

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’
RENEWED 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 renewed motion to accept their late-filed Written Direct Statement (“WDS”) in the above captioned proceeding. The requested relief is unopposed.

Pursuant to the Judges’ July 23, 2024 Order Modifying the Case Schedule, the SoundExchange Joint Petitioners’ WDS was due on September 13, 2024. As detailed in the supporting declarations of Andrew Porter, Esq. (“Porter Declaration” or “Porter Decl.”) and Alexander Cogut, Esq. (“Cogut Declaration” or “Cogut Decl.”, and, with the Porter Declaration, the “Declarations”), as a result of technical errors caused by the SoundExchange Joint Petitioners’ Microsoft SharePoint software, the WDS was not submitted through eCRB until after midnight.

The SoundExchange Joint Petitioners filed their initial Motion to Accept Late-Filed Written Direct Statement on September 16, 2024. On September 20, 2024, the Judges denied that

motion without prejudice, and directed the SoundExchange Joint Petitioners to re-file their motion with supporting declarations addressing four categories of information: “(1) a full and detailed description of the technical problems which caused the delay in the submission, (2) a full explanation and detailing of any and all modifications made to each of SoundExchange Joint Petitioners’ submissions, for which relief is sought, after receipt by them (via any method) of other parties’ filings, (3) a full and detailed explanation for the gap in submission time for Volume II, and (4) a full and detailed explanation as to why SoundExchange Joint Petitioners’ eCRB submissions were not made in sequential volume order.” The requested information is detailed in the accompanying Declarations.

As explained therein, at approximately 10:30 p.m., and then again at approximately 11:00 p.m., while finalizing the proposed redactions to the Written Direct Testimony of Jonathan Orszag (included in Vol. II of the WDS filing), the Microsoft SharePoint document of Mr. Orszag’s testimony being used by counsel to the SoundExchange Joint Petitioners crashed. Confirming that the necessary redactions were included in the master document and applying redactions that were lost as a result of the document crashing delayed the filing of the WDS. *See* Porter Decl. ¶¶ 8-16; Cogut Decl. ¶¶ 5-7.

Volume I of the SoundExchange Joint Petitioners’ WDS was submitted to eCRB at approximately 12:15 a.m. on September 14, 2024, followed by Volumes III (Exhibits) and IV (Declaration and Certification Regarding Restricted Materials). The volumes were filed out of sequential order to ensure that the volumes that were ready to be filed prior to the 11:59 p.m. deadline were filed in as timely a fashion as possible. Porter Decl. ¶ 31. 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 (ahead of the pre-arranged exchange time). *See* Porter Decl. Ex. A.

No modifications were made to the text or footnotes of the SoundExchange Joint Petitioners' WDS after the submission deadline. Porter Decl. ¶ 19. The only modifications to the WDS made after midnight were applying proposed redactions to Mr. Orszag's testimony (to apply the information that was lost as a result of the technical issues with the SharePoint document), making final formatting adjustments, and compiling Mr. Orszag's testimony with the remainder of the witness testimony submitted in Volume II of the SoundExchange Joint Petitioners' WDS. *Id.* ¶¶ 17, 19, 27-28.

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 to the issue, informing them that the SoundExchange Joint Petitioners intended to bring this request, and requesting their consent to the relief sought. *See* Porter Decl. Ex. B. All of the participants to this proceeding consented to the requested relief.

The SoundExchange Joint Petitioners viewed the technical issues with Mr. Orszag's testimony as a matter of great concern because it related to the protection of Restricted information, and the technical issues raised the possibility that some restricted information was not marked for redaction in the file. Porter Decl. ¶ 13. Accordingly, the SoundExchange Joint Petitioners undertook a thorough review of the marked redactions prior to finalizing it and compiling it with the balance of Volume II. *Id.* ¶¶ 27-29. Volume II was filed at approximately 4:00 a.m., after it was confirmed that all necessary proposed redactions were reflected in Mr. Orszag's testimony and the full set of witness testimony was compiled. *Id.* ¶¶ 28-29.

On the afternoon of Saturday, September 14, 2024, the participants mutually exchanged copies of their respective WDS, as previously agreed. As such, in finalizing their WDS, the SoundExchange Joint Petitioners did not have access to the WDS of any participant obligated to pay royalties.¹

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 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),² 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 in notifying the other participants of the issue, the SoundExchange Joint Petitioners offered to provide a copy of the WDS to all participants entitled to receive Restricted information, which the SoundExchange Joint Petitioners did. *See* Porter Decl. ¶¶ 15-19, 23-26; Exs. A, B, C, D, and E. Additionally, the entirety of the WDS was finalized and submitted to eCRB prior to the SoundExchange Joint Petitioners receiving a copy of

¹ George Johnson (“GEO”) and Word Collections, like SoundExchange, are participants entitled to receive royalties in this proceeding, and GEO sent its Written Direct Statement to counsel for the SoundExchange Joint Petitioners at 11:34 p.m. on September 13, 2024 in an effort to promote cooperation between all participants representing sound recording rights holders. Porter Decl. ¶ 25. Given the late hour and the focus on redacting Mr. Orszag’s testimony, the SoundExchange Joint Petitioners did not view this file until after its WDS was submitted to eCRB. *Id.* No edits to the SoundExchange Joint Petitioners’ WDS were made because of this file. *Id.* ¶ 26.

² Since the technical error was caused by the SoundExchange Joint Petitioners’ software, and not the eCRB filing system, this Renewed Motion is not brought under 37 CFR § 303.5(m).

the filings of any participant obligated to pay royalties. Porter Decl. ¶¶ 20-21. Finally, the SoundExchange Joint Petitioners conducted agreed-upon mutual exchanges of all Volumes of its Written Direct Testimony with participants entitled to receive Restricted information on September 14, 2024. *Id.* ¶¶ 21-24.

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 DSTR, *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, *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 Renewed Unopposed Motion to Accept Late-Filed Written Direct Statement.

Dated: September 23, 2024
New York, NY

Respectfully submitted,

By: /s/ Andrew L. Porter

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Proof of Delivery

I hereby certify that on Monday, September 23, 2024, I provided a true and correct copy of the SoundExchange Joint Petitioners' Renewed Unopposed Motion to Accept Late-Filed Written Direct Statement 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