

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR MAKING AND DISTRIBUTING
PHONORECORDS (Phonorecords IV)**

**Docket No. 21-CRB-0001-PR
(2023-2028)**

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

By notice published in the *Federal Register*, the Copyright Royalty Judges (Judges) solicited Petitions to Participate in this proceeding to determine terms and rates for licensing the making and distributing of phonorecords. *See* 86 Fed. Reg. 325 (Jan. 5, 2021). Section 115 of the Copyright Act (Act) and the procedural regulations adopted by the Register of Copyrights set the terms by which entities may make and deliver phonorecords, including specifically identifiable digital transmissions, to end users, utilizing a compulsory, statutory license. *See* 17 U.S.C. § 115(a), (d). Chapter 8 of the Act and regulations adopted by the Judges and codified in Chapter III of title 37 of the Code of Federal Regulations (Rules) govern proceedings to set the royalty rates applicable to statutory licensees. Exhibit A to this Notice and Order projects specific dates and deadlines for actions in this proceeding. Dates marked with TBD will be determined after consultation with the parties.

Participation in the Proceeding

Participation in this proceeding is limited to parties in interest who filed a timely Petition to Participate. Exhibit B to this Notice and Order is a list of participants that filed timely Petitions to Participate.¹

Voluntary Negotiation Period

All participants shall engage directly or by counsel in good faith settlement negotiations aimed at resolving controversies regarding the terms and rates for payment of royalty fees for making and distributing phonorecords during the years at issue in this proceeding. The Voluntary Negotiation Period (VNP) commences on the date set forth on Exhibit A. In addition to all aspects of rates and terms for payment, the negotiations shall address expressly issues relating to categories of licensees, if any, the rate structure, and terms of recordkeeping and reporting.

¹ Exhibit B includes every entity that filed a Petition and paid the filing fee. The Judges have not determined whether every responding participant listed on Exhibit B has a “significant interest” in this proceeding entitling it to continued and full participation in the proceeding. Nonetheless, a putative participant must participate fully in the proceeding, unless the participant withdraws its Petition, joins with other participants and shares joint representation, or is the subject of a dismissal order.

On the date set forth on Exhibit A the participants shall file a Notice of Settlement only if some or all participants have agreed on the applicable royalty rates and terms for recordkeeping and reporting by licensees.² The Judges will issue an Order for Further Proceedings for all participants not reporting a settlement. Nothing in this Notice and Order, or any Order for Further Proceedings, limits participants' ability to continue negotiations and reach a settlement of their differences at any time during the course of the proceeding.

Prehearing Procedures

The case schedule in Exhibit A denotes the order of events and the timeline for those events based upon applicable provisions of the Copyright Act and the Judges' rules.³ Later, the Judges will determine other important dates that are not specifically required by statute or rules, either *sua sponte*, or upon motion of the parties, pursuant to their authority to make "any necessary procedural or evidentiary ruling[] in any proceeding" 17 U.S.C. § 801(c).⁴ 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 Exhibit A.

On or before the date noted on Exhibit A, 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 A, each participant may file its Amended Written Direct Statement.⁵ The participants shall not further amend their respective Written Direct Statements after the date set in this Notice and Order.

On or before the date noted on Exhibit A to this Notice and Order (after concluding preliminary disclosure and discovery), 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 Exhibit A, each participant may file its Amended Written Direct Statement. Without leave of the Judges, the participants shall not further amend their respective Written Direct Statements after the date set in this Notice and Order.

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 permit limited rebuttal discovery in their discretion.

² Participants may notify the Judges of a settlement "in principle," but all participants shall follow the case schedule until all terms of their settlement are documented and presented for publication, comment, and approval.

³ To encourage meaningful settlement negotiations and to streamline the process of participants' identification of issues, the Judges also include in the schedule for this proceeding an initial disclosure and discovery period after the Voluntary Negotiation Period and *before* the deadline to file Written Direct Statements. *Cf.* Fed. R. Civ. P. 26(a)(1)(A)(i) & (ii). The Judges leave the specific timing and substance of the initial disclosures to negotiation between the participants.

⁴ The Judges encourage the participants to file any motions for protective order as soon as practicable.

⁵ The Judges shall address motions regarding discovery disputes as warranted.

