

Before the
COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In the Matter of

Determination of Rates and Terms for
Preexisting Subscription and Satellite Digital
Audio Radio Services

Docket No. 2011-1 CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF PAUL FAKLER

PAUL M. FAKLER, declare:

1. My name is Paul M. Fakler. I am a partner with Arent Fox LLP, counsel to Music Choice in the above captioned proceeding.

2. Pursuant to 37 C.F.R. § 350.4(e)(1) and the Copyright Royalty Judge's Order dated November 16, 2011 (the "Protective Order"), Music Choice, through its undersigned counsel, respectfully submits this affidavit and Rule 11 Certification concerning Protected Material, as that term is used and defined in the Protective Order.

3. This affidavit and Rule 11 Certification is being submitted simultaneously with the Rebuttal Testimony of David J. Del Beccaro and the Rebuttal Testimony of Dr. Gregory Crawford, Ph.D. and all accompanying exhibits.

4. I have reviewed the Rebuttal Testimony of David J. Del Beccaro and the Rebuttal Testimony of Dr. Gregory Crawford, Ph.D., and all accompanying exhibits submitted by Music Choice.

5. As discussed below and after consultation with my client, I have determined that portions of the testimony and exhibits contain Protected Material in accordance with the Protective Order.

6. Such Protected Material includes, but is not limited to testimony and exhibits involving (a) contracts, contractual terms or contract strategy that are proprietary, not available to the public, commercially sensitive and, in some instances, are subject to express confidentiality provisions with third parties; (b) highly confidential business information, financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive; and (c) material designated as “RESTRICTED” by SoundExchange presumably on the same or similar grounds.

7. If Music Choice’s commercial or financial information were to become public, it would provide an unfair competitive advantage to Music Choice’s competitors and entities with whom they do business and negotiate. Public disclosure of this information would place Music Choice at a significant commercial disadvantage and would seriously jeopardize its business interests.

8. Portions of the written direct statement and their accompanying exhibits submitted by Music Choice clearly meet the definition of “Protected Material.” Specifically, as summarized below, the following witnesses’ statements and exhibits contain commercial and financial material that is proprietary, not known to the public and the disclosure of which would place Music Choice at a significant commercial disadvantage or would unfairly advantage competitors and other parties.

a. The Rebuttal Testimony of David J. Del Beccaro contains detailed non-public financial information and projections relating to Music Choice’s business, non-public

information relating to business dealings and strategy, and information about current contracts, including those subject to confidentiality provisions. Mr. Del Beccaro also sponsors exhibits that contain confidential financial information about Music Choice's income and expenses. The information in both the written testimony and the exhibits is at a level of specificity that is not disclosed to the public; if it were disclosed, it would competitively disadvantage Music Choice while providing a competitive advantage to other parties in the industry.

b. The Testimony of Dr. Gregory Crawford contains detailed non-public financial information and projections relating to Music Choice's business. The information is at a level of specificity that is not disclosed to the public; if it were disclosed, it would competitively disadvantage Music Choice while providing a competitive advantage to other parties in the industry. Dr. Crawford's testimony also contains information related to material produced by SoundExchange and designated as "RESTRICTED". For the SoundExchange documents designated as "RESTRICTED" that Dr. Crawford's testimony refers to, attached hereto are the Rule 11 Certifications and the cover letters from SoundExchange that refer to the Bates ranges covered by the Certifications. Dr. Crawford's testimony also contains references to Restricted sections of transcripts from the direct phase of the proceedings and portions of deposition testimony that SoundExchange designated as "RESTRICTED".

9. All redacted materials designated as "RESTRICTED" contains commercial or financial information that Music Choice has reasonably determined in good faith that, if disclosed, would either competitively disadvantage Music Choice, provide a competitive advantage to another party, or potentially violate the Protective Order.

10. Attached hereto is a Redaction Log, as required by paragraph 10(b) of the Protective Order, identifying each redaction contained in the Rebuttal Testimony of David J. Del Beccaro and the Rebuttal Testimony of Dr. Gregory Crawford, Ph.D., as well as any exhibit or other document submitted that is designated Restricted.

11. Within the Redaction Log, each listing of a redaction or Restricted document identifies the document, the page and line number or the paragraph number of each redaction, and a brief description of the nature of the redacted Protected Material.

