

**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 DISMISSING DAVID POWELL AND CIRCLE GOD NETWORK INC.
FROM THE PROCEEDING**

By notice published in the Federal Register, the Copyright Royalty Judges (Judges) solicited Petitions to Participate in this proceeding to determine rates and terms for the digital performance of sound recordings and the associated making of ephemeral copies of sound recording by webcasting services. 84 Fed. Reg. 359 (Jan. 24, 2019). The Judges received timely petitions from, among other petitioners, David Powell. On March 5, 2020, Google LLC, the National Association of Broadcasters, the National Religious Broadcasters Noncommercial Music License Committee, Pandora Media, LLC, Sirius XM Radio Inc., 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. (Movants) jointly moved the Judges to dismiss David Powell from this proceeding ([Motion](#)).

Movants argue that Mr. Powell does not have the “significant interest” that the Copyright Act and the Judges’ procedural rules require in order for a party to participate in a proceeding. 17 U.S.C. § 803(b)(2)(C); 37 C.F.R. § 351.1(c).

In particular, Movants assert that:

Mr. Powell’s petition to participate does not assert that Mr. Powell is actively involved in any way with the licensing of sound recordings. Nor does it attempt to show an interest of any kind in the proceeding, as required by the governing statute. *See* 37 C.F.R. § 351.1 (stating that each petition to participate “must include ... a description of the petitioner’s significant interest in the subject matter of the proceeding.”).... Moreover, Mr. Powell did not submit any written direct testimony in support of Circle God Network’s proposed rate in this proceeding.... Nor did Mr. Powell submit any written rebuttal testimony in the proceeding.

Motion at 1-2.

On March 11, 2020, Mr. Powell opposed the motion in a filing captioned Motion to Not Dismiss Valid Significant Interest Claim by Mr. Powell ([Opposition](#)). In his Opposition, Mr. Powell asserts, without providing any details or specificity, that “Mr. Powell dba Circle God

Network Inc. has significant interest to participate...as do all other participants in this proceeding w/licensing of sound recordings and webcasting.” Opposition at 1.¹

On March 18, 2020, Movants filed a reply in support of the Motion ([Reply](#)) reiterating their view that Mr. Powell and Circle God Network Inc. do not have the “significant interest” required to participate in the proceeding. Reply at 1.

The Judges have reviewed Mr. Powell’s Petition to Participate (Petition) and agree with Movants that it fails to state any grounds upon which the Judges could conclude that he (or Circle God Network Inc.)² has any interest, much less the required “significant interest,” in the current proceeding. See Copyright Act Sections 803(b)(1)(B) (each petition to participate shall describe the petitioner’s interest in the subject matter of the proceeding) and 803(b)(2)(C) (a person may participate in a proceeding before the Judges only if, among other things, the Judges have not determined that the person lacks a significant interest in the proceeding).

Moreover, as Movants correctly note, Mr. Powell did not submit a written direct statement in support of Circle God Networks’ proposed rate in this proceeding that complies with the Judges’ rules. See Introduction Memorandum to the Written Direct Case of Circle God Network Inc. (Members) D/B/A David Powell ([Powell WDT](#)) at 1 (“Volume 2 contains no written direct testimony of CGN Inc.’s witnesses and or exhibits.”). Section 351.4 of the Judges’ rules requires that all parties who have filed a petition to participate must file a written direct statement that “shall include all testimony, including each witness’s background and qualifications, along with all exhibits.” 37 C.F.R. § 351.4(a) and (b). The absence of any witness testimony and exhibits in the Powell WDT that describe and support any significant interest in the proceeding lends further support for the Judges’ conclusion that Mr. Powell and Circle God Network, Inc. lack such interest. In addition, the failure to comply with section 351.4 is, itself, sufficient basis for dismissal. See [Order Granting AARC Motion to Dismiss David Powell and Circle God Network](#), Docket No. 2008-3 CRB DD (2007-2011 SRF), at 2-3.

Therefore, the Judges **GRANT** the Motion and **DISMISS** David Powell and Circle God Network Inc. from the proceeding.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: March 23, 2020

¹ Mr. Powell also makes a number of unsupported claims that the Movants’ Motion is somehow “retaliatory” and that SoundExchange and other participants are “[in] cahoots,” have “bad motives” and “bias.” Opposition at 2. Mr. Powell also suggests that he had reached an agreement with other participants about “his own position” in this proceeding. *Id.* Mr. Powell’s Opposition, however, does not provide any support or specificity with regard to the substance of such a purported agreement or the identities of the parties with whom he claims to have reached an agreement.

² Indeed, Mr. Powell’s petition makes no reference to Circle God Network Inc.