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In re **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)**	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

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SOUNDEXCHANGE'S OPPOSITION TO IHEARTMEDIA'S MOTION TO COMPEL SOUNDEXCHANGE TO PRODUCE DOCUMENTS IN RESPONSE TO DISCOVERY REQUESTS

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b), SoundExchange, Inc. ("SoundExchange") respectfully submits this Opposition to iHeartMedia, Inc.'s ("iHeart") Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests (the "Motion").

The Judges should deny iHeart's Motion because it seeks information not "directly related" to SoundExchange's written direct testimony and to impose substantial discovery burdens that are not justified under the rules for limited discovery in these proceedings. A few words of context are appropriate. iHeart, joined by other service participants in this proceeding ("Services") served SoundExchange with more than 145 document requests—many of which contained multiple subparts that made the actual total number of requests much higher. SoundExchange, in turn, has produced a voluminous quantity of documents spanning numerous categories of information that directly relate to SoundExchange's written direct case. To date, SoundExchange has produced nearly 10,000 documents, containing nearly 120,000 pages. Declaration of Rose Leda Ehler ("Ehler Decl.") ¶¶ 4, 5.

The participants are working diligently to resolve the various disputes that have arising regarding the participants' document productions, including by way of near-daily meet-and-confer calls and e-mail correspondence. Despite the participants' best efforts, it appears that some areas of disagreement remain. As the Judges are aware, the Services have already filed two motions to compel against SoundExchange. SoundExchange is hopeful that it can satisfy the Services' concerns regarding any additional open issues, but it is possible that they ultimately will choose to file additional motions to compel.

Similarly, SoundExchange has also raised or is in the process of raising certain concerns regarding the deficiencies of Services' productions. With a few exceptions, SoundExchange expects to be in a position to present the Judges with any necessary motions to compel, with respect to this first round of document requests, by Wednesday, November 26, 2014. Due to the upcoming Thanksgiving holidays, it is possible that a few issues may remain unresolved. SoundExchange will endeavor to present these issues to the judges during the week of December 1, 2014.

In the Motion at issue here, iHeart's purports to take issue with SoundExchange's objection to producing two categories of documents. Mot. at 1. In fact, as demonstrated below, the *actual document* requests that iHeart asks the Judges to order SoundExchange to produce sweep much more broadly than the categories that iHeart attempts to justify in its Motion. But even as to these two categories, iHeart's requests would impose undue and unjustified discovery burdens:

Internal Warner Music Group ("Warner" or "WMG") documents regarding negotiations with iHeart. The WMG-iHeart agreement is the beginning and end of *iHeart's* benchmark analysis. Not so for SoundExchange. SoundExchange introduced expert (Dr. Daniel

Rubinfeld) and company (WMG's Ron Wilcox) testimony regarding the agreement's *final terms*, and the *performance-to-date* under those terms. Unlike iHeart, however, SoundExchange did not purport to say that the WMG-iHeart agreement can be a willing buyer-willing seller benchmark, because, based simply on the *final terms*—and not the negotiation history—iHeart cannot replicate (and has not replicated) a comparable agreement with any other major recorded music company. The veracity of iHeart's contrary claim that it can and would guarantee economic returns above every other licensor's share of the recorded music market thus is directly related to iHeart's written direct case, and iHeart's internal communications are squarely within the scope of discovery. Not so for WMG's internal communications, which do not directly relate to any of SoundExchange's direct case.

Even if iHeart's request presented a close question—which it does not—the Judges still should deny it because compliance would impose a significant burden on WMG. The WMG-iHeart deal was negotiated over a nearly two-year period, with the substantial involvement of inside and outside counsel advising WMG. The process of culling through more than 30,000 potentially responsive emails to review for privileged communications would be expensive, time-consuming, and altogether unjustified. Ehler Decl. ¶ 6.

Documents from individual record label promotion departments regarding terrestrial radio promotion. iHeart says on page 1 of its Motion that it seeks—and all of the actual argument in the brief is directed to—"documents regarding the promotional effect of *webcasting services* from the individuals at the record labels in charge of promotion." Mot. at 1 (emphasis added). iHeart then says in a heading of its argument that the Judges should order searches and production regarding "promotion on *terrestrial radio*." *Id.* at 13 (emphasis added). And, in the final paragraph of the Motion, iHeart demands that SoundExchange be ordered to "search the

files of the record labels' promotional departments"—which would be literally hundreds of people, across the multiple individual labels at each of the three major companies—for documents responsive to nine incredibly broad requests for documents, including, *inter alia,* those "relating to" any promotional or substitutional effect of terrestrial or webcasting play on any form of record company revenue. *Id.*at 15; Ehler Decl., Ex.1 ("Ex. 1") at 9, 12, 15-17.

iHeart's morphing request should be denied in all of its incantations. *First,* the individual record labels' in-house promotion departments focus on terrestrial radio, not webcasting. To the extent any major record company has documents constituting "studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or nonexistence of a substitutional or promotional effect by" webcasting "on other sources of record company revenue" exist, those documents would be generated and maintained at the company's corporate level, and SoundExchange has agreed to produce such non-privileged documents. *See* Ex. 1 at 9 (Services' Req. No. 14); Declaration of Paul Robinson ("Robinson Decl.") ¶ 11; Declaration of Rand Levin ("Levin Decl.") ¶ 5; Declaration of Julie Swidler ("Swidler Decl.") ¶ 5; Mot. Ex. F at 3. That should be a non-issue.

Second, to the extent iHeart seeks to compel a search of individual label's promotion departments for analyses of webcasting effect, the request is misguided because promotion department personnel focus on *terrestrial radio* promotion. To the extent iHeart seeks documents regarding terrestrial radio promotion, the request is unsupported by argument and well-beyond the scope of SoundExchange's written direct case. None of SoundExchange's written direct testimony concerns the effect that terrestrial radio has on promoting record company revenue. And, to the extent that iHeart's motion seeks all promotion department documents that simply "relate to" any promotional effect of terrestrial radio play, the request is

incredibly overbroad, as it would effectively require an impossibly broad search of the files of huge numbers of personnel.

Third, iHeart's final-page, penultimate-sentence grab for an order compelling broad searches for documents responsive to nine requests, is entirely unsupported in iHeart's motion. As demonstrated herein, compliance with these requests would impose a massive burden to search for documents that are not related to SoundExchange's written direct testimony.

BACKGROUND

I. The WMG-iHeartMedia Agreement

iHeart is right that it and SoundExchange both use the term "unique" to describe the WMG-iHeart agreement. Just because they use the same adjective to describe that agreement, however, does not mean that iHeart and SoundExchange believe it is unique for the same reasons—or that their respective written direct cases make similar use of the agreement, and thereby open the parties up to reciprocal discovery.

iHeart's position is that the WMG-iHeart agreement is "critical to the proceeding." Mot. at 9. iHeart's benchmark experts—Dr. Fischel and Prof. Lichtman—make that agreement the centerpiece of their benchmark analysis. And iHeart's fact witnesses paint the WMG-iHeart agreement as a textbook example for what iHeart (and thus other webcasters) could replicate across the industry. *See, e.g.*, Testimony of Daniel R. Fischel and Douglas G. Lichtman ¶ 51 (describing the rate they derived from the iHeart-Warner agreement as "the best available evidence on the question at issue in this proceeding"); Testimony of Robert Pittman ¶ 12 (depicting the agreement as a "sustainable solution for radio and the music industry" at large). In short, the bona fides of iHeart's internal views concerning the validity of the deal as a benchmark is directly related to iHeart's case. As iHeart itself admits, Dr. Fischel and Prof. Lichtman expressly relied on internal iHeart documents regarding the negotiation of the deal in formulating

their opinions. Mot. at 10; *see* Fischel and Lichtman Testimony at 19-21. iHeart *had to* produce those internal communications.

SoundExchange's written direct case considers the WMG-iHeart agreement very differently. SoundExchange's position—based solely on the final terms and performance-to-date under that agreement—is that the agreement is not a typical benchmark, because the final terms guarantee advantages to one major record label that [redacted] Testimony of Daniel L. Rubinfeld ¶ 179. The reason for this, as Dr. Rubinfeld explains, is that [redacted]. *Id.* ¶ 183. Mr. Wilcox's testimony presents the final terms and discusses the specific advantages those terms provide to WMG. And, each of Mr. Wilcox's and Dr. Rubinfeld's testimony is based on the final agreement itself and/or related royalty statements. Neither witness relied on more than these documents and their general knowledge in preparing their testimony.

Notwithstanding this fact, the requests on which iHeart moves to compel sweep much more broadly than the agreement's final terms. In those requests, iHeart demands:

> 7. All documents related to negotiation of the agreements of each witness's company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, "programed," personalized, and/or customized streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements – including requests for licenses and negotiations that did not result in an executed license.
>
> 37. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, analyzing, or evaluating the value of any term of the agreement between iHeartMedia, Inc. and Warner Music Inc., including but not limited to the [redacted] described in the testimony of Ron Wilcox. For the avoidance of doubt, this Request also includes any demonstration, analysis, or evaluation of the value of the [redacted] provisions in the agreement, including the extent to which [redacted], and the manner in and

extent to which the [redacted] "save[s] WMG the expense of comparable advertising."

38. All documents, studies, analyses, presentations, and communications concerning any discussion, evaluation, or dispute, whether internal to Warner or between Warner and any counterparty to a licensing agreement or proposed licensing agreement, regarding the [redacted] offered by the licensee or proposed licensee, including the methods Warner uses to evaluate [redacted] and the means by which [redacted]

39. For each Warner agreement with a Digital Service (including any "digital services," "digital distribution services," or "digital partners" such as Mr. Wilcox uses those term in his written direct testimony, e.g., at pages 4-7), documents sufficient to show Warner's valuations, if any, of the following provisions of such agreements discussed by Mr. Wilcox at pages 6-7 of his Written Direct Testimony (or the additional consideration Warner receives when such provisions are not present): (a) payment structure based on [redacted] (b) [redacted] (c) [redacted] d) access to data; (e) security provision; (f) holdback rights; (g reporting requirements; (h) audit rights; and (i) short-term licenses.

These requests are untethered to SoundExchange's written direct submission regarding the WMG-iHeart agreement. Indeed, the requests in numerous respects are untethered to that agreement at all. In addition, SoundExchange has been willing to go above and beyond what is required of it in terms of production related to the WMG-iHeart agreement. SoundExchange produced communications that WMG exchanged with iHeart, including drafts of the agreement, discussions regarding terms, and the like. Hence, these exchanged documents are now available to the other Services' outside counsel.

SoundExchange made clear to iHeart during the meet-and-confer process that going further, and producing all internal WMG documents related to the negotiations, would impose a substantial burden. Mot. Ex. F at 3. As with any significant transaction, the WMG-iHeart deal generated substantial internal discussion. Even after applying search terms that narrow this

massive number of documents to the request that iHeart specifies in its Motion[1], this volume is in excess of 30,000 internal documents over the two-year negotiation period. *See* Robinson Decl. ¶ 4. In addition, WMG had multiple lawyers (including the General Counsel and other in-house lawyers, as well as outside counsel) providing legal advice on the deal. *See id.*, ¶ 5. The process of reviewing thousands of emails, including numerous email threads, for privileged communications would be a massive burden. In an effort to compromise on this issue, SoundExchange offered to produce responsive, non-privileged documents collected from a primary negotiator—Mr. Wilcox—for the month preceding the execution of the deal, a time period of substantial activity in this, as in any other, corporate transaction. Mot. Ex. F at 3. iHeart refused this reasonable compromise.

II. Studies, Analyses, and the Like Regarding Webcasting's Effect on Promotion and/or Substitution

The second part of iHeart's motion—according to page 1 of the Motion—purportedly is directed at "documents regarding the promotional effect of *webcasting services* from the individuals at the record labels in charge of promotion." Mot. at 1. And, the entirety of iHeart's substantive arguments about the relevance of this part of the Motion are directed to the parties'

[1] iHeart and the other Service served sweeping requests, but now apparently limit the Motion to "'any analyses or projections of anticipated revenues or earnings with respect to [the] agreement[];'" "'[a]ll studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, analyzing, or evaluating any term of the agreement;'" documents "'internal to Warner,'" "'regarding the [redacted] offered by [iHeartMedia];'" and "'documents sufficient to show Warner's valuations, if any, of [certain] provisions of' the Warner-iHeartMedia agreement." Mot. at 4 (internal citations omitted). SoundExchange understands that iHeart seeks this more limited set of documents, rather than the broad and non-specific request for "[a]ll documents related to the negotiation of the agreements of each witness's company." Ex. 1 at 8 (Services' Req. No. 7).

differing views on whether *webcasting* promotes or substitutes for other forms of record company revenue.

The parties do indeed have differing views on the promotional or substitutional effect of *webcasting*. SoundExchange's written direct case demonstrates that, on an overall basis, webcasting services substitute not only for the purchases of records (whether in physical media or permanent downloads) but also other revenue streams, including most notably paid subscriptions to services that obtain direct licenses. As stated in the written direct testimony of Dennis Kooker, Sony Music Entertainment's President, Global Digital Business and U.S. Sales:

> Statutory services do not make a relatively small number of our works available for free listening for limited times. Statutory services instead use enormous portions of our most popular repertoire and make those works available for free listening in perpetuity. And, as discussed above, statutory services increasingly customize and curate content for individual listeners, such that the individual user's listening experience is much closer to a station designed for one. This, in turn, provides significant *dis*incentives for users to pay for music access. If a consumer is increasingly confident that the next song they hear or the next playlist they select will be closely in synch with their musical preferences, it becomes increasingly difficult to persuade that consumer that they should buy tracks or albums.

