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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of: **DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (*Phonorecords V*)**	**Docket No. 25-CRB-0013-PR (2028-2032)**
In the Matter of: **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS *(Web VI)***	**Docket No. 23-CRB-0012-WR (2026-2030)**

MOTION TO ACCESS AND TO MAKE USE OF THE FORTHCOMING RESTRICTED INITIAL DETERMINATION, HEARING TRANSCRIPTS, EXPERT MATERIALS, AND FUTURE SUBSTANTIVE RULINGS IN *WEB VI*

Under 17 U.S.C. § 801(c), the Services[1] request that the Judges allow all eligible participants in this proceeding full access to and use of the following restricted materials from *Web VI*: (1) the Judges' forthcoming Initial Determination; (2) transcripts from the February 13, 2026 hearing;[2] (3) the written, deposition, and trial testimony of experts, along with any exhibits

[1] The Services joining this motion are Spotify USA Inc., Amazon.com Services LLC, Pandora Media, LLC, and Apple Inc. Google LLC does not oppose. The National Music Publishers' Association and Nashville Songwriters Association International ("Copyright Owners") take no position on the motion.

[2] *See* Public Order 59 Scheduling Supplemental Closing Arguments and Directing Participants to Jointly File Proposed Hearing Procedures, *Web VI*, Docket No. 23-CRB-0012-WR (2026-2030) (Jan. 13, 2026).

and appendices to their written testimony; and (4) any future restricted substantive rulings in *Web VI*, including any decision in response to motions for rehearing or clarification, the Final Determination, and any decision by the Register (together, the "*Web VI* Materials"). The Services seek these materials for use by eligible participants[3] on an outside-counsel-only basis, as provided in Section IV.B. of the *Phonorecords V* Protective Order. To that end, the restricted *Web VI* Materials would be treated as "Restricted" under both the *Phonorecords V* Protective Order and the *Web VI* Protective Order[4] and may be used only by eligible participants' outside counsel—subject to the conditions specified in Part IV—and experts in this proceeding.[5]

I. The Judges' Precedents Support the Services' Request

The Judges often permit participants in a later proceeding to access and use restricted material—including initial and final determinations—from prior proceedings.[6] In *Phonorecords*

[3] "Eligible participants" are those eligible to access Restricted materials under the Protective Order, Section IV.B.1.a: the Services, Copyright Owners, and Google LLC.

[4] In the event of a conflict between the protective orders, the more restrictive provision will govern.

[5] Counsel for the Services have conferred with counsel for participants in *Web VI*. SoundExchange and the Joint Record Company Participants oppose this motion. Although SoundExchange agreed to the framework described in Part IV, it later conditioned its consent to this motion on the Services' also agreeing to a separate screening provision for record label materials—an issue that remains under separate negotiation. College Broadcasters, Inc., Public Broadcasting Entities, Sirius XM Radio LLC, National Association of Broadcasters, and NRB Music Licensing Committee, Inc. do not oppose this motion.

[6] *See*, *e.g.*, Order Granting Joint Stipulation Regarding Access to and Use of *Web* Restricted Materials, *PSS/SDARS IV*, Docket No. 25-CRB-0014-SR/PSSR (2028-2032) (July 15, 2026) (granting counsel and experts access to restricted prior *Web* materials); Order Granting Stipulation to Access and to Make Use of the Restricted Final Determination, Witness Materials, and Proceeding Transcripts of Past SDARS Proceedings, *PSS/SDARS IV*, Docket No. 25-CRB-0014-SR/PSSR (2028-2032) (Apr. 6, 2026) (granting access to restricted prior SDARS materials); Order Granting in Part Services' Motion to Access and to Make Use of the Restricted *Webcasting V* Initial Determination and Future Substantive Rulings, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Aug. 9, 2021) ("*Phono IV* Order") (granting access to restricted *Webcasting V* substantive rulings); Order Granting in Part Motion For Access to the Restricted *Phonorecords III* Determination and Certain Restricted *Phonorecords III* Testimony,