Prehearing Conference

If a hearing is necessary, **approximately twenty days prior to the start date of the hearing** the Judges will facilitate a prehearing 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 **fourteen days prior to the start date of the hearing**, each participant shall exchange with each other participant 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 each exhibit's unique number (from a range of numbers that the CRB will assign to the participant), the title or a description of the exhibit, and whether the exhibit or any part of it is "restricted" under the terms of any protective order.

No later than **ten calendar days prior to commencement of the hearing**, the participants shall confer and eliminate duplicate exhibits. The final exhibit list for the hearing shall include all proposed exhibits and no proposed exhibit more than once. The participants shall prepare and file in eCRB a joint exhibit list that shall include the exhibit's unique number, the title or a description of the exhibit, and whether the exhibit or any part of it is "restricted" under the terms of any protective order. Participants shall register on the joint exhibit list objections, if any, to proposed exhibits, stating the basis of each objection.⁶ Regardless of the exhibit designation, any participant may offer into evidence any exhibit on the final exhibit list *unless* any participant objects to the admissibility of the exhibit. The Judges shall deem all objections to proposed exhibits NOT noted on the exhibit list as waived, *except* objections to relevance. No participant may utilize any unlisted exhibit, *except* as required for impeachment purposes, as rebuttal to unanticipated evidence, or to refresh recollection. The Judges shall determine admissibility of these exceptional exhibits on a case-by-case basis.

No later than **seven calendar days prior to commencement of the hearing**, the participants shall confer, prepare a joint witness list, and file that list in eCRB. The joint witness list shall include estimated time for direct-, cross-, and redirect-examination of each witness.

Exhibits

Not less than **five calendar 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 on Exhibit A and refer to the foregoing narrative as needed for interpretation of the schedule. At any time, a participant may file a motion stating good cause to vary the schedule, within the dictates of the statute.

⁶ In the absence of extraordinary circumstances presented by motion of a participant, the Judges shall rule on evidentiary objections as and when the participants present and offer each exhibit during the hearing.

The Judges **FURTHER ORDER** that the participants shall notify the Judges as soon as practicable if the participants, or any of them, reach an accommodation at any time up to and including during the course of the hearing that obviates the need for further participation in the proceeding.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

Dated: February 9, 2021

EXHIBIT A

Phonorecords IV Proceeding Schedule

Case event	Date
Initiation (publication in FR)	January 5, 2021
Deadline for petitions to participate	February 4, 2021
Commencement of Voluntary Negotiation Period	February 12, 2021
End of Voluntary Negotiation Period	May 13, 2021
Parties' Notice Regarding Settlement	May 18, 2021
If Parties Do Not Settle:	
Exchange of Preliminary Disclosures	[timing and substance subject to negotiation between participants]
Non-Settling Parties file Written Direct Statements Commencement of Discovery Period	September 10, 2021
End of Discovery	November 9, 2021
Settlement Conference period	December 27, 2021- January 17, 2022
Deadline to file Amended Written Direct Statements	November 24, 2021
Deadline for Written Rebuttal Statements	December 27, 2021
Deadline for Joint Settlement Conference Report	January 18, 2022
Hearing	TBD
Proposed Findings and Conclusions	TBD
Responsive Findings and Conclusions	TBD
Closing Arguments	TBD
Initial Determination	not later than December 16, 2022

EXHIBIT B

Participant List

Participant	Contact	Firm	Address	Phone
Amazon.com Services LLC	Joshua D Branson	Kellogg, Hansen, Todd, Figel & Frederick, PLLC	1615 M Street NW, Suite 400 Washington, DC 20036 jbranson@kellogghansen.com	202-326-7900
	Scott H Angstreich	Kellogg, Hansen, Todd, Figel & Frederick, PLLC	1615 M Street NW, Suite 400 Washington, DC 20036 sangstreich@kellogghansen.com	202-326-7900
	Aaron M Panner	Kellogg, Hansen, Todd, Figel & Frederick, PLLC	1615 M Street NW, Suite 400 Washington, DC 20036 apanner@kellogghansen.com	202-326-7900
	Leslie V Pope	Kellogg, Hansen, Todd, Figel & Frederick, PLLC	1615 M Street NW, Suite 400 Washington, DC 20036 lpope@kellogghansen.com	202-326-7900
Apple Inc.	Mary C Mazzello	Kirkland & Ellis LLP	601 Lexington Avenue, 42nd Floor New York, NY 10022 mary.mazzello@kirkland.com	212-446-4944
	Dale M Cendali	Kirkland & Ellis LLP	601 Lexington Avenue, 44th Floor New York, NY 10022 dale.cendali@kirkland.com	212-446-4800
	Claudia Ray	Kirkland & Ellis LLP	601 Lexington Avenue, 44th Floor New York, NY 10022 claudia.ray@kirkland.com	212-446-4800
Copyright Owners:	Benjamin K Semel	Pryor Cashman LLP	7 Times Square New York, NY 10036 Bsemel@pryorcashman.com	212-326-0131