Testimony of Dennis Kooker at 19. Mr. Kooker, and other witnesses on behalf of SoundExchange, demonstrate this trend through industry-wide data and statistics. *See id.* at 20; Testimony of Aaron Harrison ¶ 11 ("Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music. To the contrary, our observations of the market, especially over the last year, have been that these services are drawing consumers and revenue away from the sale of permanent downloads and CDs."); Testimony of Dr. David Blackburn ¶ 89 ("[T]here is little evidence that statutory webcasting promotes the sales of digital or physical media and it is clear that statutory webcasters compete with (and cannibalize revenue from) other directly-licensed music streaming services, such as interactive services.").

iHeart and the other services, in contrast, contend that webcasting services have some promotional effect on the sales of some permanent downloads. (Notably, the services make no effort to demonstrate that the customized radio available through the statutory license leads consumers to purchase subscriptions to directly licensed services.)

SoundExchange has no issue with producing studies that discuss whether statutorily licensed services promote or substitute for other forms of revenue. Documents of this nature most likely would exist at the corporate level of each major recorded music company. *See* Robinson Decl. ¶ 11; Levin Decl. ¶ 5; Swidler Decl. ¶ 5. SoundExchange does object to going to the promotion department within each of the individual labels within each major recorded music company. SoundExchange also objects to having to look for and produce any document related not just to a study or analysis of webcasting's effects—the subject that iHeart attempts to support with argument—but the far broader categories of anything "related to" any type of promotional effect from "terrestrial radio." Ex. 1 at 9 (Services' Req. No. 14). Hence:

- In response to Request No. 14, which seeks studies, analyses, surveys, presentations, etc. on the "substitutional or promotional effect" of music streaming services and/or terrestrial radio, SoundExchange produced dozens of internal and commissioned studies addressing substitution and promotion. *See, e.g.*, Bates Nos. SNDEX0079240-SNDEX0079925; SNDEX0080021-SNDEX0080069; SNDEX0096712-SNDEX0096820; SNDEX0099032-SNDEX0099124; SNDEX0100373-SNDEX0100405; SNDEX0110036-SNDEX0110046; SNDEX0112116-SNDEX0112137.

- In response to Request No. 15, which seeks studies, analyses, surveys, presentations, etc. on the substitutional or "promotional effect" of music streaming services and/or terrestrial radio, SoundExchange produced dozens of internal and commissioned studies addressing substitution and promotion. *See, e.g.*, Bates Nos. SNDEX0079240-SNDEX0079925; SNDEX0080021-SNDEX0080069; SNDEX0096712-SNDEX0096820; SNDEX0099032-SNDEX0099124; SNDEX0100373-SNDEX0100405; SNDEX0110036-SNDEX0110046; SNDEX0112116-SNDEX0112137. Request No. 15 also seeks "documents sufficient to show the amounts spent by each witness's company (or its subsidiary labels) to promote artists" on streaming services and terrestrial radio. SoundExchange has agreed to produce such documents and the amounts

spent by each companies' labels' promotion and marketing departments. Mot. Ex. F at 3.

- In response to Request No. 16, which seeks "[a]ll marketing plans or promotion plans for the top ten grossing artists represented by or affiliated with each witness's company," SoundExchange produced hundreds of pages of marketing and promotional plans that detail record labels' efforts to gain airplay for their artists. These plans detail efforts targeted at terrestrial radio in addition to other sources. *See, e.g.*, Bates Nos. SNDEX0097864-SNDEX0098006; SNDEX0106839-SNDEX0106865; SNDEX0110047-SNDEX0110222; SNDEX0118780-SNDEX0118844; SNDEX0118853-SNDEX0118880; SNDEX0118884-SNDEX0118988.

- In response to Request No. 28, which seeks studies, analyses, surveys, presentations, etc. on the "substitutional or promotional effect" of music streaming services and/or terrestrial radio, SoundExchange produced dozens of internal and commissioned studies addressing substitution and promotion. *See, e.g.*, Bates Nos. SNDEX0079240-SNDEX0079925; SNDEX0080021-SNDEX0080069; SNDEX0096712-SNDEX0096820; SNDEX0099032-SNDEX0099124; SNDEX0100373-SNDEX0100405; SNDEX0110036-SNDEX0110046; SNDEX0112116-SNDEX0112137.

- In response to Request No. 29, which seeks "documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings" on streaming services and terrestrial radio, SoundExchange has already agreed to produce such documents and the amounts spent by Sony's subsidiary labels' promotion and marketing departments. Mot. Ex. F at 3.

- In response to Request No. 49, which seeks studies, analyses, surveys, presentations, etc. on the "promotional or substitutional impact" of music streaming services, SoundExchange produced dozens of internal and commissioned studies addressing substitution and promotion. *See, e.g.*, Bates Nos. SNDEX0079240-SNDEX0079925; SNDEX0080021-SNDEX0080069; SNDEX0096712-SNDEX0096820; SNDEX0099032-SNDEX0099124; SNDEX0100373-SNDEX0100405; SNDEX0110036- SNDEX0110046; SNDEX0112116-SNDEX0112137.

- In Request No. 56, iHeartMedia seeks to impose a substantial burden on SoundExchange by asking it to search for documents dating as far back as 2009—prior to even the current statutory rate period—from dozens of employees in Universal Music Group's ("UMG") numerous subsidiary labels and encompassing multiple distinct categories of documents. SoundExchange objected to this requests as overly broad, unduly burdensome, and compound. The full text of the improper request is as follows:

  Each document related to Mr. Harleston's assertion in paragraph 23 of his testimony that UMG's "promotion departments use their expertise to develop

pathways of discovery and exposure for our artists across all media platforms," including, but not limited to, for each year from 2009 to the present, (a) documents sufficient to identify each such media platform and the separate amounts spent on obtaining exposure on each such platform, including terrestrial radio; (b) documents related to each type of activity in which UMG or any of its subsidiary labels engages to obtain such exposure on each such platform; and (c) each study, analysis, survey, presentation, memorandum, or other document related to any effort to determine or evaluate the impact of airplay on any of these media platforms, including terrestrial radio, on sales of sound recordings. *See* Harleston Test. ¶¶ 22-30. Please include in your response (i) documents sufficient to show the total number of promotional albums directly or indirectly (through a third party promoter, distributor, or other third party) given to any radio station, radio station simulcaster, or Digital Service; (ii) documents related to artist visits to any radio station, radio station simulcaster, or Digital Service and documents sufficient to quantify the total number of such visits; (iii) each agreement with any third party (including any independent promoter) concerning the promotion of UMG's recordings to any radio station, radio simulcaster, or Digital Service, all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other consideration paid to such third parties under each agreement; (iv) each agreement with any radio station, radio station simulcaster, or Digital Service (including the "deals with interactive services" mentioned in paragraph 27 of Mr. Harleston's testimony and any similar or related agreements), all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other thing of value given to any radio station, radio station simulcaster, both exceeds the custom of limiting documents requests to a single category of documents and or Digital Service, or their listeners or customers pursuant to those agreements; (v) all documents reflecting communications related to efforts to obtain airplay for one or more recordings released by UMG for play on any radio station, radio station simulcaster, or Digital Service, including, but not limited to, letters, emails, internal memos, and notes; and (vi) each document concerning any advertisements directed in whole or in part to any radio station, radio station simulcaster, or Digital Service (or programmers thereof), including tip sheets.

- In response to Request No. 57, which seeks "documents sufficient to show the amounts UMG spent to promote artists or sound recordings" on streaming services and terrestrial radio, SoundExchange produced documents and has agreed to produce such documents and the amounts spent by UMG's subsidiary labels' promotion and marketing departments. Bates Nos. SNDEX0100371-SNDEX00100372; Mot. Ex. F at 3.

- In response to Request No. 58, which seeks "[d]ocuments sufficient to identify" UMG employees and payroll expenses and third party promoters and compensation paid to those individuals, SoundExchange has already produced or agreed to produce documents which identify such payroll and expenditure costs. Bates No.SNDEX00100372; Mot. Ex. F at 3.

ARGUMENT

I. The Standard for Obtaining Discovery in These Proceedings

As the regulations make clear, and the Judges have repeatedly reminded participants, discovery in these proceedings is far more limited than discovery in civil proceedings. "A participant in a royalty rate proceeding may request of an opposing participant nonprivileged documents that are directly related to the written direct statement . . . of that participant. Broad, nonspecific discovery requests are not acceptable." 37 C.F.R. § 351.5(b)(1). The "directly related" standard ensures that participants focus on the testimony and evidence presented by the opposing participants' written direct statement. This is to be contrasted with the broad sort of investigative discovery permitted under the Federal Rules of Civil Procedure because such discovery is incompatible with the timeframe and structure of these proceedings.

The "directly related" standard also minimizes the burden of expedited discovery. Discovery in these proceedings is not nearly as broad as civil discovery, but even if it were, in civil discovery, the Federal Rules of Civil Procedure require courts:

> [T]o consider a number of factors potentially relevant to the question of undue burden, including . . . whether "the burden or expense of the proposed discovery outweighs its likely benefit, [taking into account] the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the [litigation], and the importance of the proposed discovery in resolving the issues."

Watts v. S.E.C., 482 F.3d 501, 509 (D.C. Cir. 2007) (quoting Fed. R. Civ. P. 26(b)(2)(C)(iii)). Likewise, here, the motion to compel must be viewed in light of the balance between the "burden and expense" imposed and the "likely benefit," if any, of the discovery at issue. The circumscribed nature of discovery in these proceedings and the balance between the burden of discovery and the need for the information furthers Congress's intent that these proceedings be

expedited and streamlined, and keeping the costs and burdens of presenting evidence in manageable proportion.

Consistent with the Regulations and these purposes, the Judges in past proceedings have drawn a line between producing external negotiating documents related to agreements and internal analyses of agreements. For example, in the SDARS I proceeding, SoundExchange moved to compel production of negotiating documents and internal analyses related to Sirius, XM, and Music Choice's agreements with the performing rights organizations, where those parties' witnesses discussed the agreements and used them as a benchmark. Sirius, XM and Music Choice objected to the request for internal documents as overbroad and likely to involve privileged documents. The Judges ordered production of the agreements and external negotiating documents, but denied the request for internal analyses and discussions of the agreements.[2] The circumstances of this matter counsel for the same approach.

II. Internal WMG Documents Regarding WMG-iHeart Negotiations

A. The Requested Documents Are Not Directly Related to SoundExchange's Written Direct Case

SoundExchange's written direct testimony presents evidence from the most comparable set of market agreements—those with music streaming services offering on-demand or interactive functionality. References to the WMG-iHeart agreement by Dr. Rubinfeld and Mr.

[2] Order Granting in Part and Denying in Part SoundExchange's Motion to Compel Sirius, XM and Music Choice to Produce Their Agreements with Performing Rights Organizations and Certain Related Documents, Docket No. 2006-1 CRB DSTRA (May 17, 2007) (SDARS I); *see also* Order Granting in Part and Denying in Part SoundExchange's Motion to Compel Sirius and XM to Produce Certain Content Deals, Negotiating Documents, and Internal Analyses of Content Deals at 3, Docket No. 2006-1 CRB DSTRA (May 18, 2007) (SDARS I) (reaching the same conclusion with respect to a similar request for internal analyses of content deals, even where Sirius's and XM's witnesses expressly referred to the content deals in their written direct testimony).

Wilcox give context to an agreement that is not a relevant benchmark and does not play a role, except to be distinguished, in SoundExchange's written direct case. iHeart, in contrast, placed this agreement at the center of its case and delved into every facet of it—*including its internal valuation.* SoundExchange did nothing of the sort. The Services have all the documents that they need. They also have the opportunity to depose Dr. Rubinfeld and Mr. Wilcox if they believe they need more information to investigate the propositions and assertions presented in SoundExchange's written direct testimony.

Even if such documents were directly related to SoundExchange's written direct testimony, external negotiation documents would be sufficient. In prior proceedings, the Judges have compelled the production of *only* external negotiating documents and denied motions to compel internal negotiation documents even as Sirius, XM and Music Choice relied on the corresponding agreements as benchmarks.[3] Here, SoundExchange does not rely on the Warner-iHeart agreement, tipping the balance between their "importance . . . in resolving the issues" and the "burden or expense" even more in favor of *not* compelling production. Fed. R. Civ. P. 26(b)(2)(C)(iii).

