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In re) CONSOLIDATED PROCEEDING
DISTRIBUTION OF CABLE) NO. 16-CRB-0009-CD
ROYALTY FUNDS) (2014-17)
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[PUBLIC TRANSCRIPT]

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In re) CONSOLIDATED PROCEEDING
DISTRIBUTION OF CABLE) NO. 16-CRB-0009-CD
ROYALTY FUNDS) (2014-17)

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BEFORE: THE HONORABLE DAVID P. SHAW, Chief
THE HONORABLE DAVID R. STRICKLER
THE HONORABLE STEVE RUWE
Copyright Royalty Judges

Library of Congress
Madison Building
101 Independence Avenue, S.E.
Washington, D.C.

November 18, 2022

2:00 p.m.

REMOTE TELECONFERENCE

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P R O C E E D I N G S

(2:00 p.m.)

CHIEF JUDGE SHAW: Good afternoon.

This is a conference In Re: Distribution of Cable Royalty Funds, Docket No. 16-CRB-0009-CD, (2014-2017).

We are on the public record, and I expect to remain on the public record. This conference is being reported. If we stray from the public record or you plan to say something restricted, let me know, and I will let the court reporter know.

I think the first order of business is to have appearances for the parties. I have a participants list for today's conference, and I'm just going to run down that list. It is, I think, more or less in alphabetical order.

Later as we proceed with the conference, and as we proceed with this entire matter, I realize that you may find that you form groups or have spokespersons and so forth, and that's fine, we don't have to stick to this order. This is just the list I have and the first conference that I have had with all of you.

1 So notices, please, of appearance or
2 make appearances on behalf of -- first I have
3 the Canadian Claimants. And I believe there is
4 a Mr. Satterfield?

5 THE REPORTER: Mr. Cosentino, you are
6 on mute.

7 CHIEF JUDGE SHAW: And, Mr. Cosentino,
8 you are on my list as well.

9 MR. COSENTINO: Thank you, yes. Mr.
10 Satterfield won't be attending, but I am here
11 on behalf of the Canadian Claimants.

12 CHIEF JUDGE SHAW: Very well. Then
13 next I have Commercial Television Claimants,
14 National Association of Broadcasters.

15 MR. ERVIN: Yes, good afternoon, Your
16 Honor, this is David Ervin from Crowell &
17 Moring.

18 CHIEF JUDGE SHAW: Good afternoon.
19 And I have Devotional Claimants.

20 MR. MacLEAN: Good afternoon, Your
21 Honor, this is Matthew MacLean from Pillsbury
22 Winthrop Shaw Pittman. And it looks like we
23 also have Arnold Lutzker on the line and my
24 colleague Caroline Block.

25 CHIEF JUDGE SHAW: Thank you.

1 MR. LUTZKER: And we also have Ben
2 Sternberg as well.

3 CHIEF JUDGE SHAW: Very well. Thank
4 you.

5 MR. ERVIN: Your Honor, if I may note
6 as well, my partner, Preetha Chakrabarti, also
7 on behalf of the Commercial Television
8 Claimants is also on.

9 CHIEF JUDGE SHAW: All right. Very
10 well. Thank you.

11 And for the Joint Sports Claimants.

12 MR. CANTOR: Yes, Your Honor, good
13 afternoon. This is Dan Cantor at Arnold &
14 Porter. With me are my colleagues Rosemary
15 Szanyi and Michael Kientzle and also Philip
16 Hochberg is here with us as well.

17 CHIEF JUDGE SHAW: Thank you. Going
18 down the list alphabetically, Program
19 Suppliers.

20 MR. OLANIRAN: Good afternoon, Your
21 Honor, I am Greg Olaniran for Program
22 Suppliers. With me are my colleagues Lucy
23 Plovnick and also Jacob Albertson.

24 CHIEF JUDGE SHAW: Very well. Thank
25 you. Public Television Claimants.

1 MR. DOVE: Good afternoon, Your Honor.
2 My name is Ron Dove. I am with Covington &
3 Burling. And with me is my colleague Dustin
4 Cho.

5 CHIEF JUDGE SHAW: Thank you. And I
6 understand that we have someone who may not be
7 in the allocation phase, but is in this
8 proceeding generally and is with us today from
9 the Multigroup Claimants. Do I have that
10 right?

11 MR. BOYDSTON: Yes, Your Honor, you
12 do.

13 (Interruption on the line.)

14 MR. BOYDSTON: Yes, Your Honor, you
15 do. This is Brian Boydston, counsel for --

16 CHIEF JUDGE SHAW: I'm sorry to
17 interrupt. We're having interference.

18 MR. BOYDSTON: I understand.

19 CHIEF JUDGE SHAW: Let's take that
20 again from the top. Thank you.

21 MR. BOYDSTON: Thank you, Your Honor.
22 This is Brian Boydston, counsel for Worldwide
23 Subsidy Group. We are not a participant in the
24 allocation phase. We are an interested party.
25 Having more than 30 years of experience in

1 civil litigation, when I get an order, I feel
2 like I better be present even on the safe side.

3 So I don't think we will be having any
4 comments or anything like that, but I am here.

5 CHIEF JUDGE SHAW: Well, I am glad. I
6 mean, I had them put the order on ECRB just in
7 case you didn't have everyone on the list and
8 people would see that could let us know or
9 otherwise are interested. So thank you very
10 much.