12. I am authorized to submit this affidavit on behalf of Music Choice. I have reviewed the redactions set forth in the Redaction Log and to the best of my knowledge, information and belief, the redacted information meets the definition of Restricted Information contained in the Protective Order. At the time this Affidavit is made, good cause exists for the treatment of the information as Protected Material in order to prevent certain business and competitive harm that would result from the disclosure of such information while, at the same time, enabling Music Choice to provide the Copyright Royalty Judges with the most complete record possible on which to base its determination in this proceeding.


Pursuant to 28 U.S.C. §1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: July 2, 2012

Respectfully submitted,

Music Choice

By:



Paul M. Fakler (NY Bar No. 2940435)
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Attorneys for Petitioner Music Choice

CERTIFICATE OF SERVICE

I, Martin Cunniff, do hereby certify that a copy of the *Declaration and Rule 11 Certification of Paul Fakler* was sent on July 2, 2012 by both Federal Express and electronic mail, to the following:

<p>Rich R. Bruce Bruce S. Meyer Todd D. Larson WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Fax: (212) 310-8007 r.bruce.rich@weil.com bruce.meyer@weil.com todd.larson@weil.com</p> <p>Counsel for Sirius XM Radio, Inc.</p>	<p>David A. Handzo Michael B. DeSanctis Jared O. Freedman Garret Levin JENNER & BLOCK LLP 1099 New York Ave., N.W. Washington, D.C. 20001 dhandzo@jenner.com mdesanctis@jenner.com jfreedman@jenner.com glevin@jenner.com</p> <p>Counsel for SoundExchange, Inc.</p>
<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americans, 36th Floor New York, NY 10020 Fax: 212-584-5200 Patrick.donnelly@siriusxm.com</p>	<p>Michael J. Huppe C. Colin Rushing Sound Exchange (SX) 733 10th Street, 10th floor Washington, DC 20001 Fax: 202-640-5883 mhuppe@soundexchange.com crushing@soundexchange.com</p>


Martin Cunniff

Before the
 COPYRIGHT ROYALTY JUDGES
 Library of Congress
 Washington, D.C.

In the Matter of

Determination of Rates and Terms for
 Preexisting Subscription and Satellite Digital
 Audio Radio Services

Docket No. 2011-1 CRB PSS/Satellite II

**MUSIC CHOICE REDACTION LOG
 FOR REBUTTAL TESTIMONY AND EXHIBITS**

Witness	Pages, Exhibit	Description
Del Beccaro	Page 19, lines 16-19	Commercial information concerning confidential business negotiations.
Del Beccaro	Page 20, lines 17 to 20	Information from which current fees per subscriber obtained by Music Choice could be calculated.
Del Beccaro	Page 23, lines 7 and 9	Information concerning a confidential dispute settlement.
Del Beccaro	Exhibit MC 69	Summaries of Music Choice historical financial results.
Del Beccaro	Exhibit MC 70	Summaries of Music Choice financial results and projections.
Del Beccaro	Exhibit MC 71	Summaries of Music Choice financial results and projections.
Crawford	Page 16 to 17, ¶ 52	Information concerning deposition testimony of Stephen Bryan, designated as “RESTRICTED” by SoundExchange.
Crawford	Page 18, ¶ 58	Information concerning deposition testimony of Charles Ciongoli designated as “RESTRICTED” by SoundExchange.
Crawford	Page 18 to 19, ¶ 58	Information concerning deposition testimony of Stephen Bryan, designated as “RESTRICTED” by SoundExchange.
Crawford	Page 19, ¶ 59 and FN 54	Information concerning deposition testimony of Stephen Bryan, designated as “RESTRICTED” by SoundExchange.
Crawford	Page 20, FN 58	Information concerning Music Choice’s financial performance.

Crawford	Page 21 to 22, ¶ 67	Information concerning documents designated as “RESTRICTED” by SoundExchange.
Crawford	Page 28 to 29, ¶¶ 94	Information concerning Music Choice’s financial projections.
Crawford	Page 29, ¶¶ 96 to 97	Information concerning Music Choice’s financial performance.
Crawford	Page 30, ¶ 101	Information concerning Music Choice’s financial projections.
Crawford	Page 31, ¶ 102	Information concerning Music Choice’s financial projections.
Crawford	Page 32, ¶ 109	Information concerning Music Choice financial projections.
Crawford	Page 34, ¶¶ 115 to 117	Information concerning documents designated as “RESTRICTED” by SoundExchange.
Crawford	Page 36, ¶¶ 124 to 126 and FN. 127	Information concerning Music Choice’s financial performance and projections and documents designated by Sound Exchange as “RESTRICTED”.
Crawford	Page 37, ¶ 126	Information concerning deposition testimony of Charles Ciongoli designated as “RESTRICTED” by SoundExchange.
Crawford	Appendix A	Information concerning license agreements designated by SoundExchange as “RESTRICTED”.
Crawford	Appendix B1 to B5	Music Choice financial statements
Crawford	Appendix B6 to B7	Information concerning Music Choice’s financial performance and material designated by SoundExchange as “RESTRICTED”.
Crawford	Appendix C	Royalty information designated by SoundExchange as “RESTRICTED”.

