

Response to FCC Form 312 Question 39

In the ordinary course of business, we are a defendant or party to various claims and lawsuits, including those discussed below.

Pre-1972 Sound Recording Litigation. On October 2, 2014, Flo & Eddie Inc. filed a class action suit against Pandora Media, Inc., one of our subsidiaries (“Pandora”), in the federal district court for the Central District of California. The complaint alleges a violation of California Civil Code Section 980, unfair competition, misappropriation and conversion in connection with the public performance of sound recordings recorded prior to February 15, 1972 (which we refer to as, “pre-1972 recordings”). On December 19, 2014, Pandora filed a motion to strike the complaint pursuant to California’s Anti-Strategic Lawsuit Against Public Participation (“Anti-SLAPP”) statute, which following denial of Pandora’s motion was appealed to the Ninth Circuit Court of Appeals. In March 2017, the Ninth Circuit requested certification to the California Supreme Court on the substantive legal questions. The California Supreme Court accepted certification. In May 2019, the California Supreme Court issued an order dismissing consideration of the certified questions on the basis that, following the enactment of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018) (the “MMA”), resolution of the questions posed by the Ninth Circuit Court of Appeals was no longer “necessary to . . . settle an important question of law.”

The MMA grants a potential federal preemption defense to the claims asserted in the aforementioned lawsuits. In July 2019, Pandora took steps to avail itself of this preemption defense, including making the required payments under the MMA for certain of its uses of pre-1972 recordings. Based on the federal preemption contained in the MMA (along with other considerations), Pandora asked the Ninth Circuit to order the dismissal of the *Flo & Eddie, Inc. v. Pandora Media, Inc.* case. On October 17, 2019, the Ninth Circuit Court of Appeals issued a memorandum disposition concluding that the question of whether the MMA preempts Flo and Eddie's claims challenging Pandora's performance of pre-1972 recordings “depends on various unanswered factual questions” and remanded the case to the District Court for further proceedings.

In October 2020, the District Court denied Pandora’s renewed motion to dismiss the case under California’s anti-SLAPP statute, finding the case no longer qualified for anti-SLAPP due to intervening changes in the law, and denied Pandora’s renewed attempt to end the case. Alternatively, the District Court ruled that the preemption defense likely did not apply to Flo & Eddie’s claims, in part because the District Court believed that the Music Modernization Act did not apply retroactively. Pandora promptly appealed the District Court’s decision to the Ninth Circuit, and moved to stay appellate briefing pending the appeal of a related case against Sirius XM. On January 13, 2021, the Ninth Circuit issued an order granting the stay of appellate proceedings pending the resolution of a related case against Sirius XM.

We believe we have substantial defenses to the claims asserted in this action, and we intend to defend these actions vigorously.

Copyright Royalty Board Proceeding to Determine the Rate for Statutory Webcasting. Pursuant to Sections 112 and 114 of the Copyright Act, the Copyright Royalties Board (the "CRB") initiated a proceeding in January 2019 to set the rates and terms by which webcasters may perform sound recordings via digital transmission over the internet and make ephemeral reproductions of those recordings during the 2021-2025 rate period under the authority of statutory licenses provided under Sections 112 and 114 of the Copyright Act. We filed a petition to participate in the proceeding on behalf of our Sirius XM and Pandora businesses, as did other webcasters including Google Inc. and the National Association of Broadcasters. SoundExchange, a collective organization that collects and distributes digital performance royalties to artists and copyright holders, represents the various copyright owner participants in the proceeding, including Sony Music Entertainment, Universal Music Group and Warner Music Group. Because the proceeding focuses on setting statutory rates for non-interactive online music streaming (commonly identified as "webcasting"), the proceeding will set the rates that our Pandora business pays for music streaming on its free, ad-supported tier and that our Sirius XM business pays for streaming on its subscription internet radio service. This proceeding will not set the rates that we pay for our other music offerings (satellite radio, business establishment services) or that we pay for interactive streaming on our Pandora Plus and Pandora Premium services.

In light of the COVID-19 pandemic, the multi-week hearing before the Copyright Royalty Judges originally scheduled to begin in Washington, DC in March 2020, was postponed and conducted virtually via videoconference between August 4 and September 9, 2020. Subsequent to the hearing, the parties submitted post-trial briefing and reply briefing. Closing arguments were held in November 2020. The final rates proposed for the 2021-2025 period by Sirius XM, Pandora, and the other webcaster participants are below the existing statutory rates. Specifically, Sirius XM and Pandora proposed rates of \$0.0011 per performance for nonsubscription commercial webcasters and \$0.0016 per performance for subscription commercial webcasters. SoundExchange proposed increasing the existing statutory rates to \$0.0028 per performance for nonsubscription commercial webcasters and \$0.0031 per performance for commercial subscription webcasters. Given the delay in the proceeding, the deadline for the CRB to deliver its initial rate determination has been extended to April 15, 2021.

Other Matters. In the ordinary course of business, we are a defendant in various other lawsuits and arbitration proceedings, including derivative actions; actions filed by subscribers, both on behalf of themselves and on a class action basis; former employees; parties to contracts or leases; and owners of patents, trademarks, copyrights or other intellectual property. None of these other matters, in our opinion, is likely to have a material adverse effect on our business, financial condition or results of operations.