

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

In re

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)

**WRITTEN REBUTTAL STATEMENT
OF SOUNDEXCHANGE, INC., AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED STATES AND CANADA, SCREEN
ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, AMERICAN ASSOCIATION OF INDEPENDENT
MUSIC, SONY MUSIC ENTERTAINMENT, UMG RECORDINGS, INC.,
WARNER MUSIC GROUP CORP., AND JAGJAGUWAR INC.**

**Volume 1:
Introductory Materials**

January 10, 2020

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**INTRODUCTORY MEMORANDUM TO THE
WRITTEN REBUTTAL STATEMENT OF SOUNDEXCHANGE, INC., AMERICAN
FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, SCREEN
ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO
ARTISTS, AMERICAN ASSOCIATION OF INDEPENDENT MUSIC, SONY MUSIC
ENTERTAINMENT, UMG RECORDINGS, INC., WARNER MUSIC GROUP CORP.,
AND JAGJAGUWAR INC.**

SoundExchange, Inc., the American Federation of Musicians of the United States and Canada (“AFM”), Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”), the American Association of Independent Music (“A2IM”), Sony Music Entertainment (“Sony”), UMG Recordings, Inc. (“UMG”), Warner Music Group Corp. (“WMG”), and Jagjaguwar Inc. (collectively, “SoundExchange”), through their undersigned counsel, respectfully submit this Introductory Memorandum to SoundExchange’s written rebuttal statement in accordance with 37 C.F.R. § 351.11. This memorandum describes the contents of SoundExchange’s written rebuttal statement and briefly summarizes the testimony of its witnesses.

CONTENTS OF SOUNDEXCHANGE’S WRITTEN REBUTTAL STATEMENT

Volume 1 contains (A) this Introductory Memorandum; (B) an index of SoundExchange’s witness testimony; (C) an index of SoundExchange’s exhibits; and (D) a declaration regarding Protected Material.

Volume 2 contains the written rebuttal testimony of SoundExchange’s six expert witnesses and four fact witnesses, as well as the designated testimony of Dr. George S. Ford, Dr. Thomas S. Lys, and Barrie Kessler from a prior proceeding.

Volume 3 contains exhibits to the written rebuttal testimony of SoundExchange’s witnesses.

Pursuant to 37 C.F.R. § 303.5, § 303.6, and the Court’s Orders of February 6, 2019 and June 27, 2019, SoundExchange is filing the materials in Volumes 1-3 through eCRB. The written rebuttal testimony of some of SoundExchange’s witnesses and some of SoundExchange’s exhibits contain confidential information as that term is defined in Part III of the Protective Order entered by this Court on June 24, 2019 (the “Protective Order”). Pursuant to Part IV(A) of the Protective Order, SoundExchange has marked Restricted portions of its written rebuttal statement that contain confidential information and has also submitted a declaration listing a description of the Restricted material.

SUMMARY OF THE WRITTEN TESTIMONY

SoundExchange’s written rebuttal statement includes the written testimony of the following expert and fact witnesses:

A. Expert Witnesses

Robert Willig is a Professor of Economics and Public Affairs Emeritus at Princeton University, where he has held a joint appointment in the Economics Department and at the

Woodrow Wilson School of Public and International Affairs since 1978. He previously submitted written direct testimony in this proceeding.

In his rebuttal testimony, Prof. Willig responds to the written direct testimony of Prof. Carl Shapiro on behalf of Sirius XM Radio Inc. and Pandora Media LLC, and the written direct testimony of Dr. Gregory Leonard on behalf of the National Association of Broadcasters (NAB). Prof. Willig explains that Prof. Shapiro's opportunity cost analysis is fundamentally flawed because it is based on label suppression experiments that fail to measure what they purport to assess and that are dramatically inconsistent with the results of a survey conducted by Prof. Itamar Simonson. Prof. Shapiro applies a series of adjustments in an effort to correct for certain acknowledged shortcomings in the label suppression experiments, but, as Prof. Willig explains, these adjustments are arbitrary and illogical. In addition, Prof. Shapiro's calculation of opportunity cost is dramatically and artificially lowered due to a simple computational error concerning the opportunity cost from diverted plays to subscription services.

Prof. Shapiro's flawed opportunity cost analysis drives his Nash-in-Nash bargaining model, but that model as specified by Prof. Shapiro suffers from its own serious defects. Prof. Shapiro's model artificially elevates competition among record labels and suppresses competition between distributors. Specifically, Prof. Shapiro models competition among ten record labels (with purportedly highly-substitutable catalogs) and only a single noninteractive distributor. Moreover, his Nash-in-Nash approach generates unstable and unreliable results given the very different incremental values that a record company brings to the negotiation depending on whether or not it is the last to arrive to the hypothetical bargaining table. Prof. Willig explains why his Shapley Value model is a more appropriate economic tool for use in this proceeding, is

robust to a variety of Prof. Shapiro's extreme assumptions, and produces royalty rates similar to Prof. Willig's written direct testimony even when those assumptions are accepted.