JENNER & BLOCK

January 9, 2012

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Paul M. Fakler
Arent Fox LLP
1675 Broadway
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Re: Docket No. 2011-1 CRB PSS/Satellite II

Dear Counsel:

On behalf of SoundExchange, we are producing initial disclosures as required by Section 3 of the Discovery Schedule entered on January 3, 2012 as described below.

Pursuant to the parties' agreement, we have uploaded to an FTP site a file containing documents bearing Bates labels SX02_00000001 through SX02_00010640. The contents of the FTP site are password-protected. The password is j3nn3rbl0ck. Some of the documents in this production are marked **Restricted** under the terms of the Protective Order entered on November 16, 2011. Please use all of the precautions required by the Protective Order in connection with these documents, including restricting access to the documents to outside counsel and outside experts, as set forth in Section 3 of the Protective Order, who have executed the Non-Disclosure Certificate. We are providing these documents pursuant to the specifications agreed to by the parties, in single-page TIFF image files with an Opticon image load file, a Concordance load file, extracted text for electronic files and OCR text, and a Concordance DAT file that contains the following fields: BATES_BEGIN, BATES_END, SOURCE and WITNESS.

Pursuant to the parties' agreement, we are sending you via overnight mail for delivery on Tuesday, January 10, six copies of a CD labeled "SoundExchange's Initial Disclosures SX02_NATIVE_0001-SX02_NATIVE_0005 1/9/12." This disk contains 5 native-format files created in connection with the testimony of SoundExchange's witnesses that we are producing pursuant to Section 8 of the Discovery Schedule. All of the documents on the disk are marked **Restricted** under the terms of the Protective Order entered on November 16, 2011 or contain confidential information as defined by the applicable regulations. As you know, Section 11 of the Protective Order imposes additional limitations on the use of **Restricted** materials produced in native format. Please use all of the precautions required by the Protective Order in connection with these documents, including these additional precautions.

In accordance with the Protective Order, please find enclosed a Declaration and Rule 11 Certificate. Finally, pursuant to Section 3 of the Discovery Schedule please find enclosed a

January 9, 2012
Page 2

document that identifies the confidential documents relied on by our witnesses for which we have sought, but not yet received, consent to produce.

Very truly yours,

A handwritten signature in black ink, appearing to read "Garrett A. Levin". The signature is written in a cursive style with a large, stylized initial "G".

Garrett A. Levin

Encl.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2011-1
CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF GARRETT A. LEVIN


I am counsel for SoundExchange in Docket No. 2011-1 CRB PSS/Satellite II and authorized to submit this declaration in support of SoundExchange's Production of Initial Disclosures.

I am familiar with the documents provided by SoundExchange, and have also reviewed the definitions and terms provided in the Protective Order. Pursuant to these definitions, certain of the documents produced in this production are marked "Restricted" because they contain commercial and financial information that is proprietary, not made available to the public, and that, if disclosed, would competitively disadvantage the Producing Parties or provide a competitive advantage to another party. If this information were to become public, it would provide an unfair advantage to the witnesses' competitors and entities with whom they do business (some of whom are parties to this proceeding), and would competitively disadvantage SoundExchange and those it represents. Consequently, pursuant to the Protective Order, such documents have been marked "Restricted," and good cause exists for such treatment.

Moreover, certain of the documents produced in this production are marked "Restricted" because they contain "confidential information" as defined in 37 C.F.R. § 382.14(a). Such information, which includes information derived from Sirius XM's statements of account, may be disclosed "[i]n connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order [to] attorneys, consultants and other authorized agents of the parties to the proceedings or the courts." 37 C.F.R. § 382.14 (d)(4). Documents containing confidential information have been marked as "Restricted" in order to comply with the regulations.

Under the Copyright Royalty Judges Rules and Procedures, 37 C.F.R. § 350.4(e)(1), and in compliance with the Protective Order in this proceeding, I declare that to the best of my knowledge, information or belief all material marked "Restricted" meets the definition set forth in the Protective Order or is "confidential information" as defined in the governing regulations.

