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**By eCRB**

The U.S. Copyright Royalty Judges  
Library of Congress  
P.O. Box 70977  
Washington, D.C. 20024-0977

Re: Docket No. 14-CRB-0005 RM – Notice and Recordkeeping  
for Use of Sound Recordings Under Statutory License

To the Copyright Royalty Judges:

I write on behalf of SoundExchange, Inc. (“SoundExchange”) to renew the request made in my letter of November 20, 2018 concerning expedited consideration of proxy distribution of statutory royalties in cases in which a licensee never provides a usable report of use. For years, SoundExchange has been required to hold tens of millions of dollars in statutory royalties due to the failure of licensees to tell SoundExchange which recordings they used. And now, artists and sound recording copyright owners (who sometimes are artists) have been severely affected by the coronavirus pandemic. SoundExchange implores the Judges to allow it to pay this money for the period 2010-2018 to artists and copyright owners at a time when they need it very badly.

Performing artists have been particularly devastated by the pandemic because many of them depend on touring and other live performance revenue for a large part of their income. The closing of performance venues and cancellation of tours, festivals and concerts around the world to help stop the spread of the coronavirus has caused that stream of income to vanish overnight, and in many cases caused the loss of significant investments relating to performances that will not happen. Many artists are in financial distress, and that is likely to continue for the foreseeable future. Releasing the money that SoundExchange is holding due to missing reports of use would materially help them.

Despite diligent efforts to obtain the missing reports of use, SoundExchange is currently holding approximately \$32 million in statutory royalties for the period 2010-2018 due to missing reports of use, which is less than 1% of total statutory royalty payments over that period. SoundExchange is holding this money because the Judges have adopted statutory license payment terms that require SoundExchange to distribute statutory royalties “based upon the information provided under the Reports of Use requirements for Licensees.” *E.g.*, 37 C.F.R. §§ 380.4(a)(1), 382.5(a)(1). When licensees fail to fulfill their obligation to deliver reports of use, SoundExchange does not know what recordings they used, and so cannot distribute their payments to the proper payees. However, SoundExchange should not be forced to continue to

hold such royalties forever, but should instead be permitted to distribute them to artists and copyright owners on a basis that approximates the usage likely involved to the best extent practicable. That is particularly important now, when the music industry is being devastated by coronavirus-related shutdowns.

As explained in my November 20, 2018 letter, the Judges commenced this proceeding in 2014 to examine various notice and recordkeeping issues, including the distribution of royalties for which SoundExchange has not received a report of use. *Notice and Recordkeeping for Use of Sound Recordings under Statutory License*, 79 Fed. Reg. 25,038 (May 2, 2014). With respect to this issue, SoundExchange proposed that the Judges allow it to distribute statutory royalties with no accompanying report of use based on “proxy data” (*i.e.*, data about sound recording usage, other than the actual usage for which the relevant royalties were paid). *Id.* at 25,043 & n.13. The Judges have previously authorized such an action with respect to royalties for the 2004-2009 period. *Notice and Recordkeeping for Use of Sound Recordings under Statutory License*, 76 Fed. Reg. 45,695 (Aug. 1, 2011); 37 C.F.R. §§ 370.3(i), 370.4(f). Before that, the Copyright Office authorized a proxy distribution for the 1998-2004 period. *See Notice and Recordkeeping for Use of Sound Recordings under Statutory License*, 69 Fed. Reg. 58,261 (Sept. 30, 2004). In this proceeding, SoundExchange originally asked for authority to make proxy distributions on an ongoing basis, and to have some discretion to make adjustments in the distribution methodology as may be necessary to achieve a fair distribution in any particular case. NPRM, 79 Fed. Reg. at 25,043; SoundExchange Petition in Docket No. 14-CRB-0005 RM, at 28-29 (Oct. 21, 2013).

SoundExchange has now proposed a regulation to a similar effect in the *Web V* proceeding. Proposed Rates and Terms of SoundExchange, Inc. in Docket No. 19-CRB-0005-WR (2021-2025) at 4, 15 (Sept. 23, 2019). While that proceeding is not going to conclude in time to allow the Judges’ resolution of that issue in *Web V* to address the immediate financial needs of artists affected by the coronavirus, SoundExchange is prepared to leave the question of ongoing proxy distribution authority for resolution in that proceeding.

Instead, SoundExchange now respectfully requests that the Judges act quickly in this proceeding to release from limbo only the approximately \$32 million in statutory royalties that SoundExchange is currently holding for the period 2010-2018. SoundExchange asks that it be permitted to distribute that money using the same “annual/license type methodology” that it used last time the Judges authorized a proxy distribution. *See* 37 C.F.R. §§ 370.3(i), 370.4(f). Specifically, SoundExchange asks the Judges to amend Sections 370.3(i) and 370.4(f) simply to change two dates, as follows:

§ 370.3(i) In any case in which a preexisting subscription service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior to January 1, ~~2010~~ 2019, reports of use for the corresponding calendar year filed by other preexisting subscription services shall serve as the reports of use

for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

§ 370.4(f) In any case in which a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service, or business establishment service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior to January 1, ~~2010~~ 2019, reports of use for the corresponding calendar year filed by other services of the same type shall serve as the reports of use for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

As described in my letter of November 20, 2018, the record of this Proceeding provides ample support for adoption of this proposal by issuing a final rule promptly and without further comment. When the Judges published SoundExchange's proposals in this proceeding for public comment, they asked certain questions concerning SoundExchange's request for flexibility in refining its proxy distribution methodology. 79 Fed. Reg. at 25,043. However, that is not relevant to SoundExchange's current proposal to use the same methodology to distribute 2010-2018 money as was previously used for 2004-2009 money. The Judges then received two rounds of comments concerning proxy distribution, and what SoundExchange is proposing now was not controversial. Artists and copyright owners are the ones with a direct interest here, and none of them expressed any concern at all with SoundExchange's proposed more flexible approach or felt a need to address the Judges' questions about it. The American Association of Independent Music supported all of SoundExchange's proposals in the Proceeding and expressed satisfaction with independent record companies' voice on SoundExchange's Board. A2IM Comments in Docket No. 14-CRB-0005 RM, at 2 (June 30, 2014).

Licensee services do not have any direct interest in the details of how statutory royalties are distributed among artists and copyright owners, but the National Association of Broadcasters, Radio Music Licensing Committee, and National Public Radio supported SoundExchange's proxy distribution proposal. NAB/RMLC Comments in Docket No. 14-CRB-0005 RM, at 63-65 (June 30, 2014); NAB/RMLC Reply Comments in Docket No. 14-CRB-0005 RM, at 30-31 (Sept. 5, 2014); NPR Comments in Docket No. 14-CRB-0005 RM, at 9 (June 30, 2014). Only Sirius XM and its agent Music Reports raised issues, but those focused on selection and notification of a proxy distribution methodology, which again is not relevant for the 2010-2018 money where SoundExchange now proposes to use the same methodology previously used for 2004-2009. *See* Sirius XM Comments in Docket No. 14-CRB-0005 RM, at 3-4 (June 30, 2014); Music Reports Comments in Docket No. 14-CRB-0005 RM, at 6 (June 30, 2014).

Because artists and copyright owners are entitled to the royalties that SoundExchange is holding due to missing or unusable reports of use, and desperately need those royalties now,

SoundExchange respectfully requests that the Judges expeditiously grant SoundExchange proxy distribution authority by amending Sections 370.3(i) and 370.4(f) as set forth above.

Respectfully submitted,

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cc: *Web V* Participants