Prof. Willig also addresses the opportunity cost approach offered by Dr. Leonard, which is applicable only to simulcasting. Prof. Willig concludes that Dr. Leonard's analysis is based on a series of incorrect assumptions and data inputs, including the fatally flawed survey conducted by Prof. John Hauser. Prof. Willig concludes that Dr. Leonard's opportunity cost computations produce an artificially low floor on simulcasting rates and should be disregarded in their entirety.

Jonathan Orszag is a Senior Managing Director and member of the Executive Committee of the economic consulting firm of Compass Lexecon, LLC. He holds a M.Sc. from Oxford University, which he attended as a Marshall Scholar, and an undergraduate degree, *summa cum laude*, from Princeton University. He previously submitted written direct testimony in this proceeding.

In his rebuttal testimony, Mr. Orszag responds to the written direct testimony of Dr. Carl Shapiro on behalf of Sirius XM Radio Inc. and Pandora Media LLC, Dr. Steven Peterson on behalf of Google LLC, Dr. Gregory Leonard on behalf of NAB, and Drs. Richard Steinberg and Joseph Cordes on behalf of the National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC). Specifically, Mr. Orszag explains that the services' experts have not relied on economically sound benchmarks and have implemented flawed adjustments, resulting in understated proposed per-play royalty rates. Among other things, Mr. Orszag points out that there is no reason to adjust benchmark rates to account for the purported lack of effective competition in benchmark markets, given that those markets have substantially changed since the time of the *Web IV* hearing, and why in any event the adjustments proposed by the services' economists are fatally flawed.

Mr. Orszag also explains that there is no sound basis for establishing different rates for simulcasters and custom radio, as NAB has proposed. Likewise, Mr. Orszag concludes that there is no sound economic basis for changing the payment structure for noncommercial webcasters, as advocated by the NRBNMLC (although he concludes there is an economic basis for increasing the minimum fee).

Ultimately, after reviewing the testimonies of the services' experts, Mr. Orszag continues to find that relying on the effective percentage-of-revenue rates paid by benchmark interactive subscription services, and converting to a per-play rate based on noninteractive services' revenue per play, is the most economically sound and appropriate benchmarking methodology for determining per-play rates for the statutory noninteractive services.

Catherine Tucker, Ph.D, is an economist who serves as the Sloan Distinguished Professor of Management Science and Professor of Marketing at MIT Sloan School of Management. She previously submitted written direct testimony in this proceeding.

Prof. Tucker's rebuttal testimony addresses several elements of the services' cases. First, Prof. Tucker draws on her expertise in field experiments to critique the Label Suppression Experiments conducted by Dr. Reiley on behalf of Pandora, and Prof. Shapiro's use of data derived from these experiments. She demonstrates that – due to major errors in design and implementation – the Label Suppression Experiments do not provide scientifically valid data about the effects of removing a record label's music from the ad-supported Pandora service. She further shows that Prof. Shapiro improperly applied the results of the Label Suppression Experiments in calculating a proposed royalty rate, and that his conclusion that no label is a “must-have” is not sufficiently supported by the evidence.

Second, Prof. Tucker addresses arguments presented by the National Association of Broadcasters. Among other things, she points out that while NAB witnesses suggest that webcasting is a small and unprofitable aspect of their business, their arguments ignore the role that simulcasting plays in protecting NAB members' broadcast radio businesses. In particular, evidence from broadcasting industry executives suggests that simulcasts enhance and complement radio stations' core businesses, including by helping radio businesses retain listeners in the face of emerging digital technologies. For this reason, the benefits of simulcasting extend beyond the profitability of simulcasting viewed as a standalone business.

Third, Prof. Tucker refutes several arguments made by the National Religious Broadcasters Noncommercial Music License Committee. She shows that the arguments that NRBNMLC makes about why noncommercial webcasters should be permitted to pay lower royalties than commercial webcasters are not based on economics; moreover, these arguments ignore evidence that the average per-performance rate paid by noncommercial webcasters is already much lower than the rates paid by commercial webcasters, and will remain lower under SoundExchange's proposed rate increase.

George S. Ford, Ph.D., is the President of Applied Economic Studies, a private consulting firm specializing in economic and econometric analysis. He is also the Chief Economist of the Phoenix Center for Advanced Legal & Economic Policy Studies, a 501(c)(3) research organization that specializes in the legal and economic analysis of public policy issues involving the communications and technology industries.

