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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
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 IV)**	**Docket No. 14-CRB-0001-WR (2016-2020)**
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 V)**	**Docket No. 19-CRB-0005-WR (2021-2025)**
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)**
In the Matter of: **Determination of Rates and Terms for Satellite Radio and "Preexisting" Subscription Services (PSS/SDARS IV)**	**Docket No. 25-CRB-0014-SR/PSSR (2028-2032)**

JOINT MOTION TO ACCESS AND MAKE USE OF *WEB* RESTRICTED MATERIALS

SoundExchange, Inc. ("SoundExchange"), Sirius XM Radio LLC ("Sirius XM"), and Music Choice (collectively, the "Stipulating Parties") have retained outside counsel for the *SDARS IV* proceeding for the 2028-2032 period. To assist outside counsel in the current proceedings, the

Stipulating Parties hereby request, pursuant to 17 U.S.C. § 801(c), that the Judges allow outside counsel and expert witnesses (and expert witness support staff) retained to assist the Stipulating Parties in *SDARS IV* ("*SDARS IV* Outside Counsel and Experts") full access to and use of the restricted versions of the *Web IV* and *Web V* Final Determinations, dated March 4, 2016 and July 22, 2021, respectively,[1] and restricted versions of the expert materials submitted by certain participants in *Web V* and *Web VI* (the "*Web* Restricted Materials").[2]

As reflected in the Joint Stipulation Regarding Access to and Use of *Web* Restricted Materials (the "Stipulation")[3] filed herewith, the Stipulating Parties, two of whom are non-settling participants that submitted restricted materials in *Web IV*, *Web V*, and *Web VI*, have agreed that it

[1] The Stipulating Parties may also seek to access and make use of the forthcoming *Web VI* Final Determination upon its publication.

[2] The *Web V* expert materials subject to this Motion include expert testimony and associated exhibits (including underlying work papers) contained in the Written Direct Statement of SoundExchange, et al. (Sept. 23, 24, 2019) (Jonathan Orszag, Catherine Tucker, Robert Willig, Gal Zauberman); Written Direct Statement of the National Association of Broadcasters ("NAB"), (Sept. 23, 2019) (John R. Hauser, Gregory K. Leonard); Google LLC's Amended Written Direct Statement of Dr. Steven R. Peterson (Dec. 11, 2019); Corrected Sirius XM and Pandora Media, LLC ("Pandora") Written Direct Statement (Dec. 11, 2019) (Dominique M. Hanssens, Carl Shapiro, Joel Waldfogel); Corrected Written Direct Statement of the National Religious Broadcasters Noncommercial Music License Committee ("NRBMLC"), Including Educational Media Foundation (Jan. 6, 2020) (Joseph J. Cordes, Richard Steinberg); Written Rebuttal Statement of Sirius XM and Pandora (Jan. 10, 2020) (Carl Shapiro); Written Rebuttal Statement of Google LLC (Jan. 14, 2020) (Steven R. Peterson); Corrected Written Rebuttal Statement of the NAB (Jan. 28, 2020) (John R. Hauser, Gregory K. Leonard); Written Rebuttal Statement of NRBMLC (Jan. 31, 2020) (Richard Steinberg); and Written Rebuttal Statement of SoundExchange, et al. (Aug. 4, 2020) (George S. Ford, Jonathan Orszag, Itamar Simonson, Catherine Tucker, Robert Willig, Gal Zauberman).

The *Web VI* expert materials subject to this Motion include expert testimony and associated exhibits (including underlying work papers) contained in the Amended Written Direct Statement of the NRBMLC (now known as the NRB Music Licensing Committee, Inc.) (Dec. 4, 2024) (Patrick J. Holder); Corrected Written Direct Statement of the NAB (Dec. 23, 2024) (Gregory K. Leonard); Corrected Written Direct Statement of SoundExchange, et al. (Dec. 30, 2024) (Jonathan Orszag); Written Rebuttal Statement of SoundExchange, et al. (Jan. 17, 2025) (Jonathan Orszag, Jean-Pierre Dubé); Written Rebuttal Statement of the NAB (Jan. 17, 2025) (Gregory K. Leonard); Corrected Written Direct Statement of Sirius XM and Pandora (Feb. 12, 2025) (Fiona Scott Morton, Ronald Wilcox); Corrected Written Rebuttal Statement of the NRBMLC (Mar. 14, 2025) (Patrick J. Holder); Corrected Written Rebuttal Statement of Sirius XM and Pandora (Apr. 22, 2025) (Fiona Scott Morton).

