

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re:

**Determination of Royalty Rates and
Terms for Making and Distributing
Phonorecords (Phonorecords III)**

**Docket No. 16-CRB-0003-PR
(2018-2022) (Remand)**

**ORDER ON DETAILED HEARING PROTOCOLS
AND PROCEDURES FOR VIRTUAL HEARING**

Pursuant to the Order Regarding Remand Hearing dated February 9, 2022 (Hearing Order), the Copyright Royalty Judges (Judges) will conduct the *Phonorecords III* remand proceeding (*Phonorecords III* Remand) hearing virtually via videoconference using Zoom Webinar on March 7, 2022. The participants jointly submitted detailed hearing protocols and logistics for the virtual hearing, which are not intended to and do not modify the Hearing Order. The remote proceedings are intended to facilitate a fair and timely resolution of *Phonorecords III* Remand, while protecting the health and safety of the Judges, Copyright Royalty Board (CRB) staff, parties, witnesses, and the public. Below are specific technical instructions, protocols, and procedures for using both Zoom Webinar and Veritext Document Sharing during the remote hearing.

I. Zoom Webinar: How to Access the Phonorecords III Hearing

1. During the remote hearing there will be **one** Zoom Webinar link to access the live hearing, unless technical or security issues require a new link. The Zoom Webinar link will be circulated to the Judges and Ms. Whittle on or before February 28, 2022. The Zoom Webinar link shall not be provided to any person who is not among the types of users listed in Section II below.
2. The hearing will commence at 10:00 a.m. ET on March 7, 2022.
3. The Judges and CRB staff shall use equipment available to them through the CRB.

II. Zoom Webinar: The Major Users

4. There are three classifications of users for Zoom Webinar:
 - a. **Host:** Controls the classifications and video and audio access. The host will not be visible during the hearing.

md/kw

Order on Protocols & Procedures
for Virtual Hearing - 1

- Third-party, Veritext, will serve as the “Zoom Host” for the proceeding.
 - The Zoom Host will oversee the Zoom-related responsibilities for the hearing, including responsibility for administration of the YouTube stream, as well as videographic responsibilities.
 - If at any time you experience technical issues or have questions related to Zoom or the YouTube streaming session, please e-mail the Zoom Host’s technician(s) at an email address that will be provided to the Judges and the participants’ counsel in advance of the hearing.
 - For any operational questions, issues or concerns, please contact Veritext. The participants shall provide a contact number for Veritext to the Judges and Ms. Whittle on or before February 28, 2022.

- b. **Panelist:** Video and audio are presented and you have control of both. You can share your screen while you are in panelist mode.

- c. The Primary “Video” Panelists:
 - **The Judges:** Chief Judge Barnett, Judge Strickler, and Judge Ruwe will all be panelists for the hearing and have video and audio presented. They will be able to control their video and microphones themselves.
 - **Presenting Attorneys:** The attorneys for each participant who will be presenting closing argument and addressing questions from the Judges will also be designated as video panelists. The designated attorneys will have video and audio presented. They will be able to control their video and microphone as needed. Each participant shall notify Veritext in advance of the hearing regarding which of its attorneys will be a video panelist.
 - **Note:** Attorneys who are designated as panelists will not present audio unless they are actually presenting closing argument, addressing a question from the Judges, or making an objection.

- d. Additional Panelists:

- **Court Reporter:** A court reporter will be a panelist but will not present video except when needed to address issues with the transcript during the live testimony. The Zoom Host will ensure that the court reporter is at all times connected and able to interrupt as needed.
 - **CRB Staff:** Ms. Whittle and any other staff designated by the CRB will be panelists for the proceeding, but will not present video except when it is necessary for them to address issues or clarifications.
 - **Additional Counsel:** One additional counsel from each participant may appear as a panelist but will not present video or audio unless the primary attorney disconnects from Zoom, experiences technical issues, or is otherwise unable to be available, such that the additional counsel is needed to ensure that each participant remains represented. Counsel may at their option connect from a conference room or other office space where multiple attorneys for the participant may be present.
 - **Hearing Tech:** Technicians for the Services and Copyright Owners will be panelists while their party's counsel is presenting argument but will not be visible, only audible. The trial technicians should be muted, unless addressing issues with attorneys when presenting demonstratives or slides.
- e. **Attendee:** Can see and hear what is being presented, but have no ability to present video or audio. Non-presenting attorneys for the participants (other than presenting attorneys and additional counsel as described above), experts who have submitted testimony in the proceeding, Mr. Johnson, and clients will be in attendee mode during the hearing. There shall be no other attendees besides Mr. Johnson and clients, and no Major Users shall be allowed to access the Webinar except for the hosts, the primary "video" panelists, the additional panelists, and the attendees described herein. The maximum number of client accounts connecting to the Zoom Webinar shall be five per participant.