Dr. Ford's written rebuttal testimony responds to the discussion of promotion and substitution effects in the services' direct cases – primarily by Steven Blatter (Sirius XM/Pandora), with more limited treatment by Christopher Phillips (Sirius XM/Pandora), Tom Poleman (NAB),

Steven Newberry (NAB), Andrew Gille (NAB), and Leonard Wheeler (NAB). First, Dr. Ford explains why these witnesses' anecdotal evidence of promotion is flawed. Dr. Ford shows that anecdotes about promotion are not helpful, as the Judges have repeatedly found in past proceedings. Even if such anecdotes could show a promotional effect (which they do not), such a demonstration would not justify a promotional discount. Second, Dr. Ford rebuts specific examples from the testimony of Mr. Blatter and Mr. Poleman, showing that the services' anecdotes themselves are flawed and incomplete. Dr. Ford therefore concludes that an adjustment based on a purported promotional effect is not warranted.

Gal Zauberman, Ph.D., is the Joseph F. Cullman 3rd Professor of Marketing at the Yale School of Management at Yale University. He previously submitted written direct testimony in this proceeding. Prof. Zauberman evaluates the Label Suppression Experiments conducted by Dr. Reiley, the methodology and questions in the survey conducted by Prof. Hauser, and the methodology and questions in the surveys conducted by Professor Hanssens – each of which purports to measure the switching behavior of consumers, given certain hypothetical changes in their webcasting services.

Prof. Zauberman concludes that Dr. Reiley's Label Suppression Experiments suffer from serious flaws that invalidate his conclusions, and that critical flaws in the Hauser Survey make any conclusions about consumer behavior based on his survey data unreliable. With respect to the Hanssens Survey, Prof. Zauberman observes that the overall approach is similar to the approach of the survey discussed in Prof. Zauberman's own Written Direct Testimony. Prof. Zauberman's rebuttal testimony, however, highlights some of the differences between the two approaches, which make the Zauberman Survey more reliable and in better keeping with best survey practices.

Prof. Zauberaman’s conclusions bear on the testimony of Prof. Willig, and undermine the validity of the testimony of Prof. Shapiro and Prof. Leonard, who relied on the Reiley Experiments and Hauser Survey respectively.

Itamar Simonson, Ph.D., is the Sebastian S. Kresge Chair of Marketing in the Graduate School of Business at Stanford University. Like Prof. Zauberaman, Dr. Simonson evaluates the testimony of Dr. Reiley, Prof. Hanssens, and Prof. Hauser. Each of these witnesses purported to offer data about the likely switching behavior of certain consumers of non-interactive webcasting services, under hypothetical conditions.

Prof. Simonson concludes that the Label Suppression Experiments, in which Dr. Reiley attempted to measure the effect of suppressing a record label’s catalog from the array of songs available to ad-supported Pandora users, was misguided and detached from reality, making the obtained data irrelevant and uninformative to the question Dr. Reiley aimed to address (what would really happen “if Pandora stopped playing the entire catalog of a particular record company”). Prof. Simonson also concludes Dr. Reiley’s implementation of the experiments was flawed, further undermining the reliability of his results.

Prof. Simonson next concludes that the consumer surveys conducted by Prof. Hanssens (the “Hanssens Surveys”) – which presented hypothetical scenarios in which respondents were informed about the change in the services’ repertoire – are considerably more informative than the Reiley Experiments. He nonetheless details several potential design flaws that may have introduced bias into Prof. Hanssens’s results. Additionally, Prof. Simonson conducted two rebuttal surveys: a replication of the Hanssens Pandora Survey, and a modified version of this survey. Prof. Simonson’s Modified Pandora Survey retained the key features of the original, but removed the

instruction telling respondents that they were “not satisfied” in order to test the impact of that instruction.

Finally, Prof. Simonson finds that the consumer survey Prof. Hauser conducted on behalf of NAB exhibits numerous serious flaws, and departs from best survey practice. The cumulative effect of these errors, he concludes, is to dilute the share of consumers who would substitute one music streaming service with another. In other words, the biased design of the Hauser Survey commands a predetermined result: that the likelihood of switching to another music streaming service is greatly underestimated. As a result, the Hauser Survey does not provide reliable data on which an economic analysis can be based.

Prof. Simonson’s findings bear on the testimony of Prof. Willig (discussed above) with regard to the opportunity cost of non-interactive commercial webcasters’ cannibalization of higher paying streaming services. Prof. Simonson’s findings also undermine the validity of the testimony of Sirius XM’s economic expert, Prof. Shapiro, who relied on the Reiley Experiments, and NAB’s economic expert, Prof. Leonard, who relied on the Hauser Survey.

B. Fact Witnesses

Aaron Harrison is Senior Vice President, Business & Legal Affairs, Digital, for UMG Recordings, Inc. (“UMG”). He previously submitted written direct testimony in this proceeding.

