

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TERI WOODS PUBLISHING, LLC, :

Plaintiff, :

-against- :

AMAZON.COM, INC., AUDIBLE, INC., :
BLACKSTONE AUDIO, INC., and URBAN :
AUDIO BOOKS, LLC, :

Defendants. :

MEMORANDUM & ORDER
23-cv-507 (DLI) (TAM)

-----X
DORA L. IRIZARRY, United States District Judge:

On January 24, 2023, Plaintiff Teri Woods Publishing, LLC (“Plaintiff” or “Woods Publishing”) filed this action alleging breach of contract claims against Defendant Urban Audio Books, LLC (“Urban Audio”) and copyright infringement claims against Defendants Amazon.com, Inc. (“Amazon”), Audible, Inc. (“Audible”), Blackstone Audio, Inc. (“Blackstone”) (the three, collectively, “Downstream Defendants”), and Urban Audio (the four, collectively, “Defendants”). *See*, Compl., Dkt. Entry No. 1. Specifically, Woods Publishing alleges that Urban Audio breached the terms of a copyright license agreement between them for the production and distribution of audiobooks based on Woods Publishing’s copyrighted works and the implied covenant of good faith and fair dealing. Plaintiff further alleges that all Defendants infringed on Woods Publishing’s copyrights, and Urban Audio and Blackstone allowed others to infringe those copyrights as well. Compl. at ¶¶ 1-2, 65-94. Plaintiff invokes the Court’s original federal question jurisdiction relating to the copyright claims, and its supplemental jurisdiction over the state law contract claims as related to the federal claims. *Id.* at ¶ 15; *See*, 28 U.S.C. §§ 1331 and 1338; U.S. Copyright Act of 1976, 17 U.S.C. §§ 101 *et. seq.*; and 28 U.S.C. § 1367(a), respectively.

Downstream Defendants moved to dismiss the Complaint for failure to state a claim

pursuant to Fed. R. Civ. P. Rule 12(b)(6) as did Urban Audio. “Downstream Mot.”, Dkt. Entry No. 27; “UAB Mot.”, Dkt. Entry No. 29. Plaintiff separately opposed each motion. Pl.’s Opp’n to Downstream Mot. (“Opp’n to DS”), Dkt. Entry No. 35; Pl.’s Opp’n to UAB Mot. (“Opp’n to UAB”), Dkt. Entry No. 36. Defendants replied in support of their respective motions. Reply in Supp. of Downstream Mot. (“Downstream Reply”), Dkt. Entry No. 37; Reply in Supp. of UAB Mot. (“UAB Reply”), Dkt. Entry No. 38.

For the reasons set forth below, Defendants’ motions are granted as to the federal claims; the Court declines to exercise its supplemental jurisdiction, and this action is dismissed.

BACKGROUND¹

I. The Parties

Plaintiff, the publishing company for author Teri Woods, is a New York limited liability company, with its “principal office” at 19834 Hopkins Road, Lewes, Delaware. Compl. at ¶¶ 1, 10. It owns or is the exclusive licensee of the copyrights to Teri Wood’s books and the books of other authors. *Id.* at ¶¶ 22, 25.

Defendant Urban Audio is a New York limited liability company with its principal place of business at 144 North 7th Street #255, Brooklyn, New York 11249. Compl. at ¶ 14. Defendant Amazon is a Delaware Corporation, with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210. Securities and Exchange Commission, Amazon 2022 Annual Report, <https://s2.q4cdn.com/299287126/files/docfinancials/2023/ar/Amazon-2022-Annual-Report.pdf>; Compl. at ¶ 11. Defendant Audible, a subsidiary of Amazon, is a Delaware corporation with its principal place of business in Newark, New Jersey. Compl. at ¶ 12. Defendant

¹ The following facts are taken from the Complaint and any documents incorporated therein or that the parties are presumed to have knowledge of, and are accepted as true as they must at this stage of the case.

Blackstone is an Oregon corporation with its principal place of business in Ashland, Oregon. *Id.* at ¶ 13. All the Defendants operate audiobook subscription streaming services. *Id.* at ¶ 4.

II. The Agreement

On December 19, 2018, in Brooklyn, New York, Woods Publishing and Urban Audio entered into a License Agreement (“Agreement”) for the creation and distribution by Urban Audio of readings of twenty (20) of Woods Publishing’s titles (“Licensed Works”). *Id.* at ¶ 25; License Agreement (“Agrmt.”), Dkt. Entry No. 1-1. Woods Publishing represented and warranted that it was “the sole and exclusive owner of the copyright and literary rights pertaining to the literary works(s) and title(s)” governed by the Agreement. Agrmt. at 1.