IV, the Judges granted a substantially identical motion, permitting eligible participants access to and use of the Initial Determination in *Web V*, as well as future restricted determinations issued in that proceeding.[7] The Judges granted a converse motion in *Web V*, allowing the parties in that proceeding to access and use restricted *Phonorecords III* materials.[8]

The Judges have likewise granted participants access to restricted expert materials from prior proceedings.[9] In *Phonorecords IV*, the Services argued that access to restricted *Web V* expert materials was necessary because the Judges had based their holdings on those experts' analyses, and participants needed "access to that material in order to understand fully the implications of the Judges' Determination on the Services' benchmarking efforts."[10] The Judges agreed, finding that "good cause exists to grant the requested access."[11] In *Web V*, the Judges

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Web V, Docket No. 19-CRB-0005-WR (2021-2025) (Sept. 13, 2019) ("*Web V* Order") (granting access to restricted *Phonorecords III* determination); Order Granting in Part and Denying in Part Services' Motion to Set Specific Discovery Deadlines and Compel the Copyright Owner Participants' Adherence to their Discovery Obligations at 4, *SDARS III*, Docket No. 16-CRB-00001 SR/PSSR (2018-2022) (Aug. 23, 2016) (same).

[7] *Phono IV* Order at 2-3.

[8] *Web V* Order at 1.

[9] Order 21 Granting in Part and Denying in Part the Service Participants' Expedited Motion to Access and Make Use of the Restricted *Phonorecords IV* Testimony of Spotify Witnesses Benjamin Kung and Niklas Lundberg, *Web VI*, Docket No. 23-CRB-0012-WR (2026-2030) (Dec. 20, 2024) ("*Web VI* Order") (granting access to restricted *Phonorecords IV* expert testimony); Order Granting Services' Unopposed Motion to Access and Make Use of Restricted *Web V* Expert Materials and Trial Exhibits, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Sept. 2, 2021); *Web V* Order at 1 (granting access to restricted *Phonorecords III* expert testimony, exhibits, and appendices); Order Granting in Part and Denying in Part Services' Omnibus Motion to Compel SoundExchange to Produce Documents at 5, *Web IV*, Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015) (granting access to prior unredacted testimony in *Web II* and *Web III*).

[10] Services' Unopposed Motion to Access and To Make Use of Restricted *Webcasting V* Expert Materials and Trial Exhibits at 5, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Aug. 30, 2021).

[11] *Phono IV* Order at 2.

conversely granted the parties access to restricted *Phonorecords III* expert materials, including testimony, exhibits, and appendices. The movants in *Web V* argued that, like here, the analyses of those experts "formed the foundation of the Judges' determination" and could be "relevant to [the later] proceeding."[12] And in *Web VI*, the Judges again granted access to restricted *Phonorecords IV* expert testimony for use in that proceeding.[13]

II. The *Web VI* Materials Are Relevant To This Proceeding

Just as in these other cases, eligible *Phonorecords V* participants should be permitted to access and use the restricted *Web VI* Materials because they are highly relevant to this proceeding. Although this proceeding concerns mechanical royalty rates for interactive streaming services, it follows the same willing-buyer-willing-seller legal standard applied in *Web VI*. The two proceedings have also historically involved overlapping issues, including evidence concerning licensing for the interactive services at issue in this proceeding.[14] Thus, because the restricted *Web VI* Materials will likely be relevant to the issues in *Phonorecords V*, this proceeding will be "enhanced, to the benefit of the Judges, if the parties have access" to the

[12] SoundExchange and the National Religious Broadcasters Noncommercial Music License Committee's Motion for Access to the Restricted *Phonorecords III* Determination and the Restricted *Phonorecords III* Testimony, Exhibits, and Appendices of Expert Witnesses Leslie H. Marx, Joshua Gans, Richard Watt, and Jeffrey A. Eisenach at 2-4, *Web V*, Docket No. 19-CRB-0005-WR (2021-2025) (July 25, 2019).

[13] *Web VI* Order at 1-2.

