

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 VI*)

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

**DECLARATION OF ANDREW L. PORTER, ESQ. IN SUPPORT OF
SOUNDEXCHANGE JOINT PETITIONERS'
RENEWED UNOPPOSED MOTION TO ACCEPT
LATE-FILED WRITTEN DIRECT STATEMENT**

Andrew L. Porter, Esq. hereby declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am counsel for 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”) in the above-captioned matter. I respectfully submit this Declaration in support of the SoundExchange Joint Petitioners’ Renewed Unopposed Motion to Accept Late-Filed Written Direct Statement (the “Motion”) in the above captioned proceeding, and in response to the inquiries of the Copyright Royalty Judges included in their September 20, 2024 Order 12 Denying, Without Prejudice, SoundExchange Joint Petitioners’ Unopposed Motion to Accept Late-Filed Written Direct Statement (the “Order”).

2. The Order requested that the following four categories of information be provided: “(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.” Order at 2. I address each in turn below.

I. Disclose . . . a full and detailed description of the technical problems which caused the delay in the submission.

3. I was responsible for overseeing the filings of the SoundExchange Joint Petitioners’ Written Direct Statement (“WDS”) on the evening of September 13, 2024. A team of five attorneys (including myself) and three paralegals worked on finalizing the WDS for filing to the eCRB system.

4. One of the most significant undertakings was preparing the Expert Witness Statement of Jonathan Orszag for filing. Mr. Orszag, the SoundExchange Joint Petitioners’ retained economic expert, submitted 149 pages of testimony (with an additional 25 pages of appendices) that referenced the written direct testimony of multiple fact witnesses testifying on behalf of the SoundExchange Joint Petitioners and included dozens of exhibits. The vast majority of the testimony and exhibits referenced contained commercially sensitive information marked Restricted or being designated as Restricted under the Protective Order. Mr. Orszag’s testimony made heavy use of, and reference to, Restricted material.

5. Finalizing Mr. Orszag’s testimony required, (1) cross-checking references to other witness testimony, (2) updating all exhibit cites to match the final exhibit list that would be

submitted with the WDS, and (3) highlighting the portions of Mr. Orszag's testimony the SoundExchange Joint Petitioners intended to designate as Restricted. The final step required cross-referencing Mr. Orszag's witness statement with the other witness testimony and exhibits to identify what statements referenced information designated as Restricted by SoundExchange or the record labels.

6. The highlighting of Restricted testimony is required to allow all parties and the Court to comply with the Protective Order, as it signals to the participants and the Judges what information can, and what information cannot, be disclosed publicly in future filings.

7. At approximately 8:30 p.m. an associate under my supervision began applying the Restricted highlights to Mr. Orszag's testimony. The team was using Microsoft SharePoint. This allowed paralegals working on the team to simultaneously review and check cross-references to other witness testimony and exhibits.

8. As detailed in the accompanying Declaration of Alexander Cogut, Esq., at approximately 10:30 p.m., the "share drive" file crashed. As a result of this crash, a number of redaction highlights were lost. Correcting this required (1) identifying precisely which highlights were lost (so as to not inadvertently lead to the disclosure of Restricted information), and (2) replacing the lost highlights.

9. As detailed in the accompanying Declaration of Alexander Cogut, Esq., at approximately 11:00 p.m., the "share drive" file crashed again, creating a repeat of the issues that occurred at 10:30 p.m.

10. Both the 10:30 p.m. and 11:00 p.m. crashes substantially delayed the filing of the Orszag testimony.

11. At approximately 11:30 p.m. I and additional members of the team signed into the “share drive” file to assist in finalizing the redaction highlighting.

12. At approximately 11:50 p.m. I observed that the file I was working in had disconnected from the network and, as a result, I could not see the changes made by others, and I did not believe any changes I had made were included in the “share drive” version of the file.

13. This made it impossible to confirm that the redaction highlights were fully applied to Mr. Orszag’s testimony and raised the possibility that some highlights were missing from the shared file. I was concerned that this might lead to the inadvertent disclosure of Restricted information.

14. At approximately 11:55 p.m., concerned that the redaction highlighting in the Orszag testimony was incomplete or marred by a technical error, and aware it would be impossible to resolve the issue prior to midnight, I instructed the team to stop all edits in the Orszag file, and requested that a PDF version of Mr. Orszag’s testimony be generated at that time. I received a copy of the PDF from Mr. Cogut approximately 15 minutes later.

15. At 12:15 a.m. on September 14, 2024, I sent that PDF copy of Mr. Orszag’s testimony to counsel for the National Association of Broadcasters and Sirius XM/Pandora via email. In that email, I explained the issue that occurred. A true and correct copy of that email is attached hereto as Exhibit A. As reflected in the email chain, the parties had previously discussed a mutual exchange of written direct statements, and this transmission was made voluntarily, ahead of any mutual exchange.