III. Pre-Hearing Requirements

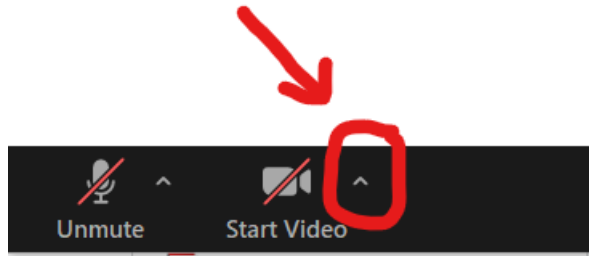
5. All participants anticipating using visual aids or demonstrative documents shall provide paper copies to each Judge and to the two CRB attorneys. Participants shall assure that the paper copies arrive at the designated addresses no later than Friday, March 4, 2022.

6. On March 1, 2022, at a time after 3:00 p.m. EST designated by the participants, the host and participants shall attend a Zoom technical rehearsal to assure that all participants and facilitators have fully functioning connections for the Zoom Webinar hearing. The designated court reporter shall be included in the technical rehearsal. Ms. Whittle, CRB paralegal Richard Waldrop, and an IT staff member from the Library of Congress (optional) shall attend the technical rehearsal; the Judges will not participate.
7. On March 3, 2022, starting at 9:45 a.m., the host shall facilitate a “dress rehearsal” of the hearing for all participants, the Judges, Ms. Whittle, CRB staff, and the court reporter.
8. At the start of the hearing, the Judges, Ms. Whittle, the court reporter, the Zoom Host and the panelists will join the Zoom Webinar no later than 9:45 am ET and be placed into a Zoom “practice room.” Ms. Whittle will be in charge of signaling to the Veritext Zoom host when it’s time to “raise the curtain” (*i.e.*, begin broadcasting the Zoom Webinar and start recording the hearing). Her signal, and Veritext’s cue that everyone is ready to begin for the day, will be saying “raise the curtain.”
9. The Veritext Zoom hosts will monitor the hearings to ensure that all key panelists remain connected at all times. If at any time any of the Primary Video Panelists, the court reporter, Ms. Whittle, or any of the Judges disconnects from the hearing, the Zoom host will interject and note which panelist has disconnected. If any of the Primary Video Panelists, the court reporter, or Ms. Whittle first notice that one of the above persons has disconnected, they should also interject and note which panelist has disconnected. The hearing will be paused until the connection issue is resolved.

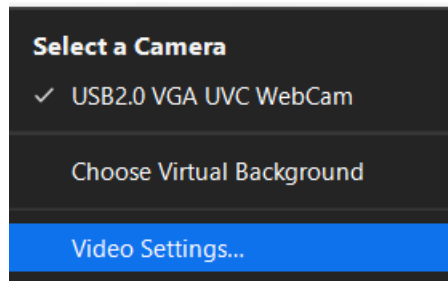
III. Optimizing Screen Space and How to Adjust Screen Settings

10. The CRB hearing is best viewed using at least two display screens. Zoom Webinar can be spread across the screens so that one screen can show the video of all the panelists. The other screen would serve as the document screen, where demonstratives or other documents may be displayed.
11. In order to split your screen across two monitors, to make Zoom Webinar fit on one screen and document display of the other, take the following steps:

