

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

*In re*

**DETERMINATION OF RATES AND TERMS  
FOR DIGITAL PERFORMANCE OF SOUND  
RECORDINGS BY NEW SUBSCRIPTION  
SERVICES AND MAKING OF EPHEMERAL  
COPIES TO FACILITATE THOSE  
PERFORMANCES (NSS V)**

**Docket No. 23-CRB-0013-NSR  
(2026-2030)**

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**NOTICE OF PARTICIPANTS, COMMENCEMENT OF VOLUNTARY  
NEGOTIATION PERIOD, AND ORDER 2 SETTING CASE SCHEDULE**

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 licensees making ephemeral recordings and digital performances of sound recordings by new subscription services. *See* 89 FR 810 (Jan. 5, 2024). Title 8 of the Copyright Act (Act) and the procedural regulations adopted by the Judges and codified in Chapter III of title 37 of the Code of Federal Regulations (Rules) govern royalty rate proceedings. Exhibit A projects specific dates and deadlines for actions in the 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 properly filed a Petition to Participate. Exhibit B to this Notice and Order identifies parties that have filed Petitions to Participate in the captioned proceeding.<sup>1</sup> By listing filers of Petitions to Participate, the Judges do not imply a finding that the filing party has a significant interest in the proceeding as required by 17 U.S.C. 803(b)(2)(C).

**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

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<sup>1</sup> Exhibit B includes every entity that filed a timely Petition and paid the filing fee, unless waived. One entity filed a request to accept its late-filed Petition, and the Judges granted the request. That entity has filed its Petition and paid the filing fee, and it is included in the list. *See* Order 1 Accepting Late Petition to Participate of Sirius XM Radio Inc. 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.

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>2</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. The Judges subsequently shall determine other appropriate time periods and deadlines that are not specifically required by statute or rules, either *sua sponte*, or upon motion of the parties.<sup>3</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.<sup>4</sup>

Chapter 8 of the Act prescribes procedural steps and timelines the Judges must follow in every rate proceeding. Chapter 8 also authorizes the Judges to make "any necessary procedural or evidentiary ruling[] in any proceeding ...." See 17 U.S.C. 801(c). The Judges' experience in both rate and distribution proceedings under this iteration of chapter 8<sup>5</sup> demonstrates the benefits of a procedural order to augment the current statutory provisions. To encourage meaningful settlement negotiations and to streamline the process of participants' identification of issues, the Judges 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.

During the preliminary disclosure and discovery period, each participant shall provide to all other participants a brief statement of proposed rates and terms. Each participant shall disclose by name, title, and contact information, all fact witnesses upon whom they intend to rely to supply evidence of the business bases of their respective rate proposals. *Cf.* Fed. R. Civ. P. 26(a)(1)(A)(i) & (ii). Also, during preliminary disclosure and discovery, each participant shall disclose all testifying expert witnesses, providing name, qualifications, contact information, and the substance of the witness's anticipated testimony.

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. The Judges anticipate that the requirement for preliminary disclosure and the opportunity for discovery before the Written Direct Statements may reduce the amount of discovery required after the filing of Written Direct Statements. Further, after a

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<sup>2</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>3</sup> The Judges encourage the participants to file any motions for protective order as soon as practicable.

<sup>4</sup> Filing using eCRB generates a notice to all other participants, which notice is a substitute for delivery. See 37 CFR 303.5, 303.6. Unless the Judges order otherwise, all participants shall deliver and receive relevant documents electronically through eCRB.

<sup>5</sup> Congress overhauled royalty rate-setting and distribution procedures with enactment of the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No.108-419m 118 Stat, 2341 (November 30, 2004).

period of discovery, on or before the date set in Exhibit A, 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.

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 participants' Written Direct Statement.

### **Prehearing Conference**

If an evidentiary hearing is necessary, approximately **thirty days prior to the scheduled start date of the evidentiary hearing**, the Judges will facilitate a prehearing conference, or teleconference, to discuss, *inter alia*, issues remaining for evidentiary hearing, order of presentation, exhibit numbering and presentation, scheduling concerns, disabilities to accommodate, or any other matter that might affect efficient conduct of the hearing. At the preliminary conference, the Judges shall instruct the participants regarding presentation and formatting of electronic documents. Participants in the prehearing conference shall have knowledge of the issues and of the availability of all counsel and witnesses.

