

**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 SEEKING COMMENTS ON EXAMINATION OF EXPERT WITNESSES**

The hearing in this matter is scheduled to commence on Monday, March 16, 2020. As the participants’ submissions demonstrate, a number of the witnesses who will testify at the hearing are expert witnesses, including (but not necessarily limited to) those with expertise in economics and in survey design and implementation.

In order to obtain the testimony of such witnesses in a complete, thorough, and helpful manner, the Copyright Royalty Judges (Judges) contemplate the use of procedures for the examination of expert witnesses that are substantively similar to the procedures they recently promulgated in connection with Administrative Assessment proceedings conducted pursuant to the Music Modernization Act. *See* 37 C.F.R. §355.5(d).

In particular, the Judges are considering whether it would be appropriate and helpful to utilize the elements of that rule set forth below:

The Copyright Royalty Judges may, at their discretion ... after consideration of the positions of counsel for the participants, require expert witnesses to be examined concurrently by the Judges and/or the attorneys. If the Judges so order, the expert witnesses may then testify through a colloquy among themselves, including questions addressed to each other, as limited and directed by the Judges and subject to valid objections by counsel and ruled upon by the Judges. The concurrent examination procedure may be utilized in conjunction with, or in lieu of, traditional direct, cross, redirect and (with leave of the Judges) further direct or cross examination. In the absence of any order directing the use of concurrent examination, only the traditional form of examination described above shall be utilized.

37 C.F.R. §355.5(d).

Accordingly, the Judges **ORDER** that counsel for the participants submit to the Judges a brief in which they set forth whether they would be amenable to the Judges’ implementing some or all of the above procedure in the present proceeding and, if so, what elements of the procedure the Judges should adopt. Any participant that is amenable to such an examination process, but only with variations as to the particular terms, shall set forth in its brief proposed variations.

The Judges will adopt procedures regarding the examination of witnesses for this procedure that are different from the rules now governing this proceeding only if all participants who have proffered expert testimony agree to the procedures.

The Participants shall file briefs no later than February 5, 2020. They shall file no responsive briefs unless and until the Judges request them.

**SO ORDERED.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

Dated: January 28, 2020