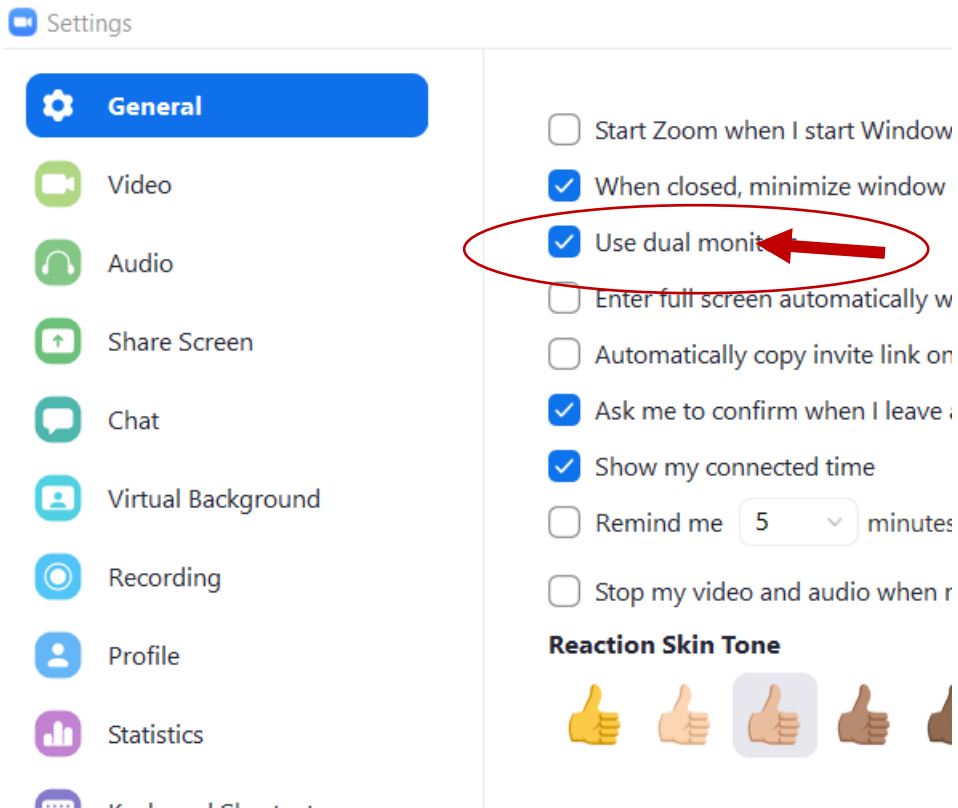
Step 1: Click on Start Video up arrow at bottom left of main Zoom screen.



Step 2: Click on Video Settings...



Step 3: Go to general tab and check use dual monitors



Step 4: Log out of meeting and log back in.

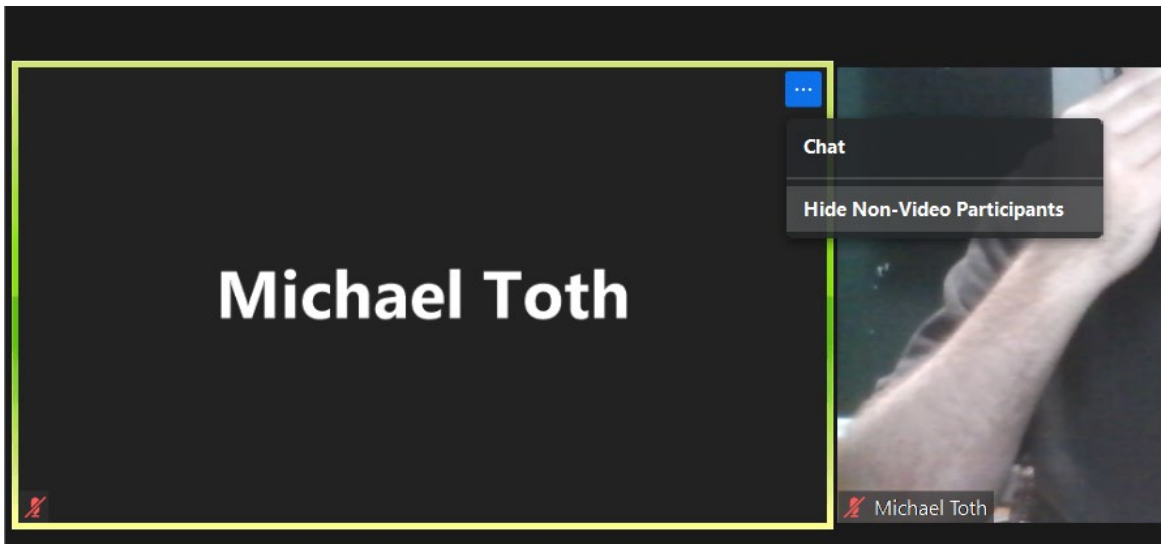
REMINDER: Make sure this setting is in place *before* the virtual hearing begins.

