

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
PERFORMANCES (WEB VI)**

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

**ORDER 37 ESTABLISHING A SCHEDULE FOR PREHEARING AND HEARING
MATTERS AND SETTING FORTH PROPOSED HEARING PROCEDURES**

On April 8, 2025, the Copyright Royalty Judges (the “**Judges**”) issued Order 33 rescheduling the hearing in the captioned proceeding to begin on April 28, 2025, and ordering the participants to confer and jointly submit a proposed order establishing a schedule for prehearing and hearing matters and setting forth proposed hearing procedures.¹

In accordance with the Judges’ instructions, the participants (a) provided dates for all remaining prehearing tasks that need to be accomplished in **Exhibit A** to this Order; (b) explained why any items listed in the Web V Orders do not need to be accomplished in **Exhibit B** to this Order; and (c) identified all items listed in the Web V Orders that have already been accomplished in the **Exhibit C** to this Order. The participants also proposed the below hearing procedures.

The Judges find good cause to adopt the participants’ proposals. Accordingly, the Judges adopt the prehearing schedule provided in **Exhibit A** to this Order and make the following rulings pursuant to their authority under 17 U.S.C. § 801(c).

I. Allocation of Time

1. The evidentiary hearing (the “**Hearing**”) in this matter will commence on Monday, **April 28, 2025**. The Hearing will be held remotely.

¹ Specifically, the Judges instructed the participants to review two Orders in 19-CRB-0005-WR (2021-2025) (Web V) related to scheduling and hearing procedures (eCRB no. 21052 and eCRB no. 20469) (the “**Web V Orders**”) and (a) provide dates for all items referenced in the aforementioned Web V Orders that need to be accomplished; (b) explain why any items listed in these Web V Orders do not need to be accomplished; and (c) identify all items listed in these Web V Orders that have already been accomplished.

2. The Hearing shall conclude after **96** hours of Hearing time, with the last scheduled day of the Hearing being **May 22, 2025**. Hearing days will be Monday through Thursday of each week.²
3. On Hearing days, the Hearing will commence at **9:00 a.m.**³ and conclude at **5:00 p.m.**⁴ The Judges will recess the Hearing each day for one hour at or about **12:00 p.m.** and for 15 minutes during the morning and afternoon sessions. The Judges, in their discretion, may extend the Hearing day by starting the Hearing earlier than 9 a.m., and/or extending it past 5 p.m., after providing reasonable notice to the Participants, Veritext and the Court Reporter.
4. The Judges allocate a maximum of **48** hours, collectively, to the National Religious Broadcasters Music License Committee, Sirius XM Radio Inc., and Pandora Media, LLC (collectively the “**Licensee Participants**”) for presentation of their cases. The Judges allocate a maximum of **48** hours, collectively, to The American Association of Independent Music; The American Federation of Musicians of the United States and Canada; Jagjaguwar, Inc.; SAG-AFTRA; Sony Music Entertainment; SoundExchange, Inc.; UMG Recordings, Inc.; and Warner Music Group Corp. (collectively the “**SoundExchange Joint Petitioners**”) and George Johnson d/b/a GEO Music (“**George Johnson**”)⁵ for presentation of their case (collectively the “**Licensor & Artist Participants**”).⁶ Each Participant Group shall agree amongst itself as to its allocation of the allotted time. At the forthcoming pretrial conference, the Judges and the participants shall discuss the possibility of reducing the number of hours equally for the licensee and licensor sides in a manner commensurate with the issues and witnesses addressed in prior hearings regarding rate-settings.
5. When circumstances render a participant unable to immediately call the next scheduled witness, unused time shall count against that participant’s time allotment unless the opposing participants agree to defer the witness until the next hearing day and split the unused time or switch the order in which witnesses are called.