Mr. Harrison’s rebuttal testimony addresses five issues. First, Mr. Harrison identifies and discusses factors that affect the rates in UMG’s agreement with [REDACTED] for its [REDACTED]. Second, Mr. Harrison identifies and discusses factors that make [REDACTED] unique, and therefore materially different from [REDACTED], including statutory webcasting services. Third, Mr. Harrison addresses assertions that performance of sound recordings on nonportable devices should command lower royalties than

the performance of sound recordings on other devices. Fourth, Mr. Harrison addresses assertions that simulcasters operating under the statutory license should receive rates lower than other webcasters. Finally, Mr. Harrison provides testimony for the purpose of establishing authenticity of, and laying the foundation for, documents from UMG's files that are being submitted as exhibits in this proceeding, including digital licensing agreements.

Travis Ploeger is the Director of License Management for SoundExchange, Inc. In that role, he is responsible for SoundExchange's relationship with licensees. His testimony first responds to the services' proposals to continue the current \$500 annual minimum fee, explaining that \$500 per channel or station is not sufficient to cover SoundExchange's administrative costs at this time and that the minimum fee needs to double even to keep the minimum fee's contribution to SoundExchange's administrative costs on par with pre-*Web IV* levels. He then explains that NRBNMLC's proposal to slash the royalty rates for noncommercial webcasters is not justified, given competition between noncommercial and commercial services and the significant discounts already provided by the current rate structure. Next, Mr. Ploeger addresses the terms and other regulatory language proposed by the services participating in this proceeding. Finally, he provides certain additional information relevant to the broadcaster groups' written direct statements.

Jon Bender, who provided written direct testimony on behalf of SoundExchange, is leaving SoundExchange and may not be available to testify at trial. Mr. Ploeger assisted with the preparation of that testimony and is also prepared to testify at trial as set forth therein.

Mark Piibe is the Executive Vice President for Global Business Development and Digital Strategy at Sony Music Entertainment. He previously submitted written direct testimony in this proceeding. Mr. Piibe testifies [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. Additionally, Mr. Piibe’s rebuttal testimony is submitted for the purpose of establishing authenticity of, and laying the foundation for, documents from Sony’s files that are being submitted as exhibits in this proceeding.

Reni Adadevoh is Vice President, Legal and Business Affairs, for Warner Music International, which is a London-based division of Warner Music Group (“WMG”). She has previously submitted written direct testimony in this proceeding. Her rebuttal testimony is submitted for the purpose of establishing authenticity of, and laying the foundation for, documents from WMG’s files that are being submitted as exhibits in this proceeding.

C. Designated Testimony

George S. Ford. In response to the discussion of promotion and substitution effects in the services’ direct cases, SoundExchange is also designating Dr. George S. Ford’s direct case testimony from Docket No. 16-CRB-0001 SR/PSSR. SoundExchange is including a copy of Dr. Ford’s Written Direct Testimony and a transcript of Dr. Ford’s trial testimony.

Thomas S. Lys. In response to the discussion of the NAB’s benchmark, based on direct licenses executed between iHeart and independent record labels, SoundExchange is also designating Professor Thomas S. Lys’s rebuttal case testimony from Docket No. 16-CRB-0001 SR/PSSR. SoundExchange is including a copy of Professor Lys’s Written Rebuttal Testimony and a transcript of Professor Lys’s trial testimony.

Barrie Kessler. In response to discussion about the appropriate annual minimum fee for noncommercial webcasters in the NRBNMLC’s direct case, SoundExchange is also designating Barrie Kessler’s direct case testimony from Docket No. 2009-1 CRB Webcasting III.

SoundExchange is including a copy of Ms. Kessler's Written Direct Testimony and a transcript of Ms. Kessler's rebuttal testimony.

Dated: January 10, 2020

Respectfully submitted,

By: */s/ David A. Handzo*

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Witness Name	Identification
A. Expert Witnesses	
Robert Willig	Professor of Economics and Public Affairs Emeritus, Princeton University
Jonathan Orszag	Senior Managing Director and Member of the Executive Committee, Compass Lexecon
Catherine Tucker	Sloan Distinguished Professor of Management Science at MIT Sloan at the Massachusetts Institute of Technology
George S. Ford	President, Applied Economic Studies
Gal Zauberaman	Joseph F. Cullman 3rd Professor of Marketing, Yale School of Management
Itamar Simonson	Sebastian S. Kresge Professor of Marketing at the Graduate School of Business, Stanford University
B. Fact Witnesses	
Aaron Harrison	Senior Vice President, Business & Legal Affairs, Digital, UMG Recordings, Inc.
Travis Ploeger	Director of License Management, SoundExchange, Inc.
Mark Piibe	Executive Vice President for Global Business Development and Digital Strategy at Sony Music Entertainment
Reni Adadevoh	Vice President, Legal and Business Affairs, Warner Music International
C. Designated Testimony	
George S. Ford	President, Applied Economic Studies <ul style="list-style-type: none"> • Written Direct Testimony and trial testimony from Docket No. 16-CRB-0001 SR/PSSR (2018-2022) (<i>SDARS III</i>)
Thomas S. Lys	Eric L. Kohler Professor Emeritus, Kellogg School of Management Northwestern University <ul style="list-style-type: none"> • Written Rebuttal Testimony and trial testimony from Docket No. 16-CRB-0001 SR/PSSR (2018-2022) (<i>SDARS III</i>)

