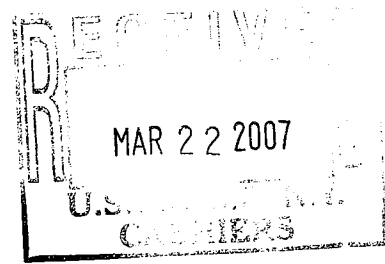


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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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FAMOUS MUSIC LLC, BEECHWOOD MUSIC
CORP., COLGEMS-EMI MUSIC INC., EMI
APRIL MUSIC INC., EMI BLACKWOOD MUSIC
INC., EMI GOLD HORIZON MUSIC CORP., EMI
GOLDEN TORCH MUSIC CORP., EMI
INTERTRAX MUSIC INC., EMI SOSAHA
MUSIC INC., EMI JEMAXAL MUSIC INC., EMI
U CATALOG INC., EMI UNART CATALOG
INC., EMI VIRGIN MUSIC, INC., EMI VIRGIN
SONGS, INC., JOBETE MUSIC CO. INC.,
SCREEN GEMS-EMI MUSIC INC., WB MUSIC
CORP., WARNER-TAMERLANE PUBLISHING
CORP., UNICHAPPELL MUSIC, INC.,

Civil Action No. _____

COMPLAINT

Famous Music LLC, Beechwood Music Corp., Colgems-EMI Music Inc., EMI April Music Inc., EMI Blackwood Music Inc., EMI Gold Horizon Music Corp., EMI Golden Torch Music Corp., EMI Intertrax Music Inc., EMI Sosaha Music Inc., EMI Jemaxal Music Inc., EMI U Catalog Inc., EMI Unart Catalog Inc., EMI Virgin Music, Inc., EMI Virgin Songs, Inc., Jobete Music Co. Inc., Screen Gems-EMI Music Inc., WB Music Corp., Warner-Tamerlane Publishing Corp., Unichappell Music Inc., SONY/ATV Tunes LLC, SONY/ATV Tree Publishing, SONY/ATV Cross Keys Publishing, SONY/ATV Songs LLC, SONY/ATV Discos Music Publishing LLC, SONY/ATV Milene Music, and SONY/ATV Acuff Rose Music (collectively “Plaintiffs”), by their attorneys Gibson, Dunn & Crutcher LLP, allege for their complaint as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action to put an end to the pervasive and willful copyright infringement of Defendant XM Satellite Radio Inc. (hereinafter, “XM” or “Defendant”). Plaintiffs are music publishers that own or control some of the best-known musical works in the world, including such valuable works as “Let it Be,” “My Heart Will Go On,” “Me and Bobby McGee,” and “Like a Prayer.” XM is unlawfully reproducing and distributing—and profiting from—Plaintiffs’ copyrighted musical works on a massive scale without license authority from, or payment of royalties to, Plaintiffs.

2. XM, a satellite radio provider, owns and operates the “XM + MP3” music service, pursuant to which XM reproduces and distributes perfect digital copies of sound recordings embodying Plaintiffs’ musical compositions for XM’s subscribers to download and permanently store (for so long as they pay XM) on iPod-like devices controlled by XM. XM touts its rogue service as the functional equivalent of—and a substitute for—legitimate digital music services.

But, unlike legitimate services, XM has deliberately refused to obtain from Plaintiffs any of the licenses required by law to authorize XM's reproduction and distribution activities.

3. In defense of its unlawful conduct, XM has argued to this Court in a related proceeding that it is free to provide its download service to subscribers without the necessary licenses because it is functioning merely as a "radio broadcaster." But XM's own marketing and promotional materials tell the true story: The XM + MP3 service—or, as XM calls it, the "Ultimate Music Experience"—"*delivers new music to you everyday and lets you choose tracks to create your own custom playlists.*" XM Consumer Electronics Show 2006 Product Guide (emphasis added). XM's unlicensed reproduction and distribution of sound recordings embodying Plaintiffs' compositions blatantly infringes Plaintiffs' exclusive rights under the United States Copyright Act to reproduce and distribute their copyrighted musical works.

4. Although XM ostensibly operates a subscription satellite radio service—an alternative to traditional over-the-air broadcast radio—the XM + MP3 service is designed as a substitute for legitimate digital music download services and to usurp customers from those services through unlawful means. The XM + MP3 service allows any XM subscriber who purchases an XM + MP3 device to obtain perfect digital copies of individual songs broadcast by XM, which the subscribers can replay on their devices as many times as they like and can use to create extensive libraries of musical works of their own choosing, for as long as they pay XM's monthly fee. Indeed, XM's service notifies subscribers when their favorite songs and artists are playing on any of XM's 67 music channels so as to encourage subscribers to switch channels to immediately store these favorite songs for unlimited replay. Through XM-sponsored user guides for the XM + MP3 devices, XM encourages its subscribers to use the XM + MP3 service to record full "blocks" of programming or, as XM says, to "schemul[e] a recording session" —

without ever having to listen to XM's actual radio shows at all. Inno and Helix User Guides at 33. Moreover, after recording a block of programming, subscribers can use XM-supplied digital song identification data to search the recorded "block" by song title, artist, or other criteria to choose which songs within the blocks they wish to permanently retain. Indeed, XM's XM + MP3 service enables subscribers to disaggregate the recorded "block" to create individualized libraries of their own digital music—just as they could with any other digital music download service, such as Apple's iTunes for use with its iPod.

5. XM prominently advertises the download features of its XM + MP3 service. Describing the service as a substitute for the iPod/iTunes combination, XM proclaims that: "IT'S NOT A POD, IT'S THE MOTHERSHIP." XM Consumer Electronics Show 2006 Product Guide. XM exhorts its subscribers to "Hear It, Click It, Save It!," emphasizing the ease of reproducing and retaining permanent digital copies of songs for unlimited replay. XM Consumer Electronics Show 2006 Product Guide. XM's website heralds that its subscribers can "record with the touch of a button" and "store up to 50 hours of XM." XM Satellite Radio, Pioneer Inno: Hear It, Click It, Save It, at http://www.xmradio.com/Innodemo/index.xmc?utm_source=xmp3&utm_medium=href&utm_campaign=Innolaunch (last viewed March 1, 2007). And XM boasts that its subscribers can "[m]ix recorded XM with your MP3s and CDs," thereby underscoring the equality of music downloaded from XM with music obtained from other sources, such as legitimate digital music download services. XM Consumer Electronics Show 2006 Product Guide.

6. On February 19, 2007, XM announced its intent to merge with a competitor, SIRIUS Satellite Radio ("SIRIUS"), in a deal valued at over \$13 billion. To defend against charges that the merger will create a monopolist satellite radio provider, XM has gone to great

lengths to emphasize that it competes directly not only with radio stations, but also with digital music download services. XM has stated: “Satellite has strong incentives to keep prices low, particularly in the face of *competition from many other audio entertainment providers — including . . . music subscription services, iPods, CD players and cell phones.*” XM Satellite Radio, Proposed XM SIRIUS Merger: Consumers and Subscribers FAQ, at <http://www.xmradio.com/merger/index.xmc> (last viewed Mar. 1, 2007) (emphasis added). Thus, XM recognizes and acknowledges that its unlicensed service competes with legitimate digital music download services.