² In order to facilitate scheduling of witness testimony and completion of the Hearing within the allotted timeframe, the Participant Groups may mutually request by no later than **10:00 pm** on Wednesday that there be a Hearing day on the Friday of that week, which the Judges may allow for good cause shown. The Judges, in their discretion, may propose, *sua sponte*, no later than the close of a Tuesday hearing, that there be a Hearing day on the Friday of that week. The Judges will afford the Participants with an opportunity to argue orally, before the close of the immediately following Wednesday hearing, why a Friday Hearing day would not be appropriate. The Judges, in their discretion, will determine the number of hours during which a Friday Hearing shall be conducted, whether the Friday hearing has been requested by the Participant Groups or ordered by the Judges.

³ The Judges will entertain a request by the National Religious Broadcasters Music License Committee to commence the hearing at 11:00 a.m. on any day when Dr. Patrick Holder, who is located in the Pacific Time Zone, is scheduled to testify before 11:00 a.m. Eastern, and any other participant shall have the right to object to such request.

⁴ All times are Eastern.

⁵ Word Collections, Inc. does not intend to present any testimony or evidence at the hearing.

⁶ The Licensee Participants and the Licensor & Artist Participants are hereinafter referred to as “**Participant Groups**.”

6. If there is a dispute within a Participant Group about the allocation of time, a participant may ask the Judges to resolve it. Each Participant Group must appoint a timekeeper(s) and, **each morning**, the Participant Groups must jointly inform the Judges about the amount of chess clock time used on the prior day. Time spent responding to questions interposed by the Judges shall be allocated to the participant sponsoring the witness if the questions arise during direct or re-direct examination, and to the participant cross-examining the witness if the questions arise during cross or re-cross examination.

II. Opening Statements

7. Each participant may, through one or more counsel, use a portion of its Participant Group's allocated **48** hours, not to exceed 90 minutes per participant, to make an opening statement. Any participant may waive its opening statement.
8. The Licensee Participants will deliver opening statements first followed by the Licensor & Artist Participants. The participants within each Participant Group may determine the order of presentation among themselves.

III. Order of Presentation of Cases

9. The Judges have adopted the order of presentation proposed by the participants, which consists at a high level of **two phases** further described below. The participants shall endeavor to follow the schedule below and work cooperatively with respect to witness scheduling, and are currently discussing specific witness scheduling issues and calendaring that may lead to some deviation from the broad scheduling principles outlined below (resulting in some witnesses expected to be called out of order of the phasing/sequence described below). Should any scheduling conflicts arise that necessitate deviation from the schedule below, counsel for the participants shall notify the Judges and the other participants on a timely basis and work in good faith to agree upon any necessary changes to the sequence of witnesses, whether within or between phases.
10. **By Thursday of the preceding week**, the participants will provide the Judges and the other participants advance notice of the anticipated order of the witnesses who will testify the following week, and the expected time estimates of their testimony.
11. The Participant Groups shall work collaboratively to schedule the examination of all witnesses.

Phase 1. Economic and Other Experts

12. During Phase 1 of the Hearing, the Judges will hear testimony from each participant's expert witnesses. The participants shall endeavor to present witnesses during this phase in the following order. However, as mentioned above, the order of presentation may change depending upon witness availability, which the participants are currently finalizing. Depending on witness availability, the participants anticipate that the non-economic experts, Professors Wilcox and Dubé, may testify later in the proceeding.

- (a) Professor Fiona Scott Morton (Sirius XM Radio Inc., Pandora Media, LLC)⁷
- (b) Mr. Jonathan Orszag (SoundExchange Joint Petitioners)
- (c) Professor Ronald Wilcox (Sirius XM Radio Inc., Pandora Media, LLC)
- (d) Dr. Patrick Holder (National Religious Broadcasters Music License Committee)
- (e) Professor Jean Pierre Dubé (SoundExchange Joint Petitioners)

Phase 2. Fact Witnesses

13. During Phase 2 of the Hearing, each participant shall present its fact witnesses a single time for purposes of all examinations covering his or her direct and/or rebuttal testimony. The participants shall endeavor to present witnesses during this phase in the following order:

- (a) The Licensor & Artist Participants shall present all of its fact witnesses, in the order of its choosing.
- (b) The Licensee Participants shall present all of its fact witnesses, in the order of its choosing.