B. The Substantial Burden of Having to Review WMG's Internal Communications for Privilege Outweighs Any Claim of Direct Relevance

iHeart's Motion sweeps well beyond reason in imposing an onerous review process on SoundExchange and Warner. The two-year negotiation of the deal resulted in tens of thousands of internal communications exchanged including those seeking legal advice from numerous in-

[3] Order Granting in Part and Denying in Part SoundExchange's Motion to Compel Sirius, XM and Music Choice to Produce Their Agreements with Performing Rights Organizations and Certain Related Documents, Docket No. 2006-1 CRB DSTRA (May 17, 2007) (SDARS I); Order Granting in Part and Denying in Part SoundExchange's Motion to Compel Sirius and XM to Produce Certain Content Deals, Negotiating Documents, and Internal Analyses of Content Deals at 3, Docket No. 2006-1 CRB DSTRA (May 18, 2007) (SDARS I).

house and outside attorneys. Robinson Decl. ¶¶ 4-7. Review of more than 30,000 documents potentially responsive to the requests for internal WMG documents in iHeart's privileged communications would be expensive, time-consuming, and would not further illuminate the testimony at issue in these proceedings.[4] Ehler Decl. ¶ 6. The Judges have previously denied requests similar to those at issue here as "too broad and nonspecific" because they include "documents within the scope of this request [that] may well be protected by the attorney-client privilege."[5] Moreover, the "burden [and] expense" that Warner and SoundExchange would have to incur to produce these documents far outweighs the "likely benefit" to the Judges' determination. Fed. R. Civ. P. 26(b)(2)(C)(iii).

Although SoundExchange does not believe it is so obligated, it offered to produce documents collected from Mr. Wilcox, who was intimately involved with the negotiation of the deal, for the month preceding execution of the agreement. These are not Mr. Wilcox's personal emails as iHeartMedia suggests, but rather emails drafted and exchanged internally at Warner among those deal negotiators, attorneys, and analysts regarding the valuation of the agreement. This set of documents, even after narrowed to the population of documents sought in iHeart's motion, numbers over a thousand additional documents. Ehler Decl. ¶ 6. If SoundExchange's production to date is not sufficient, these documents would provide iHeartMedia with the

[4] As clear from Services' requests, at issue is burden that extends well beyond the Warner-iHeart agreement. Services seek "[a]ll documents related to the negotiation of the agreements of each witness's company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, 'programed,' personalized, and/or customized streaming." Ex. 1 at 8 (Services' Req. No. 7). Complying with such a request would result in the need to review hundreds of thousands of documents, if not over a million, for responsiveness and privilege.

[5] Order Granting in Part and Denying in Part the Motion of Digital Media Association and its Member Companies to Compel SoundExchange to Produce its Satellite Digital Audio Radio Services License Agreements and Related Documents at 1, Docket No. 2005-1 CRB DTRA (Mar. 28, 2006) (SDARS I).

internal Warner documents it seeks. Not satisfied, iHeart refused to accept SoundExchange's reasonable compromise.

Furthermore, iHeart's Motion should also be denied because the requested information "can be obtained from some other source that is more convenient, less burdensome, or less expensive" and the Services have "had ample opportunity to obtain the information by discovery in the action" Fed. R. Civ. P. 26(b)(2)(C)(i), (ii). iHeartMedia is free to depose Mr. Wilcox and inquire further about Warner's internal perceptions of that agreement and the value of the consideration received to Warner. Notably, despite iHeart's present insistence that it is important to test Mr. Wilcox on the statements in his written direct testimony, the Services (including iHeart) have not noticed Mr. Wilcox's deposition.

III. Webcasting and Terrestrial Radio Promotion Documents

iHeart's Motion seeks to impose a substantially burdensome search for additional documents that (1) do not exist in the places that they are asking be searched; (2) encompass a category so large, "broad," and "nonspecific" that it would require production of *every* document from individual record labels' promotion departments; and/or (3) deal with promotion on terrestrial radio—a subject not related to the issues to be decided in these proceedings. SoundExchange has already produced documents responsive that were located after a reasonable search. Any additional search for those documents related to terrestrial radio, which do not directly relate (or even relate) to SoundExchange's written direct testimony and are not sufficiently addressed by iHeart's Motion, would likewise impose a substantial burden that far outweighs whatever likely benefit, if any, such documents would have.

In prior proceedings, the Judges have denied requests substantially similar to what iHeart seeks here—a request seeking "all documents concerning the possibility that radio airplay, radio

simulcasting, or non-interactive internet-only webcasting substitutes for record sales" as "too broad and nonspecific".[6] iHeart's Motion is no different and should likewise be denied.

A. Promotion Departments Do Not Have Studies (or Similar Documents) Related to Promotional Effects of Webcasting

Label promotion departments promote artists and new releases to terrestrial radio stations. Levin Decl. ¶ 3; Robinson Decl. ¶ 9; Swidler Decl. ¶ 3. They thus have little if anything to do with webcasting promotion and any search of these departments for these documents would be fruitless. Further, individual record labels within Warner, UMG, and Sony Music Entertainment are not in the business of creating "studies, analyses, surveys, presentations, or memoranda," referring or relating to the existence or nonexistence of a substitutional or promotional effect of webcasting services. Levin Decl. ¶ 4; Robinson Decl. ¶ 10; Swidler Decl. ¶ 4. Such studies and the like are done at the corporate level of each of the three major record labels. Levin Decl. ¶ 5; Robinson Decl. ¶ 11; Swidler Decl. ¶ 5. SoundExchange collected responsive documents from the places where they were most likely to be found—the corporate level of the three major recorded music companies. Any additional search would be both pointless and an undue burden on each of the subsidiary record labels.

In short, the burden imposed by iHeart's Motion that SoundExchange conduct an extensive (or even limited to ten individuals search) of promotion departments fair outweighs the likely benefit of the very few, if any, documents that would be turned up.

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[6] Order Granting in Part and Denying in Part the Motion of Digital Medial Association and its Member Companies, NPR, Corporation for Public Broadcasting Qualified Public Radio Stations and the Radio Broadcasters to Compel SoundExchange to Produce Discovery Relating to the Promotional Value of Airplay at 4, Docket No. 2005-1 CRB DTRA (Mar. 28, 2006) (Web II).

B. Terrestrial Radio Is Not Directly Related to SoundExchange's Written Direct Statement

iHeart barely discusses "terrestrial radio" in its Motion and makes no meaningful attempt to explain why promotion on terrestrial radio is "directly related" to SoundExchange's written direct statement. It is not related. SoundExchange's witnesses do not testify regarding promotional or substitutional effects of terrestrial radio, which is not at issue in this proceeding. What is relevant to this proceeding are "[t]he promotional or substitution effects of the *use of webcasting services* by the public on the sales of phonorecords or other effects of the use of webcasting that may interfere with or enhance the sound recording copyright owner's other streams of revenue from its sound recordings." Webcasting III Remand, Dkt No. 2009-1 CRB, 79 Fed. Reg. 23102, 23110 n.25 (emphasis added). Whether terrestrial radio does or does not promote other streams of revenue is beside the point.

Further, here "the burden or expense of the proposed discovery outweighs its likely benefit," particularly in light of the tangential relevance, if any, that promotion related to terrestrial radio serves to the Judges' determination. Fed. R. Civ. P. 26(b)(2)(C)(iii). Where, as here, promotion for terrestrial radio is not even relevant to the proceeding, its "likely benefit" is easily outweighed. iHeart would have the Judges make the leap from webcasting services to terrestrial radio, however, iHeart itself submits substantial evidence on the differences between the two, including special technology that allows it to replace songs broadcast on terrestrial radio with different songs on its "simulcast" service. *See* Testimony of Jeffrey Lee Littlejohn ¶¶ 2-5. The two formats are not the same and should not be so easily conflated to impose a burdensome discovery search.

The likely benefits of discovery regarding terrestrial radio promotion are further outweighed because iHeart, as a broadcaster, *already has* documents relating to the "promotional

effect" of terrestrial radio. Record labels' promotional efforts (especially those relating to terrestrial radio) directly involve iHeart's terrestrial radio stations. Further, iHeart owns MediaBase—a service that measure the impact of terrestrial promotion. iHeart literally has all of the information at its fingertips to assess the "promotional effect" of terrestrial radio play.

C. Services' Requests Are Broad and Nonspecific, Overly Burdensome, and Without Proper Justification

Each of Services' Requests is overbroad, unduly burdensome, and not limited to those documents "directly related" to SoundExchange's written direct testimony. Essentially, Services requests target three broad categories of documents and SoundExchange has produced or agreed to produce documents responsive to each category. Beyond those, any additional search would pose a tremendous burden on the promotion departments from whom these documents are sought.

First, Services request "all documents" relating to studies, analyses, surveys, presentations, etc. on the "substitutional or promotional effect" of music streaming services and/or terrestrial radio. Ex. 1 (Services' Req. Nos. 14, 15, 28). The Services' requests are amenable to two readings. In the first, they seek a set of documents directly related to these proceedings—promotion/substitution studies and the like related to webcasting and other digital services. In this case, SoundExchange has produced these documents. In the second possible reading, iHeart is seeking documents responsive to the broader interpretation of its requests encompassing "all documents" that relate to "promotional effects" of webcasting, other digital services, and terrestrial radio. This latter set would encompass nearly every document created by promotion departments. As explained by UMG's Mr. Levin:

> [P]eople in a promotion department focus on promoting releases by that label's artists through terrestrial radio, so virtually everything they do "relates to" the possibility that such plays may have a positive effect on record sales. It would be extremely difficult, if not impossible, to frame a search of electronically stored

> documents that would help to identify documents that "relate to" "terrestrial radio" having a "promotional effect."

Levin Decl. ¶ 7; *see also* Swidler Decl. ¶ 7; Robinson Decl. ¶ 13.

Second, Services request marketing and promotional plans. Ex. 1 at 10 (Services' Req. No. 16). SoundExchange has produced hundreds of pages of these documents for top grossing projects from the various labels. It is unclear what, if anything, iHeart is seeking in addition to that already produced. These documents include efforts directed at terrestrial radio in addition to other forms of marketing and promotion. iHeart has made no attempt to explain why SoundExchange's production is deficient.

Third, Services request various expenditures and costs related to promotion and marketing. Ex. 1 (Services' Req. Nos. 15, 29, 57, 58). SoundExchange agreed to produce these documents to the extent they are kept in the ordinary course of business. Mot. Ex. F at 3. It is unclear as to why—when SoundExchange specifically agreed to produce such documents—iHeart moved to compel production of these documents.

Finally, Services' Request No. 56 is incredibly overbroad, nonspecific, and unduly burdensome as it seeks documents broken into numerous subparts to the request and further sub-subparts to the request. *See supra* pp. 11-12. To the extent that Mr. Harleston relied on documents, they have already been produced. To the extent this request is redundant of the previous requests, such documents have been produced or SoundExchange has agreed to produce such documents. Beyond that, iHeart has not justified its massive request, nor sufficiently demonstrated that each sub and sub-sub category of documents is directly related to the over eight paragraphs of testimony it cites—"See Harleston Test. ¶¶ 22-30." The request should be denied as unduly broad and burdensome.

IV. CONCLUSION

SoundExchange respectfully requests that the Judges deny iHeart's Motion. If the Judges grant any portion of the Motion, SoundExchange respectfully submits that a three-business day period for production is infeasible. SoundExchange respectfully requests a period of at least 10 business days to collect, review, and produce additional documents, subject to SoundExchange's ability to request a reasonable extension depending on the breadth of any relief allowed.

Dated: November 21, 2014 Respectfully submitted,

By: Glenn Pomerantz / ZK

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Counsel for SoundExchange, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 21, 2014, I caused a copy of **SOUNDEXCHANGE'S OPPOSITION TO IHEARTMEDIA'S MOTION TO COMPEL SOUNDEXCHANGE TO PRODUCE DOCUMENTS IN RESPONSE TO DISCOVERY REQUESTS** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

Participants

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Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com Telephone: (916) 251-1600 Facsimile: (916) 251-1731 *Educational Media Foundation*	Donna K. Schneider Associate General Counsel, Litigation & IP iHeartMedia, Inc. 200 E. Basse Rd. San Antonio, TX 78209 DonnaSchneider@iheartmedia.com Telephone: (210) 832-3468 Facsimile: (210) 832-3127 *iHeartMedia, Inc.*
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Karen Easton

Karen Easton

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

RECEIVED
NOV 21 2014
Copyright Royalty Board

In re **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)**	)))))))))	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF ROSE LEDA EHLER

I, Rose Leda Ehler, declare as follows:

1. I am an attorney with Munger, Tolles & Olson LLP and am counsel for SoundExchange, Inc. ("SoundExchange") in Docket No. 14-CRB-0001-WR (2016-2020).

2. I respectfully submit this Declaration in support of SoundExchange's Opposition to iHeartMedia's Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests (the "Motion").

3. This Declaration is made based upon my personal knowledge.

4. On October 13, 2014, the Licensees' served their First Set of Requests for Production of Documents to SoundExchange, Inc. and Geo Music Group ("Services' Requests"). Of these, 145 requests were directed at SoundExchange asking it to produce its own documents as well as to collect and produce documents from its member record companies, its witnesses' companies, and the Recording Industry Association of America from 2009 to present—two years before even the current statutory rate term. Attached as **Exhibit 1** are Services' Requests.

5. SoundExchange responded and produced thousands of documents directly responsive to Licensees Requests on November 7, 2014. To date SoundExchange has produced 9,817 documents totaling 119,229 pages.