12. **Before the hearing** begins, all of the CRB and attorney Participants should pre-populate their Zoom account names to indicate (1) their name and (2) affiliation. *E.g.*, Ms. Whittle (Clerk), Benjamin Semel (PC / COs); Richard Assmus (MB / Spotify), etc. Experts should populate their Zoom account names with the word “EXPERT” followed by the expert’s name and the name of the participant on whose behalf the expert submitted testimony in the proceeding. If a Participant needs to modify their Zoom account name after they have connected to comport with this requirement, they can contact the host who has the power to do so. **Clients must populate their Zoom account names with the word “CLIENT” followed by the name or initials of the client representative(s) connecting via the Zoom account and then the name of their company (e.g., “CLIENT – Jane Doe (ACME Corp.)”). Mr. Johnson should populate his account name in a manner that prominently identifies himself by his full name.**
13. If a participant is using one screen (monitor), whether a panelist or attendee, the participant can re-size their screen and manually “drag” it so that documents display on one side and video of the panelists on the other.

IV. Zoom Webinar

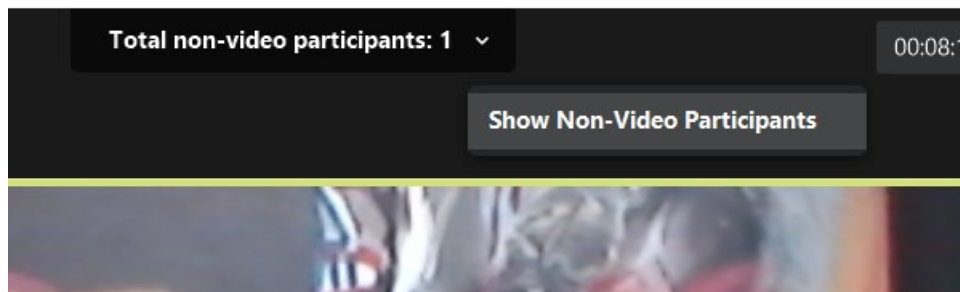
14. During the hearing, the preferred view is to “spotlight” the attorney presenting his/her closing argument and responding to the Judges’ questions, and to “spotlight” the Judge asking those questions. Gallery mode is not preferred.
15. When the attorney finishes his/her statement, he/she will disable video, and the next attorney presenting will enable his/her video, be “spotlighted” by the Zoom Host, and present, and so on through the end of the Hearing.
16. When all closing argument has concluded, then at the Judges’ option, the Zoom Host may make all presenting attorneys and the Judges visible and audible to address any outstanding questions and issues. The Judges and Panelists should use “gallery view” for this discussion.
17. Whenever during the Hearing “gallery mode” is enabled, Panelists may **remove video tiles** of panelists who are not “showing their video,” if they want to customize their screen and only see certain individuals. To remove a video tile as a Panelist, take the following steps:
 - a. **How to Hide Non-Video Participants**

- **Step 1:** Go to any participant that is not showing their video
- **Step 2:** Hover over their box and click on the 3 dots



b. **Restoring the View of Non-Video Participants**

- To get the non-video panelists back, click the down arrow **at the top of the main Zoom screen** and click “Show Non-Video Participants”



18. **For all breaks and recesses, the panelists should disable both video and audio until back in session. The Zoom feed will not be turned off during breaks and recesses, but the audio feed on YouTube will be paused and a message posted that the hearing is in recess.**