IV. Exhibits and Demonstratives

14. The participants exchanged lists of exhibits each participant intends to offer into evidence, *including* exhibits to be used on cross examination (other than for impeachment purposes, as rebuttal to unanticipated evidence, or to refresh recollection) on **April 10, 2025, and April 11, 2025**. The participants are limited in the number of exhibits that they may include on the joint exhibit list⁸ as follows: In addition to any written direct testimony and any written rebuttal testimony, and any designated testimony from prior proceedings, each Participant Group may submit no more than **750** exhibits.⁹ Agreement that a witness's testimony shall appear on a joint exhibit list shall not constitute a waiver of any objections to the testimony. The parties will seek conference and guidance from the Judges about whether and how any portion of written testimony or any exhibit that may be admitted into evidence for "limited purposes only" at trial shall be used during

⁷ The Parties anticipate beginning Professor Scott Morton's direct testimony on the afternoon of April 28. Professor Scott Morton is unavailable for most of the day on Thursday May 1. In order to conclude Professor Scott Morton's testimony by the end of Wednesday, April 30, the Parties anticipate that they may request that the Judges extend the hearing day beyond 5:00 p.m. on either or both of April 29 and April 30. The Participants will need to confer with one another and the Judges as to how examinations will proceed on May 1 in the event that Professor Scott Morton's examinations have not been completed on April 30.

⁸ No participant may utilize any unlisted exhibit, *except* for impeachment purposes, as rebuttal to unanticipated evidence, or to refresh recollection.

⁹ Any document referred to, relied upon, and/or attached to a witness's direct or rebuttal testimony and that a participant seeks to introduce into evidence (for consideration by the Judges as such), counts towards this limit, with the exception of any appendices to written testimony that consist of material generated by the witness (i.e., curriculum vitae, tables or charts reflecting the witness's analyses). Compilation exhibits numbered as a single exhibit in written testimony shall count as one exhibit against each participant's limit. With respect to any other compilation exhibits, each separately produced document within a compilation exhibit will be counted as a separate exhibit.

post-trial briefing. Deposition transcripts for any witness that provides live testimony at the Hearing may not be admitted into evidence but may otherwise be used for impeachment or any other appropriate purpose, subject to objection and ruling from the Judges.

The joint exhibit list shall be numbered as follows:

- Exhibits 1000-1999: SoundExchange Joint Petitioners
- Exhibits 2000-2999: George Johnson
- Exhibits 3000-3999: National Religious Broadcasters Music License Committee
- Exhibits 4000-4999: Sirius XM Radio Inc. and Pandora Media, LLC
- Exhibits 5000-6999: Agreements between record companies and digital service providers and royalty statements showing royalties owed to record companies under their agreements with digital service providers, and other documents relied on by more than one Participant

Proposed hearing exhibits must be filed in eCRB, except as follows. eCRB can accommodate the following exhibit file types: PDF, Word, Excel, PowerPoint, WordPerfect, Microsoft Rich Text. The Participant Groups anticipate that several hundreds of exhibits will be in the form of Excel files, which eCRB requires to be filed individually, rather than in a compilation as with other exhibit types. The Participants plan to reach out to CRB staff regarding an alternative method of delivery. All PDFs must be OCR'ed to the extent possible.

15. The participants may amend their exhibit lists subject to the following limitations. When submitting the joint exhibit list on **April 18, 2025**, each Participant will be permitted to reserve up to **100** exhibits, subject to the Participant Group caps set out in ¶ 14. Thereafter, each Participant will be permitted to amend the joint exhibit list in order to use its reserved exhibits. Should any participant wish to amend its exhibit list after **April 18, 2025**, the participants must provide an amended exhibit list and copies of the proposed additional exhibits to counsel for the other participants, in each instance, no later than **10:00 p.m. two days prior** to the day the participant intends to offer such exhibit(s). Any objections to the admissibility of such exhibits must be made **by 10:00 p.m. the following day**. Participants will not be permitted to amend their exhibit lists to offer more than the number of exhibits set out in § IV(¶ 14) without leave of the Judges. A Participant will not be permitted to add more than **20 exhibits** to its exhibit list in a single day. Participants must file amended exhibit lists in eCRB.
16. Participants shall meet and confer with each other to attempt to reach agreement that would permit the participants to stipulate to the admissibility and authenticity of certain documents to which the other participants do not object. The Judges will entertain motions by the participants to move *en masse* the admission into evidence of exhibits to which there are no objections. Participants shall provide to the Judges, the clerk, the court reporter, and the other participants a written list of the exhibits subject to a motion for *en masse* admission into evidence. If a Participant intends to rely on any Exhibit(s) which have been moved *en masse* in its post-Hearing filings and/or closing argument, it