At issue are the rights licensed to Urban Audio and the remuneration due Woods Publishing specifically under Sections I and II of the Agreement. Compl. at ¶¶ 25, 26, 45; Agrmt. at § I (“Rights Section”) and § II (“Royalties Section”). In the Rights Section, Woods Publishing granted to Urban Audio the:

“exclusive unabridged audio publishing rights, to manufacture, market, sell and distribute copies throughout the World, and in all markets, copies of unabridged readings of the [Licensed Works] on cassette, CD, MP3-CD, pre-loaded devices, as Internet downloads and on, and in, other contrivances, appliances, mediums and means (now known and hereafter developed) which are capable of emitting sounds derived for the recording of audiobooks.”

Agrmt. at § I.

Subsection 1 of the Royalties Section sets forth the compensation Urban Audio will pay Woods Publishing on the receipts generated by the audiobooks:

“As consideration for the aforementioned rights and License granted by Licensor to Licensee, Licensee shall pay to Licensor a sum equivalent to:

(a) Ten percent (10%) of Licensee's net receipts from catalog, wholesale and other retail sales and rentals of the audio recordings of said literary work;

(b) Twenty Five percent (25%) of net receipts on all internet downloads of said literary work.

(c) Twenty Five percent (25%) of net receipts on Playaway format [under certain conditions].”

Id. at § II. 1.² Subsection 2 of the Royalties Section defines “net receipts” for purposes of the Agreement, as well as the procedure for providing payment and a statement of sales and royalties semi-annually. *Id.* Net receipts are “actual cash proceeds received by [Urban Audio], after deducting a twenty percent (20%) reserve, returns, discounts and allowances, and sales taxes, shipping and handling charges which may be included in the sales or rental prices, but without deductions of any other kind.” *Id.* The Agreement further provides that it is to be governed by the laws of the State of New York and that the parties “submit to the jurisdiction of the Courts of the State of New York.” *Id.* at 3.

III. Distribution of the Licensed Works on Subscription Streaming Platforms

This dispute arises out of Defendants’ distribution of the Licensed Works as digital streams via their subscription streaming platforms. Compl. at ¶¶ 2-4. After signing the Agreement in late 2018, Urban Audio initially “did not distribute any Licensed Works as digital streams.” *Id.* at ¶ 30. Sometime in 2020, this changed, and Defendants began distributing the audiobooks as digital streams. *Id.* at ¶ 31. Around the same time, sales of the Licensed Works “substantially increased,” while Plaintiff’s “royalties plummeted.” *Id.*

Woods Publishing attributes these trends to Defendants’, especially Amazon’s and Audible’s, subscription payment model for their streaming services. *Id.* at ¶¶ 37-42, 46-53. Specifically, Plaintiff alleges that features of Amazon’s and Audible’s payment model distribute the Licensed Works for free to their subscribers. *Id.* According to Plaintiff, Defendants distributed the Licensed Works without charging adequate prices by allowing subscribers to use credits, which

² None of the parties contend that the Playaway format or its sales are relevant to the dispute here. The use of the term “format,” however, is useful in characterizing the list in Section I for purposes of this discussion.

were provided at the time of initial subscription and monthly thereafter, to obtain the works permanently. *Id.* at ¶ 39. Plaintiff, in turn, received only a fraction of the listed retail price of the Licensed Works. *Id.* at ¶¶ 32-33. This distribution was alleged to be ongoing at the time the Complaint was filed. *Id.* at ¶ 25.

Plaintiff further alleges that the subscription streaming model violates the Agreement by allowing fractional distributions of the Licensed Works through Amazon’s and Audible’s use of “Qualified Listens” to calculate the royalty payments from digital streams of works. *Id.* at ¶¶ 43-45. According to an email from Urban Audio quoted in the Complaint, when a subscriber listens to more than five minutes of a Licensed Work, this constitutes a “Qualified Listen.” *Id.* at ¶ 44. Amazon and Audible then use the total minutes of Qualified Listens to calculate their royalty payments to Woods Publishing. *Id.* Plaintiff argues that this violates the Agreement because the Agreement does not permit distribution of abridged readings. *Id.* at ¶¶ 44-45.

Finally, Plaintiff alleges that Urban Audio and Blackstone have similar audiobook subscription streaming services. *Id.* at ¶¶ 46-47. Both of these Defendants offer subscriptions where subscribers receive monthly credits that they can redeem for an audiobook. *Id.* at ¶¶ 46-51. The same problems regarding underpayment of royalties resulted. *Id.* at ¶ 52.

DISCUSSION

I. Legal Standard

To survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a complaint must “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard “does not require ‘detailed factual allegations,’ but it demands more than . . . unadorned, the-defendant-unlawfully-harmed-me accusation[s].” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.