7. In sum, by distributing sound recordings embodying Plaintiff’s musical works to its subscribers, XM is unlawfully exploiting these works in order to maintain and expand its subscriber base, increase its revenues and better position itself to merge with SIRIUS, to the detriment of copyright holders, legitimate digital music download services and, ultimately, consumers. XM’s service encroaches directly on the digital download business, and undermines Plaintiffs’ ability to distribute their copyrighted works through lawful, legitimate services and other music providers that distribute sound recordings embodying Plaintiffs’ compositions under authority granted by Plaintiffs. Through its activities, XM is knowingly and willfully infringing Plaintiffs’ exclusive rights to reproduce and distribute their copyrighted musical works, entitling Plaintiffs to permanent injunctive relief barring XM’s continued use of Plaintiffs’ copyrighted works in the XM + MP3 service. Plaintiffs are also entitled to recover statutory damages of up to \$150,000 per musical composition infringed or, at Plaintiff’s election, actual damages and XM’s profits derived from operating its illicit service, as well as Plaintiffs’ attorneys’ fees and costs in bringing this action.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action, which arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, based on 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant because Defendant does or transacts business in the Southern District of New York (“the District”), has committed unlawful acts in the District or outside of the District having consequences within the District, and/or does systematic and continuous business in the District.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(a), because the Defendant or its agent may be found in this District and because Defendant is subject to personal jurisdiction in this District.

THE PARTIES

11. Plaintiffs are music publishers that own or control, in whole or in part, the copyrights in numerous well-known and popular musical compositions that have been distributed and reproduced without Plaintiffs’ authorization by the XM + MP3 service. Plaintiffs are in the business of licensing the exclusive rights to record, reproduce and distribute such copyrighted musical works in the form of CDs, cassettes, vinyl records and digital downloads, among other uses, in exchange for the payment of royalties. These royalties are shared by Plaintiffs with the writers of the songs, who rely on this income for their livelihoods. Plaintiffs have not licensed XM to engage in the activities complained of herein.

12. Plaintiff Famous Music LLC is engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it owns or controls the copyrights and the exclusive rights related to such works, in whole or in part. The songs within Famous Music LLC’s catalog that have been infringed by XM include

such valuable works as “My Heart Will Go On,” “End of the Road,” and the theme from “Mission Impossible.”

13. Plaintiffs WB Music Corp., Warner-Tamerlane Publishing Corp. and Unichappell Music, Inc. (“Warner/Chappell Plaintiffs”) are engaged in the business of music publishing, whereby they license the recording, reproduction and distribution of musical works for which they own or control the copyrights and the exclusive rights related to such works, in whole or in part. The songs within the Warner/Chappell Plaintiffs’ catalogs that have been infringed by XM include such valuable works as “Like a Prayer,” “Islands in the Stream,” and “Time After Time.”

14. Plaintiffs SONY/ATV Tunes LLC, SONY/ATV Tree Publishing, SONY/ATV Cross Keys Publishing, SONY/ATV Songs LLC, SONY/ATV Discos Music Publishing LLC, SONY/ATV Milene Music and SONY/ATV Acuff Rose Music (“Sony/ATV Plaintiffs”) are engaged in the business of music publishing, whereby they license the recording, reproduction and distribution of musical works for which they own or control the copyrights and the exclusive rights related to such works, in whole or in part. The songs within the Sony/ATV Plaintiffs’ catalogs that have been infringed by XM include such valuable works as “Let It Be,” “Bad Case of Lovin’ You,” and “Landslide.”

15. Plaintiffs Beechwood Music Corp., Colgems-EMI Music Inc., EMI April Music Inc., EMI Blackwood Music Inc., EMI Gold Horizon Music Corp., EMI Golden Torch Music Corp., EMI Intertrax Music Inc., EMI Sosaha Music Inc., EMI Jemaxal Music Inc., EMI U Catalog Inc., EMI Unart Catalog Inc., EMI Virgin Music, Inc., EMI Virgin Songs, Inc., Jobete Music Co. Inc. and Screen Gems-EMI Music Inc. (“EMI Plaintiffs”) are engaged in the business of music publishing, whereby they license the recording, reproduction and distribution of musical works for which they own or control the copyrights and the exclusive rights related to

such works, in whole or in part. The songs within the EMI Plaintiffs' catalogs that have been infringed by XM include such valuable works as "Ain't Too Proud to Beg," "Hooked on a Feeling," and "Mr. Jones."

16. Upon information and belief, Defendant XM is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Washington, D.C.

17. A non-exhaustive exemplary list of Plaintiffs' copyrighted musical compositions that XM has reproduced and/or distributed without authorization, along with the copyright registration number(s) for each, is attached hereto as Appendix A. This list identifies only a small fraction of the copyrighted musical works that are being reproduced and distributed unlawfully by XM.

DEFENDANT'S XM SERVICE

18. XM is one of the two leading providers of satellite radio services in the United States. XM currently broadcasts approximately 170 channels and purports to provide "over 80,000 hours of entertainment each month" (Inno and Helix User Guides, at 4) for an average monthly subscription fee of \$12.95.

19. Of the 170 channels of programming provided by XM, approximately 67 are continuous, 24-hour-a-day commercial-free, digital-quality channels providing a specific type of music, and which combined cover every major genre of music in the United States. For example, XM currently offers approximately 7 different kinds of country music channels, including "Bluegrass," "Traditional Country," "New Country Hits," "Folk," and "Classic Country;" 6 different "Decades" channels, covering the 1940s through the 1990s; 13 different kinds of rock music channels (including "Punk/Hardcore/Ska," "Indie/College Rock," and "Acoustic Rock;" 7 different kinds of hip-hop urban music channels (including "Old Skool

R&B,” “New Soul,” and “Classic Soul”); 9 different kinds of “Pop & Hits” music channels (including “Love Songs/Lite Pop,” “Beautiful Music,” “Modern Adult Hits,” “Top 20 Hits,” “Contemporary Hits,” “International Hits,” and “Show Tunes”); and 4 different kinds of Latin music channels (including “Regional Mexican” and “Latin Jazz”).

20. Upon information and belief, all of XM’s broadcasts are encrypted and XM’s digital satellite transmissions to its subscribers are closely controlled as part of a closed and proprietary system to ensure that those transmissions are received only by XM subscribers using XM-approved receivers that can decrypt XM’s proprietary encryption protocol. Each receiver has a unique XM serial number to facilitate such control, used by XM to activate approved receivers before the receiver can receive content from XM. XM can deactivate any receiver at any time. For a monthly subscription fee, XM’s subscribers can receive XM’s programming, as transmitted by XM, over an XM-approved receiver. XM maintains complete and continuing end-to-end control over who is permitted to receive its signals, the content its subscribers receive, what subscribers can do with the content transmitted to them by XM, and whether and how long subscribers can retain copies of the digital music transmitted to them by XM.

21. Upon information and belief, XM’s subscriber base, from which it derives its primary source of revenue, has grown exponentially over time. The number of XM subscribers has increased over 800% in the last three calendar years: from over 900,000 in late 2003, to 3.1 million by the end of 2004, to 5.9 million by the end of 2005, to 7.6 million by the end of 2006. XM predicts that it will have between 9 and 9.2 million subscribers by the end of 2007. Buoyed by a higher subscription rate implemented in April 2005, XM’s revenue has grown at an even faster rate: XM collected \$91 million in revenue in 2003; \$244 million in 2004; \$558 million in 2005; and \$933 million in 2006.

