

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re XM SATELLITE RADIO COPYRIGHT LITIGATION

MASTER DOCKET  
06 Civ. 3733 (LAK)

This Document Relates to: 07 Civ. 4682 (LAK)  
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**PROPOSED PLAN OF ALLOCATION**

**Definitions**

1. This Plan of Allocation hereby incorporates by reference the definitions in the Settlement Agreement and all terms used herein shall have the same meaning as set forth in the Settlement Agreement.

2. In addition to the terms defined in the Settlement Agreement, the following additional defined terms shall have the following meaning as used in this Plan of Allocation:

a. “Eligible Musical Composition Settlement Class Member” shall mean a member of the Musical Composition Settlement Class who does not opt out and submits a valid Proof of Claim form that is determined by the Administrator to be entitled to share in the Net Musical Composition Settlement Fund.<sup>1</sup>

b. “Eligible Sound Recording Settlement Class Member” shall mean a member of the Sound Recording Settlement Class who does not opt out and submits a valid Proof of Claim form that is determined by the Administrator to be entitled to share in the Net Sound Recording Settlement Fund.

c. “Proof of Claim” shall mean the form attached.

d. “Qualifying Musical Composition” shall mean a musical composition owned or controlled by an Eligible Musical Composition Settlement Class Member and is determined by the Administrator to be entitled to share in the Net Musical Composition Settlement Fund.

e. “Qualifying Sound Recording” shall mean a sound recording owned or controlled by an Eligible Sound Recording Settlement Class Member and is determined by the Administrator to be entitled to share in the Net Sound Recording Settlement Fund.

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<sup>1</sup> As detailed in ¶52 of the Settlement Agreement, *Famous Music* Settlement Participants cannot participate as members of the Musical Composition Settlement Class in this Action.

### Sound Recording Settlement Class Method of Distribution

3. The Net Sound Recording Settlement Fund shall be distributed based on each Eligible Sound Recording Settlement Class Member's pro rata share of the total number of plays (or "spins") of Qualifying Sound Recordings transmitted by XM during the time period April 1, 2006 through December 6, 2010.<sup>2</sup>

4. (a) The formula to determine an Eligible Sound Recording Settlement Class Member's presumptive share of the Net Sound Recording Settlement Fund is as follows:

Total Number of Times An Eligible Sound  
Recording Settlement Class Member's Qualifying  
Sound Recording Was Transmitted By XM  
During the Time Period April 1, 2006 Through  
December 6, 2010

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Net Sound Recording  
Settlement Fund

Total Transmittals of Qualifying Sound  
Recordings by XM During the Time Period  
April 1, 2006 Through December 6, 2010

(b) To the extent that an Eligible Sound Recording Settlement Class Member owns or controls more than one Qualifying Sound Recording, the foregoing formula in 4(a) above shall be repeated for each such Qualifying Sound Recording owned by such Eligible Sound Recording Settlement Class Member and then summed in order to determine that Eligible Sound Recording Settlement Class Member's total presumptive share of the Sound Recording Net Settlement fund.

5. Example: Eligible Sound Recording Settlement Class member Z owns or controls 100% of one (1) Qualifying Sound Recording transmitted by XM ten (10) times during the time period April 1, 2006 through December 6, 2010. The total number of transmittals by XM of Qualifying Sound Recordings is 1,000. Eligible Sound Recording Settlement Class Member Z's presumptive share of the Net Sound Recording Settlement Fund would be 10/1000 (or 1%).

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<sup>2</sup> The data relied on for calculating XM's transmittals of sound recordings shall be XM's quarterly reports of performances as calculated by SoundExchange.

Transmittals will be calculated through the date December 6, 2010 to the extent that the foregoing data is readily available. Otherwise, transmittals of sound recordings will be calculated through the most recent quarterly report available.

**Musical Composition Settlement Class Method of Distribution**

6. The Net Musical Composition Settlement Fund shall be distributed based on each Eligible Musical Composition Settlement Class Member’s pro rata share of the total number of Qualifying Musical Compositions transmitted by XM by during the time period April 1, 2006 through December 6, 2010.<sup>3</sup>

7. (a) The formula to determine an Eligible Musical Composition Settlement Class Member’s presumptive share of the Net Musical Composition Settlement Fund is as follows:

Total Number of Times An Eligible Musical Composition Settlement Class Member’s Qualifying Musical Composition Was Transmitted By XM During the Time Period April 1, 2006 Through December 6, 2010  <hr style="width: 40%; margin-left: 0;"/> Total Transmittals of Qualifying Musical Compositions by XM During the Time Period April 1, 2006 Through December 6, 2010	*	Net Musical Composition Settlement Fund	*	Eligible Class Member’s Percentage Ownership of Qualifying Musical Composition
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(b) To the extent that an Eligible Musical Composition Settlement Class Member owns or controls more than one Qualifying Musical Composition, the foregoing formula in 7(a) above shall be repeated for each such Qualifying Musical Compositions owned by such Eligible Musical Class Member Settlement Class Member and then summed in order to determine that Eligible Musical Composition Settlement Class Member’s total presumptive share of the Net Musical Composition Settlement fund.

8. Example: Eligible Musical Composition Settlement Class Member Y owns or controls 50% of one (1) Qualifying Musical Composition that was transmitted by XM ten (10) times during the time period April 1, 2006 through December 6, 2010. The total number of transmittals by XM of the Qualifying Musical Compositions owned by Eligible Musical Composition Settlement Class Members is 1,000. Eligible Musical Composition Settlement Class Member Y’s presumptive share of the Net Musical Composition Settlement Fund would be  $10 \times 50\% = 5/10,000 = .05\%$ .

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<sup>3</sup> The data relied on for calculating XM’s transmittals of musical compositions shall be XM’s quarterly reports of performances. Transmittals will be calculated through December 6, 2010 to the extent that the foregoing data is readily available. Otherwise, transmittals of musical compositions will be calculated through the most recent quarterly report available.

## **Claims Process**

9. In processing claims, the Administrator shall rely on timely and properly completed Proof of Claim forms.

10. In order for a claim to be allowed, the Administrator must determine from the information available that: (a) the claimant did not timely submit a valid request for exclusion; (b) the claimant timely submitted a properly completed Proof of Claim form; and (c) the claim is valid. The Administrator's determinations regarding the allowance of claims shall be made in a just, speedy and efficient manner. Claims may be disallowed upon a finding that there is no reasonable likelihood that the claim is valid. The Administrator's determinations shall be final.

11. In the event that the Administrator determines that two or more persons have submitted valid Proof of Claim forms for a particular musical composition or sound recording due to a joint interest in same, then shares of each Eligible Musical Composition Settlement Class Member's or Eligible Sound Recording Settlement Class Member's recovery shall be determined based on such Settlement Class Member's proportional interest in such musical composition or sound recording. The Administrator will first look to the Proof of Claim forms to resolve such differences and then, if necessary, look to resolve such differences with the claimants based upon their documents. If, after the foregoing, a dispute remains, the claimants shall submit their dispute to a third party mediator at the sole expense of the claimants.

12. In the event that two or more persons submit competing and inconsistent Proof of Claim forms, the Administrator will first look to the Proof of Claim forms to resolve such differences and then, if necessary, look to resolve such differences with the claimants based upon their documents. If, after the foregoing, a dispute remains, the claimants shall submit their dispute to a third party mediator at the sole expense of the claimants.