shall identify such exhibit(s) during the hearing and explain its (their) alleged evidentiary value, either through a witness or through counsel, as appropriate, in order to allow all other Participants the opportunity to respond to the claims of evidentiary value, through witnesses and/or arguments by counsel, as appropriate, in order to comport with the requirement of *Johnson v. Copyright Royalty Bd.*, 969 F.3d 363 (D.C. Cir. 2020) that the parties are not “blindsided” by such evidence, but rather are afforded “a chance to submit evidence” in response.

17. Where a witness is expected to begin their direct examination **before 12:00 p.m.**, demonstratives to be used during direct examination must be identified or exchanged no later than **9:00 p.m.** the day before the document is used. If the document will be used before 12:00 p.m. on a Monday, then the exchange must occur not later than **9:00 p.m.** on Sunday. Where a witness is expected to begin their direct examination after 12:00 p.m., demonstratives to be used during the direct examination must be identified or exchanged no later than **8:30 a.m. that morning**. Demonstratives to be used during opening statements are to be provided to each participant on the other side, in color copy and in order of presentation, **no later than immediately prior to the beginning of the statement**.¹⁰ Participants shall not file demonstratives in eCRB. Each demonstrative shall include on its face the exhibit and/or record testimony that properly serves as the source(s) for the substance of the demonstrative. Upon a Participant’s motion successfully objecting to the use of a demonstrative for failure to include such proper information, or upon the Judges’ *sua sponte* inquiry regarding the absence of such proper information, the Judges may refuse to allow the demonstrative to be utilized and may strike from the record any testimony or argument based solely on that demonstrative. The participants shall provide certified copies of the final form of all demonstratives presented in the hearing, in digital form within 10 days of closing arguments.
18. When using documents during trial, participants shall utilize Veritext’s Exhibit Share system. The participants will not deliver physical copies of exhibits to each other.

V. Remaining Pre-Hearing Materials & Exhibit Objections

19. The procedure and schedule for exchange and submission of the remaining prehearing materials is set forth in **Exhibit A** to this Order.
20. The Judges shall deem waived any objection to an exhibit if not presented in writing through a prehearing motion or an objection on the joint exhibit list, except for (1) objections to evidence based on relevance; (2) objections arising from late discovery or information not previously discoverable through reasonable diligence; or (3) if a participant demonstrates good cause, as determined by the Judges.

¹⁰ The participants shall endeavor to deliver Final versions of Demonstratives to the Judges in hard copy according to the aforementioned exchange schedule (in accordance with each Judge’s stated preference for hard copies).

