

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DETERMINATION OF RATES AND TERMS
FOR DIGITAL PERFORMANCE OF SOUND
RECORDINGS BY NEW SUBSCRIPTION
SERVICES AND MAKING OF EPHEMERAL
COPIES TO FACILITATE THOSE
PERFORMANCES (NSS IV)**

**Docket No. 19-CRB-0006-NSR
(2021-25)**

**NOTICE OF PARTICIPANTS,
COMMENCEMENT OF VOLUNTARY NEGOTIATION PERIOD,
AND CASE SCHEDULING ORDER**

By notice published in the *Federal Register*, the Copyright Royalty Judges (Judges) initiated this rate proceeding to determine terms and rates for licensees making ephemeral recordings and digital performances of sound recordings by new subscription services. *See* 84 Fed. Reg. 6021 (Feb. 25, 2019). Title 8 of the Copyright Act (Act) and the procedural regulations adopted by the Judges and codified in Chapter III of title 37 of the Code of Federal Regulations (Rules) govern royalty rate proceedings. Attachment A to this order identifies parties that have filed Petitions to Participate in the captioned proceeding. Participation in this proceeding is limited to parties in interest who filed a timely Petition to Participate. By listing filers of Petitions to Participate, the Judges do not imply a finding that the filing party has a significant interest in the proceeding as required by 17 U.S.C. § 803(b)(2)(C). “Attachment B” projects specific dates and deadlines for actions in the proceeding. Dates marked with TBD will be determined after consultation with the parties.

Voluntary Negotiation Period

All participants shall engage directly or by counsel in good faith settlement negotiations to resolve any outstanding controversies regarding the terms and rates for payment of royalty fees for the years at issue in this proceeding. On the date specified in Attachment B, the participants shall file a Notice Regarding Settlement, notifying the Judges whether any of the parties have reached a settlement regarding any of the disputed issues in the proceeding.¹ Unless all parties reach a settlement regarding all disputed issues, the Judges will issue an Order for Further Proceedings. Nothing in this Notice and Order or the Order for Further Proceedings, if necessary, shall limit the parties’ ability to continue settlement negotiations.

¹ Parties may notify the Judges at any time during the proceeding of a settlement “in principle,” but the Judges expect all parties to follow the case schedule until all terms of their settlement are approved.

Prehearing Procedures

The case schedule in Attachment B denotes the order of events and the timeline for those events based upon applicable provisions of the Copyright Act and the Judges' Rules. Later, the Judges shall determine other important dates that are not specifically required by statute or rules, either *sua sponte*, or upon motion of the parties.² At any time, a participant may file a motion stating good cause to vary the schedule, within the dictates of the statute, or to propose important proceeding dates not stated in Attachment B.³

On or before the date noted on Attachment B, any participant having or asserting an issue in controversy shall file its Written Direct Statement. After a period of discovery, on or before the date set in Attachment B, each participant may file its Amended Written Direct Statement.⁴ The participants shall not further amend their respective Written Direct Statements after the date set in this Notice and Order, unless permitted by order entered after filing and delivery in accordance with 37 C.F.R. § 350.6 of a motion setting forth the reasons why good cause exists for further amendment, and why further amendment would not be prejudicial to any other participant.

If the participants' Joint Settlement Conference Report does not indicate full and final settlement of all issues with all participants, any participant asserting an unresolved issue shall file a Written Rebuttal Statement. Written Rebuttal Statements shall be limited to addressing assertions opposing participants made in their respective Written Direct Statements. Written Rebuttal Statements may include written testimony from rebuttal witnesses but may not address new issues that were not raised in one or more participant's Written Direct Statement. On motion and for good cause, the Judges may, in their discretion, permit limited rebuttal discovery.

Prehearing Conference

If a hearing is necessary, approximately **fifteen days prior to the start date of the hearing**, the Judges will facilitate a prehearing conference, or teleconference, to discuss issues remaining for evidentiary hearing, including order of presentation, exhibit numbering, scheduling concerns, and other matters that might affect conduct of the hearing.

Witness and Exhibit Lists

Not less than **ten days prior to the start date of the hearing**, each participant shall file in eCRB a list of witnesses the participant intends to call and a list of exhibits the participant intends to offer into evidence. The witness list shall include each witness's name, contact information, a brief statement of the substance of the witness's testimony, and an estimate of the time required for direct examination of the witness. The exhibit list shall include the exhibit's unique number (from a range of numbers that the CRB will assign to the participant), the title or

² The Judges encourage the participants to file any motions for protective order as soon as practicable.

³ Filing using eCRB generates a notice to all other participants, which notice is a substitute for delivery. See 37 C.F.R. §§ 350.5, 350.6. Unless the Judges order otherwise, all participants shall deliver and receive relevant documents electronically through eCRB.

⁴ The Judges shall address motions regarding discovery disputes as warranted.

a description of the exhibit, and whether the exhibit or any part of it is “restricted” under the terms of any protective order.

Exhibits

Not less than **five days prior to the start date of the hearing**, each participant shall file in eCRB copies of all exhibits listed on their respective exhibit lists, tabbed in the same order and with the same number as on the exhibit list.

Order

The Judges hereby **ORDER** that all participants adhere to the case schedule in Attachment B and refer to the foregoing narrative as needed for interpretation of the schedule.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: March 19, 2019.

ATTACHMENT A
Participant List for Docket No. 19-CRB-0006-NSR (2021-2025)

PARTY	CONTACT	FIRM	ADDRESS	TELEPHONE
SoundExchange, Inc.	David Handzo Steven R. Englund	Jenner & Block LLP	1099 New York Avenue, NW Suite 900 Washington, DC 20001 dhandzo@jenner.com senglund@jenner.com	202-639-6000
David Powell d/b/a Circle God Network Inc.	David Powell		PO Box 010950 Miami, FL 33101 Davidpowell008@yahoo.com	305-539-1755
Sirius XM Radio Inc.	Todd Larson	Weil, Gotshal & Manges LLP	767 Fifth Avenue New York, NY 10153 Todd.larson@weil.com	212-310-8238

ATTACHMENT B

NSS IV Proceeding Schedule

Case event	Date
Initiation (publication in FR)	February 25, 2019
Deadline for petitions to participate	March 15, 2019
Commencement of Voluntary Negotiation Period	March 20, 2019
End of Voluntary Negotiation Period	June 20, 2019
Parties' Notice Regarding Settlement	June 21, 2019
If Parties Do Not Settle:	
Non-Settling Parties file Written Direct Statements Commencement of Discovery Period	October 21, 2019
End of Discovery	December 20, 2019
Settlement Conference period	December 23-January 13, 2020
Deadline to file Amended Written Direct Statements	January 6, 2020
Deadline for Written Rebuttal Statements	February 3, 2020
Hearing	TBD
Proposed Findings and Conclusions	TBD
Responsive Findings and Conclusions	TBD
Closing Arguments	TBD
Initial Determination	not later than December 16, 2020