

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of)	
)	
)	
DETERMINATION OF ROYALTY RATES)	Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND)	(2016-2020)
RECORDINGS AND EPHEMERAL)	
RECORDINGS (WEB IV))	
)	

DECLARATION AND CERTIFICATION OF JOHN THORNE
ON BEHALF OF iHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. in this proceeding.
2. On October 2, 2014, the CRB adopted an Interim Protective Order that limits the disclosure of materials and information marked “RESTRICTED” to outside counsel and their law firm’s staff while the CRB considers three specific issues. *See* Interim Protective Order (Oct. 2, 2014). The Interim Protective Order does not define confidential information or state that participants must submit declarations or affidavits identifying the materials they have designated confidential. In requesting a protective order, iHeartMedia, SoundExchange, and several other participants proposed that confidential information may “include information that is commercial or financial information that the Producing Party has reasonably determined in good faith that, if disclosed, would either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future.” Joint Motion to Adopt Protective Order, Appendix A at III (Sept. 23, 2014). iHeartMedia, SoundExchange, and the other joining participants further proposed that any party producing confidential information must “deliver with all Restricted materials an affidavit or declaration . . . listing all materials marked with the

‘Restricted’ stamp and the basis for the designation.” *Id.* at IV.2. Both provisions were modeled on provisions in protective orders the CRB issued in prior rate determination and distribution proceedings.

3. I submit this declaration listing the information and materials iHeartMedia has designated confidential and the basis for those designations in compliance with Sections III and IV of the Proposed Protective Order or similar provisions in any final protective order the CRB may issue.

4. I have reviewed iHeartMedia’s Introductory Memorandum, witness testimony, accompanying exhibits, and Redaction Log. After consultation with my client, I have determined to the best of my knowledge, information and belief that portions of iHeartMedia’s Introductory Memorandum, witness testimony, and accompanying exhibits contain confidential information. The confidential information is identified in the attached Redaction Log, redacted in the public copies of iHeartMedia’s filing, bracketed in the “RESTRICTED” copies of iHeartMedia’s filing, and described in more detail below.

5. The redacted confidential information includes, but is not limited to, testimony and exhibits involving (a) contracts, contractual terms, and contract strategy that are proprietary, not available to the public, competitively sensitive and often subject to express confidentiality provisions with third parties; (b) confidential internal business information, financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive; and (c) communications between iHeartMedia and content providers concerning activities that, if disclosed, would disrupt ongoing partnerships and collaborations, and interfere with future partnerships and collaborations.

6. If the redacted confidential information were to become public, it would place iHeartMedia at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of iHeartMedia, and jeopardize iHeartMedia's business interests. Information related to iHeartMedia's confidential contracts or iHeartMedia's relationships with content providers could be used by iHeartMedia's competitors, or by other content providers, to formulate rival bids, bid up iHeartMedia payments, or otherwise unfairly jeopardize iHeartMedia's commercial and competitive interests.

7. With respect to the financial information, I understand that iHeartMedia has not disclosed to the public or the investment community the financial information that it seeks to restrict here, including its internal financial projections and specific royalty payment information. Consequently, neither iHeartMedia's competitors nor the investing public has been privy to that information, which iHeartMedia has treated as highly confidential and sensitive, and has guarded closely. In addition, when iHeartMedia does disclose information about its finances to the market as required by law, iHeartMedia provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that iHeartMedia seeks to restrict by designating it confidential is not intended for public release or prepared with that audience in mind, and therefore was not accompanied by the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the statements and exhibits include information that has not been approved by iHeartMedia's Board of Directors, as such sensitive disclosures usually are, or accompanied by the typical disclaimers that usually accompany such disclosures. iHeartMedia could experience negative market repercussions and competitive disadvantage were this confidential financial information released publicly without proper context or explanation.

8. The written testimony of Steven Cutler, Executive Vice President, Business Development and Corporate Strategy for iHeartMedia, and all but two of the exhibits accompanying his testimony contain information regarding the terms of contracts with record labels, iHeartMedia's internal financial projections, and information concerning iHeartMedia's costs and royalty payments. None of this information is publically known or available. For the reasons discussed in paragraphs 7 and 8, disclosure of the terms of these contracts and non-public financial data would competitively disadvantage iHeartMedia. Mr. Cutler's testimony and the exhibits accompanying his testimony also contain material non-public terms of agreements with record labels that are subject to confidentiality provisions as well as material non-public details of negotiations with record labels.

9. The written testimony of Jeffrey Littlejohn, Executive Vice President for Engineering and Systems Integration for iHeartMedia contains confidential information regarding iHeartMedia's strategy in contract negotiations with record labels and the development of proprietary, patented technology. Disclosure of this information would, for the reasons discussed in paragraph 6 among others, competitively disadvantage iHeartMedia.

10. The written testimony of Tom Poleman, President of National Programming Platforms for iHeartMedia, and three of the exhibits accompanying his testimony contain competitively sensitive information concerning iHeartMedia's ongoing contractual relationships and strategic partnerships with content providers. Disclosure of the details of these contractual relationships and strategic partnerships would cause iHeartMedia competitive harm, and jeopardize iHeartMedia's ongoing relationships with these content providers. In addition, the testimony and exhibits sponsored by Mr. Poleman include non-public communications between iHeartMedia personnel and individual representatives of content providers. Disclosure of these

individuals' communications with iHeartMedia's personnel would jeopardize iHeartMedia's relationships with these individuals, and thereby cause iHeartMedia competitive harm.

11. The written testimony of Professors Fischel and Lichtman and the accompanying exhibits contain material non-public information concerning the particular rates and terms agreed to by specific iHeartMedia direct licensors; material non-public internal financial data concerning iHeartMedia's subscriber counts, royalty payments, and cost structure; and iHeartMedia's internal financial projections and business strategies. None of this information is publically known or available. Disclosure of this information would, for reasons discussed in paragraphs 7 and 8 among others, competitively disadvantage iHeartMedia.

12. The contractual, commercial and financial information described in the paragraphs above and detailed on the accompanying Redaction Log must be treated as restricted confidential information in order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling iHeartMedia to provide the Judges with the most complete record possible on which to base their 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 the foregoing is true and correct.

October 7, 2014

Respectfully submitted,



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