Nashville Songwriters Association International National Music Publishers' Association	Donald S Zakarin	Pryor Cashman LLP	7 Times Sq. New York, NY 10036-6524 dzakarin@pryorcashman.com	212-421-2100
	Joshua A Weigensberg	Pryor Cashman LLP	7 Times Square New York, NY 10036 jweigensberg@pryorcashman.com	212-326-0839
	Benjamin K Semel	Pryor Cashman LLP	7 Times Square New York, NY 10036 Bsemel@pryorcashman.com	212-326-0131
	Lauren B Cooperman	Pryor Cashman LLP	7 Times Sq., 40th Floor New York, NY 10036-6569 lcooperman@pryorcashman.com	212-326-0431
	Frank P Scibilia	Pryor Cashman LLP	7 Times Square New York, NY 10036 fscibilia@pryorcashman.com	917-885-7001
Google LLC	Gary R Greenstein	Wilson Sonsini Goodrich & Rosati, PC	1700 K Street, N.W., 5th Floor Washington, DC 20006 ggreenstein@wsgr.com	202-973-8849
	Ryan Benyamin	Wilson Sonsini Goodrich & Rosati, PC	633 West Fifth Street, Suite 1550 Los Angeles, CA 90071-2027 rbenyamin@wsgr.com	323-210-2900
	Victor H. Jih	Wilson Sonsini Goodrich & Rosati, PC	633 West Fifth Street, Suite 1550 Los Angeles, CA 90071-2027 rbenyamin@wsgr.com	323-210-2900
	Lisa D. Zang	Wilson Sonsini Goodrich & Rosati, PC	633 West Fifth Street, Suite 1550 Los Angeles, CA 90071-2027 rbenyamin@wsgr.com	323-210-2900
	Rebecca E. Davis	Wilson Sonsini Goodrich & Rosati, PC	633 West Fifth Street, Suite 1550 Los Angeles, CA 90071-2027 rbenyamin@wsgr.com	323-210-2900

	Maura L. Rees	Wilson Sonsini Goodrich & Rosati, PC	650 Page Mill Road Palo Alto, CA 93404-1050 mrees@wsgr.com	650-493-9300
George Johnson	<i>Pro Se</i>		PO Box 22091 Nashville, TN 37202 george@georgejohnson.com	615-242-9999
Joint Record Company Participants: Warner Music Group Corp. Sony Music Entertainment UMG Recordings, Inc.	Susan Chertkof Kenneth Doroshow Jared Freedman		Recording Industry Association of America, Inc. (RIAA) 1000 F Street NW, Floor 2 Washington, DC 20004 susan.chertkof@riaa.com kdoroshow@riaa.com	202-857-9682 202-857-9637 202-857-9611
Pandora Media, LLC	Benjamin E. Marks	Weil, Gotshal & Manges LLP	767 Fifth Avenue New York, NY 10153 benjamin.marks@weil.com	212-310-8029
David Powell	<i>Pro Se</i>		POB 010950 Miami, FL 33101 davidpowell008@yahoo.com	305-539-1755
SoundCloud Operations Inc.	Todd Larson	Weil, Gotshal & Manges LLP	767 Fifth Avenue New York, NY 10153 todd.larson@weil.com	212-310-8000
Spotify USA Inc.	Sarang (Sy) Damle	Latham & Watkins LLP	555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 sy.damle@lw.com	202-637-2200
	Joseph Wetzel	Latham & Watkins LLP	505 Montgomery Street, Suite 2000 San Francisco, CA 94111 joe.wetzel@lw.com	415-395-8007
	Allison Stillman	Latham & Watkins LLP	885 Third Avenue New York, NY 10022	212-906-1200

			alli.stillman@lw.com	
	Andrew Gass	Latham & Watkins LLP	505 Montgomery Street, Suite 2000 San Francisco, CA 94111 andrew.gass@lw.com	415-391-0600
Brian Zisk	<i>Pro Se</i>		8287 SW 128th St. , #214 Miami, FL 33156 brianzisk@gmail.com	415-564-0904