

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of:

Determination of Rates and Terms for
Digital Performance of Sound Recordings
and Making of Ephemeral Copies to
Facilitate those Performances (Web V)

Docket No. 19-CRB-0005-WR
(2021-2025)

**DECLARATION OF PREVIN WARREN
(On behalf of SoundExchange)**

1. I am counsel for SoundExchange, Inc. (“SoundExchange”) in the above-captioned case. I am familiar with the facts, circumstances, and proceedings in this case and submit this declaration in support of SoundExchange’s Motion to Compel Discovery from the National Association of Broadcasters (“NAB”).
2. On September 23, 2019, NAB filed the Written Direct Testimony of Gregory K. Leonard, Ph.D, the Written Direct Testimony of Tres Williams, and the Written Direct Testimony of Steven W. Newberry with the Copyright Royalty Board. NAB served a copy of these documents on SoundExchange.
3. On September 30, 2019, SoundExchange served its First Set of Requests for Production of Documents to NAB and iHeartMedia, Inc (the “RFPs”), as well as its First Set of Interrogatories to iHeartMedia, Inc (the “Interrogatories”). A true and correct copy of these documents are attached as Exhibits A and B, respectively.
4. On October 17, 2019, NAB served its Responses and Objections to the RFPs. A true and correct copy of that document is attached as Exhibit C.
5. On November 4, 2019, NAB served its Responses and Objections to the Interrogatories. NAB explained that “iHeartMedia, Inc.’s continued participation in this proceeding is in

its capacity as a member of NAB” and that NAB “therefore treated SoundExchange’s interrogatory requests to iHeart as having been directed to NAB.” NAB represented that it had “made inquiries to and obtained information from iHeart” in providing its responses. A true and correct copy of NAB’s responses is attached as Exhibit D.

6. Beginning on October 30, 2019 and continuing through the present, I have engaged NAB’s counsel in an effort to resolve NAB’s responses and objections to the RFPs and Interrogatories. The parties have been able to reach agreement on some but not all issues. Below, I outline the remaining areas of disagreement that are the subject of the instant motion.
7. On November 13, 2019, NAB’s counsel stated in an email that it “will not be collecting and producing documents from Commonwealth [Broadcasting Corporation],” a broadcaster that I understand is one of NAB’s members. Despite having submitted testimony from Steven W. Newberry, who I understand is the CEO of Commonwealth, NAB’s counsel contended that SoundExchange’s request “is unduly burdensome and not proportional to the needs of the case,” purportedly because Mr. Newberry offered his testimony “on behalf of” NAB and not Commonwealth. On November 14, 2019, I wrote to NAB’s counsel declaring an impasse on this issue and reserving the right to bring it to the Judges’ attention.
8. On November 13, 2019, NAB’s counsel stated in an email that it would not be producing documents in response to RFP 64 or what the parties have referred to as the “Unnumbered Request” (which comes after RFP 64 and before RFP 65 in the requests). NAB’s counsel claimed that these requests “are legally and economically incoherent.” On November 14,

2019, I wrote to NAB's counsel declaring an impasse on this issue and reserving the right to bring it to the Judges' attention.

9. On November 19, 2019, NAB's counsel stated in an email that it "stands on its objections and response to Interrogatory No. 6." In doing so, NAB's counsel made clear that it would not be revealing the identities of record companies, distributors, representatives, or other copyright owners that did not accept iHeart's offer to enter into a direct license. On November 20, 2019, I wrote to NAB's counsel declaring an impasse on this issue and reserving the right to bring it to the Judges' attention.
10. On November 13, 2019, NAB's counsel stated in an email that it "strongly disagrees that Dr. Leonard put at issue documents related to Entercom [Communications Corporation] and Beasley [Media Group]." NAB's counsel advanced this position despite the fact that Dr. Leonard's written direct testimony discusses his interview of Beasley and references licenses entered into by certain independent labels with both Beasley and Entercom. NAB's counsel indicated that NAB would not be collecting or producing documents from Entercom and Beasley in response to RFPs 13, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 32, or 33. On November 14, 2019, I wrote to NAB's counsel declaring an impasse on this issue and reserving the right to bring it to the Judges' attention.
11. On October 30, 2019, NAB's counsel stated in a discovery letter that it "will ... revise its response to RFP No. 28 to make clear that it will produce valuation-related documents from January 1, 2012 to the present related to the negotiation or renewal of executed direct licenses, to the extent they exist." On November 15, 2019, I wrote a lengthy email to NAB's counsel explaining why NAB's self-imposed limitations were inadequate. On November 21, 2019, NAB's counsel indicated that it did not agree, and on November 22,

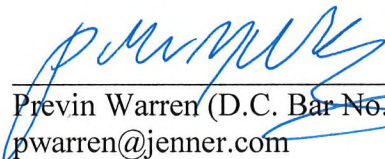
2019 I responded declaring an impasse on this issue and reserving the right to bring it to the Judges' attention.

12. On November 20, 2019, NAB's counsel stated in an email that RFP 49 was "objectionable" and that it would not be collecting or producing documents from Beasley, Cumulus Media Inc., Salem Media Group, or Cromwell Group, Inc. in response to this request. On November 21, 2019, I wrote to NAB's counsel declaring an impasse on this issue and reserving the right to bring it to the Judges' attention.

13. As of the date of this declaration, the parties have not reached an impasse on whether NAB will produce documents in response to RFP 82 (whether or not limited in some fashion). Because those discussions are ongoing, SoundExchange has not moved to compel on this request. However, on November 26, 2019, I notified NAB that SoundExchange reserves the right to do so if the parties are unable to resolve their differences regarding this request.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.6(d), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 26, 2019
Washington, D.C.


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Proof of Delivery

I hereby certify that on Tuesday, November 26, 2019, I provided a true and correct copy of the Declaration of Previn Warren to the following:

National Public Radio, Inc., represented by David P Mattern, served via Electronic Service at dmatter@kslaw.com

National Association of Broadcasters, represented by Joseph Wetzel, served via Electronic Service at joseph.wetzel@lw.com

Corporation for Public Broadcasting, represented by Kenneth L Steinthal, served via Electronic Service at ksteinthal@kslaw.com

Radio Paradise Inc., represented by David Oxenford, served via Electronic Service at doxenford@wbklaw.com

Educational Media Foundation, represented by David Oxenford, served via Electronic Service at doxenford@wbklaw.com

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

iHeartMedia, Inc., represented by John Thorne, served via Electronic Service at jthorne@kellogghansen.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via Electronic Service at ablin@fhhlaw.com

Sirius XM Radio Inc., represented by Bruce Rich, served via Electronic Service at bruce.rich@weil.com

College Broadcasters, Inc., represented by David D Golden, served via Electronic Service at dgolden@constantinecannon.com

Google Inc., represented by David P Mattern, served via Electronic Service at dmatter@kslaw.com

Pandora Media, LLC, represented by Bruce Rich, served via Electronic Service at
bruce.rich@weil.com

Signed: /s/ Previn Warren