

SoundExchange Sues Muzak to Recover Underpayment of Digital Royalties

Frequently Asked Questions (FAQs)

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1. What is Muzak?

While many people know Muzak for its background music service for retail stores and other business establishments, it has also provided music channels over satellite television through the Dish Network. In 2011, Muzak became a wholly-owned subsidiary of Canada's [Mood Media Corporation](#).

2. What is DMX?

DMX, a Mood Media company, is a "multi-sensory" branding agency based in Austin, Texas. DMX also has provided music for cable and satellite television networks, including DirecTV.

3. Wasn't DMX originally a pre-existing service? Why was DMX paying at the new subscription rates?

Congress originally recognized the DMX music service (as operated by TCI Music) as a pre-existing service in 1998, and it was grandfathered into the old rate standard much like Muzak's provision of music to Dish Network. However, by 2006, when the Copyright Royalty Board was setting the rates for pre-existing services for 2008-2012, the "DMX" branded service was being provided by a different company. The company operating the DMX service initially argued that it was still "pre-existing." But after a ruling by the Copyright Office addressing the issue, DMX withdrew from the "pre-existing services" proceeding and began operating under the "new subscription service" rates.

4. Why is SoundExchange suing Muzak?

SoundExchange collects and distributes certain performance royalties that digital audio services owe to recording artists and rights holders under federal law. SoundExchange believes that Muzak has not paid what it owes under the applicable regulations. On behalf of the artists and rights holders we represent, we want to ensure that all services play by the rules and to take action when they do not.



5. How has Muzak underpaid?

Under the Digital Millennium Copyright Act (DMCA) of 1998, Congress granted Muzak the special privilege of using copyrighted sound recordings at “pre-existing subscription service” royalty rates, *which are set below fair market value*, but only for its transmissions through the Dish Network. Its competitors, which included DMX before it was acquired by Muzak’s parent, have their rates set under a fair market value, “willing buyer, willing seller” standard. Muzak may pay the lower pre-existing subscription service rates **only** for providing music to Dish Network. However, Mood Media is seeking to convert DMX’s provision of music channels over DirecTV from a “new subscription service” to a “pre-existing subscription service” simply by transferring some of the DMX business to Muzak. We think that is a violation of the statutory license used by Muzak.

6. Why are the “pre-existing subscription service” rates so much lower?

The DMCA, which clarified the scope of the Section 112 and 114 statutory licenses that SoundExchange administers, created an exception for a handful of services already using the statutory licenses. Those “pre-existing” services were allowed to rely on an outdated rate standard, which has resulted in below market rates, while their competitors were subject to a willing buyer, willing seller standard.

The “pre-existing subscription service” rates and the “new subscription service” rates are set for the exact same type of service. However, under the pre-existing subscription service rates for 2015, a pre-existing service pays a royalty of 8.5 percent of revenue. Under the new subscription service rates, a service (such as DMX on DirecTV) owes the *greater of* 15 percent of revenue or 1.74 cents per subscriber per month. We believe that the system is already unfair, since it allows Muzak to pay a below market rate when delivering content to Dish Network. By illegally manipulating the system, Muzak adds insult to injury to the thousands of artists whose recordings power their business.

7. Why is this lawsuit important?

For two reasons: First, it is our core belief that every penny owed by digital audio services relying on the license administered by SoundExchange should be paid and distributed to their rightful owners – the performing artists and the rights holders. Second, the special below market rates for “pre-existing” services already work an injustice; we think it’s critical that digital services not get away with expanding the scope of those licenses beyond what Congress provided. Indeed, we think that *all* services should pay a fair market rate.