DEFENDANT'S INFRINGING XM + MP3 SERVICE

The XM + MP3 Digital Download Service

22. In the late 1990's, XM began offering its regular satellite radio service to paying subscribers. In exchange for a monthly fee, XM provided its subscribers with the digital satellite equivalent of a conventional, over-the-air radio broadcast, without any kind of storage, recording, or "on demand"-like features. In or about April 2006, Defendant expanded its radio service offerings to include the XM + MP3 service, allowing subscribers to record, store and replay music of the subscribers' choosing. Through this XM + MP3 service, XM now distributes digital content in competition with legitimate digital music download services such as iTunes. XM provides its XM + MP3 subscribers with permanent, disaggregated copies of individual songs, which subscribers can store in a personal music library, and replay unlimited times, for so long as they remain XM subscribers. In fact, XM + MP3 subscribers are given the option of never having to listen to XM's satellite transmissions as unified radio broadcasts. Rather, XM encourages subscribers to use the XM + MP3 service solely to download perfect digital copies of songs of their choosing into the subscribers' portable iPod-like devices. XM has branded the recording and storage aspects of the service under the name "My Music." Inno and Helix User Guides at 37. Because the XM + MP3 service functions as a digital download delivery service, XM is acting without authorization as a commercial provider of copyrighted musical compositions owned and controlled by Plaintiffs and others.

23. XM broadcasts and delivers digital reproductions of Plaintiffs' musical works to its XM + MP3 subscribers through various portable, iPod (or cell-phone)-sized consumer devices called the "Inno," "Helix," and "NeXus" (the "devices") that function as receivers, storage devices, and music players. Upon information and belief, the Inno and Helix can receive XM's

satellite transmissions from nearly any location within the continental United States, and the NeXus can as well, if connected to its docking station.

24. The XM + MP3 service currently allows XM's subscribers to create their own permanent music libraries containing up to 50 hours of recorded music—or approximately 1,000 songs—of the subscriber's choosing, sorted by artist, title, or genre, and arranged or “mixed” into personalized playlists. Each of the songs selected by the subscriber for inclusion in her personal library or playlists can be “locked” so that they are not recorded over or erased and remain available for replay unless the subscriber affirmatively deletes them or cancels or fails to pay for her XM + MP3 subscription. It is likely that the up-to-1,000-song storage capacity will increase in the future, with further advances in technology

25. The XM + MP3 service works as a single, integrated music delivery service controlled by XM in every meaningful respect. The proprietary XM + MP3 devices receive only heavily encrypted transmissions sent from XM's satellites. And before these receivers can operate at all, they must first be individually activated by XM, after the subscriber contacts XM, so that the receiver can begin to decrypt and audibly render XM's transmissions. XM retains the right and ability to deactivate any subscriber's receiver at any time, and can alter the functionality of the devices by sending software updates via the Internet to XM's subscribers.

26. Upon information and belief, each individual device can automatically report back to XM certain subscriber-specific information, and, if XM so chose, XM could track subscriber-specific information concerning the particular songs captured and stored on each device.

27. XM exercises significant control over the content that is delivered to each XM + MP3 subscriber and that each subscriber can receive and store. Using codes like those that it

embeds in all of its satellite transmissions, XM can, if it chooses to, mark particular songs so that they could not be stored or saved. Indeed, the user guides for the Inno and Helix make clear to XM's subscribers that "[s]ome content cannot be recorded due to restrictions placed by the content owners." Inno and Helix User Guides at 80. XM has not taken any steps to prevent the recording of Plaintiffs' and others' musical compositions, even though it is well within XM's power and ability to do so. Instead, on information and belief, XM exercises its control over the service only to cut off subscribers' access to their recordings when subscribers cancel their XM subscription or stop paying XM's monthly subscription fees.

28. In addition to the complete control that XM exercises over the entire XM + MP3 service, specific features of the XM + MP3 service, described below, underscore the extent to which the XM + MP3 service is the functional equivalent of a legitimate digital music download service and how XM infringes upon Plaintiffs' exclusive rights to reproduce and distribute Plaintiffs' copyrighted musical compositions. The XM + MP3 service goes well beyond simple broadcasting of Plaintiffs' musical compositions through the satellite subscription equivalent of evanescent over-the-air radio broadcasts. The XM + MP3 service is a digital music download service, which delivers to Defendant's subscribers permanent digital copies of Plaintiffs' and others' copyrighted musical compositions for unlimited replay as long as Defendant's subscribers continue to pay subscription fees to XM.

Server Copies

29. Upon information and belief, XM, without license authority from Plaintiffs, has reproduced copies of sound recordings embodying Plaintiffs' musical works, including each of the works listed on Appendix A, on computer file servers ("server copies"), copies XM retains indefinitely. These server copies are the source from which XM initiates the distribution and

further reproduction of Plaintiffs' compositions that results in the storage, librarying, and unlimited replay of permanent unlicensed copies of Plaintiffs' musical compositions via the XM + MP3 service.

Buffer Copies

30. Upon information and belief, the XM + MP3 service automatically—without any user input—makes a short-term “buffered” copy of every song which a subscriber’s device receives as a broadcast from XM. These short-term “buffered” copies are not necessary to radio-style satellite broadcasts and unlawfully facilitate and enable the storage, librarying, and unlimited replay of permanent unlicensed copies of Plaintiffs’ musical compositions. For example, these “buffered” copies enable subscribers to capture and permanently store a copy of an entire song, even if the subscriber does not start listening to the song until it is nearly finished playing, provided that the song is under 10 minutes in duration and the subscriber’s device was already tuned to the channel playing that song.

“Block” Recording

31. The XM + MP3 service also allows users to automatically record substantial “blocks” of programming—without ever listening to the programming blocks at all—and to rapidly and efficiently select particular songs within the blocks to store permanently for unlimited replay. Specifically, after a subscriber records a block of programming, the subscriber may access an XM-supplied “digital playlist,” which lists all the songs recorded as part of the block, and which can be sorted and searched by song title, artist, or other criteria. A subscriber can use this playlist to instantly identify and select for retention on his or her device those songs—out of the many songs recorded from the programming “block”—that the subscribers want to library.

32. XM also offers dozens of channels focusing on narrow musical niches. For example, within the general rock category, XM features stations playing Early Classic Rock, Acoustic Rock, and Hard Rock/Hairbands. Thus, by recording blocks of time on one of the targeted channels, and then using the XM-supplied “playlist,” subscribers can easily find and store the precise music they want. For example, if the subscriber wants recordings of certain current hits, all the subscriber needs to do is record a several-hour block of programming from XM’s “Top 20” channel (which broadcasts only current “Top” hits) and then use the XM-supplied digital “playlist” to identify the particular songs that the subscriber wants to retain. As XM proclaims:

XM offers musical choice, variety, and discovery—worlds beyond your own collection. . . . One device, all the music you could ever hope for, *and the easiest way to find the music you want.*

Helix and Inno User Guides at 4 (emphasis added).

