

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

In the Matter of:

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16-CRB-001-SR/PSSR
(2018-2022)

**DECLARATION OF TODD LARSON
(On behalf of Sirius XM Radio Inc.)**

1. I am counsel for Sirius XM Radio Inc. (“Sirius XM”) in the above-captioned case. I am familiar with the facts, circumstances, and proceedings in this case and submit this declaration in support of Sirius XM and Music Choice’s (the “Services”) motion to set specific discovery deadlines and compel SoundExchange, Inc. (“SoundExchange”), RIAA, Sony Music Entertainment (“SME”), Universal Music Group (“UMG”), Warner Music Group (“WMG”), A2IM, AFM, and SAG-AFTRA (collectively, the “Copyright Owner Participants”) to adhere to their discovery obligations (the “Motion”).

2. On March 14, 2016, the Copyright Royalty Judges (the “Judges”) issued an initial scheduling order in this matter (the “March 14 Scheduling Order”). Among other things, the March 14 Scheduling Order adopted a period for “Preliminary Disclosure and Discovery” that was to commence on June 20, 2016 – several months before the deadline for the parties to file Written Direct Statements.

3. Following the issuance of the March 14 Scheduling Order, counsel for the Services (along with counsel for Muzak LLC) began a period of regular discussions with counsel for the Copyright Owner Participants regarding the parties’ disclosure and discovery obligations

and other scheduling matters, including discussion of the Preliminary Disclosure and Discovery Period ordered by the Judges.

4. From the earliest such conversations, counsel for the Copyright Owner Participants expressed that their clients were not willing to concede that the Judges possessed the authority to order a discovery period prior to Written Direct Statements. They instead suggested that the parties engage in a “voluntary” exchange of documents that, by their representation, would substantially achieve the same ends as more formal discovery.

5. The Services stated their view that they believed a robust period of formal discovery was appropriate, necessary, and intended by the March 14 Order, but agreed to engage in a process of voluntary initial exchanges of agreed-upon documents in order to obtain information from the files of the Copyright Owner Participants as quickly as possible.

6. To that end, on May 10, 2016, the parties exchanged “wish lists” describing the documents (or categories of documents) that each party wished to obtain from the other. The list from the Copyright Owner Participants contained 44 requests directed at Sirius XM, 23 requests directed at Music Choice, and 21 requests directed to Muzak LLC. The Services immediately began work reviewing and gathering documents responsive to SoundExchange’s wish list.

7. I provided a proposed discovery list to counsel for the Copyright Owner Participants on behalf of the Services (including Muzak as well). These requests identified ten different categories of documents requested of the Copyright Owner Participants. Attached hereto as Exhibit A is a true and correct copy of my email to counsel for the Copyright Owner Participants, dated May 10, 2016.

8. On May 17, 2016, Mr. Freedman provided written comments on the Services’ wish list.

9. On May 26, 2016, I sent an email to Mr. Freedman providing responses to certain of the Copyright Owner Participants' inquiries regarding the wish list. Attached hereto as Exhibit B is a true and correct copy of my email to Mr. Freedman, dated May 26, 2016.

10. Counsel for the Copyright Owner Participants eventually communicated that they viewed an exchange of license agreements – and perhaps some limited survey and financial information – as the only categories of documents that could feasibly be gathered and produced to the Services. They later proposed voluntarily exchanging only copies of certain license agreements, on or before July 1, 2016.

11. On June 20, 2016 – the first day of the Preliminary Discovery Period – the Services (again including Muzak) served their First Set of Requests for Production of Documents on each of the Copyright Owner Participants (the “Services’ First Requests”). The bulk of the Services’ requests overlapped with the voluntary lists that they had provided in early May, while others called for the reproduction of documents already gathered, reviewed, and produced by SoundExchange in the *Web IV* Proceeding.

