

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

<p>In the Matter of:</p> <p>Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate those Performances (<i>Web VI</i>)</p>	<p>Docket No. 23-CRB-0012-WR (2026-2030)</p>
<p>In the Matter of:</p> <p>Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate those Performances (<i>Web V</i>)</p>	<p>Docket No. 19-CRB-0005-WR (2021-2025)</p>

**STIPULATION REGARDING ACCESS AND TO USE OF THE RESTRICTED
WEB V FINAL DETERMINATION, EXPERT MATERIALS, AND PROCEEDING
TRANSCRIPTS**

On April 18, 2024, SoundExchange, Inc. (“SoundExchange”) filed a motion (the “Motion”) requesting that the Judges allow its outside counsel (“Milbank”) and expert witnesses (and expert witness support staff) retained to assist SoundExchange in *Web VI* (“SoundExchange Experts”) full access to and use of the restricted versions of the following materials from the *Web V* record: (1) the Final Determination, (2) the written testimony of all parties’ economic experts, and (3) the appendices and exhibits (including underlying work papers) to the written testimony of those experts, and (4) transcripts of the proceedings in *Web V* (together, the “Web V Materials”),¹

¹ Specifically, the requested documents from *Web V*, Docket No. 19-CRB-0005-WR (2021-2025), include expert testimony and associated exhibits (including underlying work papers) contained in the Written Direct Statement of SoundExchange, *et al.* (Sept. 23, 24 2019) (Jonathan Orszag, Catherine Tucker, Robert Willig, Gal Zauberman); Written Direct Statement of the National Association of Broadcasters (“NAB”), (Sept. 23, 2019) (John R. Hauser, Gregory K. Leonard); Google LLC’s Amended Written Direct Statement of Dr. Steven R. Peterson (Dec. 11, 2019); Corrected Sirius XM Radio Inc. (“Sirius XM”) and Pandora Media, LLC (“Pandora”) Written Direct Statement (Dec. 11, 2019) (Dominique M. Hanssens, Carl Shapiro, Joel Waldfogel); Corrected Written Direct Statement of the

on an outside-counsel-only basis, as provided in the *Web V* Protective Order.

In preparing the Motion, SoundExchange conferred with the non-settling licensees that participated in the *Web V* proceeding: Google LLC (“Google”), the NAB, the National Religious Broadcasters Music License Committee (“NRBMLC”), and Sirius XM (collectively the “Services” and together with SoundExchange, the “Stipulating Parties”). The Services have a similar interest in obtaining access to the *Web V* Materials for their counsel and experts retained for *Web VI*. SoundExchange proposed to the Services that individuals who are involved on behalf of digital music services in negotiating license agreements with sound recording companies (a “Negotiating Individual”) be screened from reviewing restricted information concerning record company bargaining objectives, bargaining strategy, perceptions of bargaining power, or other similar information contained in the *Web V* Materials. The Services did not agree to the inclusion of such a screening provision.

The Stipulating Parties did, however, reach agreement that counsel, expert witnesses, and expert witness support staff retained by SoundExchange or the Services to assist in *Web VI* who (1) are not participating in normal-course license negotiations (as opposed to negotiations to settle pending or threatened litigation) with sound recording companies and reasonably do not expect to directly participate in such negotiations during the course of the this proceeding (“Non-Negotiating Individuals”) ²; or (2) already had access to the *Web V* materials by virtue of their participation in

National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”), Including Educational Media Foundation (Jan. 6, 2020) (Joseph J. Cordes, Richard Steinberg); Written Rebuttal Statement of Pandora and Sirius XM (Jan. 10, 2020) (Carl Shapiro); Written Rebuttal Statement of Google LLC (Jan. 14, 2020) (Steven R. Peterson); Corrected Written Rebuttal Statement of the NAB (Jan. 28, 2020) (John R. Hauser, Gregory K. Leonard); Corrected Written Rebuttal Statement of the NRBNMLC, Including Educational Media Foundation (Jan. 31, 2020) (Richard Steinberg); and Written Rebuttal Statement of SoundExchange, et al. (Aug. 4, 2020) (George S. Ford, Jonathan Orszag, Itamar Simonson, Catherine Tucker, Robert Willig, Gal Zauberman), as well as the Final Determination (Sept. 20, 2021) (“Web V Final Determination”).