11 All right. Well, I did want to
12 introduce myself to you. I don't think any of
13 you have been before me here at the CRB. I
14 have had a few conferences, but I don't think
15 with any of you individually, perhaps your
16 firms in other cases, but I came here in July
17 of this year.

18 And I also wanted to meet you, and so
19 I think that is a very important thing and we
20 are accomplishing that.

21 I would ask when you speak to me in
22 this conference, since we are new to one
23 another, that you do identify yourself or your
24 client or something along those lines,
25 especially since we are not in the traditional

1 courtroom.

2 And that is the other thing that I
3 wanted to raise with the parties and I wanted
4 to do it now because I know that we have a
5 schedule that calls for a proceeding, a hearing
6 sometime in February. And we haven't even had
7 Thanksgiving yet, but there is one thing that I
8 do know for sure and that is that we do not
9 have a courtroom and we will not have a
10 courtroom in February.

11 And the good news is that they are
12 building a courtroom in the Library in the
13 Madison Building. So eventually as we see each
14 other over the years or over the months there
15 will be a very nice courtroom for our use, but
16 it is under construction at this time, and I
17 doubt that it would be completed by February.

18 So also, kind of a mixture of bad news
19 and good news, because we have all been through
20 this pandemic together, we obviously all know
21 how to use Zoom and to conduct proceedings this
22 way. So we have been doing virtual, I have
23 been doing virtual, you have been doing virtual
24 for a couple years now, and that is an option.

25 I understand that technically there's

1 an option to do a hearing on the papers, there
2 is clearly this video option, and I just wanted
3 to get the parties now thinking about the
4 things that we need to do for a hearing in
5 February, given the fact that we will not be in
6 a traditional courtroom or the hearing room
7 that you are familiar with in the Madison
8 Building from years past. That room is no
9 longer available to us. But, as I said, in the
10 building, a very nice courtroom is being
11 prepared for us in the future.

12 So that's just a very important thing.
13 And I wanted to get that on the record today
14 and let the people who will be, you know,
15 litigating in the allocation phase in February
16 know about that. Related to that, I want the
17 parties to know that we want to pin down the
18 schedule.

19 We want to set a hearing date for
20 February, the earlier the better in February,
21 obviously. Frankly, given the weather in
22 Washington in February, we are probably just as
23 well having a virtual hearing and not having
24 any delays or cancellations in that first week
25 or two of February, which often occurs in the

1 city at that time of the year.

2 So I think it is important that the
3 parties get together and talk about hearing
4 dates. We can set them, of course, but there
5 are a lot of parties here, a lot of firms, a
6 lot of commitments you may have and so forth,
7 so it would be nice if the parties could work
8 out some dates for themselves beginning in
9 early February and at the same time reach
10 stipulations for prehearing matters in the end
11 of the procedural schedule.

12 I have been looking over a lot of CRB
13 cases and I see a pattern, you know, that is
14 very similar to all of these sorts of
15 administrative hearings. I was looking --
16 well, in my own case, I have been here for
17 Phonorecords IV, we almost had a hearing go
18 forth in late summer or early autumn, and we
19 had an Order Number 60 in that case where we
20 talked about prehearing stipulations,
21 procedures, timing. In the Phonorecords III
22 Remand, there were a couple orders in December
23 of 2020, in February of 2022, and even in Web V
24 I found a lot of orders that talk about these
25 sorts of procedural matters, but you are all

1 probably very familiar with these sort of
2 things.

3 I am giving you this big monologue now
4 because I want to turn it over to everyone to
5 hear what you propose and what you think, but I
6 just want to tell you exactly why this
7 conference is being held and what we're
8 striving to do in the next couple weeks or so.
9 And we would want a joint submission,
10 preferably with agreement on these things or
11 most things, but, if not, at least everyone's
12 positions can be in one place in a unified
13 document and, you know, we can make rulings
14 from there.

15 The other thing that I can offer is if
16 this is too abstract or you feel it would work
17 better another way, we can certainly issue an
18 order next week, you know, telling you the
19 different things we want in the schedule or
20 things we want you to agree to, setting hearing
21 dates or asking you to select them. We can do
22 something much more specific, depends on how
23 prepared you feel you are to run with this now
24 and give something to us in about two weeks,
25 but so that's really what is going on.

1 I know there are some outstanding
2 motions and so forth in this case that are
3 being worked on, but today we thought it was
4 best, even before the holiday here coming up,
5 to let you know about the courtroom situation,
6 let you know what we're thinking about
7 scheduling. And also I would say that it is
8 never too soon if we're having a virtual
9 hearing to start coordinating with our staff at
10 the CRB, such as, I believe, Ms. Whittle is on
11 this case, we have one of our new paralegals on
12 this case, and to form some sort of technology
13 contact group or list, depending on, you know,
14 what kind of audiovisual materials you want to
15 present, what kind of hardware or software you
16 might want to provide to us in order to view
17 those materials.

18 So that's also something that's never
19 too soon to start planning for. So I apologize
20 for the long monologue, but I think it tells
21 you clearly where I think we are in this
22 proceeding and the kinds of information that
23 we're going to need from you in the next couple
24 weeks or so to chart a course to get us
25 smoothly into February.

1 And I think the best thing for me to
2 do is just to turn the floor back over. And
3 sometimes I do reversal alphabetical, but I
4 don't want to catch you off guard, so I will go
5 down the list the exact same way, unless the
6 parties have spoken among themselves already
7 and have another order that they would like to
8 follow.