6. I understand, from initial investigation into the population of custodial emails collected from Warner that, after applying search terms and deduplicating the population, SoundExchange would have to review in excess of 1,500 documents for responsiveness and privilege merely to produce the emails collected from one custodian—Ron Wilcox—for the month preceding execution of the agreement. To comply with the demands made in iHeart's Motion—covering multiple custodians and a two-year negotiating period—SoundExchange would have to review over 30,000 documents for responsiveness and privilege.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 20, 2014

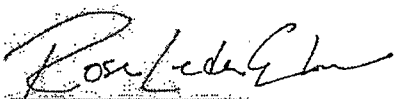

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EXHIBIT 1

PUBLIC VERSION

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

In re	)	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	)	**Docket No. 14-CRB-0001-WR (2016-2020)**

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO SOUNDEXCHANGE, INC. AND GEO MUSIC GROUP FROM LICENSEE PARTICIPANTS

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq., 37 C.F.R. § 351.5, the Copyright Royalty Judges' Scheduling Order dated August 29, 2014, and the Parties' agreement concerning the discovery schedule as submitted to the Judges on July 29, 2014 (the "Discovery Schedule"), you are required to respond to the following Document Requests propounded by the licensee participants in this proceeding. Pursuant to the Discovery Schedule, your written responses and documents responsive to these Requests must be delivered to counsel for Pandora Media Inc., iHeart Media, Inc., the National Association of Broadcasters, Sirius XM Radio Inc., the National Religious Broadcasters Noncommercial Music License Committee, National Public Radio, Intercollegiate Broadcasting System, Inc., AccuRadio, and Harvard Radio Broadcasting Co., Inc. on or before November 7, 2014.

DEFINITIONS

1. "Digital Service" means any service providing users with access to digital audio transmissions or digital phonorecord deliveries of sound recordings and/or music videos, whether for free or by subscription, whether by streaming or download (either permanent or temporary),

whether offering a single type of music service or bundling together different music services (e.g., streaming and downloads), and whether available on a personal computer, television, receiver, set-top box, mobile/cellular phone, other mobile device (iPad, smartphone, tablet computer, laptop, etc.), or any other device or platform. Digital Services include but are not limited to services offering digital downloads, cloud services, providers of ringtones, mastertones and ringbacks, interactive streaming services (e.g., Rhapsody, Napster, Spotify, Mog, Rdio), all statutory, non-interactive, and customized varieties of internet radio/webcasting (e.g., Pandora, Slacker, Last.fm, radio station simulcasters, iHeart Radio, 8Tracks, Turntable.fm), music video providers (e.g., YouTube, Vevo), and mobile/cellular providers (e.g., Verizon, AT&T). Digital Services shall not include PSS's (e.g., Music Choice) or Business Establishment Services (e.g., Muzak, DMX, PlayNetwork).

2. "Document" or "Documents" shall have the same meaning as the term "document" in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall include all such items, including electronically-stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agendas, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing,

signatures, receipt stamps, comments, notations, differences in stationary or any other difference or modification of any kind.

3. "GEO Music Group" means Geo Music Group and its predecessors, including its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

4. "Noncommercial Broadcaster means a Noncommercial Digital Service that owns or operates one or more noncommercial terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission or otherwise meets the definition at 47 U.S.C. § 397(6), (7), (11), or (12).

5. "Noncommercial Digital Service" means a Digital Service that meets the requirements of 17 U.S.C. § 114(f)(5)(E)(i)(I), (II), or (III).

6. "Record Company" means any SoundExchange member company (as contrasted to recording artist members) that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels, and including but not limited to Sony, UMG, and WMG. Any references to a Record Company specifically by name (for example, the employer company of a witness who submitted a statement as part of SoundExchange's written direct statement) shall likewise be construed to include any and all subsidiary and/or affiliate recording companies and/or labels owned by the parent company.

7. "Recording Industry Association of America" or "RIAA" mean the Recording Industry Association of America, Inc. and its directors, officers, shareholders, employees, personnel, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on their behalf.

8. "Sony" shall mean Sony Music Entertainment and its predecessors (including Sony BMG Music Entertainment), including its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

9. "Statutory Licenses" are the licenses available under 17 U.S.C. § 114(d)(2) and § 112(e) for services offering eligible digital audio transmissions. "Statutory Licensees" or "Statutory Services" are services making digital audio transmissions pursuant to the Statutory Licenses.

10. "SoundExchange," "you" and "your" mean SoundExchange, Inc., SoundExchange Witnesses and their respective employer companies, and SoundExchange's directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

11. "SoundExchange Witness" means any of the witnesses who have supplied and/or will supply testimony on behalf of SoundExchange in this proceeding, including, but not limited to, the witnesses listed by SoundExchange in its "Index of Witness Testimonies."

12. "Warner" and "WMG" means Warner Music Group Corp and its directors, officers, board members, committee members, employees, subsidiaries (including but not limited to Atlantic Recording Corp. ("Atlantic") and Elektra Records ("Elektra")), parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

13. "Universal" and "UMG" means Universal Music Group and its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

14. Whenever appropriate in these requests, the singular form shall include the plural and vice-versa. The connectors "and" and "or" are terms of inclusion and not exclusion, and shall be construed as necessary to bring within the scope of each request each document and things that if construed otherwise might be considered to be outside of its scope. "Including" means "including but not limited to." The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Document Request.

INSTRUCTIONS

1. These requests are intended to supplement the production by SoundExchange of all materials that were relied upon by SoundExchange Witnesses in the creation of their written testimony, as ordered by the Judges. The absence of specific requests for materials relied upon by SoundExchange witnesses in formulating each contention in their written testimony does not waive the licensee participants' right to such materials; to the extent the licensee participants find it necessary to assert follow-up requests for such relied-upon materials, those requests shall not count against the 200 limit on document requests as agreed by the participants.

2. These requests are continuing in nature, and in the event SoundExchange becomes aware of additional responsive information or documents at any time through the conclusion of this proceeding, SoundExchange is requested promptly to provide such additional information or documents.

3. The responses to each request shall include Documents that are within the possession, custody or control of SoundExchange, RIAA, or any Record Company related to

testimony provided by witnesses from such Record Company, including, without limitation, Documents that are in the possession, custody or control of SoundExchange's, RIAA's or such Record Company's attorneys, agents, directors, officers, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with SoundExchange, RIAA or such Record Company.

4. Each request should be answered separately and in order.

5. If SoundExchange objects to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents constitute attorney work product, SoundExchange is hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator, the name of the person(s) to whom it is addressed, the names of all person(s) who were shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privileged or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of the propriety of such refusal.

7. If, in answering these requests, you claim that any request, or a definition or instruction applicable thereto, is ambiguous, do not use such claim as a basis for refusing to

respond, but rather set forth as a part of the response the language you claim is ambiguous and the interpretation you have used to respond to the individual request.

8. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

9. Unless otherwise stated, the period covered by these requests is from January 1, 2009 to the present.

10. The terms "any," "each," or "all" shall be construed as terms of inclusion, not as exclusion.

REQUESTS FOR DOCUMENTS

Document Requests Related to SoundExchange's Rate Proposal for Noncommercial Webcasters

1. Each document reflecting the consideration given, if any, by SoundExchange (including any officers, directors, Board members, or employees of SoundExchange) or any SoundExchange witness (including SoundExchange's experts), in connection with the development of SoundExchange's proposed rates and terms as are applicable to NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete noncommercial broadcaster group regarding whether and/or how NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete Noncommercial Broadcaster group were (or should be) considered or treated in any fashion different or separate from other Noncommercial Webcasters covered by SoundExchange's proposed rates and terms for Noncommercial Webcasters (as set forth in Section II.B of the Proposed Rates and Terms of SoundExchange, Inc., filed on October 7, 2014).

2. Each document constituting, reflecting, discussing, or otherwise relating to any communication between SoundExchange and any SoundExchange witness concerning Noncommercial Broadcasters, other Noncommercial Digital Services, or the rates and terms that apply, should apply, or are under consideration to apply to such services under the Statutory Licenses.

3. Each document concerning any analysis, study, or other consideration by SoundExchange or any SoundExchange fact or expert witness of (i) the similarities or differences between (a) commercial Digital Services and (b) Noncommercial Broadcasters or other Noncommercial Digital Services as they relate to the Statutory Licenses and (ii) the rates

and terms to apply to Noncommercial Broadcasters and other Noncommercial Digital Services under the Statutory Licenses.

4. Each document referring to, discussing, supporting, undermining, or otherwise related to any or all aspects of SoundExchange's proposed rates and terms for Noncommercial Digital Services, including the proposed minimum fee, the proposed 159,140 monthly aggregate tuning hour fee threshold, and the usage fees that SoundExchange proposes to apply after the proposed 159,140 monthly aggregate tuning hour threshold is exceeded.

Document Requests Related to the Testimony of SoundExchange's Record Industry Witnesses (Dennis Kooker, Ron Wilcox, Aaron Harrison, Jeffrey S. Harleston, Simon Wheeler, Darius Van Arman, Fletcher Foster) and GEO Music Group

5. All agreements in effect or entered into since January 1, 2009 between the witness's company (or any of its subsidiary labels or affiliates) and any Digital Service, including any amendments, extensions or renewals of such agreements.

6. Each direct license agreement or other document constituting, reflecting, discussing, or evidencing authorization given by each witness's company to NPR/Public Radio, broadcasters affiliated with a college or university, one or more noncommercial religious broadcasters, or any other noncommercial broadcaster group to perform sound recordings outside of the scope of the section 114/112 statutory license (*e.g.*, on-demand streams, full album streams, etc.) by any SoundExchange witness company (including Sony, Warner, UMG, Beggars Group, Secretly Group, and/or Iconic Entertainment Group).

7. All documents related to the negotiation of the agreements of each witness's company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, "programmed," personalized, and/or customized streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements – including requests for licenses and negotiations that did not result in an executed license.

8. For the agreements of each witness's company (or any of its subsidiary labels or affiliates) with any Digital Service offering on-demand streaming, video streaming, or custom, personalized or non-interactive streaming, all royalty statements/ statements of account from the Digital Service for each quarterly reporting period (or other regular reporting period specified by the agreement) since January 1, 2009.

9. To the extent not included in the royalty statements/statements of account responsive to Request No. 8, documents sufficient to show, on a quarterly basis, separately for each tier of service and fee level (e.g., free tiers versus paid tiers), total payments collected from the Service and how those payments were calculated, revenue reported by the Service (including the calculation of revenue base if available), advances paid, number of subscribers, number of streams/plays during the reporting period, number of downloads, number of users, reported advertising and other ancillary revenue, Service retail price, the record company's pro rata share for any aspect of the Service reported, rates of conversion from fee to subscription services, and

any other data reported to the record company or subsidiary label (other than logs of specific songs streamed or downloaded).

10. Each document reflecting, referring to, or discussing each witness's company's strategy for licensing Digital Services, or the effect on the record companies' revenues or business of such record company's licenses with Digital Services, including any memoranda, checklists, templates, policy manuals, training materials, best practices or similar materials relating to such approach.

11. Annual financial statements for each witness's company (and, to the extent separately maintained, for each of the company's subsidiary labels) for the years 2009 to the present, including documents sufficient to show the company's revenue from statutory licensing, digital downloads, other digital sources, sales of physical units, and any other categories of sales or licensing revenue, and any financial forecasts and/or projections of revenues and costs covering the time period 2014 to 2020.

12. Documents sufficient to show each company's (and, to the extent separately maintained, its subsidiary labels' and affiliates') annual operating costs for the years 2009 to the present, detailed by category, including but not limited to costs associated with: the discovery, development, production, and distribution of sound recordings; the use of the company's sound recordings by streaming music services; and the amount of expenditure for all costs and expenses associated with the company's revenue identified in the previous request, as well as any forecasts and/or projections of such costs/expense covering any of the time period 2014-2020.

13. Documents sufficient to show for the years 2009 to the fiscal year ended March 2014, and any subsequent fiscal quarter, the amount of advances written off by the witness's company (or its subsidiary labels or affiliates), the number of releases not making a profit, any financial analysis of advances made (including amount of advances and whether the advance was recouped), and for each release with an non-recouped advance, the recording agreement (and any amendments thereto) governing that release.

14. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or nonexistence of a substitutional or promotional effect by any Digital Service or terrestrial radio on other sources of record company revenue.

15. All documents concerning to the promotional effects of terrestrial radio airplay and/or performances on any webcasting or streaming service, including (a) all analyses, research, studies, or surveys performed concerning such promotional effects; and (b) documents sufficient to show the amounts spent by each witness's company (or its subsidiary labels) to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

16. All marketing plans or promotion plans for the top ten grossing artists represented by or affiliated with each witness's company, including efforts to obtain radio or webcasting play of the artist's recordings, and the benefits or risks to the company or the artist of radio or webcast play of such recordings.

17. In relation to the witnesses' various contentions that the presence or availability of statutory license(s) influences negotiations with Digital Services, or acts as a "ceiling," "constraint" or other limit on rates that can be achieved in direct licensing negotiations, all documents related to the effect of statutory rates, or the actions or reactions of other record companies, on license fees that the witnesses' companies are able to obtain in direct license negotiations with Digital Services.

18. Each document created by or on behalf of the witnesses' companies (or their subsidiary labels) concerning the effect of statutory streaming royalties on the company's investment in developing sound recordings.

19. All documents related to communications between the witness's company and SoundExchange, or between the witness's company and any other company represented by SoundExchange related to the negotiation of licenses for the reproduction or public performance of sound recordings, the rates and terms of the Statutory Licenses, and the applicable regulations governing the Statutory Licenses.

20. All documents related to Sony's and Universal's new policies – as communicated to iHeartMedia in or around September and/or October 2014 – [redacted] (as pertaining to Kooker at 4-5 (testifying about Sony's marketing and promotion of artists and songs, including "promotion, publicity, social media, live tour support, video promotion, and brand sponsorship) and at 8 (discussing revenues earned from digital streaming) and Harleston and 5, 11 (discussing Universal's investments and costs of A&R) and at 9 (discussing Universal's marketing "across all media platforms, and the assertion that Universal "work[s] with our digital partners to ensure that our artists are featured prominently on their services," including "encouraging tastemakers to feature our music on their playlists")).