² The lead counsel for Google in *Web VI*, Mr. Gary Greenstein, is a Negotiating Individual, as he was in the *Phono IV* proceeding where he received redacted versions of materials produced in *Web V*.

that proceeding, or the *Phono IV* proceeding, and are bound by the *Web V* protective order (“Web V Counsel and Experts”) may be given immediate access to the *Web V* materials for use in connection with *Web VI*.³ The Stipulating Parties also agreed that their entry into this stipulation is without prejudice to their right to contest the Motion and shall not be cited by any other Stipulating Parties in the Motion or related briefing.

Accordingly, the Stipulating Parties respectfully request that the Judges enter the proposed order submitted herewith, allowing Non-Negotiating Individuals and Web V Counsel and Experts immediate access to *Web V* materials to prepare for *Web VI*.

Dated: April 18, 2024

Respectfully submitted,

/s/ Scott A. Edelman

Scott A. Edelman (N.Y. Bar No. 2250942)

Atara Miller (N.Y. Bar No. 4126314)

Andrew L. Porter (N.Y. Bar No. 5252176)

MILBANK LLP

55 Hudson Yards

New York, New York 10001

(212) 530-5000

sedelman@milbank.com

amiller@milbank.com

aporter@milbank.com

Counsel for SoundExchange, Inc. in Web VI

³ To the extent any outside counsel or expert is bound by the *Web V* Protective Order and already has access to the *Web V* Materials by virtue of their participation in that proceeding, nothing in this stipulation is intended to limit such access.

/s/ Todd Larson

Todd Larson
Benjamin E. Marks
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
todd.larson@weil.com

Benjamin.marks@weil.com

*Counsel for Sirius XM Radio Inc./Pandora
Media, LLC in Web VI*

/s/ Joseph R. Wetzel

Joseph R. Wetzel
Sarang V. Damle
Allison L. Stillman
Britt N. Lovejoy
LATHAM & WATKINS LLP
505 Montgomery St #2000
San Francisco, CA 94111
(415) 391-0600
joe.wetzel@lw.com
sy.damle@lw.com
alli.stillman@lw.com
britt.lovejoy@lw.com

*Counsel for The National Association of
Broadcasters in Web VI*

/s/ Karyn K. Ablin

Karyn K. Ablin
FLETCHER, HEALD & HILDRETH
1300 North 17th St, 11th Floor
Arlington, VA 22209
(703) 812-0400
ablin@fhhlaw.com

*Counsel for National Religious Broadcasters
Music License Committee in Web VI*

/s/ Gary R. Greenstein

Gary R. Greenstein

Victor Jih

Jeremy P. Auster

Lisa Zang

WILSON SONSINI GOODRICH & ROSATI

1700 K St. NW, Washington, DC 20006

(202) 973-8800

ggreenstein@wsgr.com

vjih@wsgr.com

jauster@wsgr.com

lzang@wsgr.com

Counsel for Google LLC in Web VI

Proof of Delivery

I hereby certify that on Thursday, April 18, 2024, I provided a true and correct copy of the Stipulation Regarding Access and to Use of the Restricted WEB V Final Determination, Expert Materials, and Proceeding Transcripts to the following:

George Johnson dba Geo Music, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Google LLC, represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

Educational Media Foundation, represented by Keenan P Adamchak, served via E-Service at kadamchak@wbklaw.com

National Religious Broadcasters Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

Sirius XM Radio Inc./Pandora Media, LLC, represented by Todd Larson, served via E-Service at todd.larson@weil.com

TuneSat, LLC, represented by Jessie Kuhn, served via E-Service at jkuhn@kuhnlawgroup.com

Stingray Music USA Inc., represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

The National Association of Broadcasters, represented by Joseph R. Wetzel, served via E-Service at joe.wetzel@lw.com

AccuRadio LLC, represented by Keenan P Adamchak, served via E-Service at kadamchak@wbklaw.com

College Broadcasters, Inc., represented by Seth D. Greenstein, served via E-Service at sgreenstein@constantinecannon.com

Word Collections, Inc., represented by Eric B Goldberg, served via E-Service at
eric@wordcollections.com

Signed: /s/ Scott Edelman