Pursuant to 28 U.S.C. § 1746 and consistent with the requirements of Rule 11, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.


Garrett A. Levin

Dated: January 9, 2012

JENNER & BLOCK

January 27, 2012

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Re: Docket No. 2011-1 CRB PSS/Satellite II

Dear Counsel:

On behalf of SoundExchange, we are producing discs, described below, that contains a production of documents in response to the Order Granting Music Choice's Motion to Compel Certain Documents, dated January 24, 2012. This production contains all of the remaining documents that were relied on in preparing SoundExchange's witness testimony.

1. One disc containing documents bearing Bates labels SX02_00010641 through SX02_00013844. Some of the documents in this production are marked Restricted under the terms of the Protective Order entered on November 16, 2011. Please use all of the precautions required by the Protective Order in connection with these documents, including restricting access to the documents to outside counsel and outside experts, as set forth in Section 3 of the Protective Order, who have executed the Non-Disclosure Certificate. We are providing these documents pursuant to the specifications agreed to by the parties, in single-page TIFF image files with an Opticon image load file, a Concordance load file, extracted text for electronic files and OCR text, and a Concordance DAT file that contains the following fields: BATES_BEGIN, BATES_END, SOURCE and WITNESS.

2. Six copies of a CD labeled "SoundExchange's Document Production SX02_NATIVE_0006-SX02_NATIVE_0008 1 27 12." This disk contains 3 native-format files created in connection with the testimony of SoundExchange's witnesses that we are producing pursuant to Section 8 of the Discovery Schedule. All of the documents on the disk are marked Restricted under the terms of the Protective Order entered on November 16, 2011 or contain confidential information as defined by the applicable regulations. As you know, Section 11 of the Protective Order imposes additional limitations on the use of Restricted materials produced in native format. Please use all of the precautions required by the Protective Order in connection with these documents, including these additional precautions.

In accordance with the Protective Order, please find enclosed a Declaration and Rule 11 Certificate.

January 27, 2012
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Garrett A. Levin". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping underline.

Garrett A. Levin

Encl.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2011-1
CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF GARRETT A. LEVIN

I am counsel for SoundExchange in Docket No. 2011-1 CRB PSS/Satellite II and authorized to submit this declaration in support of SoundExchange's Production of Documents in Response to the Order Granting Music Choice's Motion to Compel Certain Documents, dated January 24, 2012.

I am familiar with the documents provided by SoundExchange, and have also reviewed the definitions and terms provided in the Protective Order. Pursuant to these definitions, certain of the documents produced in this production are marked "Restricted" because they contain commercial and financial information that is proprietary, not made available to the public, and that, if disclosed, would competitively disadvantage the Producing Parties or provide a competitive advantage to another party. If this information were to become public, it would provide an unfair advantage to the witnesses' competitors and entities with whom they do business (some of whom are parties to this proceeding), and would competitively disadvantage SoundExchange and those it represents. Consequently, pursuant to the Protective Order, such documents have been marked "Restricted," and good cause exists for such treatment.

Under the Copyright Royalty Judges Rules and Procedures, 37 C.F.R. § 350.4(e)(1), and in compliance with the Protective Order in this proceeding, I declare that to the best of my knowledge, information or belief all material marked "Restricted" meets the definition set forth in the Protective Order.

Pursuant to 28 U.S.C. § 1746 and consistent with the requirements of Rule 11, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.


Garrett A. Levin

Dated: January 27, 2012

JENNER & BLOCK

February 7, 2012

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Re: Docket No. 2011-1 CRB PSS/Satellite II

Dear Counsel:

On behalf of SoundExchange, we are producing documents responsive to the First Set of Requests for Production of Documents to SoundExchange, Inc. from Sirius XM and Music Choice as described below.

Pursuant to the parties' agreement, we have uploaded to an FTP site a file containing documents bearing Bates labels SX02_00013845 through SX02_00045968. The contents of the FTP site are password-protected. The password is 786022012. Some of the documents in this production are marked Restricted under the terms of the Protective Order entered on November 16, 2011. Please use all of the precautions required by the Protective Order in connection with these documents, including restricting access to the documents to outside counsel and outside experts, as set forth in Section 3 of the Protective Order, who have executed the Non-Disclosure Certificate. We are providing these documents pursuant to the specifications agreed to by the parties, in single-page TIFF image files with an Opticon image load file, a Concordance load file, extracted text for electronic files and OCR text, and a Concordance DAT file that contains the following fields: BATES_BEGIN, BATES_END, SOURCE and WITNESS.