21. All prior written, deposition, and hearing testimony submitted in any prior CARP, Copyright Royalty Board, or other rate-setting proceeding by any Record Company providing a witness for SoundExchange in this proceeding.

Document Requests Directly Related to the
Written Direct Testimony of Dennis Kooker

22. All documents that refer or relate to revenue from digital sources "closing the gap" of revenue declines from physical product as described on page 8 of Mr. Kooker's testimony including any internal and external communications and analyses concerning these trends including forecasts of revenue from digital and physical product in the music industry and at Sony Music or any of its Subsidiary Labels.

23. All documents that refer or relate to the calculation of the expenses directly related to digital distribution referenced on page 9 of Mr. Kooker's testimony and documents sufficient to show the calculation of such expenses from each year from 2009 to the fiscal year ended March 2014, and any subsequent fiscal quarter, and any forecasts of future amounts of such expenses.

24. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to Mr. Kooker's contentions concerning the "Shift from Ownership to Access Models" on pages 10 through 13 of his testimony, including without limitation his contentions that "[b]ased on market trends, we expect the decline in permanent download sales to be permanent" (p. 12) and "Sony Music anticipates that the movement away from ownership and toward access models will further accelerate over the course of the next statutory rate term." (p. 13).

25. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the contentions on page 14 of Mr. Kooker's testimony that (i) "We have found that streaming services cannot generate revenues sufficient to compensate us for the value of our music . . . [,]" (ii) "[s]treaming services are unable to significantly increase their ARPU through advertising alone[,]" or to the analysis or calculation of ARPU for various Digital Services also referenced on page 14.

26. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the contention that a "convergence" of statutory and directly licensed Digital Services exists as described on page 16 of Mr. Kooker's testimony, including the ways in which the services are converging, whether the services are reasonably interchangeable, whether positive cross-elasticity of demand exists, customer views of the convergence, market research about the convergence, Mr. Kooker's expressed expectation that the convergence will continue through the coming rate period, and the impact of the convergence.

27. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to Mr. Kooker's contentions on pages 15 through 17 of his testimony, concerning the (i) effects of the statutory licenses on direct licensing and (ii) competition between statutory services and Sony Music's directly licensed partners, including without limitation, (a) the effect of the statutory rates on privately negotiated rates, (b) the effect of statutorily licensed services on the conversion of on-demand services' users to subscription tiers or otherwise to generate higher ARPU, (c) the effect of the statutory streaming royalties on Sony's investment in developing sound recordings, and (d) the contentions on page 17 that (1) "It is difficult for direct licensees to convince users that the differences [between the overall consumer offerings of direct licensees' services and statutory services] are worth paying for," (2) "Users perceive costs to switching" from free digital services to subscription services, and (3) "Direct licensees find themselves competing for listeners with closely comparable services that pay substantially reduced rates and that make little or no effort to convert free listeners to paying subscribers."

28. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the existence or nonexistence of a

substitutional or promotional effect by any Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony) or terrestrial radio on other sources of record company revenue such as sales of CDs and permanent downloads or higher ARPU subscription offerings.

29. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

30. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

31. All documents related to the statement on pages 6-7 of Mr. Kooker's written direct testimony that "the highest ARPU is generated from paying subscribers of directly licensed services," including without limitation, all calculations of the ARPU for periods since January 1, 2009, for each Sony Music or Sony Subsidiary Label agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony).

32. For each Sony agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony), documents sufficient to show Sony Music's valuations, if any, of the following provisions of such agreements discussed by Mr. Kooker at pages 21-23 of his written direct testimony (or the additional consideration Sony receives when such provisions are not present): (a) payment structure based on [redacted] (b) terms "intended [redacted] including without limitation, [redacted]; (c) specification of audio quality; (d) security provisions; and (e) [redacted] (f) reporting requirements; (g) auditing rights; (h) access to consumer data; and (i) duration of agreement terms.

33. All studies, analyses, surveys, presentations, memoranda or other documents that relate to the competition between statutory services and Sony Music's directly licensed partners referred to on page 15 of Mr. Kooker's written direct testimony, including but not limited to all documents relating to the contentions on page 17 that "It is difficult for direct licensees to convince users that the differences [between the overall consumer offerings of direct licensees' services and statutory services] are worth paying for," that "Users perceive costs to switching" from free digital services to subscription services, and that "Direct licensees find themselves competing for listeners with closely comparable services that pay substantially reduced rates and that make little or no effort to convert free listeners to paying subscribers."

Document Requests Directly Related to the
Written Witness Testimony of Ron Wilcox

34. All documents related to Mr. Wilcox's assertion on p. 4 of his testimony that "[t]he rise of digital services has fundamentally altered WMG's view of how to generate revenues from distributing its sound recordings," including, but not limited to, any analyses, studies, research, memoranda, or presentations related to WMG's altered view and any related budgets, projections, or business plans concerning Digital Services.

35. All documents related to Mr. Wilcox's assertion on p. 4 of his testimony that "[t]he idea that such unlimited access [to streaming services] – without some additional element to incentivize music purchasing – promotes sales is fanciful," including any analyses, studies, surveys, memoranda, or presentations prepared for or by WMG related to this issue.

36. Any documents – including, but not limited to, any analyses, studies, research, memoranda, or presentations related to the assertion on p. 5 of Mr. Wilcox's testimony that "Through free market negotiations, WMG is able to obtain significantly higher rates and/or significantly more valuable overall deal terms than WMG receives through the statutory license."

37. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, analyzing, or evaluating the value of any term of the agreement between iHeartMedia, Inc. and Warner Music Inc., including but not limited to the [redacted] described in the testimony of Ron Wilcox. For the avoidance of doubt, this Request also includes any demonstration, analysis, or evaluation of the value of the [redacted] provisions in the agreement, including the extent to which [redacted], and the manner in and extent to which [redacted] "save[s] WMG the expense of comparable advertising."

38. All documents, studies, analyses, presentations, and communications concerning any discussion, evaluation, or dispute, whether internal to Warner or between Warner and any counterparty to a licensing agreement or proposed licensing agreement, regarding the [redacted] offered by the licensee or proposed licensee, including the methods Warner uses to evaluate [redacted] and the means by which [redacted]

39. For each Warner agreement with a Digital Service (including any "digital services," "digital distribution services," or digital partners" as Mr. Wilcox uses those term in his written direct testimony, e.g., at pages 4-7), documents sufficient to show Warner's valuations, if any, of the following provisions of such agreements discussed by Mr. Wilcox at pages 6-7 of his Written Direct Testimony (or the additional consideration Warner receives when such provisions are not present): (a) payment structure based on [redacted] (b) [redacted] (c) [redacted] (d) access to data; (e) security provisions; (f) holdback rights; (g) reporting requirements; (h) audit rights; and (i) short-term licenses.

Document Requests Directly Related to the
<u>Written Witness Testimony of Aaron Harrison</u>

40. All new partner questionnaires as described by Mr. Harrison in paragraph 23 of his testimony.

41. For each Universal (or any Subsidiary Label) agreement with a Digital Service, all calculations of the "effective rate" paid and ARPU (as described by Mr. Harrison at pp. 8 and 17-18 of his testimony) for periods since January 1, 2009.

42. For each Universal (or any Subsidiary Label) agreement with a Digital Service, documents sufficient to show Universal's valuations, if any, of the following provisions of such agreements discussed by Mr. Harrison at pp. 17-24 of his testimony (or the additional consideration WMG receives when such provisions are not present): (a) advances, minimum guarantees, flat fees, and shortfall payments; (b) marketing commitments and guarantees; (c) holdback rights; (d) user data; (e) security precautions; (f) short deal terms; and (g) fan engagement, including but not limited to user emails.

43. In relation to Mr. Harrison's contentions regarding Security Guarantees on p. 22, documents sufficient to show all instances where a statutory webcaster allowed users to "capture or download" content, offered its service in other territories, was hacked, or used "unencrypted progressive downloads" in a way that led to any Universal (or other) recordings being captured or hacked by users.

44. All studies, analyses, surveys, presentations, memoranda or other documents related to Mr. Harrison's contention on pp. 4-6 that the market for recorded music is shifting from an "ownership model to an access model."

45. All documents related to the contention on page 9 of the Harrison testimony that "we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services," including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another.

46. Documents from January 1, 2009, to the present concerning Universal's "approach to the market for the distribution of recorded music" (Harrison testimony page 4), including but not limited to strategic plans, presentations, memos, analyses, etc., whether for Universal, any of its labels, or industry-wide.

47. All documents related to the contention on page 9 of the Harrison testimony that "Pandora is streaming music to users who might otherwise pay for a subscription or use a higher ARPU streaming service," including all studies, analyses, memoranda or documents otherwise concerning whether and how Pandora or other webcasters do or do not substitute for paying subscriptions or use of services with higher ARPU.

48. All documents related to the contention on page 10 of the Harrison testimony that "on-demand services like Spotify compete directly with statutory webcasters like Pandora," including all studies, analyses, memoranda or documents otherwise concerning such competition, and any competition between other statutory services and on-demand services like Spotify.

49. All studies, analyses, surveys, presentations, memoranda or other documents related to the following contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services:

a. "Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music" (p. 5)
b. "If a user has 'customized' her or his preferences through a streaming service, the user knows they have a good chance of hearing songs they like, or others like them, and thus see a diminished need to own a particular recording"
c. "these services are drawing consumers and revenue away from the sale of permanent downloads and CDs"
d. "on-demand and customized streaming services do not promote sales of downloads"
e. The requested documents include, without limitation, all documents concerning the potential or actual substitution of any Digital Service for any other Digital Service and/or sales of compact discs, vinyl records or digital downloads.

50. All documents, including without limitation any studies, analyses, surveys, presentations, memoranda or other documents, related to the statement in paragraph 13 of Mr. Harrison's testimony that "we have found that streaming services cannot generate sufficient ARPU through advertising alone."

Document Requests Directly Related to the
Written Direct Testimony of Jeffrey Harleston

51. Each document related to Mr. Harleston's assertion in paragraph 5 of his testimony that there is a "significant investment involved in developing new music" as well as "inherent risks" and his assertions in paragraph 35 of his testimony that UMG's revenues "have declined dramatically" and that "[t]his decline only increases the pressure on us to manage our costs and our losses wisely," including, for each year from 2009 to the present, annual financial statements (including balance sheets, income statements, profit and loss statements, and cash flow statements), strategic or business plans, and projections for Universal Music Group ("UMG") and, to the extent separately maintained, for any UMG subsidiary label (including, but not limited to, Motown Records, Interscope Records, Island Records, Def Jam Records, Geffen Records, A&M Records, Capitol Records, Virgin Records, Mercury Nashville, Universal Music

Latino, Verve Records, Republic Records, Universal Music Classics, and any other UMG label) (collectively "UMG's subsidiary labels") as well as any business plans, projections, or forecasts covering any of the time period 2016-2020 for UMG or its subsidiary labels.

52. For each year from 2009 to the present, each financial statement and other document identifying the amounts that UMG spent on each of the types of expenditures discussed by Mr. Harleston in his testimony, including amounts spent on any subcategory of each such expenditure to the extent that those expenditures are maintained in the ordinary course of business, including: Artists & Repertoire expenditures (¶¶ 9-11, 14-21) (including documents identifying any separately reported Production and Recording expenditures); Business and Legal Affairs expenditures (¶¶ 12-13); Marketing expenditures (¶ ¶ 22-30) (including documents identifying any separately reported expenditures in connection with obtaining airplay on terrestrial radio, a radio station simulcaster, or any Digital Service; and Manufacturing and Distribution expenditures (¶¶ 31-34). Please include in your response documents sufficient to support the amounts that Mr. Harleston asserts were spent on each of these types of expenditures in 2013 that are set forth in paragraphs 11, 13, 30, 31, and 32 of his testimony.

53. For each year from 2009 to the present, documents sufficient to identify the types and amounts of each separately reported type of "Marketing" expenditure by UMG and UMG's subsidiary labels, including: (a) video department expenditures (¶ 24); (b) artist development department expenditures associated with touring (¶ 25); (c) in-house publicity staff expenditures (*id.*), including separately reported expenditures associated with obtaining airplay on terrestrial radio, a radio station simulcaster, or any Digital Service; (d) new media staff expenditures (*id.*); (e) expenditures in connection with making recordings available in brick-and-mortar retail partner establishments (¶ 25); (f) expenditures associated with obtaining airplay on services offered by "digital partners," including radio station simulcasters and other Digital Services (¶ 27); and (g) and other separately reported "Marketing" expenditures. *See* Harleston Test. ¶¶ 22-30.

54. Each document related to Mr. Harleston's assertions in paragraphs 20 and 21 of his testimony regarding UMG's "pre-release costs" for both new and established artists, including, but not limited to, documents sufficient to show UMG's average pre-release costs for an artist affiliated with UMG or one of UMG's subsidiary labels for each year from 2009 to the present.

55. Each document related to the creation and implementation of the "unique marketing plan designed for each artist" (as referred to in paragraph 22 of Mr. Harleston's testimony) for each of the representative artists identified in paragraph 7 of Mr. Harleston's testimony, Robin Thicke, discussed in paragraph 29 of Mr. Harleston's testimony, and Eminem, discussed in paragraph 37 of Mr. Harleston's testimony.

