

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

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

Docket No. 16-CRB-0001-SR/PSSR (2018-
2022) (Remand)

**DECLARATION AND CERTIFICATION OF MARGARET WHEELER-
FROTHINGHAM REGARDING RESTRICTED MATERIAL**

1. I am an attorney at Mayer Brown LLP, and am counsel for Music Choice in the above-captioned remand proceeding. I submit this declaration in support of Music Choice’s Opening Brief on Remand. I am fully familiar with the facts set forth in this declaration, and if called upon to testify could do so truthfully and competently.

2. Pursuant to the Copyright Royalty Judges’ Order dated June 15, 2016 (the “Protective Order”), Music Choice, through its undersigned counsel, respectfully submits this declaration concerning Protected Material, as that term is used and defined in the Protective Order.

3. This declaration is being submitted simultaneously with the public filing of Music Choice’s Opening Remand Brief, the Declaration of David J. Del Beccaro, the Declaration of Russell Potts, the Declaration of Margaret Wheeler-Frothingham, and accompanying exhibits.

4. I have reviewed the in Music Choice’s Opening Remand Brief, the Declaration of David J. Del Beccaro, the Declaration of Russell Potts, the Declaration of Margaret Wheeler-

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Frothingham, as well as any exhibit or other document submitted that is designated Restricted, 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 this 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, or the competitors and counterparties of other parties to the information. Public disclosure of this information would place Music Choice or the owner of the relevant information at a significant commercial disadvantage and would seriously jeopardize its business interests.

8. Portions of Music Choice’s Opening Remand Brief, the Declaration of David J. Del Beccaro, the Declaration of Russell Potts, the Declaration of Margaret Wheeler-Frothingham, and/or their accompanying exhibits submitted by Music Choice clearly meet the definition of “Protected Material.” Specifically, as summarized below, the following documents and exhibits contain commercial and financial material that is proprietary, not known to the

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public and the disclosure of which would place Music Choice or another party to that material at a significant commercial disadvantage or would unfairly advantage competitors and other parties.

9. The Declaration David J. Del Beccaro contains information about Music Choice's contracts, including those subject to confidentiality provisions, and regarding Music Choice's confidential negotiations with business counterparties. Mr. Del Beccaro also sponsors exhibits that contain confidential information about the terms of Music Choice's contracts, including those subject to confidentiality provisions, and highly-confidential, non-public strategy documents from Music Choice's partner meetings. The information in both the written declaration 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.

10. The Declaration of Russell Potts contains detailed non-public financial information relating to Music Choice's revenues, statutory license payments, and amounts for which SoundExchange has claimed underpayment and amounts Music Choice has paid to settle such claims. The testimony also contains information relating to confidential reports of SoundExchange's accountants and the independent auditors hired by Music Choice, as well as information about confidential settlement negotiations. Mr. Potts also sponsors exhibits that contain confidential information about Music Choice's reports of SoundExchange's accountants and the independent auditors hired by Music Choice, as well as information about confidential settlement negotiations, and contracts, including those subject to confidentiality provisions. The information in both the written declaration 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

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of the other parties to whom the information pertains, while providing a competitive advantage to other parties in the industry.

11. The Declaration of Margaret Wheeler-Frothingham sponsors exhibits containing material produced by SoundExchange relating to the terms of its agreements with its accountants, and which SoundExchange has designated as “RESTRICTED.” The information in the exhibits is at a level of specificity that is not disclosed to the public; if it were disclosed, it would competitively disadvantage the parties to whom the information pertains, while providing a competitive advantage to other parties in the industry.

12. 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 (or SoundExchange, in the case of materials designated “RESTRICTED” by SoundExchange), provide a competitive advantage to another party, interfere with Music Choice’s ability to obtain like information in the future, or otherwise potentially violate the Protective Order.

13. Attached hereto is a Redaction Log, as required by paragraph 4(c) of the Protective Order, identifying each redaction contained in Music Choice’s Opening Remand Brief, the Declaration of David J. Del Beccaro, the Declaration of Russell Potts, the Declaration of Margaret Wheeler-Frothingham, and any exhibit or other document submitted that is designated Restricted.

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

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15. I am authorized to submit this declaration 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 declaration 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 their determination in this remand proceeding.

16. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: June 30, 2021
New York, New York


Margaret Wheeler-Frothingham (NY Bar No. 5281191)

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UNITED STATES COPYRIGHT ROYALTY JUDGES
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In re

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

Docket No. 16–CRB–0001–SR/PSSR (2018–2022) (Remand)

**MUSIC CHOICE’S REDACTION LOG
FOR OPENING REMAND BRIEF, DECLARATIONS, AND EXHIBITS**

DOCUMENT	PAGE OR EXHIBIT	DESCRIPTION
Potts Decl.	Page 9, lines 14-15	Information pertaining to RZO’s confidential and commercially sensitive “Royalty Examination” report pertaining to Music Choice’s PSS license payments.
Potts Decl.	Page 10, line 15	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.
Potts Decl.	Page 10, line 18	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.
Potts Decl.	Page 11, line 10	Confidential and commercially sensitive information regarding the amount of payment and interest paid SoundExchange to correct undisputed accounting errors in Music Choice’s Music Choice’s PSS payments.

