

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 Responsive 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 Responsive Remand Brief, the Declaration of Russell Potts in Support of Music Choice’s Responsive Brief, the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice’s Responsive Brief, and all accompanying exhibits.

4. I have reviewed Music Choice’s Responsive Remand Brief, the Declaration of Russell Potts in Support of Music Choice’s Responsive Brief, the Declaration of Margaret

Wheeler-Frothingham in Support of Music Choice’s Responsive Brief, and all accompanying exhibits.

5. As discussed below and after consultation with my client, I have determined that portions of Music Choice’s Responsive Remand Brief, the Declaration of Russell Potts in Support of Music Choice’s Responsive Brief, 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, and references thereto in the brief, contain commercial, financial and strategic material that is proprietary, not known to the 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.

6. The Declaration of Russell Potts in Support of Music Choice’s Responsive Brief 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 of the other parties to whom the information pertains, while providing a competitive advantage to other parties in the industry.

7. The Declaration of Margaret Wheeler-Frothingham sponsors exhibits that contain confidential memoranda written by SoundExchange's accountants and analyzing Music Choice's financial information and payments under the statutory license, as well as information about confidential internal discussions at SoundExchange, all of which were produced by SoundExchange as "RESTRICTED."

8. 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 and/or SoundExchange, provide a competitive advantage to another party, interfere with Music Choice or SoundExchange's ability to obtain like information in the future, or otherwise potentially violate the Protective Order.

9. Attached hereto is a Redaction Log, as required by paragraph 4(c) of the Protective Order, identifying each redaction contained in Music Choice's Responsive Remand Brief, the Declaration of Russell Potts in Support of Music Choice's Responsive Brief, and any exhibit or other document submitted that is designated Restricted.

10. 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.

11. 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.

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

Dated: October 7, 2021
New York, New York


Margaret Wheeler-Frothingham (NY Bar No. 5281191)

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

DOCUMENT	PAGE OR EXHIBIT	DESCRIPTION
Potts Responsive Decl.	Page 7, line 2	Confidential and commercially sensitive information regarding the amount of interest owed as revealed in BDO’s defensive audit of Music Choice’s PSS payments to SoundExchange.
Potts Responsive Decl.	Page 7, line 4	Confidential and commercially sensitive information regarding the amount Music Choice paid to SoundExchange under the PSS license in 2015.
Potts Responsive Decl.	Page 13, line 8	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.
Potts Responsive Decl.	Page 13, line 10	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice’s PSS to SoundExchange.

Potts Responsive Decl.	Page 13, line 15	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 Responsive Decl.	Page 13, line 16	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 Responsive Decl.	Ex. MC 18	Confidential and commercially sensitive correspondence between SoundExchange's accountants and Music Choice relating to Music Choice's PSS payments.
Potts Responsive Decl.	Ex. MC 19	Confidential and commercially sensitive correspondence between SoundExchange's accountants and BDO relating to the audit of Music Choice's PSS payments.
Potts Responsive Decl.	Ex. MC 20	Confidential and commercially sensitive correspondence between SoundExchange's accountants and BDO relating to the audit of Music Choice's PSS payments.
Potts Responsive Decl.	Ex. MC 21	Confidential and commercially sensitive correspondence between SoundExchange's accountants and BDO relating to the audit of Music Choice's PSS payments, and commercially sensitive financial information attached to those emails.
Potts Responsive Decl.	Ex. MC 22	Confidential and commercially sensitive correspondence between SoundExchange's accountants and Music Choice's accountants relating to Music Choice's PSS payments.
Potts Responsive Decl.	Ex. MC 23	BDO's confidential and commercially sensitive 2015 audit report pertaining to Music Choice's PSS license payments.
Potts Responsive Decl.	Ex. MC 24	Confidential and commercially sensitive correspondence between Music Choice and BDO relating to BDO's audit of Music Choice's PSS payments.

Wheeler-Frothingham Decl.	Ex. MC 25	Prager Metis's confidential and commercially sensitive memorandum to SoundExchange regarding its review of the defensive audits of Music Choice's PSS royalty payments conducted by BDO, produced by SoundExchange as "Restricted."
Wheeler-Frothingham Decl.	Ex. MC 26	Confidential email chain between Colin Rushing and Brienne Elpert Jackson regarding Prager Metis's review of BDO's audits of Music Choice's PSS royalty payments, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 29, lines 22-24	Information regarding the substance of Prager Metis's confidential and commercially sensitive memorandum to SoundExchange regarding its review of the defensive audits of Music Choice's PSS royalty payments conducted by BDO, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 30, line 1	Information regarding the substance of Prager Metis's confidential and commercially sensitive memorandum to SoundExchange regarding its review of the defensive audits of Music Choice's PSS royalty payments conducted by BDO, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 30, lines 2-4	Information regarding the substance of Prager Metis's confidential and commercially sensitive memorandum to SoundExchange regarding its review of the defensive audits of Music Choice's PSS royalty payments conducted by BDO, produced by SoundExchange as "Restricted."

Music Choice's Responsive Brief on Remand	Page 30, lines 6-9	Information regarding the substance of Prager Metis's confidential and commercially sensitive memorandum to SoundExchange regarding its review of the defensive audits of Music Choice's PSS royalty payments conducted by BDO, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 30, lines 14-15	Information regarding the substance of a confidential email chain between Colin Rushing and Brienne Elpert Jackson regarding Prager Metis's review of BDO's audits of Music Choice's PSS royalty payments, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 30, lines 16-17	Information regarding the substance of a confidential email chain between Colin Rushing and Brienne Elpert Jackson regarding Prager Metis's review of BDO's audits of Music Choice's PSS royalty payments, produced by SoundExchange as "Restricted."
Music Choice's Responsive Brief on Remand	Page 32, line 4	Confidential and commercially sensitive information regarding the amount of interest owed as revealed in BDO's defensive audit of Music Choice's PSS payments to SoundExchange.
Music Choice's Responsive Brief on Remand	Page 32, line 7	Confidential and commercially sensitive information regarding the amount Music Choice paid to SoundExchange under the PSS license in 2015.
Music Choice's Responsive Brief on Remand	Page 34, line 4	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice's PSS to SoundExchange.
Music Choice's Responsive Brief on Remand	Page 34, line 12	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice's PSS to SoundExchange.

Music Choice's Responsive Brief on Remand	Page 34, line 14	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 Responsive Brief on Remand	Page 34, line 15	Confidential and commercially sensitive information regarding the amount of alleged underpayment by Music Choice's PSS to SoundExchange.

Proof of Delivery

I hereby certify that on Thursday, October 07, 2021, I provided a true and correct copy of the Declaration and Certification of Margaret Wheeler-Frothingham Regarding Restricted Material to the following:

Sony Music Entertainment, 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

Recording Industry Association of America, 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

Universal Music Group, 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

SAG-AFTRA, 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

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

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

Signed: /s/ Paul Fakler