VI. Conduct of the Hearing

21. Participants shall engage in direct examination of their respective witnesses, unless the Judges consent, upon good and sufficient cause shown, to a waiver of direct examination with regard to a specific witness, in which case the participant may rely upon the witnesses' written testimony. The opposing parties are entitled to cross-examination, though may also elect to waive cross-examination. With the consent of the Judges, if a participant waives direct examination and all opposing participants waive cross-examination of a witness, such witness need not testify at the Hearing, and the written testimony of such witness may be admitted into evidence. Participants will endeavor to determine whether they waive direct and/or cross examination of a witness **48 hours prior** to the witness's scheduled appearance.
22. The participant sponsoring the testimony of a witness may conduct re-direct examination of a witness who has been cross-examined. On good cause shown, the Judges may permit further cross or direct examination of that witness.
23. Participants may call as witnesses only individuals who previously submitted written direct or rebuttal testimony (subject to order of the Judges, *e.g.*, to permit testimony from a third-party witness who has been subpoenaed to testify).
24. Section 351.9(f) of the Judges' procedural rules provides that "[s]ubject to applicable trial order, witnesses, other than party representatives, may not be permitted to listen to any testimony and may not be allowed to review a transcript of any prior testimony." 37 C.F.R. § 351.9(f). The Judges apply the foregoing rule subject to this prehearing order: Expert witnesses are permitted to listen to the testimony of any witness, any arguments of counsel including opening statements, and are permitted to review a transcript of any prior testimony from this proceeding of any witness of any party. Fact witnesses may listen to testimony, arguments of counsel, and review a transcript of this hearing only after they have completed their testimony. Once a fact witness listens to testimony or arguments of counsel, or reviews a transcript of this hearing, he or she may not be recalled to present further testimony.¹¹
25. Counsel for a participant may communicate with any of that participant's witnesses at any time before cross-examination begins. Once cross-examination begins, such counsel cannot speak to that witness about his or her testimony until after the witness's testimony has concluded.¹²

¹¹ Before a fact witness testifies, the witness may read the written direct or rebuttal testimony (but not the trial testimony) and deposition transcripts of other witnesses, including expert witnesses, to the extent permitted by the Protective Order.

¹² To the extent that an economic expert witness in Phase 1 is testifying twice, counsel may speak with such witness after their initial testimony (direct, cross, re-direct, and re-cross) has concluded.

VII. Briefing Schedule

26. There will be no further prehearing briefing other than the prehearing motions that have already been submitted by the participants, briefing expressly permitted by the Judges, and the prehearing submissions contemplated in **Exhibit A**.
27. The Judges adopt the following briefing schedule with respect to proposed findings of fact and conclusions of law. The schedule below provides the participants with sufficient time to brief their cases; however, should unforeseen circumstances extend witness testimony in the Hearing beyond the timeframe contemplated by this Order, the Judges will consider any reasonable request to extend such briefing deadlines.

Proposed findings of fact and conclusions of law: Three weeks following conclusion of the Hearing

Reply findings of fact and conclusions of law: Three weeks following deadline for submission of proposed findings of fact and conclusions of law

VIII. Prehearing Conference

28. The Parties request that the Judges schedule a prehearing conference on April 23, 2024, or at another time convenient for the Judges. During the prehearing conference, the Parties wish to discuss the Judges' desire to hear testimony during the hearing regarding the allocation of the royalty payments between the section 112 ephemeral recordings royalties and the section 114 sound recording royalties,¹³ and to discuss any remaining issues for hearing and for oral argument on pending motions (if determined necessary by the Judges).

IX. Closing Arguments

29. Each participant is entitled to make a concise closing argument describing the applicable legal principles and relating them to the evidence in the record. Closing arguments shall

¹³ The SoundExchange Joint Petitioners have proposed continuing the historical 5% / 95% split between 112 ephemeral recordings royalties and the section 114 sound recording royalties, which is not opposed by the Licensee Participants. In their Notice Announcing Commencement of Proceeding with Request for Petitions to Participate, 89 Fed. Reg. 812, 812-14 (Jan. 5, 2024) (*Web VI*) (eCRB No. 39500), the Judges raised four questions with respect to the royalty split, which were addressed in the Corrected Written Direct Testimony of Jonathan Orszag (eCRB No. 44876) ("Orszag CWDT"); Written Direct Testimony of Darius Van Arman (eCRB No. 43761) ("Van Arman WDT"); Written Direct Testimony of Janice Pendarvis (eCRB No. 43761) ("Pendarvis WDT"); Written Direct Testimony of Tino Gagliardi (eCRB No. 43761) ("Gagliardi WDT"); and Written Direct Testimony of Dan Navarro (eCRB No. 43761) ("Navarro WDT") as follows:

Question 1: Orszag CWDT ¶¶ 269.

Question 2: *Id.* ¶¶ 271-72.

Question 3: See SoundExchange Exhibit 102.