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Potts Decl.	Page 11, line 17	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice's PSS to SoundExchange and the amount for which claims of underpayment were settled.
Potts Decl.	Page 14, line 16	Confidential and commercially sensitive information regarding instances in which Music Choice determined it had made errors in its payments under the PSS license.
Potts Decl.	Page 14, line 18	Confidential and commercially sensitive information regarding the amount of interest Music Choice has paid on late payments under the PSS license.
Potts Decl.	Page 17, lines 7-10	Confidential and commercially sensitive referring to and quoting Prager Metis's confidential royalty verification report pertaining Music Choice's payments under the BES license.
Potts Decl.	Ex. MC 1	Music Choice's confidentiality agreement with SoundExchange's accounting firm.
Potts Decl.	Ex. MC 3	RZO's confidential and commercially sensitive "Royalty Examination" report pertaining to Music Choice's PSS license payments.
Potts Decl.	Ex. MC 5	Information regarding Music Choice's confidential correspondence regarding disputed royalty claims made by SoundExchange's accountants.
Potts Decl.	Ex. MC 6	Confidential information regarding Music Choice's payment for undisputed accounting errors identified by SoundExchange's accountants.
Potts Decl.	Ex. MC 7	Information regarding the confidential and commercially sensitive settlement agreement between SoundExchange and Music Choice, dated relating to Music Choice's PSS payments.

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Potts Decl.	Ex. MC 8	Information regarding a confidential and commercially sensitive Independent Auditor's Report regarding Music Choice's PSS royalty payments.
Potts Decl.	Ex. MC 9	Music Choice's engagement agreement with an independent auditing firm for the defensive audit of Music Choice's PSS payments.
Del Beccaro Decl.	Page 7, line 6	Confidential and commercially sensitive information regarding Music Choice's business negotiations.
Del Beccaro Decl.	Page 7, line 9	Confidential and commercially sensitive information regarding Music Choice's business negotiations.
Del Beccaro Decl.	Page 8, line 20	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Page 8, lines 21-23	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Page 9, line 1	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Page 9, line 3	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Page 15, line 9	Confidential and commercially sensitive information regarding Music Choice subscriber numbers for its ETV interface on the television.
Del Beccaro Decl.	Page 29, line 10	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Page 29, lines 11-13	Confidential and commercially sensitive information regarding the terms of Music Choice's affiliate agreement.
Del Beccaro Decl.	Ex. MC 12	Confidential and commercially sensitive pages from Music Choice's October 11, 1996 partner meeting file.

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Del Beccaro Decl.	Ex. MC 13	Confidential and commercially sensitive pages from Music Choice’s February 13, 1997 partners’ meeting file.
Del Beccaro Decl.	Ex. MC 14	Confidential and commercially sensitive pages from Music Choice’s September 17, 1997 partners’ meeting file.
Del Beccaro Decl.	Ex. MC 15	Music Choice’s confidential agreement with its affiliate.
Wheeler-Frothingham Decl.	Ex. MC 16	Confidential and commercially sensitive information regarding the terms of SoundExchange’s engagement letter with its accountants, which SoundExchange produced as “RESTRICTED.”
Wheeler-Frothingham Decl.	Ex. MC 17	Confidential and commercially sensitive information regarding the terms of SoundExchange’s engagement letter with its accountants, which SoundExchange produced as “RESTRICTED.”
Music Choice’s Opening Remand Brief	Page 11, line 17	Confidential and commercially sensitive information regarding the terms of Music Choice’s affiliate agreements.
Music Choice’s Opening Remand Brief	Page 28, lines 6-9	Confidential and commercially sensitive information regarding the terms of SoundExchange’s engagement letter with its accountants, which SoundExchange produced as “RESTRICTED.”
Music Choice’s Opening Remand Brief	Page 30, line 11	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.
Music Choice’s Opening Remand Brief	Page 30, line 14	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.
Music Choice’s Opening Remand Brief	Page 30, line 18	Confidential and commercially sensitive information regarding the amount of undisputed accounting errors identified in Music Choice’s Music Choice’s PSS payments.

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Music Choice's Opening Remand Brief	Page 30, line 23	Confidential and commercially sensitive information regarding the amount of payment and interest paid SoundExchange to correct undisputed accounting errors in Music Choice's Music Choice's PSS payments.
Music Choice's Opening Remand Brief	Page 31, lines 3-4	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice's PSS to SoundExchange and the amount for which claims of underpayment were settled.
Music Choice's Opening Remand Brief	Page 32, line 23	Confidential and commercially sensitive referring to and quoting Prager Metis's confidential royalty verification report pertaining Music Choice's payments under the BES license.
Music Choice's Opening Remand Brief	Page 33, line 1	Confidential and commercially sensitive referring to and quoting Prager Metis's confidential royalty verification report pertaining Music Choice's payments under the BES license.
Music Choice's Opening Remand Brief	Page 33, lines 10-13	Confidential and commercially sensitive information regarding the terms of SoundExchange's engagement letter with its accountants, which SoundExchange produced as "RESTRICTED."

Proof of Delivery

I hereby certify that on Thursday, July 01, 2021, I provided a true and correct copy of the Declaration and Certification of Margaret Wheeler-Frothingham Regarding Restricted Material to the following:

Sirius XM, represented by Todd Larson, served via ESERVICE at todd.larson@weil.com

Sony Music Entertainment, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Universal Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SoundExchange, Inc., represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

SAG-AFTRA, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Association of Independent Music ("A2IM"), represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Warner Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Recording Industry Association of America, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Signed: /s/ Paul Fakler