Pursuant to the parties' agreement, we are sending you via overnight mail for delivery on Wednesday, February 8, six copies of a CD labeled "SoundExchange Production SX02_NATIVE_0009 2/7/12." This disk contains 1 native-format file created in connection with the testimony of SoundExchange's witnesses that we are producing pursuant to Section 8 of the Discovery Schedule. The document on the disk is marked Restricted under the terms of the Protective Order entered on November 16, 2011 or contain confidential information as defined by the applicable regulations. As you know, Section 11 of the Protective Order imposes additional limitations on the use of Restricted materials produced in native format. Pursuant to the parties' agreement, however, Restricted native documents may be loaded into a party's document review system. Please use all of other the precautions required by the Protective Order in connection with these documents.

February 7, 2012

Page 2

In accordance with the Protective Order, please find enclosed a Declaration and Rule 11 Certificate.

Very truly yours,

A handwritten signature in black ink, appearing to read "Garrett A. Levin". The signature is fluid and cursive, with a prominent initial "G" and "L".

Garrett A. Levin

Encl.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2011-1
CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF GARRETT A. LEVIN


I am counsel for SoundExchange in Docket No. 2011-1 CRB PSS/Satellite II and authorized to submit this declaration in support of SoundExchange's Production of Documents in Response to the First Set of Requests for Production of Documents to SoundExchange, Inc. from Sirius XM and Music Choice.

I am familiar with the documents provided by SoundExchange, and have also reviewed the definitions and terms provided in the Protective Order. Pursuant to these definitions, certain of the documents produced in this production are marked "Restricted" because they contain commercial and financial information that is proprietary, not made available to the public, and that, if disclosed, would competitively disadvantage the Producing Parties or provide a competitive advantage to another party. If this information were to become public, it would provide an unfair advantage to the witnesses' competitors and entities with whom they do business (some of whom are parties to this proceeding), and would competitively disadvantage SoundExchange and those it represents. Consequently, pursuant to the Protective Order, such documents have been marked "Restricted," and good cause exists for such treatment.

Moreover, certain of the documents produced in this production are marked "Restricted" because they contain "confidential information" as defined in 37 C.F.R. § 382.14(a). Such information, which includes information derived from Sirius XM's statements of account, may be disclosed "[i]n connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order [to] attorneys, consultants and other authorized agents of the parties to the proceedings or the courts." 37 C.F.R. § 382.14 (d)(4). Documents containing confidential information have been marked as "Restricted" in order to comply with the regulations.

Under the Copyright Royalty Judges Rules and Procedures, 37 C.F.R. § 350.4(e)(1), and in compliance with the Protective Order in this proceeding, I declare that to the best of my knowledge, information or belief all material marked "Restricted" meets the definition set forth in the Protective Order or is "confidential information" as defined in the governing regulations.

Pursuant to 28 U.S.C. § 1746 and consistent with the requirements of Rule 11, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.



Garrett A. Levin

Dated: February 7, 2012

JENNER & BLOCK

March 5, 2012

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Re: Docket No. 2011-1 CRB PSS/Satellite II

Dear Counsel:

On behalf of SoundExchange, we are producing documents responsive to the First Set of Requests for Production of Documents to SoundExchange, Inc. from Sirius XM and Music Choice as described below.

Pursuant to the parties' agreement, we have uploaded to an FTP site a file containing documents bearing Bates labels SX02_00076100 through SX02_00090949. The contents of the FTP site are password-protected. The password is 5eDEH2dRe. Some of the documents in this production are marked Restricted under the terms of the Protective Order entered on November 16, 2011. Please use all of the precautions required by the Protective Order in connection with these documents, including restricting access to the documents to outside counsel and outside experts, as set forth in Section 3 of the Protective Order, who have executed the Non-Disclosure Certificate. We are providing these documents pursuant to the specifications agreed to by the parties, in single-page TIFF image files with an Opticon image load file, a Concordance load file, extracted text for electronic files and OCR text, and a Concordance DAT file that contains the following fields: BATES_BEGIN, BATES_END, SOURCE and WITNESS.

In accordance with the Protective Order, please find enclosed a Declaration and Rule 11 Certificate.

Regards,



Garrett A. Levin

Encl.

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Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2011-1
CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF GARRETT A. LEVIN

I am counsel for SoundExchange in Docket No. 2011-1 CRB PSS/Satellite II and authorized to submit this declaration in support of SoundExchange's Production of Documents in Response to the First Set of Requests for Production of Documents to SoundExchange, Inc. from Sirius XM and Music Choice.