9 So unless I hear otherwise, I would
10 like to hear from the Canadian Claimants, your
11 thoughts at this point?

12 MR. COSENTINO: Thank you, Your Honor.
13 You know, we're prepared to work with the other
14 parties and come up with a plan. We have seen
15 some of the orders in the other cases and they
16 are quite comprehensive.

17 So, you know, I don't think I am
18 prepared to go through all those different
19 points right now, but I think we could work
20 something out. We're probably inclined to go
21 with a virtual hearing rather than a paper
22 proceeding. And, you know, I just think we
23 need a little bit of time to work that out.

24 CHIEF JUDGE SHAW: Sure.

25 MR. COSENTINO: I think maybe sometime

1 toward the end of the first week of December we
2 could have something ready. That would be my
3 suggestion. So I don't have much more than
4 that at this time, Your Honor.

5 CHIEF JUDGE SHAW: All right. My only
6 concern about, you said the end -- what was
7 that, where in December were you talking about?

8 MR. COSENTINO: The end of the first
9 week.

10 CHIEF JUDGE SHAW: Oh, okay, right.
11 We have, you know, a lot of holidays and things
12 going on, but, yeah, end of the first week.
13 Well, we're already practically at -- you're
14 Canadian, I guess, United States, American
15 Thanksgiving.

16 MR. COSENTINO: I am actually in Los
17 Angeles, Your Honor.

18 CHIEF JUDGE SHAW: Okay. Then you
19 will be celebrating Thanksgiving. I forget
20 when Canadian Thanksgiving is, but I know it is
21 not the exact same date. Maybe I am wrong
22 about that.

23 MR. COSENTINO: No, it is in October.
24 You are right, Your Honor.

25 CHIEF JUDGE SHAW: In October, all

1 right. Well, as many people know, I was born
2 in Detroit, so I got my Canadian days as well.
3 So let's move on -- thank you very much -- to
4 the Commercial Television Claimants, National
5 Association of Broadcasters.

6 MR. ERVIN: Thank you, Your Honor.
7 The parties had met prior to the hearing today,
8 as we have in the previous proceedings,
9 anticipating that the Judges may be looking for
10 this sort of coordination and I share Victor's
11 perspective. I think we can come to an
12 agreement, hopefully on most of these issues.

13 I had a question for Your Honor just
14 to make sure I am hearing it correctly. The
15 options that we have are virtual or paper. Is
16 that correct?

17 CHIEF JUDGE SHAW: Well, I think
18 that's right. I mean, there could possibly be
19 an in-person in a third-party location or
20 something, you know, well, hypothetically, yes,
21 that is an option, but I am not exactly sure
22 what that would be or where that would be.

23 And, you know, there is a lot of
24 variables there. So just looking at the way
25 things have gone the last couple of years, at

1 least in the practice that I have witnessed, I
2 think the most practical options would be paper
3 or virtual, but, you know, we might be open to
4 any other suggestions that you have.

5 It seems most people do like the Zoom
6 hearings these days, but I would listen to
7 anything that, you know, you had to offer.

8 MR. ERVIN: I appreciate that, Your
9 Honor. I think there was, if I can speak on
10 behalf of others, there was some preference for
11 a live hearing and proceeding, but we were not
12 aware, at least I was not aware of the Madison
13 Building and the construction.

14 CHIEF JUDGE SHAW: Yes.

15 MR. ERVIN: That might be something we
16 can take back among the group. I look for
17 nodding heads perhaps that we can talk about
18 some more. I think our preference would be
19 live, considering the number of witnesses, but
20 understand that we may have constraints, so if
21 you allow us to give that some further
22 consideration.

23 CHIEF JUDGE SHAW: By live, you mean
24 in person?

25 MR. ERVIN: Yes, yes, Your Honor.

1 CHIEF JUDGE SHAW: Of course with a
2 lot of witnesses, you know, sometimes it is
3 better to do it virtually if people are
4 traveling in the winter, you know, but just an
5 observation.

6 MR. ERVIN: I understand. It was an
7 issue we faced in the last proceeding.

8 CHIEF JUDGE SHAW: I have only done 36
9 years of hearings in Washington, so I have had
10 a few snow days in February, but, you know, it
11 is not the end of the world. It is just
12 something you have to balance. That's all.

13 MR. ERVIN: Okay, sure. And we will
14 -- we would like to give it some more
15 consideration. And we can talk among the other
16 claimants in our effort to get a consolidated
17 sort of group perspective back.

18 One other question, Your Honor, in
19 terms of timing is I think you said as early as
20 possible in February. For purposes of our
21 proposing a schedule, could we look as early in
22 February as the calendar allows? Would that be
23 appropriate, Your Honor?

24 CHIEF JUDGE SHAW: I think so, yes.

25 MR. ERVIN: Okay.

1 CHIEF JUDGE SHAW: In other words, the
2 Board doesn't have any other hearings or
3 conferences that I'm aware of scheduled for
4 February, and I don't know of any other
5 obligations that individuals have in the month
6 of February.

7 Now, of course, we do have holidays in
8 February as well. So, you know, and I think
9 another thing that may influence our decisions
10 about all of these things is how long the
11 hearing is. I guess that remark sort of stands
12 on its own.

13 MR. ERVIN: Sure.

14 CHIEF JUDGE SHAW: You know, it is one
15 thing to do two days. It is another thing to
16 do two weeks. It is another thing to do two
17 months in different formats and in different
18 places and, you know, and when we begin, but I
19 think it is preferable to begin early.