V. Zoom Webinar: How Restricted Sessions Will Be Handled

19. Whenever an attorney will be discussing restricted information in his or her oral presentation or will be displaying restricted information on a slide or other document, the Hearing will go into a Restricted session. Before beginning the Restricted session, all clients and Mr. Johnson will be removed from the Zoom Webinar and the Webinar will be locked by the Zoom Host to ensure they cannot re-enter the virtual courtroom unless and until the Restricted session ends
20. During a Restricted session, the public audio stream (described in Section VIII below) will also be turned off so that it is not accessible at any point during the Restricted session.
21. During the hearing, the presenting attorney must indicate that he or she is about to discuss or display restricted information and that the Hearing must go into a Restricted session. It is best practice to estimate the amount of time the Restricted session may last. This is no different than with an in-person hearing. **Chief Judge Barnett will announce that the Hearing is going into Restricted session and that all attendees not permitted in the Restricted session must leave the Webinar within the next 60 seconds.** At the conclusion of those 60 seconds, the Veritext Zoom Host shall confirm that all clients and Mr. Johnson have left the Webinar and, to the extent any such persons remains in the Webinar at such time, shall exclude such persons from the Webinar. Once all unauthorized attendees have been removed, the Zoom Host will lock the Webinar and turn off the public stream. When the Zoom Host says “**the room is cleared,**” the hearing will continue in **restricted** session.
22. When the presenting attorney indicates to the Judges that his/her discussion or display of Restricted information is complete, **Chief Judge Barnett will announce that the restricted session has ended.** The Zoom Host will then “unlock” the Webinar, and turn the public audio stream back on. The Zoom Host will confirm once the public audio stream is back on, at which point clients and Mr. Johnson may reconnect to the Webinar, and the proceedings will continue in public session. Each Party will be responsible for letting their representatives know when they can re-enter the Webinar and the session is no longer restricted.

VI. Teleconference Lines and Deliberations

23. In the event that there is an error or malfunction with Zoom Webinar, the Judges may determine that the hearing shall proceed by dial-in by using a telephone number to be provided to the Judges and Ms. Whittle on or before February 28, 2022. This teleconference line shall remain available during the entire hearing and will serve as a back-up to the videoconferencing platform. To protect Restricted information, the teleconference may not be accessed by any Attendee other than non-presenting attorneys for the participants nor by any member of the

public. The teleconference line may also be used to conduct side bars, if more practicable to do so than via Zoom Webinar.

24. The Judges will have their own, separate teleconference medium to conduct any as-needed deliberations during the hearing. The Judges will disable both audio and video at any point that they leave the virtual hearing room for deliberations. The Zoom Host will verify that the Judges cannot be heard or seen during any such deliberations. Once the Judges enable video the Participants will be alerted that the Hearing is back in session.

VII. Recording the Hearing

25. The Zoom Host will be responsible for recording the hearing and will circulate the video recording to only the Judges, the counsel of record for each Participant, and any CRB staff that is afforded access to the videos.
26. The Technology Working Group will put together the service list for the video recording. **The Video recording will be subject to the Protective Order and should not be forwarded to any non-participants. Improper dissemination of the recording will be considered a violation of the Protective Order.**

VIII. Live Stream of the Hearing

27. Veritext will control the live stream of the hearing and provide access to members of the public. The live stream will be audio only.
28. Any public live stream of the hearing will be made available on the CRB website: <https://www.crb.gov/rate/>. The livefeed link shall be provided to Ms. Whittle on or before February 28, 2022.
29. If the session is Restricted, it will not be live-streamed and the public will see a placeholder display that reads “**CURRENTLY IN RESTRICTED SESSION.**”
30. The public feed will not be accessible after the hearing ends.

IX. Hearing Chess Clock

31. In the Hearing Order, the Judges allocated 2.5 hours to the Services (with the right to reserve up to 15 minutes for rebuttal) and 2.5 hours to the Copyright Owners (with the right to reserve up to 5 minutes for rebuttal). The Zoom Host will keep time for the hearing and will notify each side when it has reached the two-hour mark (*i.e.*, when only 30-minutes of its 2.5 hour allotment remain). The Judges shall have the discretion to ask questions throughout the hearing time and to ask questions and obtain answers after the allocated times.

X. Virtual Hearing Room

32. Although being conducted using videoconferencing solutions, the Hearing constitutes a hearing. Counsel should dress as they would for an in-person hearing session. No one other than the Zoom Host (*e.g.*, via a videographer on behalf of the Zoom Host) or the Court Reporter may record images or sounds from any location.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: February 24, 2022