

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
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–0001–SR/PSSR
(2018–2022)

DECLARATION OF JOHN SULLIVAN

(On behalf of Music Choice)

1. I am counsel for Music Choice in the above-captioned proceeding. I respectfully submit this Declaration pursuant to 28 U.S.C. § 1746. I am authorized by Music Choice to submit this Declaration on Music Choice’s behalf.
2. Music Choice has negotiated in good faith with SoundExchange regarding discovery during the preliminary discovery period in this proceeding.
3. On August 17, 2016, I met and conferred with counsel for SoundExchange by telephone regarding Music Choice’s responses and objections to SoundExchange’s discovery requests. During that call, counsel for SoundExchange sought only to confirm that Music Choice would be producing documents responsive to requests 10, 12, and 13 from SoundExchange’s First Set of Requests for Production of Documents. I confirmed that Music Choice would do so, subject to its objections, and stated that Music Choice intended to do so on Monday, August 22, 2016—the same day that counsel for SoundExchange indicated SoundExchange intended to make its own production of documents.

4. At 6:28 P.M. on August 22, 2016, SoundExchange served on Music Choice a motion to compel production of documents responsive to SoundExchange's First Set of Requests for Production of Documents (the "Motion"). This came as some surprise, given that there were, to Music Choice's understanding, no unresolved disputes at the end of the meet and confer call of August 17.

5. A 6:49 P.M. on August 22, 2016, Music Choice produced documents bearing Bates ranges MC0000282 – MC0016675 to SoundExchange. A true and correct copy of the email transmitting that document production is attached hereto as **Exhibit A**.

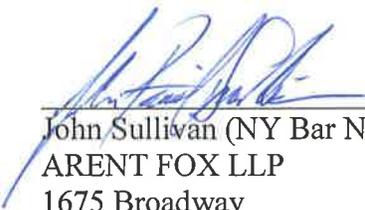
6. Music Choice's August 22, 2016 production of documents to SoundExchange included documents that Music Choice believes are responsive to SoundExchange's document requests, as promised during the August 17 meet and confer call.

7. At 2:18 P.M. on August, 23, 2016, I emailed counsel for SoundExchange to state Music Choice's belief that SoundExchange's Motion was moot in light of Music Choice's production of documents as promised, and to ask that SoundExchange decide by close of business the following day whether it would withdraw its Motion as to Music Choice to prevent unnecessary briefing. At 4:49 P.M. on August 23, 2016, counsel for SoundExchange replied to my email and did not agree to withdraw the Motion, citing SoundExchange's receipt of both Music Choice's and Sirius XM's productions of documents and SoundExchange's likely inability to review all of those documents by close of business the following day. A true and correct copy of that email exchange is attached hereto as **Exhibit B**.

8. Music Choice has received no further communications from SoundExchange regarding whether SoundExchange will withdraw its Motion as to Music Choice.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: August 26, 2016



John Sullivan (NY Bar No. 4996310)

ARENT FOX LLP

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New York, NY 10019-5874

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Email: john.sullivan@arentfox.com

Counsel for Music Choice

EXHIBIT A

Sullivan, John P.

From: Miranda Perkins <miranda.perkins@arentfox.com>
Sent: Monday, August 22, 2016 6:49 PM
To: dhandzo@jenner.com; mdesanctis@jenner.com; senglund@jenner.com;
jfreedman@jenner.com; aali@jenner.com; atrepp@jenner.com; APeterson@jenner.com;
Elisabeth.Sperle@weil.com; bruce.rich@weil.com; benjamin.marks@weil.com;
randi.singer@weil.com; Todd.Larson@weil.com; David.Yolkut@weil.com;
Jennifer.Oliver@weil.com; jacob.ebin@weil.com; Olivia.Greer@weil.com;
Leason.Hoilett@weil.com; Fakler, Paul M.; Toof, Jackson; Sullivan, John P.; Cunniff,
Martin; Wheeler-Frothingham, Margaret
Subject: 16-CRB-0001-SR/PSSR (2018-2022) (SDARS III)

You have received 2 secure files from miranda.perkins@arentfox.com.

Use the secure links below to download.

Counsel,

Attached please find Music Choice's Second production of documents, bearing bates numbers MC0000282 - MC0016675. The accompanying Declaration of John Sullivan is attached. Certain documents in this production have been designated as "Restricted" pursuant to the Protective Order entered June 15, 2016. The password for the zip file is z6cEW3*4bE@.

Please let me know if you have any issues accessing.

Miranda Perkins
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New York, NY 10019-5820
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Available until: **21 September 2016**

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[2016-08-22 Sullivan Declaration.pdf](#)

620.03 KB, Fingerprint: 6e15029c2794762a99913b99027be8f5 ([What is this?](#))

[MC002.zip](#)

1.30 GB, Fingerprint: 8a5352b58a68b32cca1d9a6c8a65b2f7 ([What is this?](#))

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EXHIBIT B

Sullivan, John P.

From: Freedman, Jared O. <JFreedman@jenner.com>
Sent: Tuesday, August 23, 2016 4:49 PM
To: Sullivan, John P.; Rao, Devi M.; Trepp, Alex S.
Cc: Fakler, Paul M.; Toof, Jackson
Subject: RE: Docket No. 16-CRB-001-SR/PSSR (2018-2022): SoundExchange's Motion to Compel

Hi John,

We received your production of over 16,000 pages of documents last night at about 7 pm. We also received Sirius XM's production last night. We have provided them to our vendor to load in our database for review. I doubt we will be able to complete our review of the documents by COB tomorrow. If we determine that we agree with your assessment that the motion is moot before your opposition to the motion is due, we will let you know.

Thank you.

Jared

From: Sullivan, John P. [mailto:John.Sullivan@arentfox.com]
Sent: Tuesday, August 23, 2016 2:19 PM
To: Freedman, Jared O.; Rao, Devi M.; Trepp, Alex S.
Cc: Fakler, Paul M.; Toof, Jackson
Subject: RE: Docket No. 16-CRB-001-SR/PSSR (2018-2022): SoundExchange's Motion to Compel

Jared,

We believe this motion is moot as to Music Choice in light of yesterday's production. Would you please let us know by COB tomorrow whether you will file a withdrawal of the motion as to Music Choice?

Best,
John

John P. Sullivan
Associate

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john.sullivan@arentfox.com | www.arentfox.com

From: Trepp, Alex S. [mailto:ATrepp@jenner.com]
Sent: Monday, August 22, 2016 6:28 PM
To: 'paul.fakler@arentfox.com'; 'eric.roman@arentfox.com'; 'martin.cunniff@arentfox.com'; 'jackson.toof@arentfox.com'; 'ross.panko@arentfox.com'; 'pcalhoun@musicchoice.com'; 'benjamin.marks@weil.com'; 'elisabeth.sperle@weil.com'; 'melanie.mccool@moodmedia.com'; 'george@georgejohnson.com'; 'bruce.rich@weil.com'; 'randi.singer@weil.com'; 'todd.larson@weil.com'; 'david.yolkut@weil.com'; 'jacob.ebin@weil.com'; 'patrick.donnely@siriusxm.com'; 'Cynthia.greer@siriusxm.com' <Cynthia.greer@siriusxm.com>
Subject: Docket No. 16-CRB-001-SR/PSSR (2018-2022): SoundExchange's Motion to Compel

All,

Please find attached SoundExchange's Motion to Compel the Services' Production of Certain Documents and the accompanying Declaration of Jared Freedman, filed this afternoon with the CRB. Hard copies will follow by mail.

Best,
Alex

Alex S. Trepp

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