20 Some of this is probably just my own
21 choice in life, and in litigation, just to try
22 to make sure we get the hearing completed
23 because I don't like delays, but things do
24 happen, and so the earlier we can start
25 probably the better.

1 MR. ERVIN: Very well. Thank you,
2 Your Honor.

3 In our discussions before today's
4 hearing, Your Honor, we had tried to get a
5 sense among the group about how much time we
6 think we might need. We recalled that in the
7 prior proceeding, in the 2010 to '13 allocation
8 proceeding, we had requested 120 hours. I
9 believe the judges gave us 100 hours for that
10 proceeding.

11 Interestingly enough, the number of
12 witnesses in this case are identical to the
13 number of witnesses that we had in the last
14 case. So I will use my discretion to share, I
15 think, among our discussions, we were thinking
16 it would be along the same lines in terms of
17 timing, which if we don't have proceedings on
18 Fridays, as I know the Judges may not and
19 didn't in the last proceeding, that's probably
20 a five-week time period, roughly, that we were
21 at least estimating about. I will pause there.
22 Others may have different views, but that was
23 something we had talked about before today.

24 CHIEF JUDGE SHAW: Well, to be candid,
25 I don't think we were expecting a hearing that

1 long. At least I wasn't. So, you know, I am a
2 little surprised to hear that large an
3 estimate.

4 But, as I said, there are holidays to
5 think about. The funny thing is the longer the
6 hearing is, the more days we need not to be in
7 hearing because we have other matters pending.
8 So if we have a shorter hearing, you know, at
9 least my experience has been, I'm new at the
10 CRB, but you get more of my time when you're
11 taking less of it, if that makes sense, but
12 when you have a lot of other proceedings going
13 on, then we do need to take, as many judges do,
14 take a break, you know, you can't have five
15 weeks of judges doing only one thing in a forum
16 like this.

17 So, like I said, all these things
18 affect each other. We will just have to see.
19 But another good reason to start as early in
20 February as possible because we do have some
21 deadlines in this proceeding, as you know, that
22 follow on after the hearing.

23 MR. ERVIN: Absolutely, Your Honor. I
24 guess in terms of our planning and I think we
25 have some collaborating and discussions to take

1 place, as we would propose a schedule, am I
2 correct that Fridays are generally dark and
3 would be, whether it is virtual or otherwise?

4 CHIEF JUDGE SHAW: That has been our
5 practice here at the CRB, and it may very well
6 be again. I would have to double-check on
7 that. I would say especially if you are
8 planning on having something that goes over a
9 couple of weeks, you can pretty well bank on
10 the fact that we're going to need some dark
11 days in the courtroom so we can attend to other
12 matters.

13 I know traditionally we have chosen
14 Fridays, and I have no problem with that, but
15 we haven't discussed it in that level of
16 detail. I think we will when we see your
17 proposal.

18 MR. ERVIN: Very well. Thank you,
19 Your Honor. I will allow others to share their
20 thoughts. Thanks very much.

21 CHIEF JUDGE SHAW: Sure. Thank you.

22 Let's see. I think are we at,
23 alphabetically here going down the list, were
24 we at Devotional Claimants?

25 MR. MacLEAN: Your Honor, this is

1 Matthew MacLean from Pillsbury Winthrop Shaw
2 Pittman. And I don't have anything to add to
3 what Mr. Cosentino or Mr. Ervin have said. I
4 would say that I do agree with Mr. Ervin that
5 we did ask for 120 hours in the last proceeding
6 and we were given 100 hours.

7 And when we talked a few days ago, I
8 think the consensus among us was that this
9 proceeding, in which we have approximately the
10 same number of witnesses and issues that are at
11 least as complex, we were, I don't think,
12 intending to ask for less than that, but I will
13 leave it at that.

14 So thank you, Your Honor.

15 CHIEF JUDGE SHAW: Well, I appreciate
16 the fact that the parties actually did take the
17 initiative to meet ahead of time. So, you
18 know, then I am hearing things probably from
19 one person, but more than one person has agreed
20 to or heard before, and I appreciate the fact
21 that the parties met ahead of time and
22 anticipated what this conference was all about.

23 Going down the list, the Joint Sports
24 Claimants.

25 MR. CANTOR: Yes, good afternoon, Your

1 Honor, Dan Cantor for the Joint Sports
2 Claimants. Thank you for having the hearing
3 this afternoon. It is helpful, I think, for
4 all parties, as you suggested, to start the
5 planning in advance.

6 I don't have a lot additional to add.
7 I concur that the parties have been working
8 well together. If it is acceptable in the
9 filing that we make to Your Honors, we will try
10 to provide a rationale for what the parties
11 think is an appropriate and efficient amount of
12 time for the hearing, obviously understanding
13 that that is ultimately the Judges'
14 determination, but if it is helpful to the
15 Judges we can in our submission try to explain
16 the parties' thinking about appropriate length.

17 CHIEF JUDGE SHAW: You know, that's
18 fine. I will just say, some of you may know me
19 from other forums. Maybe you have been in my
20 courtroom. Maybe your firms have. You know
21 that I am usually not very optimistic, and I
22 find that attorneys are frequently very
23 optimistic about how many hours of actual
24 testimony one gets in an average day.

