a fixed wholesale price per mastertone downloaded or a percentage of the consumer retail price.

Free, Ad Supported Streaming Services on the Internet. These services offer consumers the ability to stream unlimited content on their computers for free but with banner or pre/post roll advertisement embedded in or around the music player. Example services include Myspace Music and Last.FM. In such models, we typically receive a percentage of the total revenue pool generated by the advertising revenue, after costs and deductions, based on our share of total streams in the service during a one month period.

Handset Subscription Services. The cost of these subscription services are bundled into the price of a mobile handset and they offer consumers unlimited tethered downloads for the life of the handset with no monthly charge to the consumer. The tracks have digital rights management (DRM) restrictions and consumers cannot transfer the files to other digital media devices. Currently the only major handset manufacturer offering this model is Nokia, through its Comes With Music services. We receive a percentage of the total handset revenue pool based on our share of total tethered downloads in the service each month.

We also generate revenue from direct-to-consumer mastertone sales via SMS, a-la-carte mastertone sales via the internet, streaming radio on the web and via mobile devices, and advertising supported models, although these revenues are at present not significant.

We also seek to work closely with certain content owners to market their music and video content directly to consumers, who will then be motivated to purchase this content at the various digital entertainment service providers. In doing this, we experiment with new ways to market our music catalogue directly to consumers. In addition, we intend to continue to market our se