16. At approximately the same time, I directed that Vols. I, III, and IV of the WDS be filed. I further directed that Vol. II, which contains all of the witness testimony in the WDS, be

held until the redaction highlights for Mr. Orszag's testimony were final, and Mr. Orszag's testimony was incorporated with the balance of Vol. II.

17. In light of my concerns about the integrity of the file containing the redaction highlighting, I then directed the team to do a full review of the redaction highlighting applied to Mr. Orszag's testimony, and add any necessary highlighting missing from the then-current draft. I further directed the team that it was to make no edits to the Orszag file other than to add in redaction highlighting.

18. At 1:29 a.m. on September 14, 2024, I 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. I also offered to exchange a copy of the WDS with any party entitled to receive Restricted information. A true and correct copy of that email is attached hereto as Exhibit B.

II. Disclose . . . 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.

19. The SoundExchange Joint Petitioners did not make any modifications to the content of the text or footnotes of any of the materials in Vol. II (or any other volume) of its WDS following the midnight deadline. The SoundExchange Joint Petitioners did not have copies of the music services' filings before the entirety of its WDS was filed with the CRB, and therefore did not make any modifications to the content of the text or footnotes (or apply redactions) of any of the materials in Vol. II (or any other volume) of their WDS following the receipt of other parties' filings.

20. The final version of Vol. II of the SoundExchange Joint Petitioners' WDS was submitted to eCRB at approximately 4:00 a.m. on Saturday, September 14, 2024.

21. The SoundExchange Joint Petitioners did not receive the filings of any participant participants obligated to pay royalties until after that submission.

22. The SoundExchange Joint Petitioners first received the filings of a participant obligated to pay royalties at approximately 1 p.m. on Saturday, September 14, 2024, when it received the filings of the National Association of Broadcasters and Sirius XM / Pandora. A true and correct copy of the email chain confirming the exchange is attached hereto as Exhibit C.

23. The SoundExchange Joint Petitioners received the filings of the National Religious Broadcaster Music Licensing Committee in the evening of September 14, 2024. A true and correct copy of the email chain confirming the exchange is attached hereto as Exhibit D.

24. The SoundExchange Joint Petitioners received the filings of the Corporation for Public Broadcasting / National Public Radio on Monday September 16, 2024 via eCRB, and provided counsel for the Corporation for Public Broadcasting / National Public Radio with a copy of the SoundExchange Joint Petitioners' WDS when counsel requested it on September 19, 2024. A true and correct copy of the email chain confirming that exchange is attached hereto as Exhibit E.

25. At 11:34 p.m. on September 13, 2024, George Johnson sent the SoundExchange Joint Petitioners a copy of the as-filed Written Direct Statement of George Johnson ("GEO") and Word Collections. GEO and Word Collections, like SoundExchange, are participants entitled to receive royalties in this proceeding, and GEO sent the Written Direct Statement. The SoundExchange Joint Petitioners did not open the Written Direct Statement of GEO or Word Collections until after its WDS was submitted to eCRB.

26. Although the full review of Mr. Orszag's testimony to confirm the accuracy of the redaction highlighting took place following receipt of the Written Direct Statement of GEO and

Word Collections, that review did not result in any changes to the content of the text (or footnotes) of the any materials included in Vol. II of the WDS.

III. Disclose . . . a full explanation and detailed explanation for the gap in submission time for Volume II.

27. As discussed above, shortly after 12:15 a.m., I directed the team to do a full review of the redaction highlighting applied to Mr. Orszag's testimony and add any necessary highlighting of Restricted information missing from the current draft.

28. That review was completed at approximately 2:30 a.m. In light of the complications experienced that evening, I then did a careful review of the file to confirm that all commercially sensitive information was appropriately marked. That review was completed at approximately 3:30 a.m.

29. I then directed that Mr. Orszag's marked testimony be converted to a PDF and incorporated into Vol. II. The volume was filed on eCRB at approximately 4:00 a.m.

IV. Disclose . . . a full and detailed explanation as to why SoundExchange Joint Petitioners' eCRB submissions were not made in sequential volume order.

30. The SoundExchange Joint Petitioners' eCRB submissions were not made in sequential volume order because of the issues described above in finalizing Vol. II of the WDS.

31. At my direction Vols. III and IV were filed prior to Vol. II. I made that instruction to ensure that the volumes that were completed prior to the 12:00 a.m. deadline were filed in as timely fashion as possible.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 23, 2024
New York, NY

By: /s/ Andrew L. Porter
Andrew L. Porter

Proof of Delivery

I hereby certify that on Monday, September 23, 2024, I provided a true and correct copy of the Declaration of Andrew Porter in Support of 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