12. Consistent with prior practice before the CRB and the deadlines set by the Judges during the formal discovery period following the submission of written direct statements, the Services’ First Requests called for written responses and objections within three weeks (*i.e.*, on or before July 11, 2016) and the production of responsive documents within four weeks (*i.e.*, on or before July 19, 2016).

13. The Services’ First Requests to SoundExchange, RIAA, and A2IM sought documents not solely from those organizations’ own files, but from the limited set of record companies who sit on their respective boards of directors.

14. On July 21, 2016, SoundExchange served extensive document requests on each of Sirius XM, Music Choice, and Muzak. SoundExchange's requests – 46 directed to Sirius XM, 25 directed to Music Choice, and 23 directed to Muzak – provided the same time period for responses as the Services' First Requests: written responses and objections within three weeks (*i.e.*, July 12, 2016), and production of responsive documents for delivery within four weeks (*i.e.*, July 20, 2016).

15. Three days before the mutually agreed-upon exchange of agreements on July 1, 2016, Michael B. DeSanctis, counsel for the Copyright Owner Participants, informed me by phone that they would not be providing license agreements between the major record companies and three of the leading digital music service providers (Spotify, Google, and Apple) due to purported objections from those services. He indicated that they were attempting to resolve those objections, but did not know for sure when they would be able to do so.

16. In light of SoundExchange's changed position, and not wanting to produce our agreements without receiving a commensurate production from the other side, I responded to Mr. DeSanctis and indicated that the Services indicated that they would hold off on the voluntary exchange of agreements until it was clearer whether and when SoundExchange would ultimately produce the withheld agreements. A true and correct copy of my email to Mr. DeSanctis is attached hereto as Exhibit C.

17. On Friday, July 8, 2016, Mr. Freedman wrote to "flag" for the Services that the Copyright Owner Participants would not be providing responses and objections on Monday, July 11. He stated that the Copyright Owner Participants were "aiming" to have such responses ready by July 18. Mr. Freedman further indicated that the Copyright Owner Participants were "aiming" to provide license agreements on July 19. A true and correct copy of Mr. Freedman's

email to the Services regarding the timing of its responses and objections is attached hereto as Exhibit D.

18. On a July 11, 2016 phone call, counsel for the Copyright Owner Participants indicated that they did not know whether they would have the responses or objections ready by the 18th (or whether they would be responding to all or only a portion of the requests), and did not know when they would be in position to produce any other documents beyond the agreed-upon license agreements.

19. On July 18, 2016, only SoundExchange and RIAA sent responses and objections to the Services' First Requests. Attached hereto as Exhibits E and F are true and correct copies of responses and objections to the Services' First Requests on behalf of SoundExchange and RIAA, respectively.

20. On July 19, 2016, Mr. Freedman emailed counsel for the Services informing them that agreements with Spotify were being pulled from the production, although he could not provide any more information as to why such documents were being withheld. Mr. Freedman emailed again later that day to inform the Services that agreements with Tidal (another interactive service) were also being withheld, as Tidal had indicated they might be filing a motion with the Judges objecting to such production. A true and correct copy of my correspondence with Mr. Freedman regarding the Spotify and Tidal agreements is attached hereto as Exhibit G.

21. As agreed, the Services served their responses and objections to the Copyright Owner Participants and produced license agreements on July 19, 2016.

22. The Copyright Owner Participants produced their "voluntary" license agreements on July 19, 2016, but withheld the Spotify and Tidal agreements. They produced the Tidal

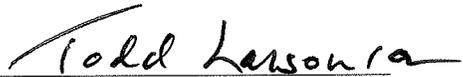
agreements on July 20, 2016, apparently after learning that Tidal did not plan to file a motion with the Judges.

23. As of the date of this Declaration, the Services have not received responses and objections from any of the other Copyright Owner Participants.

24. Based on my communications with counsel for the Copyright Owner Participants, it remains unclear to me when responses from the other Copyright Owner Participants will be served, or when SoundExchange, RIAA, or any of the other Copyright Owner Participants intend to produce any of the other requested documents.

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 21, 2016
New York, NY


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