25 You know, it seems that even though

1 we're in the courtroom for many, many, many
2 hours, and even though I am known for being a
3 little bit efficient, shall we say, when it
4 comes to breaks and objections and timing, I
5 tend to underestimate the number of hours that
6 we actually get in a day.

7 For example, I usually think we're
8 lucky to get six hours of actual testimony or
9 other time that's chargeable to the parties,
10 but I invariably find at the end of the hearing
11 that we get a lot more than that. So, you
12 know, I am just saying to the counsel and I say
13 to myself, you often need a reality check about
14 what actually happens during the day. So hours
15 is a good way to divvy things up, rather than
16 days.

17 I appreciate that, because in the end
18 that's really how we charge the parties and
19 that's really how we get a record. It is not
20 by days.

21 But it is also helpful to think about
22 what will really happen, how many hours of
23 testimony or other time that is chargeable to
24 the parties, you know, we really do cover in a
25 day. As I said, I tend to be pessimistic and

1 then, you know, I find out that we get a lot
2 more testimony in a day than I thought.

3 So I will just put that out there for
4 those of you who don't know me.

5 MR. CANTOR: Thank you. That is
6 helpful. Nothing further here.

7 CHIEF JUDGE SHAW: Thank you. Let's
8 see. We had Joint Sports. I believe we're at
9 Program Suppliers.

10 MR. OLANIRAN: Yes, Your Honor, it is
11 Greg Olaniran, counsel for Program Suppliers.
12 First of all, I thank you for holding this
13 conference. It actually answered a few
14 questions that we had in our prior meeting.

15 I also concur with the other prior
16 speakers that we have a long history of
17 collaborating on procedural issues, even if we
18 strongly disagree on substantive issues, so my
19 hope is that we will certainly present a
20 well-reasoned and coherent proposal with regard
21 to how to proceed with the hearing.

22 I am curious, Your Honor, do you have
23 any idea, do you have some idea of what time
24 you would like to start and what would be the
25 start of the day through the end of the day, so

1 that we can sort of incorporate that into what
2 we're planning to do?

3 CHIEF JUDGE SHAW: Well, that's a very
4 good question. One thing that I found here at
5 the CRB is something that I figured out for
6 myself also, which is that early starts to the
7 day, like 8:00 in the morning or 9:00 in the
8 morning frequently don't result in more
9 testimony because -- well, let's just put it
10 this way. I tend to start my hearings -- and I
11 will consult with the other Judges -- but I am
12 looking at CRB precedent here, usually like
13 9:30 or 10:00.

14 And the reason for that is -- and
15 Karen will know too, because she has reported a
16 lot of my hearings -- once we go, we really go.
17 That means because we're not starting early in
18 the morning, that means there is no time for
19 setup, technical problems, finding witnesses.
20 I am very unsympathetic to those things when I
21 am not starting at 8:00 in the morning, when we
22 are starting later in the morning. That means
23 we're ready to go.

24 The good news is counsel always are
25 and the tech support always is. And we get a

1 good morning of testimony. So it is probably,
2 you know, like when I -- when we actually sit
3 on the bench and swear in the first witness, it
4 might be like 9:30 or 10:00 in the morning, but
5 that's just a signal that everything is going
6 to be ready to go.

7 And I have tried it the other way, but
8 I find out that at 8:30 or 9:00 in the morning,
9 particularly when you are in person and not on
10 Zoom, there are bus loads of people that are
11 stuck in traffic or technical issues that
12 couldn't be addressed because it was the middle
13 of the night and no one could do anything about
14 it, because the door was locked. So by
15 starting a little later in the morning, it
16 really means we're ready to go.

17 It also means that if we are in Zoom,
18 people throughout the time zones, you know,
19 have an easier time starting, but even if we're
20 in person, it means we have had time to be
21 ready and we're set to go at 9:30 or 10:00.
22 And I usually do ask the people to stay a
23 little later than 5:00.

24 And, personally, and I will consult as
25 we go along with the other Judges and with

1 counsel, but you will find that even though I
2 do like to keep things moving at pace, we do
3 accommodate witnesses, you know. Again, all
4 with an eye to making sure that we get a good
5 record and we get it as quickly as possible and
6 as full and complete.

7 So I personally am open to when people
8 need to move things around a little bit or do
9 things, you know, combine certain testimonies
10 and that sort of thing. It is all for the sake
11 of efficiency, but, you know, making sure that
12 it is there as well.

13 So I hope that answers your question.

14 MR. OLANIRAN: Yes, it does, Your
15 Honor, and thank you for that.

16 And one other question. You mentioned
17 the possibility of a third-party location. Is
18 it sort of -- would you entertain a proposal on
19 that or you are really committed to either
20 virtual or on paper?

21 CHIEF JUDGE SHAW: Well, let me put it
22 this way. I just know what the variables and
23 the parameters are in a video situation. If we
24 talk about a third location, legally, I believe
25 that it is possible, but, you know, that opens

1 up a whole group of other variables that I
2 don't even know what they would be or what the
3 answers would be, having to do with, you know,
4 with a lot of issues.

5 So, you know, particularly when we're
6 talking about a long hearing about not being at
7 the CRB and not being with our personal
8 computers, but being somewhere else, I don't
9 know where it would be, being isolated for a
10 long -- you are talking five weeks of not
11 showing up at the Library, I am not so sure
12 about that, you know, and not being at home
13 either and not having my own materials and
14 ability to work on other things.