[3] The Stipulating Parties include all parties represented by outside counsel in this proceeding. The Stipulating Parties sought the consent of George Johnson ("Johnson") to this Motion and the Stipulation. Johnson indicated that he consents to this Motion and the Stipulation.

would be appropriate for *SDARS IV* Outside Counsel and Experts to be given immediate access to and permission to use the *Web* Restricted Materials in connection with their work in *SDARS IV*.

The Stipulating Parties propose that use of the *Web* Restricted Materials be subject to the operative protective orders for *Web IV*, *Web V*, and *Web VI,* respectively, except that provisions limiting the use of the materials to each proceeding shall not apply to the extent the *Web* Restricted Materials are used to prepare for *SDARS IV*. For the avoidance of doubt, any restrictions relating to "outside counsel of record in this proceeding" or "outside counsel" in the *Web IV*, *Web V*, and *Web VI* protective orders shall apply to *SDARS IV* Outside Counsel and Experts in accessing and using the *Web* Restricted Materials for and in the *SDARS IV* proceeding. The *Web* Restricted Materials would be treated as "Restricted" under any protective order that may be entered in *SDARS IV* and would only be used on an outside-counsel-only basis by *SDARS IV* Outside Counsel and Experts in connection with *SDARS IV*.

ARGUMENT

I. The *Web* Restricted Materials Are Relevant to the Upcoming *SDARS IV* Proceeding

The *Web* Restricted Materials will be highly relevant to the Stipulating Parties' presentations in the forthcoming *SDARS IV* proceeding. In prior CRB proceedings, including *Web IV* and *Web V*, the Judges have extensively referred to and relied on the record in earlier proceedings. For example, in *SDARS III*, the Judges discussed the willing-buyer, willing-seller framework and benchmarking guidance outlined in the *Web IV* Final Determination.[4] The Judges in *SDARS III* also considered the propriety of using the *Web IV* rates as a benchmark in *SDARS III*, which Sirius XM had suggested in its expert testimony submission.[5] And in *Web V*, the Judges

[4] *See, e.g.*, Final Determination at 57, 73, *SDARS III*, Docket No. 16-CRB-0001 SR/PSSR (2018–2022) (Oct. 18, 2018).

[5] *Id*. at 83-85.

applied numerous principles from *SDARS III* to determine the proper benchmarking approach and assess the need for an effective competition adjustment.[6] The Stipulating Parties expect the Judges will likewise rely on or cross-reference the *Web IV, Web V*, and *Web VI* records here, particularly in light of the statutory requirement that the Judges act in accordance with their prior determinations. *See* 17 U.S.C. § 803(a)(1). Allowing the *SDARS IV* Outside Counsel and Experts to access and use the *Web IV* and *Web V* Final Determinations and the underlying expert testimony that more recently guided the Judges in *Web V* and *Web VI*, will help allow the Stipulating Parties to engage effectively with the Judges on the substance of their precedent.

II. The Judges' Precedents Support This Joint Request

The Judges have previously granted similar requests to use restricted materials from prior proceedings—including determinations, testimony, and exhibits from those records—in a subsequent proceeding. *See*, *e.g.*, Order Granting Stipulation to Access and to the Make Use of the Restricted Final Determination, Witness Materials, and Proceeding Transcripts of Past *SDARS* Proceedings at 3, *SDARS IV*, Docket No. 25-CRB-0014-SR/PSSR (2028–2032) (Apr. 6, 2026) ("*SDARS IV* Order"); Order Granting in Part Services' Motion to Access and to Make Use of the Restricted *Web V* Materials at 5-6, *Phonorecords IV* ("*Phono IV*"), Docket No. 21-CRB-0001-PR (2023–2027) (Mar. 23, 2022) ("*Phono IV* Order") (granting access to restricted *Web V* final determination and expert testimony);[7] Order Granting in Part Services' Motion to Access and to Make Use of the Restricted *Webcasting V* Initial Determination and Future Substantive Rulings at 2, *Phono IV*, Docket No. 21-CRB-0001-PR (2023–2027) (Aug. 9, 2021);[8] Order Granting in Part

[6] *See, e.g.*, Final Determination at 13-14, 106, 107 n.133, 132 n.173, 133 n.174, *Web V*, Docket No. 19-CRB-0005-WR (2021–2025) (Sept. 20, 2021).

