

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR PERFORMANCE OR DISPLAY  
OF NONDRAMATIC MUSICAL WORKS AND  
PICTORIAL, GRAPHIC, AND SCULPTURAL  
WORKS BY PUBLIC BROADCASTING  
ENTITIES (PB IV)**

**Docket No. 21-CRB-00021-PBR  
(2023-2028)**

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**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, *inter alia*, the performance or display of nondramatic musical works and pictorial, graphic, and sculptural works by public broadcasting entities.<sup>1</sup> See 86 Fed. Reg. 325 (Jan. 5, 2021). Section 118 of the Copyright Act (Act) encourages voluntary negotiation of license agreements between copyright owners and public broadcasting entities. See 17 U.S.C. § 118(b).

If the parties in interest do not negotiate license agreements, then the Judges shall conduct a proceeding to establish royalty rates and terms in accordance with 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). In previous rate periods for public broadcasting entity licensing, the parties reached agreement, obviating further proceedings. The Judges provide guidance in this Notice and Order in the event the parties require further proceedings for the rate period at issue. 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.<sup>2</sup>

**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 the

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<sup>1</sup> A “public broadcasting entity” in the Act is a “noncommercial educational broadcast station” as defined in 47 U.S.C. § 397 and any nonprofit institution or organization engaged in “production of a transmission program, reproduction ..., or distribution ... solely for the purpose of transmissions [by public broadcasting entities].” 17 U.S.C. § 118 (c).

<sup>2</sup> 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.

performance or display of nondramatic musical works and pictorial, graphic, and sculptural works by public broadcasting entities 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.

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.<sup>3</sup> 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.<sup>4</sup> 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).<sup>5</sup> 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 B, each participant may file its Amended Written Direct Statement.<sup>6</sup> 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

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> The Judges encourage the participants to file any motions for protective order as soon as practicable.

<sup>6</sup> The Judges shall address motions regarding discovery disputes as warranted.

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.

### **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 the 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 each 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.<sup>7</sup> 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

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<sup>7</sup> 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.

participant may file a motion stating good cause to vary the schedule, within the dictates of the statute.

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.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

Dated: February 9, 2021

**EXHIBIT A**

**PB IV Proceeding Schedule**

<b>Case event</b>	<b>Date</b>
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
<b>If Parties Do Not Settle:</b>	
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**

<b>Participant</b>	<b>Contact</b>	<b>Firm</b>	<b>Address</b>	<b>Phone</b>
American Society of Composers, Authors and Publishers	Sam Mosenkis		ASCAP 250 West 57th Street, 14th Floor New York, NY 10107 smosenkis@ascap.com	212-621-6450
Broadcast Music, Inc.	Jennifer T. Criss	Faegre Drinker Biddle & Reath LLP	1500 K Street, NW, Suite 1100 Washington, DC 20005 jennifer.criss@faegredrinker.com	202-230-5648
	Janet Fries	Faegre Drinker Biddle & Reath LLP	1500 K Street, NW, Suite 1100 Washington, DC 20005 janet.fries@faegredrinker.com	202-354-1333
	Brian A Coleman	Faegre Drinker Biddle & Reath LLP	1500 K Street, N.W., Suite 1100 Washington, DC 20005 Brian.Coleman@faegredrinker.com	202-842-8868
	John T Ellwood		Broadcast Music, Inc. 7 World Trade Center 250 Greenwich Street, 31st Floor New York, NY 10007 jellwood@bmi.com	212-220-3137
	Hope Lloyd		Broadcast Music, Inc. 7 World Trade Center 250 Greenwich Street, 31st Floor New York, NY 10007-0030 hlloyd@bmi.com	212-220-3148
Church Music Publishers' Association, Inc.	Carroll C Rigler	Shrum Hicks & Associates PC	229 Morton Avenue Nashville, TN 37211 cheshirerigler@shrumhicks.com	615-424-5171

	J. Rush Hicks	Shrum Hicks & Associates PC	407c Main Street, Suite 206 Franklin, TN 37064 rushhicks@comcast.net	615-319-1912
Educational Media Foundation	David Oxenford	Wilkinson Barker Knauer, LLP	1800 M Street, N.W., Suite 800N Washington, DC 20036 doxenford@wbklaw.com	202-383-3337
Global Music Rights, LLC	Scott A Zebrak	Oppenheim + Zebrak, LLP	4530 Wisconsin Avenue, NW, 5th Floor Washington, DC 20016 scott@oandzlaw.com	202-420-9235
National Religious Broadcasters Noncommercial Music License Committee	Karyn K Ablin	Fletcher, Heald & Hildreth PLC	1300 N. 17th St., Suite 1100 Arlington, VA 22209 ablin@fhhlaw.com	703-812-0443
	Elizabeth E. Craig	Fletcher, Heald & Hildreth, PLC	1300 N. 17th St., Suite 1100 Arlington, VA 22209 craig@fhhlaw.com	703-812-0424
Powell, David	<i>Pro Se</i>		POB 010950 Miami, FL 33101 davidpowell008@yahoo.com	305-539-1755
Public Broadcasting Entities:  National Public Radio (NPR) Public Broadcasting Service (PBS) Corporation for Public Broadcasting (CPB)	David P Mattern	King & Spalding LLP	1700 Pennsylvania Ave NW, Suite 200 Washington, DC 20006 dmattern@kslaw.com	202-626-2946
	Kenneth L Steinthal	King & Spalding LLP	50 California Street, Suite 3300 San Francisco, CA 94111 ksteinthal@kslaw.com	415-318-1211
	Jason B Cunningham	King & Spalding	500 West 2nd Street, Suite 1800 Austin, Texas 78701 bcunningham@kslaw.com	405-488-8434
SESAC Performing Rights, LLC	John C. Beiter	Beiter Law Firm, PLLC	P.O. Box 120433 Nashville, TN 37212 john@beiterlaw.com	615-488-0088

	Christos P. Badavas		SESAC Performing Rights, LLC 152 West 57th Street, 57th Floor New York, NY 10019 cbadavas@sesac.com	212-586-3450
The Harry Fox Agency LLC	John C. Beiter	Beiter Law Firm, PLLC	P.O. Box 120433 Nashville, TN 37212 john@beiterlaw.com	615-488-0088
	Stephen Block		The Harry Fox Agency LLC 40 Wall Street, 6th Floor New York, NY 10005 sblock@harryfox.com	212-922-3260
	Michael Smith		The Harry Fox Agency LLC 40 Wall Street, 6th Floor New York, NY 10005 msmith@harryfox.com	212-922-3238