

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)

DECLARATION OF ANDREW L. PORTER IN OPPOSITION TO LICENSEE PARTICIPANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF LICENSEE PARTICIPANTS' MOTION TO COMPEL SOUNDEXCHANGE TO PRODUCE ADDITIONAL NEGOTIATING DOCUMENTS, AND, IN THE ALTERNATIVE, IN SUPPORT OF SOUNDEXCHANGE'S CROSS-MOTION TO FILE SUPPLEMENTAL RESPONSE BRIEF AND IN SUPPLEMENTAL OPPOSITION TO LICENSEE PARTICIPANTS' MOTION TO COMPEL SOUNDEXCHANGE TO PRODUCE ADDITIONAL NEGOTIATING DOCUMENTS

1. I am counsel for the SoundExchange Joint Petitioners ("SoundExchange")¹ in the above-captioned proceeding. I am familiar with the facts, circumstances, and proceedings in this case and submit this declaration in opposition to the Licensee Participants'² Motion for Leave to File Supplemental Brief (Dkt. No. 44266 (the "Motion for Leave" or "Mot. for Leave")) in Support of Motion to Compel SoundExchange to Produce Additional Negotiating Documents (Dkt. No.

¹ Unless otherwise defined, capitalized terms have the same meaning given to them in the Licensee Participants' Motion to Compel the SoundExchange Joint Petitioners to Produce Additional Negotiation Documents or SoundExchange's Opposition to the Licensee Participants' Motion to Compel the SoundExchange Joint Petitioners to Produce Additional Negotiation Documents (the "Opposition" or "Opp'n").

² Though labeled the Licensee Participants' Motion to Compel the SoundExchange Joint Petitioners to Produce Additional Negotiating Documents, certain of the Licensee Participants have not joined the Motion, such as the National Religious Broadcasters Music License Committee or the Educational Media Foundation. Therefore, SoundExchange will refer to those Licensee Participants who have brought the Motion as "Movants."

Declaration of A. Porter in Support of SoundExchange's Opposition to Licensee Participants' Motion for Leave to File Supplemental Brief in Support of Motion to Compel SoundExchange to Produce Additional Negotiation Documents, and in the Alternative, in Support of SoundExchange's Cross-Motion to File Supplemental Response Brief

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43814 (the “Motion” or “Mot.”), and, in the alternative, in support of SoundExchange’s Cross-Motion to File Supplemental Response Brief and in Supplemental Opposition to the Motion.

2. On October 23, 2024, Sirius XM/Pandora sent a letter to SoundExchange (the “October 23 Letter”), in which it agreed to produce “[REDACTED]” responsive to SoundExchange’s RFP Nos. 42-44. A true and correct copy of the October 23 Letter is attached hereto as Ex. A.

3. On October 28, 2024, SoundExchange produced external Negotiation Documents, *i.e.*, those actually exchanged by the major record companies (the “Majors”) with Spotify and Apple Music. The production of external Negotiation Documents alone consisted of over 3,000 documents and nearly 16,000 pages.

4. Also on October 28, 2024, SoundExchange served its Responses and Objections to Licensee Participants’ Interrogatories (“Responses”). Among the answers provided in the Responses, SoundExchange stated that it does not possess any so-called “[REDACTED]” analyses, nor is it aware that any exist. A true and correct copy of the Responses is attached hereto as Ex. B.

5. On November 7, 2024, SoundExchange sent Movants an email, in which SoundExchange stated that it does not possess any documents responsive to the Licensee Participants’ First Set of Requests for Production of Documents Request No. 29, which requested: “All analyses, memoranda, presentations, studies, surveys, research findings, and other Documents concerning the short-term and long-term impacts on Spotify, Apple Music, and/or other on-demand Digital Services of [REDACTED]” A true and correct copy of SoundExchange’s November 7, 2024 email to Movants is attached hereto as Ex. C.

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6. On November 11, 2024, Movants served a deposition notice on SoundExchange for Jonathan Dworkin's deposition.

7. On November 19, 2024, SoundExchange produced internal Negotiation Documents, consisting of over 11,000 additional documents and over 114,000 additional pages. In total, SoundExchange's production of Negotiation Documents consisted of 14,000 documents comprising over 130,000 pages.

8. On November 22, 2024, Mr. Dworkin's deposition was scheduled for December 18, 2024. Between November 22 and December 4, 2024, SoundExchange and Movants corresponded via email regarding the logistics of Mr. Dworkin's deposition. During that time, Movants did not communicate any problems with SoundExchange's production. However, on December 4, 2024, Movants cancelled the deposition. A true and correct copy of the email correspondence between SoundExchange and Movants from November 22 to December 4, 2024 regarding Mr. Dworkin's deposition is attached hereto as Ex. D.