Barrie Kessler	Former Chief Operating Officer, SoundExchange, Inc. <ul style="list-style-type: none">• Written Direct Testimony and trial testimony from Docket No. 2009-1 CRB Webcasting III (2011-2015) (<i>Web III</i>)
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SoundExchange Ex. 203	Robert Willig	Sirius XM Radio Inc. and Pandora Media, LLC's Responses and Objections to SoundExchange Inc.'s First Set of Interrogatories, dated Nov. 4, 2019	Restricted	
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SoundExchange Ex. 329	Jonathan Orszag	NAB usage data, 2017	Restricted
SoundExchange Ex. 330	Jonathan Orszag	NAB usage data, Dec. 2017	Restricted
SoundExchange Ex. 331	Jonathan Orszag	NAB usage data, 2018	Restricted
SoundExchange Ex. 332	Jonathan Orszag		Restricted
SoundExchange Ex. 333	Jonathan Orszag		Restricted
SoundExchange Ex. 334	Jonathan Orszag		Restricted
SoundExchange Ex. 335	Jonathan Orszag		Restricted
SoundExchange Ex. 336	Jonathan Orszag		Restricted
SoundExchange Ex. 337	Jonathan Orszag		Restricted
SoundExchange Ex. 338	Jonathan Orszag		Restricted
SoundExchange Ex. 339	Jonathan Orszag	Nielsen report, Nielsen Radio PPM [®] Markets With Daily In-Tab Targets, Oct. 2018	Public

Exhibit No.	Sponsored By	Description	Designation
SoundExchange Ex. 340	Jonathan Orszag	Responses and Objections to SoundExchange's First Set of Requests for Production of Documents to the National Association of Broadcasters and iHeartMedia, Inc.	Restricted
SoundExchange Ex. 341	Jonathan Orszag		Restricted
SoundExchange Ex. 342	Jonathan Orszag		Restricted
SoundExchange Ex. 343	Jonathan Orszag	Spotify-Sony Streaming Statement, May 2018	Restricted
SoundExchange Ex. 344	Jonathan Orszag	Spotify-UMG topsheet, May 2018	Restricted
SoundExchange Ex. 345	Jonathan Orszag	Spotify-WMG royalty data, May 2018	Restricted
SoundExchange Ex. 346	Jonathan Orszag	Code from Sirius XM witness's analysis	Restricted
SoundExchange Ex. 347	Jonathan Orszag	Data from Sirius XM witness's analysis	Restricted
SoundExchange Ex. 348	Jonathan Orszag	Supplemental Responses and Objections to SoundExchange's First Set of Interrogatories to National Association of Broadcasters, Jan. 7, 2020	Restricted
SoundExchange Ex. 349	Jonathan Orszag	iHeart-Broken Bow Records Royalties Statement Summary and usage data, Dec. 2014	Restricted
SoundExchange Ex. 350	Jonathan Orszag	iHeart-Big Machine Records Royalties Statement Summary and usage data, June 2016	Restricted
SoundExchange Ex. 351	Jonathan Orszag	iHeart-Black River Entertainment Royalties Statement Summary and usage data, Oct. 2016	Restricted
SoundExchange Ex. 352	Jonathan Orszag	iHeart-BMG Records Royalties Statement Summary, Nov. 2016	Restricted
SoundExchange Ex. 353	Jonathan Orszag	iHeart-Average Joes Entertainment and Concord Music Group Royalties Statement Summaries, June 2018	Restricted
SoundExchange Ex. 354	Jonathan Orszag	iHeart-Black River Entertainment Royalties Statement Summary, Nov. 2018	Restricted
SoundExchange Ex. 355	Jonathan Orszag	iHeart-Big Machine Records Royalties Statement Summary and usage data, Sept. 2012	Restricted
SoundExchange Ex. 356	Jonathan Orszag		Restricted
SoundExchange Ex. 357	Jonathan Orszag		Restricted
SoundExchange Ex. 358	Aaron Harrison		Restricted
SoundExchange Ex. 359	Jonathan Orszag	Spotify Financial Topsheet	Restricted
SoundExchange Ex. 360	Aaron Harrison		Restricted
SoundExchange Ex. 361	Aaron Harrison		Restricted
SoundExchange Ex. 362	Aaron Harrison		Restricted
SoundExchange Ex. 363	Aaron Harrison		Restricted
SoundExchange Ex. 364	George S. Ford	Written Direct Testimony of George Ford, SDARS III	Restricted

