

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 material claims discussed below. These claims are at various stages of arbitration or adjudication.

SoundExchange Royalty Claims. In August 2013, SoundExchange, Inc. filed a complaint in the United States District Court for the District of Columbia (“SoundExchange I”) alleging that we underpaid royalties for statutory licenses in violation of the regulations established by the Copyright Royalty Board for the 2007-2012 period. SoundExchange principally alleges that we improperly reduced our gross revenues subject to royalties by deducting revenue attributable to pre-1972 recordings and Premier package revenue that was not “separately charged” as required by the regulations. We believe that we properly applied the gross revenue exclusions contained in the regulations established by the Copyright Royalty Board. SoundExchange is seeking compensatory damages of not less than \$50,000 and up to \$100,000 or more, payment of late fees and interest, and attorneys’ fees and costs.

In August 2014, the United States District Court for the District of Columbia, in response to our motion to dismiss the complaint, stayed the case on the grounds that it properly should be pursued in the first instance before the Copyright Royalty Board rather than the District Court. In its opinion, the District Court concluded that the gross revenue exclusions in the regulations established by the Copyright Royalty Board for the 2007-2012 period were ambiguous and did not, on their face, make clear whether our royalty calculation approaches were permissible under the regulations. In December 2014, SoundExchange filed a petition with the Copyright Royalty Board requesting an order interpreting the applicable regulations.

On September 11, 2017, the Copyright Royalty Board issued a ruling concluding that we correctly interpreted the revenue exclusions applicable to pre-1972 recordings. Given the limitations on its jurisdiction, the Copyright Royalty Board deferred to further proceedings in the District Court the question of whether we properly applied those pre-1972 revenue exclusions when calculating our royalty payments. The Judges also concluded that we improperly claimed a revenue exclusion based on our Premier package upcharge, because, in the Judges’ view, the portion of the package that contained programming that did not include sound recordings was not offered for a “separate charge.” We have filed a notice of appeal of this ruling to the United States Court of Appeals for the District of Columbia Circuit. We expect that the ruling by the Copyright Royalty Board in this matter will be transmitted back to the District Court for further proceedings, such as adjudication of claims relating to damages and defenses, although those proceedings may be delayed pending the appeal of the Judges’ interpretive decision. We believe we have substantial defenses to SoundExchange claims that can be asserted in the District Court, and will continue to defend this action vigorously.

This matter is captioned SoundExchange, Inc. v. Sirius XM Radio, Inc., No.13-cv-1290-RJL (D.D.C.); the Copyright Royalty Board referral was adjudicated under the caption *Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services*, United States Copyright Royalty Board, No. 2006-1 CRB

DSTRA. Information concerning SoundExchange I is publicly available in filings under the docket numbers.

On December 12, 2017, SoundExchange filed a second action against us under the Copyright Act in the United States District Court for the District of Columbia (“SoundExchange II”). This action includes claims that SoundExchange has also attempted to add to the SoundExchange I litigation through a proposed amended complaint. SoundExchange alleges that we have systematically underpaid it for our statutory license by impermissibly understating our gross revenues, as defined in the applicable regulations and, in certain cases, understating the performances of recordings on our internet radio service. Specifically, the complaint in SoundExchange II alleges that: from at least 2013 through the present, we improperly excluded from gross revenues a portion of our revenues received from our Premier and All Access packages attributable to premium channels; at least between 2010 and 2012, we improperly excluded late fees received from subscribers from the calculation of gross revenues; at least between 2010 and 2012, we improperly excluded certain credits, adjustments and bad debt for which the underlying revenues had never been included in the first instance; at least between 2010 and 2012, we improperly deducted from gross revenues certain transaction fees and other expenses - for instance, credit card processing fees, collection fees and sales and use taxes - that are purportedly not permitted by the Copyright Royalty Board regulations; at least between 2010 and 2012, we improperly deducted amounts attributable to performances of recordings claimed to be directly licensed on both our satellite radio and internet radio services, even though they were not; at least between 2010 and 2012, we improperly excluded from royalty calculations performances of recordings less than thirty seconds long under the provisions of the Copyright Royalty Board regulations and the Webcaster Settlement Agreement; from 2010 through 2012, we excluded from royalty calculations performances of songs on our internet radio services that we claimed we were unable to identify; we owe associated late fees for the previously identified underpayments under the applicable Copyright Royalty Board regulations; and we have underpaid SoundExchange by an amount exceeding 10% of the royalty payment and we are therefore obligated to pay the reasonable costs of an audit. We believe that we properly applied in all material respects the regulations established by the Copyright Royalty Board. SoundExchange is seeking compensatory damages in an amount to be determined at trial from the alleged underpayments, unspecified late fees and penalties pursuant to the Copyright Royalty Board’s regulations and the Webcaster Settlement Agreement and costs, including reasonable attorney fees and expenses.

This matter is titled SoundExchange, Inc. v. Sirius XM Radio, Inc., No.17-cv-02666-RJL (D.D.C.). Information concerning SoundExchange II is publicly available in filings under the docket number.

Telephone Consumer Protection Act Suits. On March 13, 2017, Thomas Buchanan, individually and on behalf of all others similarly situated, filed a class action complaint against us in the United States District Court for the Northern District of Texas, Dallas Division. The plaintiff in this action alleges that we violated the Telephone Consumer Protection Act of 1991 (the “TCPA”) by, among other things, making telephone solicitations to persons on the National Do-Not-Call registry, a database established to allow consumers to exclude themselves from

telemarketing calls unless they consent to receive the calls in a signed, written agreement, and making calls to consumers in violation of our internal Do-Not-Call registry. The plaintiff is seeking various forms of relief, including statutory damages of five hundred dollars for each violation of the TCPA or, in the alternative, treble damages of up to fifteen hundred dollars for each knowing and willful violation of the TCPA and a permanent injunction prohibiting us from making, or having made, any calls to land lines that are listed on the National Do-Not-Call registry or our internal Do-Not-Call registry.

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.