Making Downloading Easy

33. The XM + MP3 service enables XM’s subscribers, with the push of a button, to select, disaggregate, index and permanently store individual songs that they hear when listening to a live or pre-recorded block of XM programming. As long as the subscriber is already tuned to a particular channel when a song begins and the subscriber presses the record button at any time while a particular song is playing, the devices will instantly capture and store a copy of that *entire* song, creating a copy of the song that can then be included in the subscriber’s personal library. This unlawful functionality is exacerbated by the XM + MP3 service’s “TuneSelect” and “ArtistSelect” features, which alert Defendant’s subscribers whenever songs or artists of their choosing are being played on any of XM’s many channels, so that they can instantly switch channels and record the sought-after songs. In other words, the “TuneSelect” and “ArtistSelect”

features make the XM + MP3 service a more effective digital download service, by instantly and simultaneously searching all of XM's many channels for the songs and artists that subscribers are looking for, so that subscribers can obtain permanent digital copies of those songs at the touch of a button.

Personal "Playlists"

34. XM allows users to create their own personal "playlists" of the songs that they record, which can be sorted by artist, title, or genre and used to create personal "mixes" or selections of the subscriber's choosing. XM's subscribers are told that, "[y]ou can also personalize your XM content by creating playlists for every mood and occasion." Helix and Inno User Guides at 33.

35. XM encourages its XM + MP3 subscribers to treat musical works downloaded from XM interchangeably with their own MP3 files containing digital music from other sources, including legitimate digital music download services such as Napster and iTunes:

Mix MP3s and Recorded XM for Original Playlists. . . . Mix MP3s
with XM Tracks! Mix Recorded XM with your MP3s and CDs.
Create your own unique and original playlists.

XM Consumer Electronics Show 2006 Product Guide at 1, 3. Defendant's subscribers are provided cables and software so they can transfer digital music files from their personal computers onto their devices. Defendant's subscribers can then create their own personal playlists that mix and match digital music taken from non-XM sources (such as legitimate digital music download services) with the unlawful permanent digital copies of songs provided from XM's transmissions.

XM Admits That XM+MP3 Is A Download Service

36. As described above, XM actively and brazenly markets its XM + MP3 service as a download service and as a substitute for legitimate digital music download services, such as

Apple's iTunes (which can be used with Apple's iPod). In addition, consumer reviews and media articles, some of which XM has parlayed to its commercial advantage and quoted on its website, echo XM's admissions that its XM + MP3 service is a digital music download service. For example, XM prominently features on its website a quote from *Men's Health* magazine describing the Helix and the Inno as "the first legitimate challengers to the iPod." Seth Porges, *Men's Health*, "Liftoff," Apr. 1, 2006, at 102. XM also quotes *Wired* magazine, stating that the Inno is "the best reason yet to dump your iPod." *Wired*, Issue 14.04, at <http://www.wired.com/wired/archive/14.04/play.html?pg=10> (last viewed Mar. 6, 2007) (also cited on XM Radio's website). The *New York Times* has noted that "satellite radio is competing not just with broadcast radio in the car, but also with MP3 players," and *PC Magazine Online* has described the Inno as an expansion of XM's "product line amid competition among technology companies including Apple Computer Inc., Microsoft Corp., and Motorola Inc. to provide more portable media." Eric A. Taub, *The New York Times*, "Satellite Radio Leaves the Car to Go Home and on Walks," Jan. 12, 2006, at C9; *PC Magazine Online*, "XM Radio Announces Portable Players," Jan. 4, 2006.

37. Significantly, in its Form 10-K, filed with the United States Securities and Exchange Commission, XM admits that:

we compete most directly with the following providers of radio or other audio services: Internet Radio *and Downloading Devices*: The Apple iPod is a portable digital music player that allows users to download and purchase music through Apple's iTunes Music Store.

XM Satellite Radio, Form 10-K (Mar. 16, 2006) (emphasis added).

38. Moreover, in extolling the virtues of its proposed merger with SIRIUS, XM has further admitted that:

Satellite radio has strong incentives to keep prices low, particularly in the face of competition from many other audio entertainment providers — including free ‘over-the-air’ AM, FM, and HD radio, Internet radio, *music subscription services, iPods, CD players, and cell phones....*

XM Satellite Radio, Proposed XM SIRIUS Merger: Consumers and Subscribers FAQ, at <http://www.xmradio.com/merger/index.xmc> (last viewed Mar. 1, 2007) (emphasis added).

See also Press Release, XM Satellite Radio and SIRIUS Satellite Radio, SIRIUS and XM to Combine in \$13 Billion Merger of Equals (Feb. 19, 2007) (defining the market as the “audio entertainment marketplace” and noting that “[i]n addition to existing competition from ... iPods and mobile phone streaming, satellite radio will face new challenges from the rapid growth of HD Radio, Internet radio and next generation wireless technologies”).

The Harm To Plaintiffs

39. XM’s unlawful distribution and reproduction of Plaintiffs’ and others’ copyrighted musical compositions have undoubtedly harmed and will continue (unless redressed by this Court) to harm sales of legitimate digital downloads and CDs embodying copyrighted musical compositions. If Defendant’s subscribers can obtain permanent digital copies of popular songs composed by Plaintiffs and others as part of their satellite radio subscription service, they will have little or no incentive to purchase authorized copies of those songs on CDs or from legitimate digital music download services that would pay Plaintiffs royalties for the reproduction and distribution of their works.

COUNT I

(Direct Copyright Infringement — Infringement of Plaintiffs’ Distribution Right in Violation of 17 U.S.C. § 106(3))

40. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-39 as if fully set forth herein.

41. XM has distributed and continues to distribute sound recordings embodying Plaintiffs' copyrighted musical compositions to the public, without authorization and without Plaintiffs' permission or consent, by making available and disseminating to its XM + MP3 subscribers digital phonorecords, or copies, of Plaintiffs' copyrighted musical compositions, including but not limited to those copyrighted musical compositions listed in Appendix A hereto.

42. XM's distribution of Plaintiffs' copyrighted musical compositions for unlimited replay and permanent storage by XM subscribers for the life of their XM + MP3 subscription unlawfully infringes upon Plaintiffs' registered copyrights and their exclusive rights under the Copyright Act in violation of 17 U.S.C. § 106(3).

43. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

44. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

45. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

46. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

47. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in

terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT II

(Unauthorized Digital Phonorecord Deliveries in Violation of 17 U.S.C. § 115)

48. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-47 as if fully set forth herein.

49. XM has distributed and continues to distribute to the public, without authorization and without Plaintiffs' permission or consent, sound recordings embodying Plaintiffs' musical works, including but not limited to those musical compositions listed in Appendix A hereto, by digital transmission. Such digital transmissions result in the unauthorized making and distribution of digital phonorecord deliveries embodying Plaintiffs' musical works in violation of 17 U.S.C. §§ 115.

50. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

51. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

52. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at

Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

53. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

54. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT III

(Direct Copyright Infringement — Infringement of Plaintiffs' Reproduction Right in Violation of 17 U.S.C. § 106(1))

55. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-54 as if fully set forth herein.

56. XM has reproduced and continues to reproduce Plaintiffs' copyrighted musical compositions, without authorization and without Plaintiffs' permission or consent, by making unauthorized "buffered" copies of sound recordings embodying Plaintiffs' musical compositions, including but not limited to those copyrighted musical compositions listed in Appendix A hereto. XM operates its XM + MP3 service so that a subscriber's receipt of XM satellite transmissions simultaneously and automatically, without user interface, creates infringing "buffered" copies of the musical works received in the transmission. These "buffered" copies serve unlawfully to

facilitate the recording and storage by Defendant's subscribers of Plaintiffs' musical works for unlimited replay during the life of their subscription to Defendant's XM + MP3 service.

