

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NOTA MUSIC PUBLISHING, INC., *et al.* :
 :
 : Plaintiffs, :
 : :
 : *-against-* : 07 CV 6307 (AKH)
 : :
SIRIUS SATELLITE RADIO INC., :
 :
 : Defendant. :
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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.

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 hereto as Exhibit 1.

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.

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 Sirius during the time period November 1, 2005 through August 26, 2011.¹

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:

$$\frac{\text{Total Number of Times An Eligible Sound Recording Settlement Class Member's Qualifying Sound Recording Was Transmitted By Sirius During the Time Period November 1, 2005 Through August 26, 2011}}{\text{Total Transmittals of Qualifying Sound Recordings by Sirius During the Time Period November 1, 2005 Through August 26, 2011}} * \text{Net Sound Recording Settlement Fund}$$

(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 Sirius ten (10) times during the time period November 1, 2005 through August 26, 2011. The total number of transmittals by Sirius 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%).

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 Sirius by during the time period November 1, 2005 through August 26, 2011.²

¹ The data relied on for calculating Sirius' transmittals of sound recordings shall be Sirius' quarterly reports of performances as calculated by SoundExchange.

Transmittals will be calculated through August 26, 2011 (the date of entry of the Preliminary Order) 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.

² The data relied on for calculating Sirius' transmittals of musical compositions shall be the Eligible Musical Composition Settlement Class Member's quarterly royalty statements from ASCAP, BMI, and/or SESAC and/or Sirius' quarterly reports of performances. If appropriate, transmittals of musical compositions may also be calculated from the data described in fn. 1 hereto.

Transmittals will be calculated through August 26, 2011 (the date of entry of the Preliminary Order) 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.

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 Sirius During the Time Period November 1, 2005 Through August 26, 2011 <hr style="width: 100%;"/> Total Transmittals of Qualifying Musical Compositions by Sirius During the Time Period November 1, 2005 Through August 26, 2011	*	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 Composition 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 Sirius ten (10) times during the time period November 1, 2005 through August 26, 2011. The total number of transmittals by Sirius 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 $10 \times 50\% = 5/10,000 = .05\%$.

9. If Class Counsel determines that, after all proofs of claims have been submitted, the foregoing method of distribution set forth in 7(a) above (based on total transmittals) would be cost prohibitive (*i.e.*, the cost to administrate the claims based on this method would be impracticable given the size of the Net Musical Composition Settlement Fund), then the foregoing method of distribution may be amended so as to be based upon on the total number of Qualifying Musical Compositions transmitted by Sirius during the time period November 1, 2005 through August 26, 2011 (as opposed to the number of times any Qualifying Musical Composition was transmitted). That is, such an amendment to the method of distribution would give equal weight to all Qualifying Musical Compositions regardless of the number of times any Qualifying Musical Composition was transmitted.

Claims Process

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

11. 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.

12. 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.

13. 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.