56. Each document related to Mr. Harleston's assertion in paragraph 23 of his testimony that UMG's "promotion departments use their expertise to develop pathways of discovery and exposure for our artists across all media platforms," including, but not limited to, for each year from 2009 to the present, (a) documents sufficient to identify each such media platform and the separate amounts spent on obtaining exposure on each such platform, including terrestrial radio; (b) documents related to each type of activity in which UMG or any of its

subsidiary labels engages to obtain such exposure on each such platform; and (c) each study, analysis, survey, presentation, memorandum, or other document related to any effort to determine or evaluate the impact of airplay on any of these media platforms, including terrestrial radio, on sales of sound recordings. *See* Harleston Test. ¶¶ 22-30. Please include in your response (i) documents sufficient to show the total number of promotional albums directly or indirectly (through a third party promoter, distributor, or other third party) given to any radio station, radio station simulcaster, or Digital Service; (ii) documents related to artist visits to any radio station, radio station simulcaster, or Digital Service and documents sufficient to quantify the total number of such visits; (iii) each agreement with any third party (including any independent promoter) concerning the promotion of UMG's recordings to any radio station, radio simulcaster, or Digital Service, all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other consideration paid to such third parties under each agreement; (iv) each agreement with any radio station, radio station simulcaster, or Digital Service (including the "deals with interactive services" mentioned in paragraph 27 of Mr. Harleston's testimony and any similar or related agreements), all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other thing of value given to any radio station, radio station simulcaster, or Digital Service, or their listeners or customers pursuant to those agreements; (v) all documents reflecting communications related to efforts to obtain airplay for one or more recordings released by UMG for play on any radio station, radio station simulcaster, or Digital Service, including, but not limited to, letters, emails, internal memos, and notes; and (vi) each document concerning any advertisements directed in whole or in part to any radio station, radio station simulcaster, or Digital Service (or programmers thereof), including tip sheets.

57. For each year from 2009 to the present, documents sufficient to show the amounts UMG spent to promote artists or sound recordings to radio stations, including, but not limited to, all costs associated with: manufacturing and shipping promotional albums; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or radio station programmers; providing artists for appearances at radio stations; promotional concerts and tours; giveaways and other incentives provided to radio stations other than promotional albums; all overhead costs associated with or allocable to promotion to radio; and any other costs not included in the above. *See* Harleston Test. ¶¶ 22-30.

58. Documents sufficient to identify, for each year from 2009 to the present, (i) the number of UMG employees whose duties in whole or in part involved promotion of artists or sound recordings to radio stations, and the total compensation UMG paid to those employees; and (ii) the number of third party individuals (including, but not limited to, independent promoters) whose duties in whole or in part involve promotion of artists or sound recordings to radio stations, and the total compensation that UMG paid to those third parties. *See* Harleston Test. ¶¶ 22-30.

59. Each document related to the statement in paragraph 27 of Mr. Harleston's testimony that "[i]n the same way we work with brick-and-mortar stores, we also work with our digital partners to ensure that our artists are featured prominently on their services," including, but not limited to, each document related to any agreements or communications between UMG (or any subsidiary or affiliated label) and any third party involving efforts to gain artist exposure through terrestrial radio, a radio station simulcaster, or a Digital Service, as well as any

marketing plans, business plans, reports, studies, analyses, presentations, surveys, memoranda, budgets, financial statements, or other documents related to such efforts and their impact on sound recording sales.

Document Requests Directly Related to the
Written Direct Testimony of Simon Wheeler

60. All documents relating to the recent license agreement between Pandora and MERLIN, including but not limited to communications among or between MERLIN, MERLIN members, or the MERLIN Board of Directors, and including but not limited to Beggars Group's decision whether to opt in to the Pandora-MERLIN license agreement.

61. All documents relating to other licensing deals negotiated between MERLIN and any Digital Service since 2009 that Beggars Group has "opted into" (or not) as discussed at p. 4 of Mr. Wheeler's testimony, including but not limited to documents reflecting the decision by Beggars Group of whether to opt in to the deal.

62. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Mr. Wheeler's contention in paragraph 32 of his Testimony that "in the United States . . . consumers seem more willing to accept 'lean-back' music experiences instead of adopting the on-demand models that are more prevalent in Europe" and that "there is more of a 'lean back' mentality in the United States."

63. All studies, analyses, surveys, memoranda or other documents related to the similarities, differences, and degree of competition or substitution between webcasting and on-demand streaming services (as Mr. Wheeler uses those terms), including but not limited to documents relating to Mr. Wheeler's contentions that:

a. webcasting services "are now attempting to offer enough of a complete music experience . . . to draw consumers away from the higher-revenue-per-consumption services, such as on-demand subscription services" (paragraph 31)
b. "[t]here is a real danger that webcasting services provide enough functionality such that most consumers will not need or will choose not to look to on-demand subscription services" (paragraph 35)
c. "the distinction between [webcasting services and on-demand subscription services] is less and less a meaningful difference for consumers" (paragraph 36)
d. Mr. Wheeler "would expect that a negotiating framework for webcasting would largely approximate the on-demand service framework" (paragraph 36)
e. "statutory webcasting does offer slightly less functionality (i.e., no on-demand) but there is not really much other difference" (paragraph 38)
f. "webcasting and on-demand services compete for consumption" (paragraph 40)

64. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to the potential or actual substitution of any Digital Service for any other Digital Service, or the impact of any Digital Service usage on sales of sound recordings in physical or digital format, including but not limited to document related to Mr. Wheeler's statement in paragraph 42 of his Testimony that "streaming music on

one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service, such as an on-demand service. Indeed, it is the incentive of the webcaster to do the exact opposite. . . ."

Document Requests Directly Related to the
Written Direct Testimony of Fletcher Foster

65. Annual financial statements for Iconic Entertainment Group ("Iconic") for the years 2009 to 2014 and any forecasts covering any of the time period 2016-2020 and documents sufficient to show Iconic's revenue, directly or indirectly, from statutory licensing (webcasting, SDARS, PSS, any other), digital downloads, other digital sources (interactive streaming, ringtones), sales of physical units (CDs, records), touring and live performances, merchandise sales, and any other categories of revenue for Iconic for the years 2009 to the present and any forecasts covering any time period from 2016-2020; and documents sufficient to show for the years 2009 to present the amount of expenditure by cost accounting category used for all costs and expenses associated with such revenue.

66. Documents sufficient to show, for each recording artist represented by or affiliated with Iconic, including those discussed in paragraphs 16-20 of Mr. Foster's testimony, such artist's revenue from 2009 to the present, and any forecasts for such revenue covering any time period from 2016-2020 that are related to the artist's music, including revenue from statutory licensing (webcasting, SDARS, PSS, any other), digital downloads, other digital sources (interactive streaming, ringtones), sales of physical units (CDs, records), touring and live performances and merchandise sales.

67. Documents sufficient to show the amounts of Iconic's "significant investment" in artists as referenced in paragraph 16 of Mr. Foster's testimony, for the years 2009 to the present, including any analysis of the return on investment, success/failure rate of artists invested in, or other financial metrics related to the investments, and the effect of statutory streaming royalties on Iconic's investment.

68. All agreements, and any amendments thereto, between Iconic and any of the artists referenced in Mr. Foster's testimony, including Taps, Levi Hummon, Emily West, and LeAnn Rimes.

Document Requests Directly Related to the
Written Direct Testimony of Darius Van Arman

69. All agreements in effect or entered into between 2009 and present between Secretly Group, including the Secretly subsidiary labels and affiliates, and any third party related to the distribution (including both physical and digital distribution) of sound recordings, including without limitation the agreements with Warner, Independent Distribution Cooperative, and Alternative Distribution Alliance reference on page 7 of Mr. Van Arman's testimony, and all documents, including without limitation correspondence with third parties, concerning the negotiation, consideration, or analysis of such agreements.

70. All documents relating to the recent license agreement between Pandora and MERLIN, including but not limited to communications among or between MERLIN, MERLIN members, or the MERLIN Board of Directors, and including but not limited to the decision by Secretly Group (or any of its subsidiary labels) whether to opt in to the Pandora- MERLIN license agreement.

71. All documents referring or relating to "digital breakage," as that term is used in pages 10-13 of Mr. Van Arman's testimony.

Document Requests Directly Related to the
Written Witness Testimony of Raymond M. Hair

72. Concerning the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (the "AFM & SAG-AFTRA Fund") discussed by Mr. Hair, documents sufficient to show, for each year since 2009: (a) amounts paid into the AFM & SAG-AFTRA Fund in each year from all sources, including SoundExchange; (b) the amounts paid into the AFM & SAG-AFTRA Fund by SoundExchange by category of service (SDARS, webcasters, etc.); (c) amounts distributed from the AFM & SAG-AFTRA Fund in total and by category (e.g., session musicians, vocalists, background singers, etc.); (d) amounts not distributed; (e) the number and percentage of fund recipients not found; (f) the number and percent of checks returned; (g) amounts returned to the AFM & SAG-AFTRA Fund because the recipient could not be found within three years; and (h) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

73. Documents sufficient to show how background musicians and singers are identified for performances by statutory licensees and how they are paid from the AFM & SAG-AFTRA Fund, including the number and percentage of performances for which (a) all background singers and musicians are identified; and (b) no background singers and musicians are identified.

74. Concerning the Special Payments Fund ("SPF") discussed by Mr. Hair, documents sufficient to show the fifty percent (50%) decline in collections and distributions in the last ten years (i.e., from 2004 to present), including: (a) amounts paid into the SPF in each year from all sources; (b) amounts distributed from the Fund in total and by category (e.g., session musicians, background singers, etc.); (c) amounts not distributed; and (d) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

Document Requests Jointly Related to the
Testimony of Michael Huppe and Jonathan Bender

75. Documents sufficient to show, for each year since 2009, that SoundExchange's incentives are properly aligned with the interests of royalty recipients and that SoundExchange has a demonstrated record of maximizing royalty payments to artists, including: (a) percentage of monthly or annual royalties paid to SoundExchange that are used by SoundExchange to cover its monthly or annual administrative and other business costs; (b) SoundExchange's monthly or annual administrative expenses and other business costs; (c) SoundExchange's annual expenditures and hours spent on lobbying, and other "mission"-related activities not directly tied

to collecting and distributing royalty payments; (d) SoundExchange's annual expenses for litigation (apart from fees for internal legal staff); (e) salary, bonus and other compensation paid to SoundExchange's leadership, including its (i) President and Chief Executive Officer, (ii) Chief Operating Officer, (iii) Chief Technology Officer, (iv) Senior Vice President and General Counsel, (v) Chief Financial Officer, (vi) VP Communications, (vii) VP Global Public Policy and (viii) VP Industry Relations; (f) salary, bonus, stipend and other compensation paid to individuals serving as Directors on the Board of SoundExchange; and (g) amounts of collected royalties that are undistributed.

76. Each document related to Mr. Huppe's assertions in paragraphs 2, 6, and 7 of his testimony and Mr. Bender's assertions on pages 3-4 of his testimony describing the structure and functions of SoundExchange, its "executive team" referenced in paragraph 2, and its Board of Directors, including, but not limited to, (a) organizational charts or other documents sufficient to identify the name and title of all employees, the membership of SoundExchange's Board, executive team, committees, and any sub-committees, and how members to the Board, executive team, committees, and any subcommittees are selected; (b) documents describing the functions of SoundExchange's Board, executive team, committees, and any subcommittees; and (c) minutes from all meetings of SoundExchange's Board, executive team, committees, and any subcommittees from 2009 to the present.

77. Documents sufficient to show annual royalty payments received by SoundExchange under the Statutory Licenses for each year from 2009 to the present, on a licensee-by-licensee basis, identified by: licensee; licensee type (including each of the licensee types listed in Figure 2 of Mr. Bender's testimony, satellite digital audio service, preexisting subscription service, business establishment service); regulation or agreement governing how the payment was calculated (*e.g.*, statutory rates, rates paid under a specific Webcaster Settlement Act of 2009 agreement, etc.) to the extent not clear from licensee type; payment amount; and the number of performances, aggregate tuning hours, or revenue corresponding to each such payment. *See* Bender Test. at 6, 11-14 & Figs. 1-2; Huppe Test. ¶¶ 13, 17.

78. For each year from 2009 to the present, documents sufficient to show the royalties that SoundExchange distributed under the Statutory Licenses, and the manner in which SoundExchange reported those distributions, to (a) Sony, (b) Universal, (c) WMG, (d) independent record labels, (e) featured recording artists, and (f) back-up vocalists and session musicians. *See* Huppe Test. ¶ 5 & Ex. 1 (SX EX. 008-DP); Bender Test. at 5, 10.

79. For each year from 2009 to the present, documents sufficient to show the types and amounts of SoundExchange's expenses, including, but not limited to, operating costs associated with collecting and distributing royalties; costs associated with participating in negotiations and proceedings under the Statutory Licenses; costs associated with auditing licensees and settling disputes relating to royalty collection and distribution; costs associated with enforcing rights subject to the Statutory Licenses, equipment and system depreciation costs; staff costs; facilities costs; and other costs. *See* Bender Test. at 5, 16-18; Huppe Test. ¶ 11.