Question 4: Orszag CWDT ¶ 276; Van Arman WDT ¶¶ 33-34; Pendarvis WDT ¶¶ 13-15; Gagliardi WDT ¶¶ 15-17, Navarro WDT ¶¶ 15-16.

occur on a date to be set by the Judges following submission of post-hearing briefing, but no later than July 17, 2025. At the close of evidence, the participants will confer with the Judges regarding how much time is needed for closing arguments and the order of presentation.

X. Protocols and Procedures

30. The Participants shall adhere to the protocols and procedures reflected in their Joint Proposal Regarding Protocols and Procedures for Virtual Hearing filed on January 31, 2025 (eCRB nos. 46488 and 46489).

SO ORDERED.

David R. Strickler
Copyright Royalty Judge

Dated: April 17, 2025

Exhibit A: Remaining Prehearing Events

Event	Date ¹⁴	Notes
Participants confer to eliminate duplicate exhibits and to prepare joint exhibit/objections lists, and regarding initial prehearing motions	April 11 – April 17	
Participants exchange responses to initial prehearing motions, such as motions in limine, motions to strike or limit testimony, objections to exhibits, challenges to experts' qualifications	April 11 – April 17	Participants have already exchanged and submitted Motion in Limine packets, which included motions to strike; objections to exhibits and line-by-line objections to written testimony addressed in subsequent deadlines below
Participants confer to prepare a joint witness list, including estimated time for each witness's testimony	April 11 – April 21	
Participants exchange line-by-line objections to written testimony	April 16	
Participants submit joint exhibit list including any unresolved objections to the proposed exhibits	April 18	Participants do not propose filing motions related to the exhibit objections
Participants file witness lists with estimated testimony time	April 21	
Technical rehearsal to test remote hearing equipment	April 21	
Participants submit exhibit volumes to eCRB	April 22	
Participants deliver to the Judges copies of all exhibits, including digital copies of files best viewed in native format (e.g. Microsoft Excel files)	April 22	As noted in § IV(¶ 18), the participants have agreed not to exchange physical copies of exhibits with each other
Participants file unresolved line-by-line objections to written testimony	April 23	Participants do not propose filing motions related to the line-by-line objections

¹⁴ All dates are for the year 2025.

Event	Date ¹⁴	Notes
Final prehearing conference with the Judges to discuss the Judges' desire to hear testimony during the hearing regarding the allocation of the royalty payments between the section 112 ephemeral recordings royalties and the section 114 sound recording royalties, and any remaining issues for hearing and for oral argument on pending motions (if determined necessary by the Judges)	April 23	
Formal dress rehearsal	April 24	
Hearing commences	April 28	

Exhibit B: Prehearing Events from Web V Orders that do not need to be Accomplished

Event	Explanation
Initial pre-hearing conference with the Judges to discuss issues for hearing, order of presentation, exhibit number and presentation, scheduling concerns, disabilities to accommodate, presentation and formatting of electronic documents, or other matters that may affect efficient conduct of the hearing	This Order replaces the need for an initial pre-hearing conference with the Judges to discuss most of these matters; the remainder can be addressed at the proposed April 23 prehearing conference.
Participants exchange initial prehearing motions	Prehearing motions already submitted; Exhibit A sets forth dates to exchange and submit objections to exhibits and line-by-line objections to written testimony.
Participants submit initial prehearing motions to the Judges	[see prior explanation]

Exhibit C: Prehearing Events from Web V Orders that have been Accomplished

Informal document requests to be exchanged by email
Participants to identify witnesses they intend to depose
Participants to Serve Interrogatories
Informal responses/objections to document requests to be exchanged by email
Serve Responses/Objections to Interrogatories
Meet and confer period
Produce documents
Exchange Motions to Compel
Participants exchange witness lists. Witness list shall include name and estimate of time required for direct exam.
Exchange Oppositions to Motions to Compel
Moving parties file motions to compel and responses thereto as package
Participants exchange list of exhibits each participant intends to offer into evidence
Last day to take depositions, unless otherwise agreed by the parties