15 So it opens up a lot of other
16 problems, the way I see it, but I am not
17 speaking for the other Judges or for you. And
18 I don't know exactly what you might have in
19 mind.

20 But, you know, like I said, shorter
21 hearings, there's a lot more flexibility. Long
22 hearings, a lot of variables have to be
23 accounted for.

24 MR. OLANIRAN: Thank you, Your Honor.

25 CHIEF JUDGE SHAW: Parking, health,

1 weather, third parties, making witnesses go to
2 places that are not, you know, our courtroom.
3 So there is just a lot.

4 MR. OLANIRAN: Thank you. I have no
5 further questions.

6 CHIEF JUDGE SHAW: Thank you. I
7 appreciate it.

8 All right. Going down the list, let's
9 see, I believe we're at Public Television.

10 MR. DOVE: Yes, Your Honor, Ron Dove
11 on behalf of Public Television. Again, just
12 echoing what the other parties have said, just
13 appreciate the opportunity to have this call
14 and start addressing these issues. And I agree
15 with Mr. Olaniran that historically we have
16 been able to reach agreement amongst us with
17 regard to procedural issues, and so hopefully
18 we can assist the Judges in that way this time.

19 I appreciate you being open, the
20 Judges being open to the possibility of a
21 third-party site. I know, and this was before
22 my time, but maybe some people on this call
23 remember what I understand was a time when I
24 don't know if there was a power problem or
25 snow, there was some issue where actually one

1 of the law firms served as a courtroom for a
2 week or two, you know, so I think it is
3 possible, but there are a host of variables of
4 the type that you have described.

5 And at least back in those days, there
6 wasn't the virtual Zoom option. But we
7 appreciate the parties would talk about that.
8 And if we have a proposal, we may make it, and
9 hope you would consider that.

10 Is there any further guidance that the
11 panel could give in terms of decision-making
12 on, you know, the motions? You know, do you
13 want -- in our proposed schedule, would you
14 like us to suggest deadlines for decisions on
15 those motions, to the extent they relate to the
16 timing of the hearing or is that just something
17 obviously the panel will decide as soon as they
18 are able to and we should focus our efforts
19 only on the nature of the hearing itself and
20 not so much the prehearing, you know, motions
21 in limine, prehearing, you know, those sorts of
22 things? Where would you like us to concentrate
23 our efforts in that regard?

24 CHIEF JUDGE SHAW: Right. I was going
25 to ask you exactly what kinds of motions you

1 have in mind. Well, you are talking about
2 prehearing motions, like motions in limine and
3 so forth?

4 The other Judges are welcome to chime
5 in, but personally I think it is a good idea to
6 have that in the schedule. And, you know, we
7 may not necessarily adopt what you propose, but
8 you can make proposals.

9 You know, again, it is sort of a give
10 and a take. Like I am saying, you want me to
11 go to a third-party location. I am telling you
12 right now, not for a month and a half, you
13 know? I mean, maybe a couple days if the power
14 is out, but I am not going to live, you know,
15 in another city practically or in a different
16 part of town away from my office for over a
17 month.

18 It is kind of the same thing. I mean,
19 if you want me to give you rulings on motions
20 in limine after having only a couple days to
21 look at the responses, I better only have three
22 or four. If you're going to file 50 motions in
23 limine, I'm going to need weeks to do them.
24 But it depends on how many you want filed, what
25 kind of rulings you want.

1 So I think it is good that the parties
2 think about this. You know, I have had people
3 who, like I said, give me a very, very short
4 period of time in which to address a motion to
5 exclude or preclude or a motion in limine or a
6 motion to strike, but they had one and it is
7 not that complex.

8 Other people know they are going to be
9 filing, you know, bucket loads of motions and
10 so, you know, you have to then think about,
11 okay, so what does that mean? How much time
12 are we going to give the Judges or give the
13 Chief Judge or whoever, you know, whatever you
14 have in store, to make a decision on something?

15 So I think it is good to have it in
16 the schedule, and I think it is great to have
17 the parties talk about all the prehearing
18 preparations at this time in motions in limine,
19 to exclude or, you know, other legal issues
20 that you think will have to be addressed by the
21 Judges in advance of the hearing.

22 I think you should put that in the
23 schedule. I think that's a great idea.

24 Is there anything else?

25 MR. DOVE: Not from me, Your Honor.

1 CHIEF JUDGE SHAW: Okay.

2 MR. LUTZKER: Your Honor, this is
3 Arnold Lutzker from Lutzker & Lutzker for
4 Settling Devotional Claimants. On this motion
5 point, there is, at least, one motion to compel
6 that has been pending for several weeks.

7 CHIEF JUDGE SHAW: Okay. Now, that's
8 a different issue. That's not prehearing
9 motions.

10 MR. LUTZKER: No. I appreciate that,
11 but, in other words, in terms of preparation,
12 whether based on rulings there may be, you
13 know, further pleadings that need to be
14 prepared during an interim period. And I know
15 sort of the ability to sort of make full
16 preparation for the proceeding, you know, will
17 depend on our ability to know where things
18 stand on that. And I know there is another
19 motion that's being briefed right now.

20 So just to reflect that the parties
21 are obviously interested in sort of the ability
22 to have those rulings resolved sufficiently in
23 advance so that we can prepare for the hearing
24 in February.

25 CHIEF JUDGE SHAW: Right. And, you

1 know, I know I didn't touch on it greatly, but
2 I did mention I know there are outstanding
3 motions. And I think there is something that's
4 not ripe yet, but we are aware. And, yes, I
5 understand your point, it will help you prepare
6 for the hearing.

