

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)

**JOINT MOTION FOR ISSUANCE OF SCHEDULE FOR REBUTTAL DISCOVERY
AND OTHER PRE-TRIAL MATTERS**

Pursuant to 37 C.F.R. § 351.5(a), the undersigned participants to this proceeding¹ jointly move the Copyright Royalty Judges (“CRJs”) to adopt the schedule identified below for rebuttal discovery and other pre-trial matters in this proceeding. In recognition of the limited time between the submission of written rebuttal statements and the beginning of the evidentiary hearing on March 16, 2020, and to improve the efficiency of the rebuttal discovery process, the Participants have agreed to a schedule that will streamline certain aspects of the process, including adopting a less formal format for document requests and responses/objections, committing to a fixed period to meet and confer, and the elimination of reply briefs on motions to compel. The Participants have also agreed to exchange discovery and pretrial motions and oppositions in advance of filing with the CRJs, a process that was implemented in the *SDARS III* proceeding and will provide the Participants with additional time to meet and confer about the possibility of narrowing potential

¹ The undersigned participants attempted to contact Mr. David Powell, who is representing himself *pro se*, and Mr. David Oxenford and Ms. Jennifer Tatel, counsel for Educational Media Foundation and Radio Paradise Inc., to discuss this schedule but have not heard back from them.

disputes. For these reasons, and to facilitate preparation for the March 16, 2020 hearing in this proceeding, the Participants respectfully request that the Judges order the following schedule:

Event	Proposed Date²	Notes
Informal document requests to be exchanged by email	January 17	Participants will endeavor to focus and streamline requests categorically where possible, while still providing sufficient information for the opposing party to understand and evaluate each request. Requests will be limited in light of the limited time for discovery.
Participants to identify witnesses they intend to depose	January 17	
Participants to Serve Interrogatories	January 17	
Informal responses/objections to document requests to be exchanged by email	January 27	Participants will provide “bottom-line” responses stating what they will and will not produce on a request-by-request basis (and any refusal to produce shall be accompanied with specific objections underlying that position). Responses will be limited in light of the limited time to respond.
Serve Responses/Objections to Interrogatories	February 5 at 5:00 pm ³	
Meet and confer period	January 31-February 7	
Produce documents	February 7	Participants will endeavor to complete productions on February 7 but will be permitted to continue productions on a rolling basis until February 14.

² All dates are for the year 2020.

³ All times are eastern.

Exchange Motions to Compel	February 10	
Participants exchange witness lists. Witness list shall include name and estimate of time required for direct exam.	February 12	The parties may amend their witness lists within a week of the last deposition taken during rebuttal discovery.
Exchange Oppositions to Motions to Compel	February 18	
Moving parties file motions to compel and responses thereto as package	February 19	The parties will not file reply briefs.
Initial pre-hearing conference with the Judges to discuss issues for hearing, order of presentation, exhibit numbering and presentation, scheduling concerns, disabilities to accommodate, presentation and formatting of electronic documents, or other matters that may affect efficient conduct of the hearing.	February 21	
Participants exchange list of exhibits each participant intends to offer into evidence.	February 26	The participants are in the process of negotiating the circumstances under which exhibit lists may be amended.
Last day to take depositions, unless otherwise agreed by the parties.	March 2	
Participants exchange initial prehearing motions	March 2	
Participants confer to eliminate duplicate exhibits and to prepare joint exhibit/objections list, and regarding initial prehearing motions.	March 3-5	<u>Note</u> : Consider if we should add an interim date to exchange objections.
Participants exchange responses to initial prehearing motions, such as motions in limine, motions to strike or limit testimony, objections to	March 9	

exhibits, challenges to experts' qualifications		
Participants confer to prepare a joint witness list, including estimated time for direct, cross and re-direct of each witness.	March 9	
Participants deliver to the Judges and all other participants copies of all exhibits.	March 10	
Participants submit initial prehearing motions to the Judges	March 11	Participants will submit the motion and response in a single package. The parties will not file reply briefs.
Final prehearing conference with the Judges to discuss any remaining issues for hearing and for oral argument on pending motions (if determined necessary by the Judges)	March 13 at 1:00 pm	
Hearing commences	March 16	

Date: January 17, 2020

Respectfully submitted,

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Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

**Determination of Rates and Terms for
Digital Performance of Sound Recordings
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CERTIFICATE OF SERVICE

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I am employed in Washington, D.C. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 555 Eleventh Street, NW, Suite 1000, Washington, D.C. 20004.

I hereby certify that on **January 17, 2020**, I caused a copy of the foregoing Joint Motion for Issuance of Schedule for Rebuttal Discovery and Other Pre-Trial Matters to be served via electronic mail delivery to the people set forth below, who have consented to electronic mail service.

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Counsel for Pandora Media, LLC and Sirius XM Radio Inc.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this Declaration on January 17, 2020 in Washington, D.C.



Sarang Vijay Damle

Proof of Delivery

I hereby certify that on Friday, January 17, 2020, I provided a true and correct copy of the Joint Motion for Issuance of Schedule for Rebuttal Discovery and Other Pre-Trial Matters to the following:

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

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

Jagjaguwar Inc., represented by James Dawson, served via Electronic Service at JTDawson@jenner.com

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iHeartMedia, Inc., represented by Julia L Haines, served via Electronic Service at jhaines@kellogghansen.com

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

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

Google Inc., represented by Jason B Cunningham, served via Electronic Service at bcunningham@kslaw.com

Warner Music Group Corp., represented by James Dawson, served via Electronic Service at JTDawson@jenner.com

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Signed: /s/ Sarang V Damle