[14] *See*, *e.g.*, *SoundExchange*, 904 F.3d at 53 (noting that SoundExchange proposed a benchmark based on the interactive services market in *Web IV*).

restricted *Web VI* Materials so that they "can make informed decisions as to the presentation of their cases."[15]

Denying eligible *Phonorecords V* participants such access would cause undue prejudice. The public, redacted versions of the *Web VI* Materials may not allow participants authorized to see Restricted material to fully understand and evaluate the implications of that determination for this proceeding. For example, the redacted version may not reveal how the specific economic analyses presented may have influenced the Judges' determination, or how—if at all—those analyses might impact this proceeding. Because the Judges often "are informed" in one set of royalty-setting proceedings by their decisions in proceedings setting other royalties—and are required to consider applicable prior determinations (17 U.S.C. § 803(a)(1))—the *Phonorecords V* participants and their experts should have full access to the restricted *Web VI* Materials.[16]

III. The Judges Should Grant Access to *Web VI* Materials in Advance of the Initial Determination in *Web VI*

The Judges should grant the requested access now, rather than waiting for *Web VI* to finish. Indeed, deferring access to the *Web VI* Materials will create needless inefficiencies and delay. Early access will enable the parties to identify and narrow disputed issues as they engage in discovery. It will also allow eligible participants' outside counsel—and, more importantly, their experts—sufficient time to analyze the *Web VI* Materials and determination and incorporate them as appropriate into their direct testimony. Written direct statements are currently due in little over one month. Waiting for the *Web VI* initial determination may be too late for the

[15] Order Granting in Part Services' Motion to Access and to Make Use of the Restricted *Web V* Materials at 5, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Mar. 23, 2022).

[16] *E.g.*, Order Granting in Part and Denying in Part Motions for Rehearing (Amended) at 18, *Phonorecords III*, Docket No. 16-CRB-0003-PR (2018-2022) (Jan. 4, 2019).

participants to gain access to the relevant materials in time. For that reason, the Judges should set a schedule for responses (if any) to this motion so that it can be resolved in a timely fashion.

IV. To Avoid Unnecessary Motion Practice, the Services Agree to SoundExchange's Conditions to Access *Web VI* Materials

During the meet-and-confer process, which has lasted over a month, counsel for SoundExchange indicated it would object to the relief requested in this motion unless the Services agreed to a "negotiating attorney screen" similar to the one the Judges adopted in *Phonorecords IV*. To avoid unnecessary motion practice and to conserve the Judges' and parties' resources, the Services agree to that screen and to the two additional paragraphs of conditions to access *Web VI* Materials that SoundExchange requested and that are detailed below. The Services have agreed to abide by all three provisions pending a forthcoming motion to amend the Protective Order. Despite the Services' agreement to all of SoundExchange's conditions, SoundExchange recently took the position that it would oppose this motion unless the Services also agreed to adopt a similar screening provision for record label materials. The label-materials provision concerns materials that were produced by the Services in Initial Disclosures and will be produced in response to further discovery in *Phonorecords V*, is a separate issue that remains under negotiation, and should not hold up this motion. The Services first sought SoundExchange's position on this motion well in advance, on July 29, 2026. But because of the upcoming deadlines in *Phonorecords V*, the Services cannot wait any longer and need the *Web VI* Materials as soon as possible.

The Services do not agree that a negotiating attorney screen is necessary or appropriate in this or any future proceeding and reserve all arguments previously advanced against the

imposition of such screens.[17] In *Phonorecords IV*, SoundExchange filed an opposition to a similar motion to access *Web V* materials, arguing that outside counsel involved in negotiating license agreements with sound recording companies should be screened from certain information.[18] The Services and SoundExchange then entered into a stipulation regarding access, and the Judges granted the motion to access *Web V* materials subject to the agreed-upon screen.[19] In light of that ruling, the Services will agree to the following provisions to avoid re-litigating those issues:

