

**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
PERFORMANCES (*WEB V*)**

**Docket No. 19–CRB–0005–WR
(2021–2025)**

**ORDER ON SOUNDEXCHANGE’S MOTION FOR LEAVE TO FILE
CORRECTED VERSIONS OF RESTRICTED AND PUBLIC VERSIONS
OF WRITTEN REBUTTAL STATEMENT**

On January 15, 2020, a motion (Motion) was filed by SoundExchange, Inc. (SoundExchange) et al.,¹ for leave to submit a corrected restricted version of SoundExchange’s previously filed Written Rebuttal Statement (WRS). SoundExchange avers that the purposes of the proposed corrections are allegedly non-substantive in nature, intended to: (1) add a “RESTRICTED” label that SoundExchange had inadvertently omitted in its original filing, for material that is confidential and protected; (2) designate as restricted the description of five exhibits (identified in the Motion); (3) de-designate as restricted the description of one other exhibit (also identified in the Motion); (4) add a restricted designation for content in paragraph 33 of the written rebuttal testimony of one of its witnesses, Jonathan Orszag (testimony that is part of the WRS); and (5) add a restricted designation for footnote 58 of the written rebuttal testimony of another of its witnesses, Catherine Tucker (also part of the WRS). Motion at 1-2.

All of the other participants have consented to the relief sought by SoundExchange in the Motion as it pertains to exhibit list and exhibits. Motion at 2, n.1. However, SoundExchange states that it added the restrictions to the rebuttal testimonies of Mr. Orszag and Professor Tucker “after business hours on January 14,” and thus, it was not able to confer with one of the participants, the Educational Media Foundation (EMF), to seek its consent as to these proposed testimonial restrictions, prior to filing the Motion on January 15th. *Id.*²

Thus, the Motion is unopposed on all issues except for EMF’s potential opposition to the designations related to the rebuttal testimonies identified above. To expedite rebuttal discovery

¹ In addition to SoundExchange, the movants are 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. The Copyright Royalty Judges (Judges) refer herein to the movants collectively as SoundExchange).

² To be clear, aside from EMF, all of the other participants have consented to the testimonial restrictions sought in the Motion.

and otherwise maintain the schedule in this proceeding, the Judges seek to ensure that SoundExchange's corrected WRS is filed promptly.

Accordingly, the Judges hereby **ORDER** SoundExchange to notify the Judges, through the filing of an amended motion (seeking the same relief as sought by the present Motion), that it has obtained the consent of EMF with regard to the testimonial restrictions identified above. Such amended motion shall be filed no later than Wednesday, January 22, 2019. If SoundExchange does not so notify the Judges of its receipt of EMF's consent by that deadline, then, by that date (January 22nd), SoundExchange shall file an amended motion setting forth reasons why the testimonial restrictions identified above should be permitted, and EMF and SoundExchange will then be entitled to file a response and a reply, respectively, pursuant to the Judges' rules.

SO ORDERED.



David R. Strickler
Copyright Royalty Judge

Dated: January 16, 2020