

April 25, 2024

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The U.S. Copyright Royalty Judges
Library of Congress
P.O. Box 70977
Washington, D.C. 20024-097

**Re: Docket No. 16-CRB-0001-SR/PSSR (2018-2022) (Remand) (*SDARS III*),
Docket No. 2012-1 CRB (*Business Establishments II*), and
Docket No. 2007-1 CRB DTRA-BE (*Business Establishments I*)**

To the Copyright Royalty Judges:

I write on behalf of SoundExchange, Inc. (“SoundExchange”) to respectfully request that the Judges consider the open issues in the above-identified proceedings at their earliest convenience.

SDARS III is on remand from the Court of Appeals for the D.C. Circuit pursuant to a decision dated August 18, 2020 asking the Judges to reconsider whether Music Choice’s internet transmissions qualify for a grandfathered preexisting subscription services rate, along with relevant audit procedures. *See Music Choice v. Copyright Royalty Bd.*, 970 F. 3d 418, 430 (D.C. Cir. 2020). SoundExchange and Music Choice fully briefed the issues on remand by October 2021.

The Judges reopened *Business Establishments I and II* by an order dated March 22, 2022 to consider a question of regulatory interpretation referred to them by the D.C. District Court under the doctrine of primary jurisdiction. That question arose from a collection action SoundExchange filed against Music Choice alleging that Music Choice has long been underreporting the “Gross Proceeds” of its business establishment service and correspondingly underpaying royalties for that service pursuant to the statutory license in Section 112 of the Copyright Act. SoundExchange and Music Choice fully briefed the issues for the Judges by June 2022.

While SoundExchange recognizes that the Judges have many matters competing for their attention, the above-identified proceedings remain important, because the issues raised are relevant to determining Music Choice’s statutory royalty liability for its current activities. Thus, with each passing month, the amount of statutory royalty liability in controversy, and the complexity and possibility of disruption associated with potentially implementing a decision

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retroactively, continues to grow. SoundExchange and its constituents would greatly appreciate the business certainty that would come from resolving these issues.

Respectfully submitted,

By: /s/ Steven R. Englund
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Counsel for SoundExchange, Inc.

Proof of Delivery

I hereby certify that on Thursday, April 25, 2024, I provided a true and correct copy of the SoundExchange's letter concerning pending issues to the following:

Sirius Satellite Radio, represented by Karyn K. Ablin, served via US Mail

Music Choice, represented by Paul Fakler, served via E-Service at
pfakler@mayerbrown.com

XM Satellite Radio Inc., represented by R. Bruce Rich, served via Email

Signed: /s/ Steven R. Englund