> Access to the Restricted *Web VI* Materials shall not be granted to any outside counsel (who were not counsel of record for a participant in *Web VI*) who are currently, and/or during the course of this proceeding, directly participating in license negotiations with sound recording companies outside the context of settlement of legal claims, and such individuals shall not be permitted to review Restricted information concerning record company bargaining objectives, bargaining strategy, or perceptions of bargaining power contained in the *Web VI* Materials.
>
> In the event a participant other than a "Litigating Participant" seeks to obtain access to Restricted *Web VI* Materials pursuant to Section IV.B. of the *Phonorecords V* protective order, such party shall give notice by filing a notice on the *Web VI* docket and shall not be given access to the Restricted material for a period of ten (10) business days, during which time any *Web VI* participant that provided Restricted *Web VI* materials may seek relief necessary to prevent any potential competitive harm to that *Web VI* participant. In the event a *Web VI* participant seeks such relief, the requesting party shall not be given access to the Restricted material until the request for relief is adjudicated.

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[17] *See*, *e.g.*, Services' Opposition to Broadcast Music, Inc.'s Motion for a Limited Modification to the Protective Order in the *Phonorecords IV* Proceeding, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Sept. 21, 2021); Services' Sur-Reply in Further Opposition to Broadcast Music, Inc.'s Motion for a Limited Modification to the Protective Order in the *Phonorecords IV* Proceeding, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Oct. 8, 2021).

[18] SoundExchange's Limited Opposition to Motion for Access to Restricted *Web V* Materials, *Webcasting V* Docket No. 19-CRB-0005-WR (2021-2025) (July 30, 2021).

[19] *Phono IV* Order; Stipulation Regarding Access to and Use of *Web V* Materials in *Phono IV*, *Phonorecords IV*, Docket No. 21-CRB-0001-PR (2023-2027) (Aug. 5, 2021).

> Any participant in receipt of the *Web VI* Materials that intends to use such materials with any AI Service must abide by the restrictions in Section IV.C. of the *Phonorecords V* Protective Order and additionally must ensure that the AI Service's settings prevent the AI Service from disclosing Restricted materials to any third party to whom such disclosure is not authorized under this Protective Order, including without limitation other users or developers of the AI Service.

CONCLUSION

The Services therefore request that the Judges promptly grant this motion and rule that eligible participants in this proceeding may have access to and use restricted *Web VI* Materials—including the forthcoming Initial Determination, hearing transcripts, expert materials, and future substantive rulings—subject to Section IV.B. of the Protective Order in *Phonorecords V*. Specifically, the Judges should direct Pandora, the overlapping party in *Phonorecords V* and *Web VI*, to provide copies of the restricted versions of the *Web VI* Materials to the eligible parties in this proceeding as the Materials are released.

DATED: September 3, 2026

Respectfully submitted,

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Proof of Delivery

I hereby certify that on Thursday, September 03, 2026, I provided a true and correct copy of the Motion to Access and to Make Use of the Forthcoming Restricted Initial Determination, Hearing Transcripts, Expert Materials, and Future Substantive Rulings in Web VI to the following:

American Association of Independent Music (A2IM), represented by Matthew J Keeley, served via E-Service at joe@keeleylaw.org

Copyright Owners, represented by Benjamin K Semel, served via E-Service at Bsemel@pryorcashman.com

Eight Mile Music Companies, represented by Gwendolyn Seale, served via E-Service at gwen@gwenseale.com

George Johnson, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Google LLC, represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at susan.chertkof@riaa.com

Music Artists Coalition, represented by Timothy Kappel, served via E-Service at tkappel@wellskappel.com

Songwriters Guild of America, Inc., represented by Charles J Sanders, served via E-Service at cjs@csanderslaw.com

Word Collections, Inc., represented by Eric B Goldberg, served via E-Service at eric@wordcollections.com

Apple Inc., represented by Mary C Mazzello, served via E-Service at mary.mazzello@kirkland.com

Pandora Media, LLC, represented by Todd Larson, served via E-Service at todd.larson@weil.com

Spotify USA Inc., represented by Sarang V. Damle, served via E-Service at sy.damle@lw.com

Signed: /s/ Joshua D Branson