57. XM's reproduction of Plaintiffs' copyrighted musical compositions in "buffered" copies unlawfully infringes upon Plaintiffs' registered copyrights and their exclusive rights under the Copyright Act in violation of 17 U.S.C. § 106(1).

58. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

59. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

60. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

61. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

62. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other

reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT IV

(Direct Copyright Infringement — Unauthorized Making of Server Copies in Violation of 17 U.S.C. §§ 106(1), 112)

63. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-62 as if fully set forth herein.

64. Upon information and belief, XM has reproduced and continues to reproduce Plaintiffs' copyrighted musical compositions, without authorization and without Plaintiffs' permission or consent, by making unauthorized server copies of sound recordings embodying Plaintiffs' musical compositions, including but not limited to those copyrighted musical compositions listed in Appendix A hereto. XM retains these server copies indefinitely to facilitate the operation of the XM + MP3 service. These unauthorized server copies are the source from which XM initiates the distribution and further reproduction of sound recordings embodying Plaintiffs' musical compositions that results in the recording, storage and librarying by Defendant's subscribers of Plaintiffs' musical works for unlimited replay during the life of their subscription to Defendant's XM + MP3 service.

65. XM's reproduction of Plaintiffs' copyrighted musical compositions in server copies unlawfully infringes upon Plaintiffs' registered copyrights and their exclusive rights under the Copyright Act in violation of 17 U.S.C. § 106(1) and the express limitations of 17 U.S.C. § 112.

66. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

67. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

68. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

69. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

70. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT V

(Inducement of Copyright Infringement)

71. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-70 as if fully set forth herein.

72. Defendant's XM + MP3 subscribers are making unauthorized reproductions of sound recordings embodying Plaintiffs' copyrighted musical compositions, including but not

limited to those copyrighted musical compositions listed in Appendix A hereto, and therefore are infringing Plaintiffs' exclusive right of reproduction under 17 U.S.C. § 106(1).

73. XM has induced the infringement of Plaintiffs' copyrights by activating and maintaining each XM + MP3 subscription with the object of promoting its use to infringe Plaintiffs' copyrighted works. By its clear expression and other affirmative steps that it has taken, XM has actively fostered and promoted this infringement by its XM + MP3 subscribers, and is therefore liable for such infringement.

74. Defendant is fully aware that Plaintiffs' compositions are copyrighted and authorized for download through numerous lawful digital music distribution services. Defendant is equally aware that its XM + MP3 subscribers are using –and intends for its subscribers to use– the XM + MP3 service's librarying function to create permanent infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions obtained directly from XM. In fact, XM actively markets and advertises this capability as one of the service's most attractive features, thereby actively encouraging its XM + MP3 subscribers to commit copyright infringement.

75. Defendant knowingly and blatantly encourages its XM + MP3 subscribers to build unauthorized libraries of copyrighted works through its advertising materials, which, for example, extort users to “Hear it, Click It, Save It” and to record songs “with the touch of a button.” The XM + MP3 service is touted by XM as “The Ultimate Music Service” that “lets you choose the tracks to create your own custom playlist.” XM further encourages users to treat the songs they copy from the XM + MP3 service as substitutes for other downloaded recordings.

76. Defendant's manifest object of fostering infringement is additionally demonstrated by, among other things, Defendant's refusal to take readily available steps to prevent infringement of Plaintiffs' copyrighted musical compositions, including by marking each

work as “restricted” and not available for unauthorized reproduction. Defendant could easily institute such protection, as per the Inno’s User Guide, which indicates that XM may prevent some songs or channels from being copied. *See* Inno User Guide at 80.

77. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs’ rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

78. XM’s acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs’ rights.

79. XM’s conduct constitutes the inducement of the infringement of Plaintiffs’ copyrights in violation of Section 106 of the Copyright Act.

80. Pursuant to 17 U.S.C. § 504(c), as a result of XM’s willful infringement of Plaintiffs’ copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs’ election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant’s profits from infringement, as will be proven at trial.

81. Plaintiffs are further entitled to an award of their attorneys’ fees and full costs pursuant to 17 U.S.C. § 505.

82. XM’s conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs’ copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other

reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT VI

(Contributory Copyright Infringement)

83. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-82 as if fully set forth herein.

84. Defendant's XM + MP3 subscribers are making unauthorized reproductions of sound recordings embodying Plaintiffs' copyrighted musical compositions, including but not limited to those copyrighted musical compositions listed in Appendix A hereto, and therefore are infringing Plaintiffs' exclusive right of reproduction under 17 U.S.C. § 106(1).

85. Through its conduct alleged herein, XM has contributorily infringed Plaintiffs' copyrights by enabling, facilitating, materially contributing to and participating in its subscribers' direct infringement of Plaintiffs' exclusive right to reproduce and control the reproduction of its copyrighted musical compositions.

86. Defendant has actual and constructive knowledge that its subscribers are infringing Plaintiffs' copyrighted musical compositions by librarying, storing, mixing, and creating personal playlists of Plaintiffs' music downloaded from XM for unlimited replay, and Defendant knowingly encourages its subscribers to do the same.

87. Defendant enables, facilitates, materially contributes and participates in the infringement of Plaintiffs' copyrighted musical compositions by its XM + MP3 subscribers by, among other things, activating and maintaining the activation of each Inno, Helix, or NeXus device so that XM + MP3 subscribers can receive, decrypt and copy for unlimited replay Plaintiffs' copyrighted works, as broadcast on one of XM's 67 non-stop music channels; providing XM + MP3 subscribers with and encouraging them to use the service's ability to

automatically disaggregate, deliver, and library for permanent storage and unlimited replay digital phonorecords or copies of Plaintiffs' musical compositions; instructing subscribers on how to create such permanent digital copies, *see, e.g.*, Inno and Helix User Guides at 33-36, 40; and marking each song that it transmits and delivers to the "buffered" memory of each of its subscribers' Inno, Helix, and NeXus devices as unrestricted so as to make it available for unauthorized reproduction.

88. Defendant's refusal to take any readily implementable steps to prevent the infringement of Plaintiffs' copyrighted musical compositions, such as by marking each as "restricted" and thus not available for unauthorized reproduction, further demonstrates XM's manifest object of fostering and profiting from the direct infringement by XM's subscribers of Plaintiffs' copyrighted musical compositions.

89. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

90. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

91. XM's conduct constitutes contributory infringement of Plaintiffs' copyrights in violation of Section 106 of the Copyright Act.

92. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

93. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

94. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT VII

(Vicarious Copyright Infringement)

95. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-94 as if fully set forth herein.

96. Defendant's XM + MP3 subscribers are making unauthorized reproductions of sound recordings embodying Plaintiffs' copyrighted musical compositions, including but not limited to those copyrighted musical compositions listed in Appendix A hereto, and therefore are infringing Plaintiffs' exclusive right of reproduction under 17 U.S.C. § 106(1).