7 MR. LUTZKER: Thank you, Your Honor.

8 CHIEF JUDGE SHAW: Sure. Actually
9 what I was going to do, let me just make sure,
10 I think that left only our visitor from the
11 Multigroup Claimants, who did not think that he
12 would have anything to say.

13 MR. BOYDSTON: No, I don't have
14 anything, Your Honor, but thank you.

15 CHIEF JUDGE SHAW: Okay. Appreciate
16 it.

17 But, actually, Mr. Lutzker, I was
18 about to open the floor, so your question was
19 perfectly timed.

20 But I don't know if we want to --
21 well, I would also, you know, if the other
22 Judges want to chime in with anything at this
23 point, but I just want to do one more round and
24 make sure we have covered concerns that are on
25 your mind right now that we can address, you

1 know.

2 JUDGE STRICKLER: Judge Shaw, if I
3 may, this is Judge Strickler. Good afternoon,
4 everybody. Good to see you again.

5 I would imagine as you discuss what
6 alternatives you are considering in terms of a
7 Zoom or video virtual hearing or a third-party
8 location or even perhaps a paper proceeding, to
9 the extent you think that you will -- well,
10 maybe I should put it this way. Perhaps you
11 should put that at the first order of priority
12 because if it turns out that you are
13 entertaining the use of a virtual hearing or
14 decide, in fact, that you will do that, it is
15 better that you get in touch with us -- and by
16 "us," in particular here, I mean with
17 Ms. Whittle -- to discuss what the procedure
18 will be, so we can hit the ground running as
19 quickly as possible.

20 And there is just a couple of things
21 maybe I can mention to you now with regard to
22 that process, since that is obviously something
23 that will be under some serious consideration.

24 One is that if you go ahead and go
25 that route, the funding, at least the way we

1 have done this in the past, in our previous
2 hearings that were virtual, the compensation
3 for the contractors -- and I will get into them
4 in a moment -- that you would utilize has to be
5 decided.

6 The total amount is confidential as it
7 relates to the Copyright Royalty Board. How
8 you allocate those costs among yourselves is
9 completely between you. The Judges cannot have
10 any knowledge of how you have allocated those
11 costs. So that would be important.

12 And to the extent you are willing to
13 do that, you may already know from talking to
14 colleagues who handled other cases or in other
15 cases yourselves that you have handled who you
16 can use in situations like this, but what we
17 have used in the past for a video conferencing
18 platform is the Zoom Webinar. For document and
19 exhibit sharing platform, we have used
20 Veritext. And as you see from Karen's
21 participation here today, we have used Heritage
22 Reporting as the reporting service for a
23 virtual hearing.

24 And we're not recommending that you
25 use them. That's certainly what you would

1 decide on your own. We're telling you what
2 worked in the past successfully for us. Who
3 you choose to use and how much you choose to
4 spend, as I say, and how you divide that up is
5 completely up to you, but the idea here would
6 be to hit the ground running.

7 So if you are of a mind to seriously
8 propose either exclusively or in the
9 alternative a virtual hearing, it would behoove
10 you to get in touch with Ms. Whittle as soon as
11 possible, perhaps even before you submit your
12 proposal to us, so that we don't have any kinks
13 or delays with regard to getting a virtual
14 hearing up and running in early February.

15 And that's what I had, Judge Shaw.

16 CHIEF JUDGE SHAW: Well, thank you,
17 Judge Strickler, for amplifying that point.

18 JUDGE RUWE: Excuse me. To follow on
19 what Judge Strickler was saying, and I would
20 encourage the parties to look at the relevant
21 documents with regard to Phonorecords IV and
22 Webcasting V that addressed these matters.
23 There is also a recommendation from a
24 Technological Working Group specifically in
25 Webcasting V, there may be one for Phono IV as

1 well, but addressing a lot of these issues.

2 There is some existing work product
3 that may be helpful to you guys as you
4 hopefully come to a joint proposal on these
5 matters.

6 CHIEF JUDGE SHAW: Yes. I was going
7 to turn to you next, Judge Ruwe, but before I
8 did that, I just wanted to say one thing, which
9 is that Judge Strickler mentioned the court
10 reporting service. And I must tell you this
11 personally, I am not so sure that that is an
12 option.

13 I think that that may be the same
14 court reporting service, regardless of where or
15 how the hearing is held, but I could be in
16 error. However, usually in my experience with
17 agencies is that that's usually something
18 that's done by contract ahead of time.

19 But, in any event, but to follow on
20 Judge Strickler's point, though, with regard to
21 the court reporting service, whoever it is, and
22 I suspect it will be Heritage, there are
23 options about, you know, as I'm sure all the
24 firms know, there are options about what kinds
25 of court reporting services you get and whether

1 you get the real-time or LiveNote. And then,
2 of course -- and this goes whether we're
3 virtual or in person, you know, providing that
4 to the Board.

5 And, again, I am probably telling you
6 things you already know, but just to kind of
7 close the loop on the court reporting, whether
8 we're sitting on a bench, whether it is at the
9 Library, somewhere else, or we're at home on
10 Zoom, there are questions about what kind of
11 court reporting services you purchase and what
12 you provide to the Judges.

13 Again, as Judge Strickler said, and as
14 Judge Ruwe said, there is a lot of precedent
15 here in the orders and in working with
16 Ms. Whittle, you will find out a lot more.

