Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the matter of:	)	
	)	
Digital Performance Right in	)	
Sound Recordings and	)	Docket No.
Ephemeral Recordings for a	)	2005-5 CRB
New Subscription Service	)	DTNSRA
	)	

Room LM-408
Library of Congress

First and Independence Avenue, S.E.
Washington, D.C. 20540

Tuesday,
July 10, 2007

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JAMES SLEDGE, Chief Judge
THE HONORABLE WILLIAM J. ROBERTS, JR., Judge
THE HONORABLE STAN WISNIEWSKI, Judge

01e32389-5815-4a32-8473-696469535605

APPEARANCES

On Behalf of SoundExchange
DAVID A. HANDZO, ESQ
JARED O. FREEDMAN, ESQ
MATTHEW S. HELLMAN, ESQ
Jenner & Block
601 Thirteenth Street, N.W.
Suite 1200 South
Washington, D.C. 20005
(202) 639-6060
dhandzo@jenner.com

On Behalf of XM Satellite Radio Inc.
RALPH I. MILLER, ESQ
BRUCE S. MEYER, ESQ
BRUCE RICH, ESQ
JOHN THOMPSON, ESQ
Weil Gotshal & Manges
567 5th Avenue
New York, New York 10016
(212) 310-8238

On Behalf of Sirius Satellite Radio Inc.
THOMAS W. KIRBY, ESQ
MATT ASTLE, ESQ
JENNIFER L. ELGIN, ESQ

BRUCE JOSPEH, ESQ
Wiley Rein
1776 K Street, N.W.
Washington, D C 20006
(202) 719-7528
tkirby@wileyrein com

On Behalf of MTV Networks
CLAIRE E. GOLDSTEIN, ESQ
Weil Gotshal & Manges LLP
201 Redwood Shores Parkway
Redwood Shores, California 9406
(650) 802-3000
claire.goldstein@weil.com

I-N-D-E-X

Page

Preliminary Matters 4

Opening Statements
XM Satellite Radio, Inc..... 6
Sirius Satellite Radio, Inc. 18
MTV Networks..... 32
SoundExchange 40

W-I-T-N-E-S-S-E-S
WITNESS (XM) DIRECT CROSS REDIRECT RECROSS
Steven Cook
By Mr. Thompson 53 92
By Mr. Freedman 81

Tasneem Chipty
By Mr. Miller 97
By Mr. Hellman 156
By Mr. Freedman 231

Exhibit No. Document Mark Recd

Services
1 Written Direct Testimony of Steven Cook 55 56

2 Written Direct Testimony of Tasneem Chipty 107 107

3 Demonstrative Exhibit 154 154
SoundExchange
1 Chipty Deposition Transcript 158

2 XM Document 227

1 P-R-O-C-E-E-D-I-N-G-S
2 9:34 a.m.
3 CHIEF JUDGE SLEDGE: On the
4 record. Good morning. We'll come to order.
5 We're here to take on a new proceeding of new
6 subscription service and Docket 2005-5. Some
7 or all of the parties have asked for opening
8 statements. Who wants to go first on opening
9 statements?
10 MR. MILLER: Your Honor, this is
11 Ralph Miller on behalf of XM Satellite Radio.
12 I believe we are entitled to begin and we
13 would like to start the opening statements.
14 Before we do, we have a housekeeping matter we
15 would like to discuss with the Court that we
16 think will simplify things. Mr. Handzo, do
17 you want to summarize the stipulation we have?
18 MR. HANDZO: For the record, Your
19 Honors, David Handzo on behalf of
20 SoundExchange. As I think the Court is aware,
21 the parties have agreed to submit a fair
22 amount of the evidence in this case by

1 stipulation, either stipulating to the
2 admission of testimony that was taken in the
3 case of 2006-1 which is identical to the
4 testimony submitted in this case or by
5 submitting the written direct testimony in
6 this case supplemented by deposition.
7 We have formalized that
8 stipulation. I don't think we actually have
9 the stipulation in the courtroom. We expect
10 it shortly and will provide it to the Court as
11 soon as it arrives.
12 CHIEF JUDGE SLEDGE: Remember that
13 as we hear testimony there may be witnesses
14 that we will require to be here
15 notwithstanding your stipulation and we'll
16 advise you as soon as that's determined for
17 any particular witness and once we receive
18 your formal pleading.
19 MR. MILLER: We understand, Your
20 Honor.
21 MR. HANDZO: Your Honor, if I may,
22 one other brief housekeeping matter. The

01e32389-5815-4a32-8473-69646953560

1 SDARS service. Is that right?

2 A We don't know for certain. We

3 certainly -- We believe that it has, but we

4 haven't measured it quantitatively.

5 Q Does XM have any data on that

6 question?

7 A Not that I'm aware of.

8 Q Now I think you said that main

9 benefit to XM with this deal is exposure. Is

10 that right?

11 A That's right.

12 Q And you also testified in response

13 to the Judges' questions and in your written

14 testimony that in addition to that main

15 benefit XM receives $2.5 million or the

16 benefits by way of either a payment of $0.5

17 million or in advertising. Is that a fair

18 characterization?

19 A Yes.

20 Q And those benefits supplement the

21 main benefit of exposure. Right?

22 A They do.

1 other source like a CD or an MP3; is that
2 correct?
3 A I suppose that's -- that sounds
4 reasonable to me, yeah.
5 Q In your testimony you discuss how
6 Sirius and XM use these services primarily as
7 a promotional device for their satellite radio
8 services. Is it your testimony that XM and
9 Sirius wouldn't have entered into these
10 arrangements but for the promotional effect
11 they hoped to achieve?
12 A That is my understanding, yes.
13 Q And I won't get into specific
14 numbers here, but in fact, the actual revenues
15 that Sirius and XM receive for providing the
16 service are quite small to perhaps even
17 trivial, correct?
18 A Yes, I would characterize them
19 approximately that way, yeah. I give a much
20 more detailed description in my written
21 testimony.
22 Q I understand. And clearly, ma'am,