

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)**

**WRITTEN DIRECT STATEMENT  
OF THE SOUNDEXCHANGE JOINT PETITIONERS**

**Volume IV: Declaration and Certification Regarding Restricted Materials**

**September 13, 2024**

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
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(2026-2030)**

**DECLARATION OF ANDREW L. PORTER REGARDING RESTRICTED  
INFORMATION IN THE WRITTEN DIRECT STATEMENT OF  
THE SOUNDEXCHANGE JOINT PETITIONERS**

1. I am counsel for SoundExchange, Inc. (“SoundExchange”); the American Association of Independent Music (“A2IM”); the American Federation of Musicians of the United States and Canada (“AFM”); Jagjaguwar Inc.; Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”); Sony Music Entertainment (“SME”); UMG Recordings, Inc. (“UMG”); and Warner Music Group Corp. (“WMG”) (collectively, the “SoundExchange Joint Petitioners”), in the above-captioned matter. I respectfully submit this Declaration regarding the SoundExchange Joint Petitioners’ written direct statement, witness statements, designated testimony, and exhibits to comply with the Protective Order, dated September 6, 2024, in this matter. The Protective Order directs the parties to redact Restricted materials and submit a declaration signed under penalty of perjury listing a description of all materials marked with the “Restricted” stamp and the basis for the designation. I am authorized by the SoundExchange Joint Petitioners to submit this declaration on its behalf.

2. I have reviewed the SoundExchange Joint Petitioners’ written direct statement, witness statements, designated testimony, and exhibits, all of which are being submitted in this proceeding on September 13, 2024. I also have reviewed the definitions and terms provided in the

Protective Order. After consultation with my clients, I have determined that portions of the SoundExchange Joint Petitioners' written direct statement and accompanying exhibits contain information that is "Protected Material" as defined by the Protective Order and that should be treated as "confidential information" under 17 U.S.C § 803(c)(5). The Protective Material is shaded in the printed copies of the restricted version of the SoundExchange Joint Petitioners' filed materials, and is further described below.

3. The Protected Material that the SoundExchange Joint Petitioners are submitting includes, among other things, confidential testimony and exhibits related to or constituting (a) contracts or contract terms that are proprietary, not available to the public, commercially sensitive, and/or subject to express confidentiality obligations in agreements with third parties; (b) internal commercial information, financial data and projections, and commercial strategy that are proprietary, not available to the public, and commercially sensitive; and (c) information produced by SiriusXM and NAB in this proceeding and marked as restricted by them.

4. The public disclosure of the Protected Material that the SoundExchange Joint Petitioners are submitting would be likely to cause significant harm. The disclosure would either result in a competitive disadvantage to the SoundExchange Joint Petitioners, provide a competitive advantage to another Participant or entity, or interfere with the ability of the SoundExchange Joint Petitioners to obtain like information from other Participants or entities in the future. Accordingly, public disclosure of this information would place the SoundExchange Joint Petitioners, as well as various business partners and entities whose interests are represented by the SoundExchange Joint Petitioners, at a significant commercial disadvantage, and pose serious risk to their business interests and strategies.

5. As summarized below, the following witnesses' written direct statements and/or exhibits contain Protected Material.

(i) Mr. Jonathon Orszag's testimony contains a variety of confidential and commercially sensitive information from music service providers and record companies. Public disclosure of this information would put music service providers and record companies at a competitive disadvantage in the marketplace, and it would harm their ability to negotiate future agreements. His testimony and exhibits include the rates and terms of digital licensing agreements, which are held in strict confidence by the parties to those agreements and which are the subject of confidentiality provisions. His testimony also contains competitively sensitive information reported by digital music services to record companies regarding the revenues, performances, royalties, and other usage data related to the physical and digital distribution of music, the disclosure of which would put those parties at a disadvantage relative to their competitors and business partners in the marketplace. Additionally, Mr. Orszag's report includes information regarding record companies' business development strategy and consumers' music listening and consumption habits; this information is maintained as confidential in the ordinary course of business, and its public disclosure would put the record labels at a disadvantage relative to their competitors. Finally, his report also contains information drawn from documents produced by the opposing participants in this proceeding and designated as restricted by them.

(ii) Jonathan Dworkin's testimony and exhibits contain competitively sensitive information that is not publicly known regarding UMG's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of UMG's partners. Disclosure of this information would place UMG at an unfair disadvantage in the marketplace and in future

negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

(iii) Darren Stupak's testimony and exhibits contain competitively sensitive information that is not publicly known regarding SME's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of SME's partners. Disclosure of this information would place SME at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

(iv) Jacob Fowler's testimony and exhibits contain competitively sensitive information that is not publicly known regarding SME's business strategy, negotiating strategy, market performance, internal analytics, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of SME's partners. Disclosure of this information would place SME at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

(v) Matthew Fagin's testimony and exhibits contain competitively sensitive information that is not publicly known regarding WMG's revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of WMG's partners. Disclosure of

this information would place WMG at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

(vi) Kathleen Strouse's testimony and exhibits contain competitively sensitive information that is not publicly known regarding SoundExchange's revenues, business strategy, and confidential data of third parties.

(vii) Katie Beiter's testimony and exhibits contain competitively sensitive information that is not publicly known pertaining to audits of licensees and confidential data with third parties.

(viii) Darius Van Arman's testimony and exhibits contain competitively sensitive information that is not publicly known regarding Secretly Group's ("Secretly") revenues, business strategy, negotiating strategy, market performance, and confidential agreements with third parties. His testimony also includes confidential data regarding the performance and sales of Secretly's partners. Disclosure of this information would place Secretly at an unfair disadvantage in the marketplace and in future negotiations with existing or potential business partners. In addition, some of the restricted information in his testimony is subject to confidentiality provisions in agreements with third parties.

6. I therefore declare that to the best of my knowledge, information, and belief, the foregoing information meets the definition of "Protected Material" as set forth in the Protective Order. This information must be treated as restricted as set forth in the Protective Order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling the SoundExchange Joint Petitioners to provide the Copyright Royalty

Judges with the most complete record possible on which to base their determination in this proceeding.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 13, 2024  
New York, NY

Respectfully submitted,

By: /s/ Andrew L. Porter

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*Counsel to the SoundExchange Joint  
Petitioners*

# Proof of Delivery

I hereby certify that on Tuesday, September 17, 2024, I provided a true and correct copy of the Written Direct Statement Volume 4: Declaration re Protected Material 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