17 And I want to return to you, Judge
18 Ruwe, just to make sure that, you know, you
19 have had an opportunity to raise anything that
20 you would like this afternoon.

21 JUDGE RUWE: Thank you. Nothing more.

22 JUDGE STRICKLER: Judge Shaw, I have
23 one more thing I just wanted to ask, actually.

24 CHIEF JUDGE SHAW: Yes.

25 JUDGE STRICKLER: And this is

1 directed -- I suppose I will direct it to Mr.
2 Lutzker, since you raised the question, Mr.
3 Lutzker, of pending motions. And I just want
4 to make sure we're all on the same page when
5 you talked about motions that were pending.

6 I'm assuming that the motion that you
7 were referring to, at least, that's already
8 fully briefed is your client's motion, Settling
9 Devotional Claimants' motion to compel against
10 Public Television. That's one. Is that
11 correct?

12 MR. LUTZKER: Correct.

13 JUDGE STRICKLER: And the other one,
14 which I think Judge Shaw correctly noted is not
15 yet fully briefed because it is more recent.
16 And this one I suppose I would ask Mr. Dove or
17 Mr. Cho as to what -- to confirm, this is
18 Public Television's motion to compel against
19 the Joint Sports Claimants. Is that the other
20 motion that's at issue as far as you
21 understand?

22 MR. DOVE: Yes, Your Honor.

23 CHIEF JUDGE SHAW: Okay. Is there any
24 other motion in that regard, again, only in the
25 allocation phase that anyone else is aware of

1 that remains pending? Because I am, at least
2 off the top of my head, without consulting the
3 docket, I am not aware of another one, another
4 such motion.

5 MR. DOVE: That's correct, Your Honor.

6 JUDGE STRICKLER: Okay. Thank you
7 very much. That's what I wanted to ask, Judge
8 Shaw.

9 CHIEF JUDGE SHAW: Thank you, Judge
10 Strickler, for clarifying that for us.

11 So anything else from the Judges? All
12 right.

13 Then I will just go down through the
14 parties. If you can remember the order you are
15 in, you don't need to wait for me to say your
16 name, but just to make sure -- or maybe I will
17 open the floor generally.

18 Anything else that we can talk about
19 today as long as we're together or are we ready
20 just to get going on the stipulations? So
21 anything? I will open the floor to the
22 parties. Well, let's just to be sure begin
23 with the Canadian Complainants.

24 MR. COSENTINO: Your Honor, the only
25 question I have is when do you want us to file

1 a submission, some type of proposal?

2 CHIEF JUDGE SHAW: Well, I think since
3 you're going ahead with it anyway, it sounds
4 like, you know, the good news is you have
5 already kind of started and you're going to go
6 ahead with it right away. Let's see.

7 There was -- someone said something
8 good about that first week in December. And
9 that sounds right to me because we're already,
10 you know, effectively next week, we begin the
11 last full week of November. So just to have
12 clarity on the record, whose idea was it about
13 December, and what exactly did you say, because
14 I think I am onboard.

15 MR. COSENTINO: That was mine. And I
16 suggested the end of the first full week of
17 December.

18 CHIEF JUDGE SHAW: That would be the
19 9th?

20 MR. COSENTINO: Yes, Your Honor.

21 CHIEF JUDGE SHAW: Yes, the 9th.
22 Okay. So if there is no objection to that,
23 that sounds right to me.

24 MR. COSENTINO: Then I have nothing
25 else, Your Honor. Thank you.

1 CHIEF JUDGE SHAW: Thank you. And we
2 have it right there in one place in the
3 transcript. Good. Thank you.

4 Going down the list, National
5 Association of Broadcasters?

6 MR. ERVIN: Your Honor, David Ervin on
7 behalf of the Commercial Television Claimants.
8 Nothing further, thank you.

9 CHIEF JUDGE SHAW: Very good. And
10 Devotional Claimants?

11 MR. MacLEAN: Nothing further for the
12 Devotional Claimants. Nothing further. Thank
13 you, Your Honor.

14 CHIEF JUDGE SHAW: Thank you very
15 much. Joint Sports?

16 MR. CANTOR: Dan Cantor, Your Honor.
17 Nothing further from Joint Sports.

18 CHIEF JUDGE SHAW: Thank you very
19 much. And I think you helped facilitate the
20 tech today. Thank you.

21 MR. CANTOR: Thank you.

22 CHIEF JUDGE SHAW: Program Suppliers?
23 Anything else from Program Suppliers?

24 MR. OLANIRAN: Nothing further, Your
25 Honor.

1 CHIEF JUDGE SHAW: And Public
2 Television?

3 MR. DOVE: Ron Dove from Public
4 Television. Nothing further, Your Honor.
5 Thank you.

6 CHIEF JUDGE SHAW: All right. And
7 thank you, Mr. Boydston, for being here today.
8 And I think that takes care of it. Then thank
9 you all very much. I think this was very
10 productive. This conference is closed.

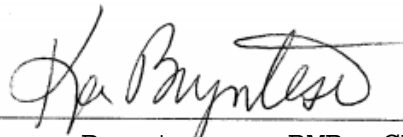
11 (Whereupon, at 2:49 p.m., the
12 conference concluded.)

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CERTIFICATE

I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

11/18/22



Date

Karen Brynteson, RMR, CRR, FAPR

Signature of the Court Reporter

[Public Transcript]

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