Exhibit No.	Sponsored By	Description	Designation
SoundExchange Ex. 365	Aaron Harrison		Restricted
SoundExchange Ex. 366	Aaron Harrison		Restricted
SoundExchange Ex. 367	Aaron Harrison		Restricted
SoundExchange Ex. 368	Aaron Harrison		Restricted
SoundExchange Ex. 369	Aaron Harrison		Restricted
SoundExchange Ex. 370	Aaron Harrison		Restricted
SoundExchange Ex. 371	Aaron Harrison		Restricted
SoundExchange Ex. 372	Aaron Harrison		Restricted
SoundExchange Ex. 373	Aaron Harrison		Restricted
SoundExchange Ex. 374	Catherine Tucker	Consent Motion of the National Religious Broadcasters Noncommercial Music License Committee to Submit Corrected Written Direct Testimony of Joseph J. Cordes	Public
SoundExchange Ex. 375	Catherine Tucker	Declaration of Cullin R. Jones	Public
SoundExchange Ex. 376	Catherine Tucker	Suggestions for Further Reading	Public
SoundExchange Ex. 377	Catherine Tucker	Deloitte Insights: Technology, Media, and Telecommunications Predictions, 2019	Restricted
SoundExchange Ex. 378	Catherine Tucker	Edison: The Infinite Dial 2018	Restricted
SoundExchange Ex. 379	Catherine Tucker	National Association of Broadcasters Radio Board of Directors, Minutes, Oct. 25, 2016	Restricted
SoundExchange Ex. 380	Catherine Tucker		Restricted
SoundExchange Ex. 381	Catherine Tucker		Restricted
SoundExchange Ex. 382	Catherine Tucker		Restricted
SoundExchange Ex. 383	Catherine Tucker		Restricted
SoundExchange Ex. 384	Catherine Tucker	Coleman Insights Media Research: The Image Pyramid	Restricted
SoundExchange Ex. 385	Catherine Tucker	Coleman Insights Media Research: National Marketplace	Restricted
SoundExchange Ex. 386	Catherine Tucker		Restricted
SoundExchange Ex. 387	Catherine Tucker		Restricted
SoundExchange Ex. 388	Catherine Tucker		Restricted
SoundExchange Ex. 389	Catherine Tucker		Restricted
SoundExchange Ex. 390	Catherine Tucker		Restricted
SoundExchange Ex. 391	Catherine Tucker		Restricted
SoundExchange Ex. 392	Catherine Tucker		Restricted
SoundExchange Ex. 393	Catherine Tucker	Family Stations, Inc Form 8879-EO	Public
SoundExchange Ex. 394	Catherine Tucker	NRBNMLC Board Members	Restricted
SoundExchange Ex. 395	Catherine Tucker		Restricted
SoundExchange Ex. 396	Catherine Tucker	Morgan Stanley - Revival: 5th Annual Music & Radio Survey	Restricted

Exhibit No.	Sponsored By	Description	Designation
SoundExchange Ex. 397	Catherine Tucker	Jacobs Media: Radio's Survival Kit	Restricted
SoundExchange Ex. 398	Catherine Tucker	MusicWatch: How US Consumers Listen to Music (Audiocensus Q4 2018)	Restricted
SoundExchange Ex. 399	Catherine Tucker		Restricted
SoundExchange Ex. 400	Catherine Tucker		Restricted
SoundExchange Ex. 401	Catherine Tucker, Itamar Simonson		Restricted
SoundExchange Ex. 402	Catherine Tucker		Restricted
SoundExchange Ex. 403	Catherine Tucker		Restricted
SoundExchange Ex. 404	Catherine Tucker	Dr. Reiley Course Syllabus	Public
SoundExchange Ex. 405	Jonathan Orszag	Shapiro Spotify analysis	Restricted
SoundExchange Ex. 406	Jonathan Orszag	Declaration of Scott Hunter	Public
SoundExchange Ex. 407	Jonathan Orszag	Declaration of Bayard Walters	Public
SoundExchange Ex. 408	Jonathan Orszag	Declaration of Jami Beasley Watkins	Public
SoundExchange Ex. 409	Jonathan Orszag	Declaration of Pat Cunnane	Public
SoundExchange Ex. 410	Jonathan Orszag	Declaration of Collin R. Jones	Public
SoundExchange Ex. 411		Intentionally left blank	
SoundExchange Ex. 412	Jonathan Orszag	NAB-Cumulus advertising rate data	Restricted
SoundExchange Ex. 413	Jonathan Orszag	Sound Recording Performance License Agreement	Restricted
SoundExchange Ex. 414		Intentionally left blank	
SoundExchange Ex. 415	George S. Ford	Sirius XM Statutory Royalties for Satellite and Webcasting 2017-2018	Restricted
SoundExchange Ex. 416	George S. Ford	Sirius XM Unique Recordings 2016-2019	Restricted
SoundExchange Ex. 417	George S. Ford		Restricted
SoundExchange Ex. 418	George S. Ford	Beard and Ford, Promotional Effects	Public
SoundExchange Ex. 419	George S. Ford	SXM Board Meeting, Dec. 2018	Restricted
SoundExchange Ex. 420	George S. Ford		Restricted
SoundExchange Ex. 421	George S. Ford	A Grave Mistake Song History Report	Restricted
SoundExchange Ex. 422	George S. Ford	The American Nightmare Song History Report	Restricted
SoundExchange Ex. 423	Jonathan Orszag; Reni Adadevoh		Restricted
SoundExchange Ex. 424	Jonathan Orszag; Reni Adadevoh		Restricted
SoundExchange Ex. 425	Jonathan Orszag; Reni Adadevoh		Restricted
SoundExchange Ex. 426	Itamar Simonson		Restricted
SoundExchange Ex. 427	Itamar Simonson		Restricted
SoundExchange Ex. 428	Itamar Simonson		Restricted
SoundExchange Ex. 429	Itamar Simonson		Restricted
SoundExchange Ex. 430	Catherine Tucker		Restricted
SoundExchange Ex. 431		Emails among counsel for Web V participants	Restricted

