

EXHIBIT D

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March 9, 2021

Via Email

Jaesan Subramaniam
Pandora/SiriusXM
2100 Franklin St.
Oakland California, 94612

cc: David Ring

Re: Notice of Copyright Infringement

Dear Mr. Subramaniam:

I write to you on behalf of my client Word Collections, LLC (“Word Collections”). As you are aware, Jeff Price, acting as the founder and owner of Word Collections, notified Pandora Media, LLC and SiriusXM Holdings Inc. (collectively “Pandora”) in July 2020 that Pandora was improperly exploiting the literary works of artists represented by Word Collections. Despite over a dozen communications between Word Collections and Pandora since Jeff Price first provided his notice of infringement, Pandora has neither acknowledged nor attempted to rectify its infringing activities. This failure comes in spite of incredibly reasonable and accommodating attempts by Word Collections to forego litigating Pandora’s past infringements (which have continued for more than a decade) and to license its catalogue of literary works to Pandora.

Given Word Collections’ prior communications with Pandora, this letter is designed to serve two purposes. First, I have attached a short memo to this letter designed to educate you on Pandora’s liabilities to Word Collections and serve as a follow-up to the calls between you and Jeffrey Levy on 12/7/2020 and 12/14/2020, wherein you requested: (i) the legal foundation and copyright law requiring Pandora to license Word Collections’ controlled copyrights for exploitation on your services; (ii) proof of past exploitations and performances on Pandora, as

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documented in related SoundExchange statements and various statements related to applicable direct license agreements; (iii) a proposed licensing agreement with Word Collections for prospective exploitations and the opportunity to work collaboratively to resolve past unlicensed exploitations; and (iv) the opportunity to work collaboratively to build an efficient workflow for the licensing and payment of copyrights controlled by Word Collections and its clients.

With that said, the primary purpose of this letter is for Word Collections, as empowered and directed by its clients, to facilitate a cordial relationship that leads to Word Collections and Pandora entering into an equitable licensing agreement for the past and future use of the represented works of Word Collections' clients. However, if Pandora is 1) not taking its legal obligations seriously or 2) simply stalling in an attempt to run out limitations periods, Word Collections and its clients are prepared to immediately take all necessary steps to vigorously defend their interests.

Note also that while this letter seeks to better educate you on Pandora's liabilities to Word Collections, this letter is not an attempt to provide a full recitation of the facts surrounding such liability. My client does not waive, and hereby expressly reserve, all rights it may have to file an action for appropriate legal and/or equitable relief on any and all bases and claims, including, but not limited to, those contained in this letter.

Respectfully,

/s/Richard Busch

Richard S. Busch

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ANALYSIS AND FOUNDATION

I. Legal Requirement that Pandora License Word Collections' Represented Literary Works

U.S. Copyright Law grants copyright for sound recordings, audiovisual works, performances and words. Under the Copyright Act, original works of authorship that are fixed in a tangible medium of expression are eligible for copyright protection. Section 102 of the Copyright Act states: "Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of machine or device."

Works of authorship include the following categories: (1) **literary works**; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works." 17 U.S.C. § 102.

The Copyright Act defines a literary work as "works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied." 17 U.S.C. § 101. A literary work may be registered with the U.S. Copyright Office if it has been "fixed in any tangible medium of expression, now known or later developed, from which [it] can be perceived, reproduced, or otherwise communicated." 17 U.S.C. § 102(a). A literary work is considered "fixed in a tangible medium of expression" when it has been embodied "in a copy or phonorecord, by or under the authority of the author" that "is sufficiently permanent or stable to permit [the work] to be perceived, reproduced, or otherwise communicated for a period of more than a transitory duration." 17 U.S.C. §101 (definition of "fixed").

A sound recording usually embodies a preexisting musical composition, literary work, or dramatic work. Copyright protection for a comedy routine or joke vests to the author when it is fixed in a tangible medium of expression such as a piece of paper, a phonorecord and/or a tape of the audiovisual work that embodies the routine.¹

¹ The Copyright Office classifies the protected comedy routines/jokes in one of two ways: (1) a literary work or (2) a work of the performing arts. Works of the performing arts are works that are, as a general matter, created to be performed before an audience, directly or indirectly, is a work of the performing arts. 37 C.F.R. §202.3(b)(1)(ii). However, a work may simultaneously be classified as both a literary work and a work of the performing arts. *Compendium of the U.S. Copyright Office Practices*, 3rd Ed., Page 14. However, irrespective of designation/categorization, the end result is the same: licenses are required to exploit a comedy routine, regardless of whether it is

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17 U.S.C. § 106 - Exclusive Rights in Copyrighted Works, states: “Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.” The preceding allows for the copyright owner (or its agent) to require licenses to exploit or transmit a protected work.

Currently, SoundExchange licenses the right of public performance for sound recordings (including sound recordings of literary works and works of the performing arts, in addition to sound recordings of musical works) under sections 112 and 114 of the Copyright Act. However, these licenses only extend to the sound recordings and not to the preexisting and underlying works encompassed within the sound recording.

Notably, it appears that Pandora is both aware of its need to license literary works and its noncompliance with this requirement. For example, numerous Pandora SEC filings have included language or identical to the following language that appeared in its SEC 10K filing for the quarter ending June 30, 2014:

“In addition, we stream spoken word comedy content for which the underlying literary works are not currently entitled to eligibility for licensing by any performing rights organization, in the United States. Rather pursuant to industry-wide custom and practice, this content is performed absent a specific license by any performing rights organization or individual rights owners, although royalties are paid to SoundExchange for the public performance of the recordings in which such literary works are embodied. There can be no assurance that this industry custom will not change or that we will not otherwise be subject to additional licensing costs for spoken word comedy content imposed by performing rights organizations or individual copyright owners in the future or be subject to damages for copyright infringement.”

Contrary to any self-serving “industry custom” that Pandora may put in its public filings, Word Collections’ clients are entitled to compensation for their works no different from any other artist. For example, it would be unimaginable that Pandora would take such a stance against musical works, for which Pandora is statutorily required to secure independent licenses in and pay for the rights to exploit the sound recording AND the underlying musical composition. As such, it is unclear why an exception is being made for comedians and other owners of literary works, from

incorporated into a sound recording or other work, and a license in the incorporating work are insufficient to satisfy this requirement.

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