97. At all relevant times, XM had and has both the right and the ability to supervise and/or control its subscribers' infringing conduct, and to prevent its XM + MP3 subscribers from infringing Plaintiffs' copyrighted musical compositions. Significantly, the XM user agreement provides that subscribers may not "reproduce, rebroadcast, or otherwise transmit the programming, *create unauthorized recordings of the programming*, charge admission specifically for the purpose of listening to the programming, or distribute play lists of the

Services.” XM Satellite Radio Terms & Conditions ¶ 1(c), available at http://www.xmradio.com/get_xm_customer_service.html (last visited Mar. 5, 2007) (emphasis added). Moreover, XM expressly reserves the right to terminate an XM + MP3 subscriber’s subscription for failure to comply with XM’s terms and conditions. *Id.* at ¶ 8(c). Yet XM has declined to exercise this right and ability to stop or limit its subscribers’ infringing conduct, while profiting from same, and so is liable for vicariously infringing Plaintiffs’ copyrights.

98. Upon information and belief, XM may be collecting usage information from its subscribers, *see* XM Satellite Radio Terms & Conditions ¶ 9, available at http://www.xmradio.com/get_xm_customer_service.html (last visited Mar. 5, 2007), and could easily determine what specific songs that its subscribers store permanent copies of for unlimited replay on their devices. XM is therefore technically capable of detecting infringement committed using its XM + MP3 service.

99. Upon information and belief, XM retains the ability to prevent the copying, on a track-by-track basis, of any particular song that XM might choose to protect. *See, e.g.*, Inno and Helix User Guides at 80. Upon information and belief, XM individually activates each Inno, Helix, or NeXus to enable it to receive and decrypt XM’s satellite transmission signals and, absent such activation by XM, its XM + MP3 subscribers could not gain access to Plaintiffs’ musical compositions. XM could, at any time that it wished, terminate infringing XM + MP3 subscribers, yet it has refused to do so. Moreover, the fact that XM has the ability, upon termination of a subscriber’s account and for other reasons, to prevent the continued replay of a subscriber’s recorded songs suggests that XM is also capable of eliminating a subscriber’s access to infringing songs from a subscriber’s device at any point, if XM chose to do so.

100. XM has refused to take any steps to exercise its right and ability to stop or limit the widespread infringement of Plaintiffs' copyrighted musical compositions by its subscribers, because XM profits substantially from this infringement. XM has achieved and maintained its remarkable, exponential growth in revenues and subscriber base in part by deliberately exploiting and touting the XM + MP3 service's ability to provide subscribers with an alternative to legitimate, on-demand digital music download services, thereby attracting more customers to sign up for and purchase the XM + MP3 service and related products such as the Inno, Helix, and NeXus. XM thus derives substantial financial benefits from its subscribers' direct infringements of Plaintiffs' copyrights.

101. With respect to each copyrighted musical composition listed on Appendix A, the infringement of Plaintiffs' rights constitutes a separate and distinct act of infringement separately actionable under the Copyright Act.

102. XM's acts of infringement are willful, intentional and purposeful, in violation of Plaintiffs' rights.

103. XM's conduct constitutes vicarious infringement of Plaintiffs' copyrights in violation of Section 106 of the Copyright Act.

104. Pursuant to 17 U.S.C. § 504(c), as a result of XM's willful infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act, Plaintiffs are entitled to recover up to \$150,000 in statutory damages for each work infringed. Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendant's profits from infringement, as will be proven at trial.

105. Plaintiffs are further entitled to an award of their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

106. XM's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs severe and irreparable harm that cannot be fully compensated or measured in terms of money, and for which Plaintiffs do not have an adequate remedy at law. Plaintiffs are entitled to an injunction under 17 U.S.C. § 502 prohibiting the continued infringement of Plaintiffs' copyrights and their exclusive rights under the Copyright Act by XM. Plaintiffs are also entitled under 17 U.S.C. § 503 to an order directing the impoundment, destruction or other reasonable disposition of all infringing phonorecords or copies of Plaintiffs' copyrighted musical compositions.

COUNT VIII

(Declaratory Judgment of Copyright Infringement — 17 U.S.C. § 106 and 28 U.S.C. § 2201)

107. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-106 as if fully set forth herein.

108. Plaintiffs contend that Defendant's XM + MP3 service results in the direct, contributory, vicarious and/or other secondary infringement of Plaintiffs' copyrighted musical compositions, whereas Defendant has contended in related litigation before this Court that its XM + MP3 service does not result in the infringement of Plaintiffs' copyrighted musical compositions. There is therefore an actual controversy as to whether Defendant's conduct and the XM + MP3 service results in the direct, contributory, vicarious and/or other secondary infringement of Plaintiffs' copyrights.

109. Plaintiffs respectfully request that this Court issue a declaratory judgment clarifying the respective rights and obligations of Plaintiffs and Defendant in respect of Plaintiffs' copyrights and Defendant's XM + MP3 service, and declaring that Defendant's

conduct and the XM + MP3 service result in the willful direct, contributory, vicarious and secondary infringement of Plaintiffs' copyrights.

WHEREFORE, Plaintiffs pray for judgment against Defendant and for the following relief:

- a. A declaration that Defendant has willfully infringed Plaintiffs' copyrights through its operation of the XM + MP3 service, both directly and secondarily, and in violation of the Copyright Act;
- b. A permanent injunction requiring Defendant and Defendant's agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, to cease directly and indirectly infringing, and causing, enabling, facilitating, encouraging, promoting, inducing, and/or participating in the infringement of any of Plaintiffs' copyrights or exclusive rights protected by the Copyright Act;
- c. For statutory damages pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 multiplied by each work infringed, or in such other amount as may be determined at trial, or, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), their actual damages, including Defendant's profits from infringement, as will be proven at trial;
- d. Awarding Plaintiffs their attorneys' fees and full costs, pursuant to 17 U.S.C. § 505;

APPENDIX A

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Famous Music LLC	Can I Get A...	PA 1-008-890
Famous Music LLC	Candyman	PA 1-165-374
Famous Music LLC	Coming Around Again	PA 301 656
Famous Music LLC	December	PA 751-844
Famous Music LLC	End Of The Road	PA 611 528
Famous Music LLC	Flagpole Sitta	PA 970-043
Famous Music LLC	I Hope You Dance	PA 981-302
Famous Music LLC	I'd Love You To Want Me	EU 326056 RE 822 363
Famous Music LLC	Mission Impossible – Theme	EU 974446 RE 662 987
Famous Music LLC	My Girl Bill	EU 461202 RE 852-919
Famous Music LLC	My Heart Will Go On (Love Theme From Titanic)	PA 880-171
Famous Music LLC	Object Of My Desire	PA 258 120
Famous Music LLC	Take My Breath Away (Love Theme From "Top Gun")	PA 292 409
Famous Music LLC	The Boy Is Mine	PA 949-111
Famous Music LLC	Where Have All The Cowboys Gone?	PA 823-603
Sony/ATV Tree Publishing	After The Fire Is Gone	EP 262964 RE 759-440