[7] Also filed in *Web V*, Docket No. 19-CRB-0005-WR (2021–2025) (Mar. 23, 2022).

[8] Also filed in *Web V*, Docket No. 19-CRB-0005-WR (2021–2025) (Aug. 9, 2021).

Motion for Access to the Restricted *Phonorecords III* Determination and Certain Restricted *Phonorecords III* Testimony at 1, *Web V*, Docket No. 19-CRB-0005-WR (2021–2025) (Sept. 13, 2019) (granting access to restricted *Phono III* determination and expert testimony, exhibits, and appendices) ("*Web V* Order"); Order Entering Stipulation to Access and to Make Use of the Restricted *Web V* Final Determination, Expert Materials, and Proceeding Transcripts at 1, 3, *Web VI*, Docket No. 23-CRB-0012-WR (2026–2030) (June 5, 2024)[9] (granting access to the restricted *Web V* determination, written testimony of economic experts, including appendices, exhibits, and underlying work papers, and transcripts of the proceedings).

In such orders granting access to restricted materials from other records, the Judges have recognized that the proceeding would be "enhanced, to the benefit of the Judges," if the participants' outside counsel have access to the restricted materials so they "can make informed decisions as to the presentation of their direct cases." *Web V* Order at 3; *see also Phono IV* Order at 5. In this proceeding, the Judges have already granted a more expansive motion by the Stipulating Parties to access and make use of restricted expert and fact witness testimony (including exhibits and appendices), transcripts, and Final Determinations from *SDARS I*, *SDARS II*, and *SDARS III*. *SDARS IV* Order at 3. Here, the Stipulating Parties seek to access and use only the Final Determinations from *Web IV* and *Web V* and the expert testimony submitted by certain participants in *Web V* and *Web VI*, minimizing any possible intrusion on confidential material.

III. Permitting Access to the *Web* Restricted Materials Would Avoid Prejudice and Unnecessary Inefficiencies and Delay

Allowing *SDARS IV* Outside Counsel and Experts access to the *Web* Restricted Materials would enhance efficiency and avoid undue delay. The public, redacted *Web IV* and *Web V* Final

[9] Also filed in *Web V*, Docket No. 19-CRB-0005-WR (2021–2025) (June 5, 2024).

Determinations and *Web V* and *Web VI* expert materials do not allow *SDARS IV* Outside Counsel and Experts to fully understand and evaluate the implications of those proceedings on their *SDARS IV* case presentations. For example, the redacted versions of the *Web V* and *Web VI* expert materials do not reveal the full extent of the economic models or arguments submitted to the Judges for consideration, and the redacted versions of the *Web IV* and *Web V* Final Determinations do not reveal the full extent of the Judges' economic analyses, including which economic models or arguments the Judges found persuasive and why. Allowing the Stipulating Parties to incorporate the *Web* Restricted Materials into their *SDARS IV* presentations and submissions will facilitate the efficient resolution of this proceeding and ensure both the parties and the Judges have a complete record for the proceeding.

CONCLUSION

The Stipulating Parties respectfully request that the Judges grant the proposed order accompanying the Stipulation as promptly as reasonably possible to allow *SDARS IV* Outside Counsel and Experts access to and/or use the *Web* Restricted Materials in, and to prepare for, *SDARS IV*.

Dated: June 23, 2026

Respectfully submitted,

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Proof of Delivery

I hereby certify that on Tuesday, June 23, 2026, I provided a true and correct copy of the Joint Motion To Access And Make Use of Web Restricted Materials to the following:

American Association of Independent Music ("A2IM"), The, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

American Federation of Musicians of the United States and Canada, The, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Educational Media Foundation, represented by David Oxenford, served via E-Service at doxenford@wbklaw.com

Google Inc., represented by Kenneth L Steinthal, served via E-Service at ksteinthal@kslaw.com

Jagjaguwar Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

National Association of Broadcasters, represented by Sarang V Damle, served via E-Service at sy.damle@lw.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

SAG-AFTRA, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

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Signed: /s/ Todd Larson