

**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 GRANTING JOINT MOTION FOR ISSUANCE OF SCHEDULE FOR
REBUTTAL DISCOVERY AND OTHER PREHEARING MATTERS, AND
ESTABLISHING, *SUA SPONTE*, PARAMETERS FOR PREHEARING DISCOVERY
MOTIONS AND RESPONSES**

On January 17, 2020, pursuant to 37 C.F.R. § 351.5(a), fourteen participants in this proceeding¹ filed a motion ([Joint Motion](#)) with the Copyright Royalty Judges (Judges) to adopt a schedule for rebuttal discovery and other prehearing matters in this proceeding.

According to the Joint Motion, the relief sought is necessitated by the limited time between the submission of written rebuttal statements and the beginning of the evidentiary hearing on March 16, 2020, and will improve the efficiency of the rebuttal discovery process. To that end, the participants have agreed to a schedule that will streamline certain aspects of the process, including adoption of a less formal format for document requests and responses / objections, commitment to a fixed period to meet and confer, and elimination of reply briefs on motions to compel.

The participants have also agreed to exchange discovery and prehearing motions and oppositions in advance of filing with the CRJs, which will provide the participants with additional time to meet and confer about the possibility of narrowing potential disputes.

The Judges find good cause for the adoption of the Participants' proposed schedule (attached as Exhibit A) hereto, and for the implementation of the discovery dispute processes described in the Joint Motion, as set forth above. Accordingly, the Joint Motion is hereby **GRANTED**.

In recognition of the time constraints identified *supra* by the Participants, the Judges further order, *sua sponte*, pursuant to their authority under 17 U.S.C. § 801(c), that the motions

¹ The fourteen moving participants are: 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.; Jagjaguwar Inc.; National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); Google LLC; National Association of Broadcasters; iHeartMedia, Inc.; Pandora Media, LLC; and Sirius XM Radio Inc. Counsel for the NRBNLMC has informed the Judges that the Educational Media Foundation (EMF) and Mr. David Powell, a *pro se* participant, have consented to the relief sought by the Joint Motion.

and responses filed by the participants in connection with their rebuttal discovery disputes shall be subject to the following provisions:

1. Each discrete discovery *issue* raised by a moving party shall be the subject of a separate motion, and any responding participant(s) shall limit its (their) response(s) to that separate issue. Each motion and brief shall not exceed 12 pages. Each such motion and response may address more than one discovery request, provided all such discovery requests raise the same issue that is the subject of the motion.
2. The movants and respondents may either use separate supporting declarations (with appended exhibits, if any) for each motion and response or file a single such declaration (appending exhibits, if any) that relates to more than one motion or response.
3. Each exhibit containing email correspondence shall be set forth as an attachment to a declaration, and the emails shall be presented consistently in either chronological or reverse chronological order. Counsel shall highlight (but not redact), and note as “redundant,” any and all emails nested within email chains that have been separately presented within the exhibit.
4. All exhibits shall bear page numbers, including the total number of pages in the exhibit (*e.g.*, Ex. A Page x of y), and all references in a motion or opposition to emails and other material in an exhibit shall identify the exhibit page in this manner.
5. All exhibits shall be bookmarked in pdfs submitted for filing.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

Dated: January 27, 2020

Exhibit A

19-CRB-0005-WR (2021-2025)

Event	Date¹	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 ²	
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.

¹ All dates are for the year 2020.

² All times are eastern.

Event	Date¹	Notes
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.

Event	Date¹	Notes
Participants exchange responses to initial prehearing motions, such as motions in limine, motions to strike or limit testimony, objections to exhibits, challenges to experts' qualifications	March 9	
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	