**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 DAVID A. HANDZO REGARDING RESTRICTED
INFORMATION IN THE WRITTEN REBUTTAL STATEMENT OF
SOUNDEXCHANGE, INC., AND COPYRIGHT OWNER AND ARTIST
PARTICIPANTS**

1. I am counsel for SoundExchange, Inc., the American Federation of Musicians of the United States and Canada (“AFM”), the Screen Actors Guild and American Federation of Television and Radio Artists (“SAG AFTRA”), the American Association of Independent Music (“A2IM”), Jagjaguwar Inc., UMG Recordings, Inc. (“UMG”), Sony Music Entertainment (“SME”), and Warner Music Group (“WMG”) (collectively, “SoundExchange”) in Docket No. Docket No. 19-CRB-0005-WR. I respectfully submit this declaration to comply with the Protective Order, dated June 24, 2019, which directs the parties to redact proposed restricted material and submit a declaration signed under penalty of perjury listing a description of all materials marked with the “Restricted” stamp and the basis for the designation. I am authorized by SoundExchange to submit this declaration on its behalf.

2. I have reviewed SoundExchange’s written rebuttal statement, witness statements, and exhibits, all of which are being submitted in this proceeding on January 10, 2020. I also have reviewed the definitions and terms provided in the Protective Order. After consultation with my clients, I have determined that portions of SoundExchange’s written rebuttal statement and accompanying exhibits contain information that is “Protected Material” as defined by the

Protective Order and that should be treated as “confidential information” under 17 U.S.C § 803(c)(5). The Protective Material is shaded in the printed copies of the restricted version of SoundExchange’s filed materials, and is further described below.

3. The Protected Material that SoundExchange is submitting includes, among other things, confidential testimony and exhibits related to or constituting (a) contracts or contract terms that are proprietary, not available to the public, commercially sensitive, and/or subject to express confidentiality obligations in agreements with third parties; (b) internal commercial information, financial data and projections, and commercial strategy that are proprietary, not available to the public, and commercially sensitive; (c) internal communications that are not available to the public and commercially sensitive; and (d) information produced by Google, the National Association of Broadcasters, Pandora, and Sirius XM in this proceeding and marked as restricted by them.

4. The public disclosure of the Protected Material that SoundExchange is submitting would be likely to cause significant harm. The disclosure would either result in a competitive disadvantage to the Producing Participant, provide a competitive advantage to another Participant or entity, or interfere with the ability of the Producing Participant to obtain like information from other Participants or entities in the future. Accordingly, public disclosure of this information would place the Producing Participants, as well as various business partners and entities whose interests are represented by the Producing Participants, at a significant commercial disadvantage, and pose serious risk to their business interests and strategies.

5. As summarized below, the following witnesses’ written rebuttal statements and/or exhibits contain Protected Material.

(a) Dr. George Ford's testimony contains information drawn from documents, data, and deposition testimony produced by the opposing participants in this proceeding and designated as restricted by them. Dr. Ford's testimony also contains a variety of confidential and commercially sensitive information from music service providers and record companies. Public disclosure of this information would put music service providers and record companies at a competitive disadvantage in the marketplace, and it would harm their ability to negotiate future agreements. Lastly, Dr. Ford's testimony contains competitively sensitive information that is not known to the public regarding revenues reported by statutory licensees to SoundExchange, which has been defined as "confidential information" under 37 C.F.R. §§ 382.5 and 382.14.