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Sony/ATV Songs LLC Sony/ATV Tunes LLC	All For Love	PA 705-055
Sony/ATV Songs LLC	Bad Case Of Lovin' You	PA 3-046
Sony/ATV Tunes LLC	Butterfly	PA 863-743
Sony/ATV Acuff Rose Music	Chiseled In Stone	PA 358-995
Sony/ATV Songs LLC	Common Man	PAU 270-877 PA 175-589 PA 052483
Sony/ATV Songs LLC	Cool Night	PAU 263690
Sony/ATV Tree Publishing	Crazy	EP 156698 RE 422-869
Sony/ATV Songs LLC	Do It Or Die	PAU 131-733 PA 78-111
Sony/ATV Songs LLC	Dreams	PA 9-852
Sony/ATV Tunes LLC	Everybody's Got Something To Hide	EFO 132176 RE 717842
Sony/ATV Cross Keys Publishing	Family Of Man	EP 299232 RE 822-922
Sony/ATV Songs LLC	God Bless America Again	EP 264310
Sony/ATV Songs LLC	Hey You	RE 886-042
Sony/ATV Songs LLC	Home	PA 1-302-743
Sony/ATV Songs LLC	I Go Crazy	EP 380304 RE 909-658
Sony/ATV Tree Publishing	I Gotta Get Drunk	EP 175527 RE 525-891
Sony/ATV Milene Music	I Just Came Home To Count the Memories	EP 327154 RE 861-145

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Sony/ATV Songs LLC Sony/ATV Tunes LLC	I Need To Know	PA 1-212-269
Sony/ATV Tunes LLC	If	PA 17-720
Sony/ATV Songs LLC	I'll Make Love To You	PA 737-778
Sony/ATV Songs LLC	I'm Your Baby Tonight	PA 486 225
Sony/ATV Songs LLC	Imaginary Lover	PAU 1388
Sony/ATV Tree Publishing Sony/ATV Cross Keys Publishing	Julia	PA 311-452
Sony/ATV Songs LLC	Landslide	PA 137421
Sony/ATV Acuff Rose Music Sony/ATV Tree Publishing	Leave Them Boys	PA 166-644
Sony/ATV Tunes LLC	Let It Be	EFO 140570 RE 770-922
Sony/ATV Acuff Rose Music	Long Gone Lonesome Blues	EP 44613 RE 655324
Sony/ATV Songs LLC	Love Is	PA-690-290
Sony/ATV Songs LLC	On Our Own	PA 418-902
Sony/ATV Songs LLC	Rhiannon	PA 45-117
Sony/ATV Songs LLC	Sara	PA 50 755
Sony/ATV Tunes LLC	She Came In Through The Bathroom Window	EFO 138021 RE 748398
Sony/ATV Songs LLC	So Into You	EP 374675

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Sony/ATV Acuff Rose Music	Standing In The Shadows	EP 288564 RE 728-769
Sony/ATV Tree Publishing	Sweet Thang	EP 941854 RE 653-710
Sony/ATV Songs LLC	Takin' Care of Business	EP 332279 RE 855-838
Sony/ATV Acuff Rose Music	That Song Is Driving Me Crazy	EP 326439 RE 859-641
Sony/ATV Songs LLC	Time After Time	PA 215 857
Sony/ATV Songs LLC	Two Occasions	PA 394-595
Sony/ATV Songs LLC	Two Princes	PA 593 765
Sony/ATV Tunes LLC	Where Do Broken Hearts Go?	PA 344264
Sony/ATV Acuff Rose Music	You Got It	PA 424-819
Sony/ATV Tunes LLC	Your Body Is A Wonderland	PA 1-237-131
WB Music Corp.	Across the River	PA 472 962
Warner-Tamerlane Publishing Corp.	Are You Happy	EP 276205 EP 256431 EU 66909
WB Music Corp.	Black Water	EP 327542 EP 343319 EU 471534 PA 245-845
WB Music Corp.	Breakaway	PA 1-253-000
WB Music Corp	Broken Wings	PA 298-394 PA 257 568

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Warner-Tamerlane Publishing Corp.	Coconut	EU 309778 EP 297488 RE 843-653 RE 820-974
Warner-Tamerlane Publishing Corp.	Cowboy	PA 1-009-075
WB Music Corp.	Don't Tell Me	PA 1-024-577
Warner-Tamerlane Publishing Corp.	Every Morning	PA 937-774
Unichappell Music, Inc.	Everytime You Go Away	PA 77-330
WB Music Corp.	Eye of the Tiger	PAU 398-752 PA 144-172
Warner-Tamerlane Publishing Corp.	Forever	PA 277 865 PA 277 683 PAU 531-923
WB Music Corp.	Going to California	EP 298106 EU 301132 RE 820-344 RE 820-973
Warner-Tamerlane Publishing Corp.	Hard to Say I'm Sorry	PA 142-242
Warner-Tamerlane Publishing Corp.	I Saw the Light	EP 305564 EU 280609 EP 298694
Warner-Tamerlane Publishing Corp.	If Everyone Cared	PA 1-298-633
Warner-Tamerlane Publishing Corp.	If It Makes You Happy	PA 815-033
Warner-Tamerlane Publishing Corp.	Islands in the Stream	PA 188-026 PAU 486-704

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Warner-Tamerlane Publishing Corp.	Jealous Again	PA 532 889
WB Music Corp.	Like a Prayer	PA 429 544 PA 413-209
Warner-Tamerlane Publishing Corp.	Listen to the Music	EU 355082 EP 304554
Warner-Tamerlane Publishing Corp.	Long Train Runnin'	EP 379111 EP 311574
Warner-Tamerlane Publishing Corp.	Loving Country	PA 927-427
WB Music Corp.	On the Radio	PAU 174-094 PA 58-345 PAU 155-533
WB Music Corp.	Rhythm of My Heart	PAU 655-011 PA 517-193 PA 304-798
Warner-Tamerlane Publishing Corp.	Rhythm of the Rain	EU 746121 EP 258220 EP 259103 EP 171590 RE 743-488 RE 485-353
Unichappell Music, Inc.	She's Gone	EU 436141 EP 322307 A 514601
WB Music Corp.	Shiny Happy People	PA 541 344 PA 341 344
WB Music Corp.	Take My Breath Away	PA 292 409
Warner-Tamerlane Publishing Corp.	The Kiss	PA 901-852

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
WB Music Corp.	Time After Time	PA 238-686
WB Music Corp.	Whole Lotta Love	EP 309235 EP 344302 EP 344301 RE 827-856 RE 874-524 RE 874-364
Warner-Tamerlane Publishing Corp.	You Are Everything	EP 291953
Unichappell Music, Inc.	You Make My Dreams	PA 77-329 PA 106-345
WB Music Corp.	Yours Is No Disgrace	EU 257320 EP 298993
Jobete Music Co. Inc.	ABC	RE 772281
EMI Intertrax Music Inc.	After All	PA 406-552 PA 418-391 PA 428-066 PA 472-772
EMI Unart Catalog Inc.	Ain't That a Shame	EU 394285 RE 155-180 EP 90764 RE 189-049
Jobete Music Co. Inc.	Ain't Too Proud To Beg	RE 673-572 EP 216556 RE 673-574
Jobete Music Co. Inc.	All This Love	PA 146-777
EMI April Music Inc. EMI Blackwood Music Inc.	Because of You	PA 161120
Jobete Music Co. Inc.	Being With You	PA 112-943