### **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.

Not less than **ten days prior to the start date of the hearing**, each participant shall file in eCRB 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.<sup>7</sup>

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

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

<sup>7</sup> The title or description of an exhibit shall not itself be "restricted" under the protective order.

objections, if any, to proposed exhibits, stating the basis of each objection.<sup>8</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 days prior to the start date of the hearing**, each participant shall file in eCRB all proposed exhibits for hearing listed on their respective exhibit lists numbered with the same numbers as on the exhibit list.

No later than **five calendar days prior to the start date of the hearing**, the participants shall deliver to the Judges and to (or as directed by) all other participants copies of all proposed exhibits for hearing listed on the final exhibit list tabbed in the same order and with the same number as on the exhibit list. The spines of hard copy exhibit binders shall be labeled in a consistent format and shall include the name of the participant that prepared it, the range of exhibit numbers in it, the volume number, the case caption, and the docket number. In the case of exhibits originally listed by more than one participant, only the participant with the lowest denomination exhibit numbers shall include the exhibit in its binder(s).

### **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.

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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David P. Shaw  
Chief Copyright Royalty Judge

Dated: February 12, 2024

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<sup>8</sup> In the absence of specific circumstances presented by motion of a participant, and in the absence of a need identified by the Judges to confer and/or, in their discretion, seek briefing and issue a written order, the Judges shall rule on evidentiary objections as and when the participants present and offer each exhibit during the hearing. Accordingly, the Judges reserve the right to admit evidence, including testimony, on a provisional basis, subject to a subsequent order admitting or excluding such evidence.

## EXHIBIT A

### NSS V Proceeding Schedule

<b>CASE EVENT</b>	<b>DATE</b>
Commencement of Voluntary Negotiation Period	February 12, 2024
End of Voluntary Negotiation Period	May 12, 2024
Parties' Notice Regarding Settlement	May 13, 2024
<b>IF PARTIES DO NOT SETTLE:</b>	
Order for Further Proceedings	On or about May 17, 2024
Begin Preliminary Disclosure and Discovery	May 17, 2024
End Preliminary Disclosure and Discovery	July 19, 2024
Non-Settling Parties File Written Direct Statements Commencement of Direct Case Discovery Period	September 2, 2024
End of Direct Case Discovery Period	November 1, 2024
Deadline to file Amended Written Direct Statements	November 15, 2024 <sup>1</sup>
Deadline for Written Rebuttal Statements	December 16, 2024
Commencement of Rebuttal Case Discovery Period	December 18, 2024
Settlement Conference Period	December 27, 2024 - January 17, 2025 <sup>9</sup>
Deadline for Joint Settlement Conference Report	January 18, 2025
End of Rebuttal Case Discovery Period	February 17, 2025
Hearing	TBD
Post-hearing Briefs (including joint outline of issues)	TBD
Proposed Findings and Conclusions	TBD
Responsive Findings and Conclusions	TBD
Closing Arguments	TBD
Determination	not later than December 16, 2025

<sup>9</sup> The Judges set this 21-day settlement conference period pursuant to the time requirement of 17 U.S.C. 803(b)(6)(C)(x). The Judges have found, *sua sponte*, good cause to waive the more particular time requirement of 37 CFR 351.7, to provide efficient and just administrative proceedings, as authorized under 37 CFR 303.8.

**EXHIBIT B**

**NSS V Participant List**

	<b>Party</b>	<b>Contact</b>	<b>Firm</b>	<b>Address</b>	<b>Phone</b>
I	Sirius XM Radio Inc.	Todd Larson	Weil, Gotshal & Manges LLP	767 Fifth Avenue New York, NY 10153 todd.larson@weil.com	212-310-8238
I	SoundExchange, Inc.	Steven R. Englund	Jenner & Block, LLP	1099 New York Ave NW, Suite 900 Washington, DC 20001 senglund@jenner.com	202-639-6006
		Bradley Prendergast	SoundExchange, Inc.	733 10th Street NW, 10 <sup>th</sup> Floor Washington, DC 20001 bprendergast@soundexchange.com	202-559-0550
I	Stingray Music USA Inc.	Gary R Greenstein	Wilson Sonsini Goodrich & Rosati	1700 K Street, N.W., 5 <sup>th</sup> Floor Washington, DC 20006 ggreenstein@wsgr.com	202-973-8849
		Jeremy P Auster	Wilson Sonsini Goodrich & Rosati	1301 6th Ave #40 New York, NY 10019 jauster@wsgr.com	212-453-2862

I = Individual PTP