9. On December 6, 2024, Movants sent SoundExchange a letter (the "December 6 Letter"), in which they identified purported deficiencies with SoundExchange's Negotiation Documents production and requested that SoundExchange respond by Tuesday, December 10, 2024, at 5:00 PM. In the December 6 Letter, the Movants identified six examples of email chains evidencing draft term sheets or agreements exchanged between one of the Majors and one of Spotify or Apple Music that were purportedly not included in SoundExchange's production. A true and correct copy of the email in which Movants sent the December 6 Letter is attached hereto as Ex. E.

10. On December 10, 2024, in the process of responding to Movants' December 6 Letter, SoundExchange identified a processing error that resulted in certain "redline" documents

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containing “track changes” from prior versions of those documents being produced without such changes visible. At no point prior to SoundExchange’s discovery of this processing error had Movants indicated to SoundExchange that there was an issue with the “redline” documents, not even with regards to the smaller body of documents with file names containing the word “redline” within the larger group of such documents that were produced.

11. SoundExchange scheduled a call with Movants on December 11, 2024, to remedy the “redline” document processing error. A true and correct copy of SoundExchange’s correspondence with Movants to schedule the call is attached hereto as Ex. F.

12. On December 11, 2024, prior to the call with Movants, SoundExchange produced the documents referenced in the six examples cited in the December 6 Letter. SoundExchange also sent Movants a response letter (the “December 11 Letter”), in which SoundExchange explained the processing error and responded to the Movant’s claims from the December 6 Letter.

13. As part of its Negotiation Document production, SoundExchange produced [REDACTED], which contained the substance of [REDACTED] in a separate column. True and correct copies of [REDACTED] and [REDACTED] are attached hereto as Ex. G and Ex. H, respectively.

14. During the call on December 11, 2024, SoundExchange further explained the processing error and offered to re-produce the “redline” documents that had been affected. On December 13, 2024, SoundExchange reproduced the “redline” documents that had been affected by the processing error.

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15. On December 17, 2024, Movants filed the Motion for Leave, which included a Supplemental Brief as Appendix A. In the Supplemental Brief, Movants proposed search terms that would ostensibly narrow SoundExchange's further review of Negotiation Documents. However, employing the proposed search terms still yields a population of over 110,000 documents that SoundExchange would have to review.

16. Between December 17 and December 19, 2024, SoundExchange and Sirius XM/Pandora corresponded by email regarding Sirius XM/Pandora's production of the Negotiation Documents that they had agreed to produce in the October 23 Letter. On December 19, 2024, Sirius XM/Pandora agreed to produce additional redline documents. As of January 2, 2025, Sirius XM/Pandora has yet to produce the additional redline documents. A true and correct copy of SoundExchange's email correspondence with Sirius XM/Pandora between December 17 and December 19, 2024, is attached hereto as Ex. I.

17. On December 31, 2024, SoundExchange produced draft term sheets or agreements referenced in the single additional, relevant email chain identified in the Supplemental Brief, [REDACTED], concerning the [REDACTED].

18. As of January 2, 2025, Sirius XM/Pandora has produced approximately [REDACTED] such Negotiation Documents, [REDACTED] of which contain the word "redline" in their text. However, Sirius XM/Pandora has not produced a single term sheet or other draft document exchanged between Sirius XM/Pandora and a negotiation counterparty.

19. One of the Negotiation Documents Sirius XM/Pandora produced was an email chain between Sirius XM/Pandora and representatives of [REDACTED] (SIRIUSXM00017506). Another Negotiation Document Sirius XM/Pandora produced was an email chain between Sirius XM/Pandora and [REDACTED] (SIRIUSXM00017510). True and correct copies of

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SIRIUSXM00017506 and SIRIUSXM00017510 are attached hereto as Ex. J and Ex. K, respectively.

20. As of January 2, 2025, Movants have produced approximately 2100 documents combined in response to SoundExchange's Requests for Production directed at each Movant.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.6(d), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 2, 2025
New York, NY

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

EXHIBIT A
(Filed in Restricted Form)

EXHIBIT B
(Filed in Restricted Form)

EXHIBIT C
(Filed in Restricted Form)

EXHIBIT D
(Filed in Restricted Form)

EXHIBIT E
(Filed in Restricted Form)

EXHIBIT F
(Filed in Restricted Form)

EXHIBIT G
(Filed in Restricted Form)

EXHIBIT H

(Filed in Restricted Form)

EXHIBIT I
(Filed in Restricted Form)

EXHIBIT J
(Filed in Restricted Form)

EXHIBIT K
(Filed in Restricted Form)

Proof of Delivery

I hereby certify that on Thursday, January 02, 2025, I provided a true and correct copy of the Declaration of Andrew L. Porter in Opposition to Licensee Participants' Motion for Leave to File Supplemental Brief in Further Support of Licensee Participants' Motion to Compel SoundExchange to Produce Additional Negotiating Documents, And, in the Alternative, in Support of SoundExchange's Cross-Motion to File Supplemental Response Brief and in Supplemental Opposition to Licensee Participants' Motion to Compel SoundExchange to Produce Additional Negotiating Documents 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

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