

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

**In the Matter of:  
Determination of Rates and Terms for  
Digital Performance of Sound Recordings  
and Making of Ephemeral Copies to  
Facilitate those Performances (*Web VT*)**

**Docket No. 23-CRB-0012-WR  
(2026-2030)**

**SOUNDEXCHANGE JOINT PETITIONERS’  
UNOPPOSED MOTION TO ACCEPT LATE-FILED  
WRITTEN DIRECT STATEMENT**

SoundExchange, Inc.; the American Association of Independent Music; the American Federation of Musicians of the United States and Canada; Screen Actors Guild-American Federation of Television and Radio Artists; Secretly Group; Sony Music Entertainment; UMG Recordings, Inc.; and Warner Music Group Corp. (collectively, the “SoundExchange Joint Petitioners”), by and through their undersigned counsel, respectfully submit this unopposed motion to accept their late-filed Written Direct Statement (“WDS”) in the above captioned proceeding.

Pursuant to the Judges’ July 23, 2024 Order Modifying the Case Schedule, the SoundExchange Joint Petitioners’ WDS was due on September 13, 2024. As a result of technical error, it was not submitted through eCRB until shortly after midnight. The SoundExchange Joint Petitioners respectfully ask the Judges to accept their WDS as timely filed. The SoundExchange Joint Petitioners have contacted all of the other participants in this proceeding, and each has consented to the relief sought by the SoundExchange Joint Petitioners.

## **BACKGROUND AND REQUEST FOR RELIEF**

While finalizing the proposed redactions to the Written Direct Testimony of Jonathan Orszag (included in Vol. II of the WDS filing), counsel to the SoundExchange Joint Petitioners experienced a technical error with their Microsoft Word software prior to the midnight filing deadline, resolution of which delayed the filing of the WDS until shortly after midnight. No modifications were made to the text or footnotes of the SoundExchange Joint Petitioners' WDS after the midnight deadline.<sup>1</sup> At 12:15 a.m. on September 14, 2024, counsel to the SoundExchange Joint Petitioners alerted counsel for the NAB and Sirius XM Pandora to the issue and provided them with a copy of Volume I of their WDS and a copy of Mr. Orszag's testimony. Volume I of the SoundExchange Joint Petitioners' WDS was submitted to eCRB at approximately the same time, followed by Volumes III (Exhibits) and IV (Declaration and Certification Regarding Restricted Materials). Volume II (Witness Testimony) was filed as soon as the proposed redactions to Mr. Orszag's testimony were applied and compiled with the balance of Volume II. At 1:29 a.m. on September 14, 2024, counsel for the SoundExchange Joint Petitioners sent an email to counsel for all participants, alerting them of the issue, informing them that the SoundExchange Joint Petitioners intended to bring this request, and requesting their consent to the relief sought. All of the participants to this proceeding subsequently consented.

The SoundExchange Joint Petitioners respectfully ask the Judges to accept their WDS as timely filed, which they have discretion to do under 17 U.S.C. § 801(c) (empowering the Judges

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<sup>1</sup> The only modifications to the WDS made after midnight were made to the file containing Mr. Orszag's testimony, and consisted of the application of proposed redactions (which were impacted by the technical error), and formatting adjustments to finalize the file and compile it with the remainder of the witness testimony submitted by the SoundExchange Joint Petitioners.

to “make any necessary procedural or evidentiary rulings in any proceeding under this chapter”). Substantial good cause exists to accept the late-filed WDS for the following reasons:

*First*, the SoundExchange Joint Petitioners conferred with the other participants prior to filing this motion, as required by 37 C.F.R. § 303.7(b), and the other participants consented to the relief requested herein.

*Second*, granting the relief requested herein will not prejudice the other participants. All participants were promptly notified of the issue, no revisions to the SoundExchange Joint Petitioners’ WDS were made after the deadline, and since the WDS testimony submitted by all participants will not be distributed by eCRB until Monday September 16, 2024, there will be no delay in participants obtaining access to the SoundExchange Joint Petitioners’ WDS.<sup>2</sup>

On the other hand, the prejudice to the SoundExchange Joint Petitioners if their WDS is not accepted would be extreme. Indeed, the CRB has previously granted motions to accept late filings that, like this motion, were unopposed. *See* Docket No. 2006-1 CRB DSTRA, *Order Accepting Royalty Logic Inc.’s Late-Filed Written Direct Statement* (Feb. 1, 2007) (accepting late-filed WDS where request was unopposed and the participants would not be prejudiced); Docket No. 2005-1-CRB-DTRA, *Order Granting Collegiate Broadcasters’ Motion to Accept Late Filing* (Jan. 20, 2006) (granting unopposed motion to accept filings that the CRB received “only two days late” by mail); Docket No. 2000-9-CARP-DTRA 1&2, *Order* (June 11, 2001) (granting Recording Industry Association of America’s unopposed request to submit late-filed brief); Docket No. 14-CRB-0001-WR, *Order Granting Motion to Accept and Refer GEO’s Late-Filed Brief* (Nov. 9, 2015) (accepting late-filed brief where request was unopposed); Docket No. 19-CRB-0005-WR,

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<sup>2</sup> The SoundExchange Joint Petitioners and certain other participants mutually agreed to exchange as-filed copies of their complete WDS on September 14, 2024, and did so.

*Order Granting Unopposed Motion to Accept Late-Filed Proposed Findings of Facts and Conclusions of Law* (Oct. 9, 2020) (accepting late-filed submission where request was unopposed and the participants would not be prejudiced).

*Third*, as the Judges have previously held, it is in their and the participants' interest to have a full, correct, and complete record. *See, e.g.*, Docket No. 14-CRB-0001-WR (2016-2020) (*Web IV*), *Order Denying Licensee Services' Motion to Strike SoundExchange's "Corrected" Written Rebuttal Testimony of Daniel Rubinfeld and Section III.E of the Written Rebuttal Testimony of Daniel Rubinfeld, and Granting Other Relief* at 9 (Apr. 2, 2015) (invoking discretion under section 801(c) to make procedural ruling and concluding that "the interests of justice are served by examination of a more complete, informed expert record"); *see also* Docket No. 19-CRB-0005-WR (2021-2025) (*Web V*), *Order Granting Sirius XM Radio Inc.'s and Pandora Media, LLC's Unopposed Motion to Submit the Corrected Written Direct Testimonies of David Reiley and Carl Shapiro* (Dec. 5, 2019).

### **CONCLUSION**

For the foregoing reasons, the SoundExchange Joint Petitioners respectfully request that the Judges grant their Unopposed Motion to Accept Late-Filed Written Direct Statement.

Dated: September 16, 2024  
New York, NY

Respectfully submitted,

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*Counsel to the SoundExchange Joint  
Petitioners*

# Proof of Delivery

I hereby certify that on Monday, September 16, 2024, I provided a true and correct copy of the Motion to Accept Late-Filed WDS to the following:

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

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

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

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

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

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

SoundExchange, Inc., represented by Steven R. Englund, served via E-Service at SEnglund@jenner.com

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

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

Signed: /s/ Andrew Porter