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
EMI Blackwood Music Inc.	Best Of My Love	EU 475746 RE 853-367 RE 876-033 PA 121-454 PA 137-956 PA 139-151 PA 217-771
EMI Blackwood Music Inc.	Better Than Me	PA 1-162-964
EMI Blackwood Music Inc.	Can I Get A...	PA 925934
EMI Blackwood Music Inc.	Come And Get Your Love	EU 417183 RE 838-938 RE 854-075
EMI Virgin Songs, Inc.	Common Man	EU 550490 RE 877-202 PA 175-589 PAU 270-877
EMI Virgin Songs, Inc.	Could It Be Magic	EU 448580 RE 840-664 RE 887-595 RE 905-383 RE 911-450 PA 95-814
EMI April Music Inc.	Crazy	PA 641534
EMI April Music Inc.	Dance With My Father	PA 1105451
EMI U Catalog Inc. EMI April Music Inc.	Delta Dawn	EU 326968 RE 818-510 EP 300811 RE 815-630
EMI April Music Inc.	Fergalicious	PA 1-165-469
EMI Virgin Songs, Inc.	Frankenstein	RE 818341

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Colgems-EMI Music Inc.	Friends and Lovers	PA 319-272 PA 320-846 PA 320-847 PA 342-013 PA 342-171 PA 291-473
EMI April Music Inc.	Get Money	PA 830008 PA 1014304
EMI Gold Horizon Music Corp. EMI Golden Torch Music Corp.	Glory of Love	PA 293-891 PA 298-635 PA 311-288 PA 320-791
Screen Gems-EMI Music Inc.	Hello, It's Me	EU 66445 RE 724-605
EMI April Music Inc.	Here And Now	PA 820570
Screen Gems-EMI Music Inc.	Here You Come Again	EU 809930 EP 380034 RE 911-455 RE 911-785 PA 10-588 PA 21-107 PA 32-682
EMI Blackwood Music Inc.	Hips Don't Lie	PA 1-163-862 PA 1-164-057
EMI Virgin Songs, Inc.	Holdin' On To Yesterday	EU 540332 RE 898638
Screen Gems-EMI Music Inc.	Hooked on a Feeling	EP 249766 RE 724-694
Beechwood Music Corp.	Hot Child In The City	PA 7-863
Jobete Music Co. Inc.	How Sweet It Is	RE 601650
EMI April Music Inc.	Human	PA 303295
EMI April Music Inc.	Hypnotize	PA 844485

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
EMI Blackwood Music Inc.	I Can Dream About	PA 402-705 PAU 500-224
EMI Unart Catalog Inc.	I Hear You Knocking	RE 155191 RE 189061
EMI Sosaha Music Inc.	I Like Dreamin'	RE 893-245 EU 671827 RE 893-317
EMI Virgin Songs, Inc.	I Saw Red	PA 510153
EMI April Music Inc.	I'll Be	PA 885557 PA 914014
EMI Gold Horizon Music Corp. EMI Golden Torch Music Corp.	It Might Be You	PA 163-997
Colgems-EMI Music Inc.	It's Too Late	EP 291207 RE 794-772 EU 251552 RE 795-950 RE 920-004
EMI April Music Inc.	Janie's Got A Gun	PA 441476 PA 473752
Colgems-EMI Music Inc.	Jazzman	EU 518232 RE 856-198 RE 892-847 PA 44-527
EMI Blackwood Music Inc.	Jumper	PA 797-856 PA 913-999
EMI Sosaha Music Inc. EMI Jemaxal Music Inc.	Laughter In Rain	EU 454214 RE 851-969
Screen Gems-EMI Music Inc. Colgems-EMI Music Inc.	Let Me Be The One	PA 330-210 PA 321-189

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
EMI April Music Inc. EMI Blackwood Music Inc.	Let's Wait Awhile	PA 278-486 PA 815-885 PA 835-037
Screen Gems-EMI Music Inc.	Mandy	RE 911-453 PA 17-721 EP 295330 RE 813-704 EP 380031 PA 27-019 PA 32-336
EMI Virgin Songs, Inc.	Maybe	EU 188945 RE 797987
EMI Blackwood Music Inc.	Me And Bobby McGee	EP 260746 RE 761-618
EMI Unart Catalog Inc.	Mr. Jones	RE 155191 RE 189061
Jobete Music Co. Inc.	My Girl	EP 196315 RE 601304 RE 911-274
EMI April Music Inc.	My Own Worst Enemy	PA 951331
EMI April Music Inc.	Nasty	PA 278481
Screen Gems-EMI Music Inc.	Natural Woman	EU 16787 RE 690-535 EP 291308 RE 794-745
EMI April Music Inc.	Nite and Day	PA 391-524
EMI Blackwood Music Inc.	Oh My My	EU 434380 RE 838-986 EP 356065 RE 876-215 EU 509393 RE 898-642
Jobete Music Co. Inc.	Oh No	PA 112986

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
EMI Blackwood Music Inc.	Rainy Night In Georgia	EP 265049 RE 762-098
EMI Virgin Songs, Inc.	Rock Your Baby	EU 489612 RE 854200
Jobete Music Co. Inc.	Roll With It	RE 618213 PA 378927 PA 541259
EMI April Music Inc.	Runaway	PA 770696
Screen Gems-EMI Music Inc. Colgems-EMI Music Inc.	Seasons Change	PA 330-207 PA 321-185
EMI April Music Inc. EMI Blackwood Music Inc.	Sexual Healing	PA 155-613 PA 162-210
EMI April Music Inc.	Ships	PA 112-835 PA 33-891 PA 173-533
EMI Virgin Music, Inc.	Slide	PA 926987 PA 988826
EMI April Music Inc.	Some Guys Have All The Luck	EU 355-543 RE 818-756 EU 423-572 RE 842-206 EU 437-726 RE 839-164
EMI Blackwood Music Inc.	Songbird	PA 330-273

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
Screen Gems-EMI Music Inc.	Southern Nights	EU 535596 RE 857-155 RE 911-271 PA 9-649 PA 9-652 PA 12-798
EMI Blackwood Music Inc. EMI April Music Inc.	Steamroller Blues (aka Steam Roller)	EP 273196 RE 772-172
Jobete Music Co. Inc.	Stoned Love	RE 772763
EMI Blackwood Music Inc.	Stoney End	EU 952834 RE 662-863
EMI Blackwood Music Inc.	Strange Magic	EU 626199 RE 893-356
EMI April Music Inc.	Sussudio	PA 367486 PA 267486
EMI Blackwood Music Inc.	Tennessee	PA 962153
EMI April Music Inc.	That's The Way Love Goes	PA 660127
EMI Virgin Songs, Inc.	That's The Way (I Like It)	EU 606220 RE 877393
EMI April Music Inc. EMI Blackwood Music Inc.	The Boy Is Mine	PA 949-111 PA 965-771
EMI April Music Inc. EMI Blackwood Music Inc.	The Promise of A New Day	PA 532-589 PA 543-963
Jobete Music Co. Inc.	The Way You Do	EU 807575 RE 601567
Jobete Music Co. Inc.	This Old Heart of Mine	RE 678567
EMI Blackwood Music Inc.	Toma	PA 1-160-644

PLAINTIFF	MUSICAL COMPOSITION	COPYRIGHT REGISTRATION NUMBER
EMI April Music Inc.	TRUE	PA 1-159-689
EMI Virgin Songs, Inc.	You Don't Have To Be A Star	EU 726330 RE 892-818 PA 25-281
EMI Virgin Songs, Inc.	You Got It	PA 424-819
EMI Blackwood Music Inc.	You Make Me Feel Like Dancing	RE 890-866 EU 732553 RE 892-983 EU 729048 RE 903-911