I am familiar with the documents provided by SoundExchange, and have also reviewed the definitions and terms provided in the Protective Order. Pursuant to these definitions, certain of the documents produced in this production are marked "Restricted" because they contain commercial and financial information that is proprietary, not made available to the public, and that, if disclosed, would competitively disadvantage the Producing Parties or provide a competitive advantage to another party. If this information were to become public, it would provide an unfair advantage to the witnesses' competitors and entities with whom they do business (some of whom are parties to this proceeding), and would competitively disadvantage SoundExchange and those it represents. Consequently, pursuant to the Protective Order, such documents have been marked "Restricted," and good cause exists for such treatment.

Moreover, certain of the documents produced in this production are marked "Restricted" because they contain "confidential information" as defined in 37 C.F.R. § 382.14(a). Such information, which includes information derived from Sirius XM's statements of account, may be disclosed "[i]n connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order [to] attorneys, consultants and other authorized agents of the parties to the proceedings or the courts." 37 C.F.R. § 382.14 (d)(4). Documents containing confidential information have been marked as "Restricted" in order to comply with the regulations.

Under the Copyright Royalty Judges Rules and Procedures, 37 C.F.R. § 350.4(e)(1), and in compliance with the Protective Order in this proceeding, I declare that to the best of my knowledge, information or belief all material marked "Restricted" meets the definition set forth in the Protective Order or is "confidential information" as defined in the governing regulations.

Pursuant to 28 U.S.C. § 1746 and consistent with the requirements of Rule 11, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.



Garrett A. Levin

Dated: March 5, 2012

JENNER & BLOCK

March 16, 2012

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Re: Docket No. 2011-1 CRB PSS/Satellite II

Dear Counsel:

On behalf of SoundExchange, we are producing documents responsive to the Copyright Royalty Board's Orders from March 13, 2012, Granting in Part and Denying In Part three motions to compel filed by Sirius XM and/or Music Choice as described below.

Pursuant to the parties' agreement, we have uploaded to an FTP site a file containing documents bearing Bates labels SX02_00090950 through SX02_00146511. The contents of the FTP site are password-protected. The password is 620293747. Some of the documents in this production are marked Restricted under the terms of the Protective Order entered on November 16, 2011. Please use all of the precautions required by the Protective Order in connection with these documents, including restricting access to the documents to outside counsel and outside experts, as set forth in Section 3 of the Protective Order, who have executed the Non-Disclosure Certificate. We are providing these documents pursuant to the specifications agreed to by the parties, in single-page TIFF image files with an Opticon image load file, a Concordance load file, extracted text for electronic files and OCR text, and a Concordance DAT file that contains the following fields: BATES_BEGIN, BATES_END, SOURCE and WITNESS.

In accordance with the Protective Order, please find enclosed a Declaration and Rule 11 Certificate.

Very truly yours,



Garrett A. Levin

Encl.

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Recordings and Ephemeral Recordings

Docket No. 2011-1
CRB PSS/Satellite II

DECLARATION AND RULE 11 CERTIFICATION OF GARRETT A. LEVIN

I am counsel for SoundExchange in Docket No. 2011-1 CRB PSS/Satellite II and authorized to submit this declaration in support of SoundExchange's Production of Documents responsive to the Copyright Royalty Board's Orders from March 13, 2012, Granting in Part and Denying In Part three motions to compel filed by Sirius XM and/or Music Choice.

I am familiar with the documents provided by SoundExchange, and have also reviewed the definitions and terms provided in the Protective Order. Pursuant to these definitions, certain of the documents produced in this production are marked "Restricted" because they contain commercial and financial information that is proprietary, not made available to the public, and that, if disclosed, would competitively disadvantage the Producing Parties or provide a competitive advantage to another party. If this information were to become public, it would provide an unfair advantage to the witnesses' competitors and entities with whom they do business (some of whom are parties to this proceeding), and would competitively disadvantage SoundExchange and those it represents. Consequently, pursuant to the Protective Order, such documents have been marked "Restricted," and good cause exists for such treatment.

Under the Copyright Royalty Judges Rules and Procedures, 37 C.F.R. § 350.4(e)(1), and in compliance with the Protective Order in this proceeding, I declare that to the best of my knowledge, information or belief all material marked "Restricted" meets the definition set forth in the Protective Order.

Pursuant to 28 U.S.C. § 1746 and consistent with the requirements of Rule 11, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.



Garrett A. Levin

Dated: March 16, 2012