(b) Mr. Jonathon Orszag's testimony contains a variety of confidential and commercially sensitive information from music service providers and record companies. Public disclosure of this information would put music service providers and record companies at a competitive disadvantage in the marketplace, and it would harm their ability to negotiate future agreements. His testimony and exhibits include the rates and terms of digital licensing agreements, which are held in strict confidence by the parties to those agreements and are the subject of confidentiality provisions. His testimony also contains competitively sensitive information reported by digital music services to record companies regarding the revenues, performances, royalties, and other usage data related to the physical and digital distribution of music, the disclosure of which would put those parties at a disadvantage relative to their competitors and business partners in the marketplace. Additionally, Mr. Orszag's report includes information regarding record companies' business development strategy and consumers' music listening and consumption habits; this information is maintained as confidential in the ordinary course of business, and its public disclosure would put the record companies at a disadvantage

relative to their competitors. Finally, his report also contains information drawn from written testimony, deposition testimony, and documents produced by the opposing participants in this proceeding and designated as restricted by them.

(c) Dr. Itamar Simonson's testimony contains information drawn from documents, data, and deposition testimony produced by the opposing participants in this proceeding and designated as restricted by them.

(d) Dr. Catherine Tucker's testimony contains information drawn from documents, data, and deposition testimony produced by the opposing participants in this proceeding and designated as restricted by them. Dr. Tucker's testimony also contains competitively sensitive information that is not known to the public regarding revenues reported by statutory licensees to SoundExchange, which has been defined as "confidential information" under 37 C.F.R. §§ 382.5 and 382.14. Dr. Tucker's testimony also contains competitively sensitive information reported by digital music services to record companies regarding the revenues, performances, and other usage data related to the physical and digital distribution of music, the disclosure of which would put those parties at a disadvantage relative to their competitors and business partners in the marketplace. Her testimony also includes confidential information regarding royalties collected through various distribution channels. In addition, her testimony includes details from digital licensing agreements, which are held in strict confidence by the parties to those agreements and are the subject of confidentiality provisions.

(e) Dr. Robert Willig's testimony contains information drawn from documents, data, and deposition testimony produced by the opposing participants in this proceeding and designated as restricted by them. Dr. Willig's testimony also contains competitively sensitive information reported by digital music services to record companies regarding the revenues,

performances, and other usage data related to the physical and digital distribution of music, the disclosure of which would put those parties at a disadvantage relative to their competitors and business partners in the marketplace. His testimony also includes confidential information regarding royalties collected through various distribution channels. Finally, Dr. Willig's report includes information regarding record companies' business development strategy and consumers' music listening and consumption habits; this information is maintained as confidential in the ordinary course of business, and its public disclosure would put the record companies at a disadvantage relative to their competitors.

(f) Dr. Gal Zauberman's testimony contains information drawn from documents, data, and deposition testimony produced by the opposing participants in this proceeding and designated as restricted by them.

(g) Ms. Reni Adadevoh's testimony and exhibits contain competitively sensitive information that is not publicly known regarding WMG's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. Her testimony also includes confidential data regarding the performance and sales of WMG's partners. Disclosure of this information would place WMG at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners.

(h) Mr. Travis Ploeger's testimony and exhibits contain competitively sensitive information that is not known to the public regarding revenues reported by statutory licensees to SoundExchange, which has been defined as "confidential information" under 37 C.F.R. §§ 382.5 and 382.14. It also contains information derived from audits of statutory licensees, which includes commercially sensitive information the disclosure of which would result in a

competitive disadvantage to the licensee, and which SoundExchange treats as confidential in the ordinary course of business.

(i) Mr. Aaron Harrison's testimony and exhibits contain competitively sensitive information that is not publicly known regarding UMG's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of Universal's partners. Disclosure of this information would place UMG at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

(j) Mr. Mark Piibe's testimony and exhibits contain competitively sensitive information that is not publicly known regarding SME's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of SME's partners. Disclosure of this information would place SME at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

6. As mentioned above, disclosure of the restricted testimony and exhibits would either result in a competitive disadvantage to the Producing Participant, provide a competitive advantage to another Participant or entity, or interfere with the ability of the Producing Participant to obtain like information from other Participants or entities in the future. As a result, SoundExchange respectfully submits that this information can and should be treated as

“Protected Material.” Such protection will prevent commercial and competitive harm that would result from disclosure and enable SoundExchange to provide the Copyright Royalty Judges with the most complete record possible on which to base its determination in this proceeding.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 10, 2020

Respectfully submitted,

By 

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Proof of Delivery

I hereby certify that on Tuesday, January 14, 2020, I provided a true and correct copy of the Written Rebuttal Statement Volume 1: Introductory Materials to the following:

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

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

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

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

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

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

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

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

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

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

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

National Public Radio, Inc., represented by Gregory A Lewis, served via Electronic Service
at glewis@npr.org

Signed: /s/ David A. Handzo