

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

SOUNDEXCHANGE, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:23-cv-01083-PTG-JFA
)	
SIRIUS XM RADIO INC.,)	
)	
Defendant.)	
)	

DECLARATION OF CATHERINE BROOKER

I, Catherine Brooker, declare as follows:

1. I am the Senior Vice President of Corporate Finance for Sirius XM Radio Inc. (“Sirius XM”). I have personal knowledge of the facts and circumstances stated herein.
2. I respectfully submit this Declaration in support of Sirius XM’s Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue pursuant to Federal Rule of Civil Procedure 12(b)(2) and 12(b)(3) or, in the alternative, to Transfer Venue pursuant to 28 U.S.C. § 1404(a).
3. Sirius XM is a Delaware corporation with its headquarters in New York, New York. It delivers satellite digital audio radio (“SDARS”) and webcasting services to more than 34 million subscribers nationwide. It transmits more than 135 channels of music, sports, news, talk, comedy, entertainment, traffic and weather. It offers its listeners access to recording artists from every genre and decade.
4. Sirius XM was formed as a result of a merger between a subsidiary of Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”). Prior to that merger, Sirius was based in New York and operated the Sirius satellite radio service; XM was based in

Washington, D.C., and operated the XM satellite radio service. Since the merger, the combined corporate entity—Sirius XM—is headquartered in New York City, where approximately 1,900 employees work. Certain legal, marketing, engineering, programming, and finance functions remain in Washington, D.C., where approximately 500 Sirius XM employees are located.

5. I am aware that this suit, brought in Virginia, alleges that Sirius XM has improperly apportioned royalties as between its SDARS and its streaming (or “webcasting”) services.

6. Prior to the summer of 2019, Sirius XM offered a variety of satellite radio-only programming packages (in various channel combinations), as well as subscriptions that provided access solely via webcasting and others that bundled webcasting with satellite radio.

7. In July 2019, Sirius XM updated its service offerings, bundling webcasting with all of its satellite radio packages, while continuing to offer standalone webcasting subscriptions (but not any new standalone satellite subscriptions). This included adding webcasting to its Music & Entertainment package.

8. Under the relevant regulations, to apportion royalties correctly between SDARS and webcasting services—each of which are subject to different licensing regimes—Sirius XM is entitled to exclude webcasting revenue from its total bundled subscription revenue because Sirius XM already pays a separate per-performance royalty for webcasting.

9. Despite offering bundled packages starting in July 2019, Sirius XM did not deduct webcasting royalties from its Music & Entertainment or Music Showcase packages until August 2021.

10. Beginning in 2021, to apportion royalties between SDARS and webcasting services, Sirius XM finance and royalty accounting personnel in New York adopted a methodology to identify the Gross Revenues attributable to Sirius XM’s SDARS under 37 C.F.R. § 382.22.

11. This methodology ascertains and excludes from bundled service offerings that revenue which is attributable to the webcasting component of the bundle, which Sirius XM already licenses by paying a separate per-performance royalty.

12. Sirius XM's royalty apportionment methodology was developed with the input of legal counsel and outside consultants (based in Texas and Georgia) to track regulatory guidance promulgated by the Copyright Royalty Board ("CRB") in Washington, D.C. in 2017 following proceedings involving Sirius XM. In the subsequent years, it was further refined based on subscriber surveys conducted by outside consultants based in California.

13. Sirius XM paid SoundExchange approximately \$695 million in statutory licensing royalties in 2022. If the contributions of Sirius XM subsidiary, Pandora Media, LLC, are factored in, that number increases to nearly \$800 million.

14. All of Sirius XM's royalty payments are sent from its headquarters in New York to SoundExchange in Washington, D.C.

15. Sirius XM employees with direct knowledge of the foregoing activities and its current and historic royalty calculation practices more generally are based primarily in New York:

- (a) Dana Scharf, Senior Director of Partner Payments, manages day-to-day calculation of royalty payments remitted by Sirius XM to SoundExchange.
- (b) George White, Senior Vice President of Music Licensing, oversees Sirius XM's broader royalty payment responsibilities and operations.
- (c) Cary Krefetz, Senior Vice President and Controller, previously served as Vice President of External and Internal Reporting, in which capacity he tracked subscriber metrics and managed corporate accounting policies that inform the company's royalty calculations. His current team is responsible

for the calculation, approval, and payment of royalties to SoundExchange, including implementation of the methodology at issue in this case and related processes.

- (d) Thomas D. Barry, Executive Vice President and Chief Financial Officer, is familiar with Sirius XM's implementation of the above-described royalty calculation methodology from his time as Controller and Senior Vice President of Sirius XM.

16. Other Sirius XM witnesses with relevant knowledge (including myself) are based in jurisdictions other than Virginia:

- (a) I serve as the Senior Vice President of Corporate Finance and work from Sirius XM's Washington, D.C. office. At the time of the events giving rise to SoundExchange's suit, I was working regularly in Sirius XM's New York office and was involved in the decision to implement the allocation methodology at issue in this case. My team analyzes and forecasts the impact of our royalty payment methodologies and payments on our financial statements and projections.
- (b) David Horgan, Senior Director of Royalties and Music Licensing, is also based in Washington, D.C., and has responsibility for Sirius XM usage reports which are used, in part, to calculate royalty payments.

17. I understand that, in addition to its claim concerning royalty apportionment, SoundExchange believes that Sirius XM has underpaid it based on a 2018 royalty examination.

18. That examination was conducted by Adeptus Partners LLC ("AP"), a firm based in New York, pursuant to consulting services it provided to SoundExchange.

19. In September 2022, Adeptus issued its findings for that examination, alleging that Sirius XM underpaid its royalties for the 2018 calendar year in various respects by approximately \$10.3 million. Adeptus did not seek to identify overpayments to SoundExchange.

20. The Sirius XM employees with primary knowledge of Adeptus's examination are based in New York.

21. Adeptus employees and representatives responsible for that examination are based in New York.

(a) Lewis Stark, Partner at Adeptus, led the firm's engagement with SoundExchange.

(b) Aleka Mazarakis, Certified Public Accountant (CPA) of Mazarakis Consulting LLC, performed day-to-day audit functions under Lewis Stark's supervision.

22. As for Virginia, Sirius XM employs only five Virginia-based employees who manage network operations out of a technical facility in Fredericksburg—operations completely unrelated to finance or royalty calculations. The company also uses servers located in Ashburn, Virginia. It has similar assets in numerous other states throughout the country.

23. Much like it does in every state, Sirius XM engages in ordinary commercial activity in Virginia by delivering its satellite radio and webcasting services to resident subscribers, who constitute roughly 3% of Sirius XM's national subscriber base.

24. None of the activities or events giving rise to SoundExchange's claims occurred in Virginia.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct to the best of my knowledge and belief.

Executed on September 22, 2023, in Washington, D.C.



Catherine Brooker