80. For each year from 2009 to the present, each document related to Mr. Huppe's assertion in paragraph 11 of his testimony that "nearly 90% of the money we collect from the 2,500+ services we work with is processed within 45 days of receipt," including, but not limited

to, documents sufficient to show the number, identities, and proportion of licensees for which SoundExchange has processed 100% of their royalty payments within 45 days of receipt, the number, identities, and proportion of licensees for which SoundExchange has processed 90% of their royalty payments within 45 days of receipt, the amount of undistributed royalties, including interest, held by SoundExchange, in a segregated trust account pursuant to 37 C.F.R. §§ 380.8, 380.17, 380.27 or otherwise for longer than three months, and the amounts of undisbursed royalties that SoundExchange has applied to offset its costs after not being claimed for three years. Huppe Test. ¶ 11; Bender Test. at 11.

81. Each document related to the "30 reciprocal agreements with international performing rights organizations" discussed in paragraph 10 of Mr. Huppe's testimony, including the agreements, documents reflecting communications regarding the negotiation or implementation of these agreements, and documents identifying each payment made to or from SoundExchange pursuant to these agreements. *See* Huppe Test. ¶ 10; Bender Test. at 10.

82. In relation to Mr. Lys's contentions regarding the need for statutory licensees to make payments to SoundExchange within 30 days of the close of a reporting period, data sufficient to show, for all distributions made by SoundExchange in the past three years, the time that elapsed between the date SoundExchange received payments from licensees and the date SoundExchange distributed such payments to copyright owners.

Document Requests Directly Related
<u>to the Testimony of Michael Huppe</u>

83. Each document related to Mr. Huppe's assertions in paragraph 15 of his testimony contrasting the breadth of "the playlists of terrestrial radio" with the breadth of the playlists of Digital Services, including, but not limited to, any analyses, studies, or comparisons of terrestrial radio playlists with the playlists of any Digital Service.

84. Each document related to Mr. Huppe's assertion in paragraph 16 of his testimony that recorded music industry "requires a great deal of up-front investment," including, but not limited to, each document that Mr. Huppe has reviewed or considered showing the types and amounts of the recorded music industry's expenditures for each year from 2009 to the present.

85. Each document related to Mr. Huppe's assertion in paragraph 9 of his testimony that "SoundExchange goes to great lengths to locate artists and small record labels not yet registered with SoundExchange," including, but not limited to, documents sufficient to show efforts undertaken by SoundExchange to work with third parties (including those identified in paragraph 9) to locate payees, documents reflecting communications with those third parties, and documents related to SoundExchange's communications with artists and sound recording copyright owners to locate payees.

Document Requests Directly Related to
<u>the Testimony of Jonathan Bender</u>

86. Year-end statements of account (showing month-by-month activity) for each year from 2009 to the present for the 30 highest-paying licensees under the Statutory Licenses. *See, e.g.*, Bender Test. at 16 ("Payments from services that pay larger amounts of royalties in effect

subsidize costs associated with processing payments and information from smaller services ....").

87. Each document related to Mr. Bender's assertion on page 9 of his testimony that "a service's royalty payments for a given distribution period are allocated to sound recordings used by that service during that period and to SoundExchange's costs deductible under Section 114(g)(3)," including, but not limited to, documents sufficient to show the method(s) by which SoundExchange allocates those royalties to its deductible costs.

88. Each document related to Mr. Bender's derivation of his $11,778 per licensee and $1,900 per station or channel cost estimates on pages 15-18 of his testimony, including, but not limited to, documents sufficient to show how Mr. Bender derived those estimates, the identity of each of the 2,547 licensees that Mr. Bender used in his estimates, the identity of each licensee for which Mr. Bender used multiple stations or channels to calculate his cost estimates, the number of stations or channels that Mr. Bender used for each licensee in deriving his $1,900 cost estimate, and the identity of each licensee as to which Mr. Bender assumed operated 100 stations or channels (*see* p. 18).

89. For each year from 2012 to the present, documents sufficient to identify each copyright owner or artist who received at least one monthly distribution, the amounts of each such distribution, and the identities of all other SoundExchange rights owner members, artist members, and non-member that did not receive at least one monthly distribution. Bender Test. at 10.

90. Each document related to Mr. Bender's assertions on page 20 of his testimony regarding SoundExchange's proposal to require royalty payments within 30 days of the close of a reporting period, including, but not limited to, for each year from 2009 to the present, documents sufficient to show the number, identity, and proportion of licensees whose royalty payments are processed within 30 days as well as the average time that it takes SoundExchange to distribute at least 90% of a royalty payment from a licensee, calculated from the time that SoundExchange received that royalty payment and expressed as an average across all licensees.

91. For each year from 2009 to the present, documents sufficient to show the identities of each royalty recipient as to which SoundExchange adjusted any distributed royalty amounts, the amounts of each such adjustment, and the amount of time between when SoundExchange first received the applicable royalty payment and when each adjustment was applied, as discussed by Mr. Bender on page 9 of his testimony.

Document Requests Directly Related to the Written Direct Testimony of SoundExchange Expert Witnesses (Rubinfeld, Lys, Blackburn, McFadden)

92. All published or unpublished scholarly articles or drafts, books or chapters of books, papers under review, working papers, course materials or presentations written in whole or in part by any of SoundExchange's testifying expert witnesses and any document constituting or reflecting the substance of any lecture, conference, presentation, seminar or other event that was participated in, moderated, written, or co-authored by any of SoundExchange's testifying expert witnesses that discusses or otherwise relates to any of the subjects discussed in his Report,

as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

93. Each document constituting a report, testimony (whether in deposition, trial or hearing) or opinion, with exhibits, submitted by any of SoundExchange's testifying expert witnesses in any judicial or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his Report, as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Audio Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Audio Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

94. Each document constituting or reflecting meetings, discussions or other communications between any of SoundExchange's testifying expert witnesses and record company personnel or record company representatives, including any meetings discussed or referenced in an expert's report.

95. Each document constituting or reflecting any communication between any of SoundExchange testifying expert witness and any SoundExchange fact witness or any non-lawyer member or employee of SoundExchange pertaining to the subject matter of this proceeding or the subject matter of the expert's or any assertion therein.

Document Requests Directly Related to the
Written Witness Testimony of Daniel Rubinfeld

96. All agreements between each Record Company and any Digital Service, including any agreement listed in Rubinfeld Testimony ¶ 16 and Appendix 2, including both current agreements and prior agreements covering all or part of the 2006-2015 period.

97. For each agreement responsive to Request 96, for each reporting period specified by the agreement (e.g., monthly, quarterly or annual), documents sufficient to show:

a. total payments collected from the music streaming service;
b. [redacted]

c. all performance statements received from the music streaming service – including total revenues reported (separately for subscription and advertising) and all measures of usage or listenership (such as subscribers, plays, streams, or hours);
d. all measures of listenership (such as plays, streams, or hours) reported separately for ad-supported users and subscription users;
e. each label's pro rata share of any of the payments, performances, revenues, and other measures of usages or listenership described in Requests 97(a)-(c); and
f. an accounting of all other consideration exchanged between the parties (including all forms of consideration such as those referenced in Rubinfeld ¶¶ 126, 205, and 218).

98. For every agreement or prospective agreement between a Record Company and a Digital Service, including each agreement responsive to Request 96, as well as each agreement between a Record Company and a Digital Service that was proposed, considered, or negotiated, but not executed, all documents in the possession of any Record Company, SoundExchange, or Dr. Rubinfeld related to negotiation, evaluation, and (where applicable) execution of the agreement, including:

a. all drafts of the agreement;
b. all term sheets describing the proposed terms of the agreement;
c. all analyses and projections of expected and actual compensation under the agreement or value provided by the agreement or specific terms thereof, both before and after the agreement was executed, whether prepared by the Record Company, the counterparty, or a third party; and
d. all documents pertaining to the negotiation of the agreement, including all communications between the Record Company and the counterparty, communications internal to the Record Company, and communications with third parties.

99. Monthly historical data for the period between 2009 and present on all royalties collected by SoundExchange from any Digital Service, including (1) total performances reported by each Digital Service, (2) total royalties paid by each Digital Service, (3) total performances attributed to each Record Company, and (4) total royalties paid to each Record Company. For the avoidance of doubt, this Request includes data on those Digital Services analyzed by Dr. Rubinfeld as well as those Dr. Rubinfeld declined to consider on the ground that they lacked a meaningful role in the U.S. market (*see* Rubinfeld ¶ 30), including 7Digital, Guvera, TurnTable.FM, Neurotic Media, Pasito, Arkiv Music, Instant Media Network, and Overflow.

100. All documents, studies, analyses, presentations, and communications concerning any Record Company's receipt or attempt to negotiate receipt of an equity interest in a Digital Service, including those Digital Services listed in Rubinfeld Testimony ¶ 16 and Appendix 2.

101. All documents, studies, analyses, presentations, and communications concerning any Record Company's plan, attempt, or investigation or evaluation of a proposed plan or attempt, to start or purchase, in whole or in part, a Digital Service.

102. Any data cited as the source of any Exhibit in the Rubinfeld Testimony or reviewed in connection with the development of any such Exhibit, including the "Internal SoundExchange data" cited as the source for Exhibit 11 of the Rubinfeld Testimony, and the "Performance data provided by major labels" cited as the source of Exhibit 16a of the Rubinfeld Testimony.

103. All documents, studies, analyses, presentations, and communications comparing, evaluating, or differentiating audio streaming services and video streaming services.

104. For each category of Digital Service described in Rubinfeld Testimony ¶ 16 and Appendix 2, all documents concerning the market characteristics for each such category, including, without limitation:

a. retail prices to end user customers;
b. consumer demand;
c. demand or price elasticities;
d. consumer usage;
e. customer turn-over/churn rates; and
f. the extent to which services in the category promote and/or substitute for other forms of consumer music consumption.

105. Each document reviewed or considered by Dr. Rubinfeld concerning his proposal for rates for Noncommercial Broadcasters or other Noncommercial Digital Services, Rubinfeld Test. ¶¶ 33, 246, including each document and all data related to his conclusion that "for most if not all non-commercial webcasters [the] $500 minimum [fee] likely will be the only leg of the formula that applies" and that "the $500 minimum fee has not discouraged entry into the music streaming industry."

106. All documents provided to Dr. Rubinfeld by Sound Exchange or the labels, including any documents or notes related to the in-person meetings that Dr. Rubinfeld had with "the three major record labels, Sony, Warner, and Universal, as well as one of the larger independent music labels," as described in ¶ 8 of his testimony.

107. All documents, studies, analyses, surveys, presentations, memoranda or other communications demonstrating, supporting, refuting, or otherwise relating to the claim that physical sales of music and other sources of record label revenue are being "replaced" by streaming, Rubinfeld Testimony ¶¶ 46, 138, including, documents relating to or quantifying the effect (promotional or substitutional) of various types of streaming services on revenue from and audience/listenership for owned music purchases (including sales of downloads and CDs), live concerts, interactive music services (including both ad-supported and subscription-based services), terrestrial radio, satellite radio, and other forms of non-interactive webcasting, or any difference in such effect between simulcasts of radio broadcasts and custom webcasting.

108. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contentions in ¶ 48 of his testimony that "[t]here are no prohibitive barriers to entry into the music streaming industry," and that "entry barriers are especially low for online broadcasters."

109. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 49 of his testimony that "listeners can become 'locked' in to services such as Pandora after they have expressed their likes and dislikes for particular music genres or artists, resulting in highly customized stations or playlists," including any data on the extent to which users of music streaming services use these features.

110. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contentions in ¶¶ 21, 52-74, 91, 140, and 160-61 of his testimony that interactive and non-interactive services "compete" with each other and that there is "increasing convergence between" and "substitution among" interactive and non-interactive services.

111. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 99 of his testimony that "some [webcasters] utilize business models that seek to generate substantial current revenues, while others may follow growth-oriented business models that forgo current revenues in the hope of growing market share while generating substantial network effects."

112. Data on U.S. music sales, by month, for the period between January 2009 and present, including artist, album, song, type of sale (download vs. CD or other media), retail outlet, and location, at the most granular geographic level available (e.g. ZIP code).

113. Data on U.S. listeners to interactive music services, by service and service type (ad-supported, trial, or subscription), including total listeners, total active listeners, total performances, and average performances per month, provided at the most granular level of demographic detail (age, income, and geographic location) available.

114. Each document reviewed or considered by Dr. Rubinfeld in connection with his testimony reflecting, referring to, or discussing: (i) any Record Company's strategy for licensing interactive and non-interactive streaming services, (ii) the effect on any Record Company's revenues or business of the Record Company's licenses with Digital Services; (iii) the effect of the statutory license rate on license fees that a record company is able to obtain in direct license negotiations with Digital Services; (iv) the elasticity of demand of Digital Services for licenses from Record Companies; (v) the effect of statutory streaming royalties on a record company's investment in developing sound recordings; or (vi) any Record Company's actual or projected revenues for 2013 through 2020.

115. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his determination of the minimum per-play fee and minimum revenue shares in his analysis of his "potential interactive benchmarks," including the discussion in ¶¶ 204-206 and Appendix 1a of the Rubinfeld Testimony.

116. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his adjustment "for the value of interactivity" to his potential interactive benchmark, including the discussion in ¶¶ 167-172 and 207-211, and Exs. 5 and 14 of the Rubinfeld Testimony.

117. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with the "adjustment for the numbers of royalty bearing plays: skips and pre-1972 recordings" to his potential interactive benchmark, including the discussion in ¶¶ 212-217 and Exs. 15a and 15b of the Rubinfeld Testimony.

118. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with the "adjustment for independent record company deals and streams" to his potential interactive benchmark, including the discussion in ¶¶ 220-225 of the Rubinfeld Testimony.

119. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his "adjusted interactive benchmark rates," including the discussion in ¶¶ 227-228 and Exs. 16a, 16b, and 16c of the Rubinfeld Testimony.

120. Each document reviewed or relied upon by Dr. Rubinfeld in connection with his assertions that the market has revealed a preference for a "greater of" compensation formula and that such a structure "offsets the limitation of recording company rights by the compulsory statutory license," including the discussion in ¶¶ 93-105 of the Rubinfeld Testimony.

121. Each document reviewed or relied upon by Dr. Rubinfeld in connection with his discussion of the Effects of the Statutory Rates on the Music Streaming Industry in Part III.B. of the Rubinfeld Testimony, including his assertions that the pureplay and statutory rates have "cast a shadow over the market"; and that the "rates paid by all services are effectively determined by the CRB and any costs of differentiation."

122. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his analysis of "Directly Licensed Agreements for Programmed and Customized/Personalized Webcasting Services" discussed in ¶¶ 176-192, and 229-239 of the Rubinfeld Testimony.

123. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his analysis of "Music Video Services" discussed in ¶¶ 193-197, and 240-244 of the Rubinfeld Testimony.

124. Each document reviewed or considered by Dr. Rubinfeld concerning the nature and level of competition among Record Companies in licensing Digital Services.

125. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 140 of his testimony that the royalty rates paid to interactive services are expected to decline.

126. Each document reviewed or considered by Dr. Rubinfeld in connection with his consideration as to whether the percentage of revenue royalty rate paid by Music Services might vary with prices paid by consumers as discussed in ¶ 211 of the Rubinfeld Report.

Document Requests Directly Related to the
Written Witness Report of David Blackburn

127. Each document constituting or reflecting any communication between Dr. Blackburn and any SoundExchange fact witness or any non-lawyer member or employee of SoundExchange pertaining to the subject matter of this proceeding or the subject matter of Dr. Blackburn's Report or any assertion therein.

128. Each document that Dr. Blackburn consulted, relied upon, cited, or reviewed in connection with his engagement by Munger, Tolles & Olsen LLP referenced in paragraph 1 of his Report or in connection with any of the assertions, tables, or figures in Dr. Blackburn's Report, including, but not limited to, each document that constitutes, records, or analyzes any data and/or document provided to Dr. Blackburn by SoundExchange, any record label, or any third party in connection with this proceeding. Where data were provided in a summary, chart, figure or compilation, provide each underlying document that was considered, consulted, or relied upon in preparing such summary, chart, figure or compilation.

129. For each study, analysis, or survey discussed or referenced in Dr. Blackburn's Report, including, but not limited to, the empirical analysis conducted by NERA (¶¶ 63-72), the "MIDiA Research survey" (¶ 95), the MIDiA Research Music Model cited in figure 10 of Dr. Blackburn's Report, and any SNL Kagan, Edison Research, Pew Research, or other analyses or studies that Dr. Blackburn discusses or cites in his Report, documents sufficient to provide the information referenced in 37 C.F.R. § 351.10(e), including "the study plan, the principles and methods underlying the study, all relevant assumptions, all variables considered in the analysis, the techniques of data collection, the techniques of estimation and testing, [] the results of the study's actual estimates and tests presented in a format commonly accepted within the relevant field of expertise implicated by the study," "[t]he facts and judgments upon which conclusions are based," "any alternative courses of action considered," "[s]ummarized descriptions of input data, tabulations of input data[,] and the input data."

130. Each document related to Dr. Blackburn's assertions concerning the alleged "convergence" between non-interactive webcasters and interactive webcasters (¶ 13), including, but not limited to, each document related to Dr. Blackburn's assertions that: "non-interactive services increasingly resemble interactive services and vice versa" (¶ 16); "there is little difference between non-interactive streaming and interactive streaming" (¶ 16); the competition between statutory webcasting and interactive music streaming "will become more and more important to content creators" (¶ 45); there is "an increasing closeness of the user experience for statutory webcasters and non-statutory interactive services" (¶ 46); "in the absence of statutory webcasting, then, it follows that these users would be more likely to sign up for subscription-based interactive competitors" (¶ 96); and that "statutory webcasters compete directly with subscription services" (¶¶ 97-105).

131. Each document related to Dr. Blackburn's assertions that "[s]tatutory webcasting has been a vibrant, growing industry throughout the past several years and is expected to continue as such," and "has experienced sustained entry and growth throughout the prior license period" (¶ 6), including, but not limited to, each document related to Dr. Blackburn's assertions that: "there is a robust and viable market in which competitors are able to earn sufficient

economic return" (¶ 7); "the statutory webcasting industry is prospering" and "data on the entry and resiliency of webcasting services demonstrate that there has been steady and consistent growth, indicating profit opportunities continue to exist in the industry" (¶ 17); "the increased demand from users would be expected to allow existing firms to earn more profits from their services" (¶ 20); "the streaming industry has seen a steady increase in new entrants" and "investors continue to pour money into the webcasting industry" (¶ 21); "survival rates are high in statutory webcasting" (¶¶ 25-28); "advertising revenues have risen and are expected to continue to rise" (¶ 33); and the webcasting industry is "healthy and represents an expected profit center for the future" (¶ 55). Please include in your response each study, analysis, report, research, or other document discussing, reflecting, quantifying, or otherwise relating to investments in any Digital Service, any market entries and exits of any Digital Service from 2007 to the present, and any business plans, analyses, or projections by a Digital Service, potential investor, or any other third-party analyzing, predicting, or otherwise related to historical and expected profits and market returns for any Digital Service from 2007 through 2020.

132. Each document related to Dr. Blackburn's assertions that Pandora and other webcasters have "chosen, as many rational actors do, to forego short-run profitability in favor of user and market share growth" (¶ 6) and "have an economic incentive to invest in market share" (at 41), that "consistent with economic theory and experience ... many companies defer profits in order to grow more rapidly" (¶ 55), that "for music streaming services, in particular, the potential to earn greater online advertising rates for access to the large user base makes foregoing short-run profits in favor of longer-run profits from greater market share a rational economic strategy" (¶ 68), and that "pricing below licensing costs can be a rational economic decision" (¶¶ 83-84). Please include in your response each document constituting, discussing, or relating to any decision by any Digital Service to forego profits in favor of market share growth and any business plans or projections of any Digital Service that Dr. Blackburn considered or reviewed.

133. Each document related to Dr. Blackburn's assertions he finds "little support for the suggestion that statutory webcasting serves a primarily promotional role to other record label revenue sources," that the "evidence suggests, at both a macro and micro level, that statutory webcasting does not tend to increase digital downloads," and that "the record is clear that statutory webcasters, such as Pandora, serve to cannibalize industry revenues earned through directly licensed interactive streaming services" (¶ 6), including each document related to Dr. Blackburn's assertions that: "webcasting does not drive sales" (¶¶ 90-96); and the existence of a "referral link" is "neither necessary nor sufficient evidence of a promotional relationship between statutory webcasting plays and sales" (¶ 91). Please include in your response each document that Dr. Blackburn reviewed or otherwise considered that reflects, discusses, or otherwise relates to the types of activities that record labels engage in to obtain play of sound recordings on terrestrial radio or any Digital Service and the amounts spent in connection with each such activity as well as any studies, analyses, or surveys that discuss the extent to which listening to sound recordings on terrestrial radio, or any noninteractive or interactive Digital Services increases or decreases the time spent listening to sound recordings through other means or increases or decreases digital or physical sales of sound recordings.

134. Each document related to Dr. Blackburn's assertions that webcasting services in general and Pandora in particular experience "network effects" and "lock-in" (¶ 24, 59-62), including, but not limited to, each document related to Dr. Blackburn's assertions that: the

"webcaster's large audience and ability to share stations among friends and users makes it more attractive to other users" (¶ 24); and "the fact that many users have invested in rating music on that service (an activity that cannot be easily transferred to a competing service without, in all likelihood, manually re-expressing preferences) means that users, once they have 'taught' the service what they like to hear, would face high switching costs from moving to a competing service" (¶ 24).

135. Each document related to Dr. Blackburn's assertions related to Pandora, including, but not limited to, each document related to the assertions that Pandora plays a "special role in statutory webcasting" (¶ 51-54), that "Pandora's content costs as a percentage of revenue are only as high as they are due to, to some extent, its own decisions" (¶ 88), that "Pandora has chosen to maximize market share over profits in the short-run, minimizing ads to bolster the user experience" (¶ 88), and that "Pandora could solve its financial problems by simply selling more ads'" (¶ 88). Please include in your response each document reviewed or considered by Dr. Blackburn that reflects, reports, or otherwise discusses Pandora's advertising rates and its advertising sell-out rates and any communications with or statements by advertisers concerning advertisers' willingness to place advertisements on Pandora.

136. Each document related to Dr. Blackburn's assertion that there has been "a paradigm shift in the way listeners consumed music" (¶ 42), including, but not limited to, each document related to Dr. Blackburn's assertions that: "record labels have also placed their stock in streaming as the future of music distribution" (¶ 41) and "are now monetizing the consumption of music in ways that were not possible a few years ago" (¶ 35); beginning in 2013, "consumers in large numbers began a switch from digital downloads to streaming services" (¶ 43); and "music is shifting into the new phase of consumption, which is expected to reflect the continued rise of music streaming services and decline of physical and digital downloads" (¶ 44). Please include in your response any strategic or business plans, projections, forecasts, or similar documents prepared by or on behalf of any Record Label related to all or any part of the time period from 2007-2020.

137. Each document relating to Dr. Blackburn's assertions in paragraphs 8-10 and 101 of his Report that the "differences among music streaming services" – including, but not limited to, "entirely programmed radio," "customized non-interactive webcasting," and interactive services – "are important" and that terrestrial radio listeners have a greater incentive to "'upgrade' to the additional offerings provided by subscription services." Please include in your response each document that discusses, analyzes, references, or otherwise relates to (1) any differences among such services, including terrestrial radio, (2) the extent to which those differences "help shape not only the licensing rates that [Digital Services] pay, but also the competition among them" (¶ 10), and (3) any differences among such types of services regarding the extent to which they promote or substitute for purchases of sound recordings or listening to sound recordings through alternative means.

138. Each document related to Dr. Blackburn's assertions in paragraph 105 of his Report that "[t]he attractiveness of free webcasting over those subscription services will also increase over time," the adoption of subscription services by new users instead of free (statutory) alternatives will be lower than currently)," and "the rate at which listeners convert from free (statutory) to subscription services will fall below its already low level."

Document Requests Directly Related to the
Written Witness Testimony of Thomas Z. Lys

139. All agreements and other documents Mr. Lys reviewed in preparation of his testimony.

140. All documents evidencing or otherwise related to any streaming service (statutory or otherwise) "discount[ing] current revenue . . . in the hope of gaining market share in the future from other streaming services" as discussed by Mr. Lys at paragraph 47 of his testimony.

141. All documents evidencing or otherwise related to any streaming service (statutory or otherwise) employing the accounting or financial "strategies" discussed in paragraphs 47 and 51-56 of Mr. Lys's testimony, and the consequences thereof: "discount[ing] current revenue . . . in the hope of gaining market share in the future from other streaming services" (or revenue minimization more generally), transfer pricing strategies/policies, revenue recognition strategies, revenue allocation strategies, bundled product strategies, establishing affiliates or additional services to shield revenue from streaming, and/or using "multiple layers of syndication."

142. All documents evidencing or otherwise related to Mr. Lys's contentions, at paragraph 65 of his testimony, that "had the labels been forced to sign, for example, 5-year private agreements that lacked the safeguards described above, they likely would have demanded higher compensation" and "if they lacked the right to cancel agreements for bad faith behavior or could not ask for advances, the labels would have to have been compensated in some other way . . . most likely through higher percentages of revenue and higher per-play fees."

143. Documents sufficient to establish the following with respect to audits conducted by SoundExchange within the last three years (including audits that are still ongoing): (i) the name(s) of the audited licensee(s); (ii) the duration of the audit; (iii) the cost of the audit; and (iv) the name and qualifications of each auditor involved in the audit and a description of each auditor's respective responsibilities in conducting the audit. (See Lys Test. ¶¶ 21, 76-84; Bender Test. at 19-21).

Document Requests Directly Related to the
Written Direct Testimony of Daniel L. McFadden

144. All documents and data related to the design, conduct, results and analysis of the survey and pilot survey described in Professor McFadden's written direct testimony, including: all documents and data referenced in 37 C.F.R. § 351.10(e); instructions and communications with The Brattle Group and the research conducted by The Brattle Group that are referenced in McFadden Testimony ¶ 21; instructions and communications with YouGov; selection of the levels and attributes and related research; changes that were made to the design of the survey following the pilot survey, as referenced in McFadden Testimony ¶ 41; recruitment communications between YouGov and participants; incentives offered to participants; the screening process; a url link to active versions of the surveys; demographic information of survey participants; all questions asked to any participant who completed any portion of the survey or pilot survey; all choice sets shown to such participants; all responses provided by such participants (including those that did not complete the survey), including during pre-survey

screening; survey verification documents; survey results and compilations of results; survey data in electronic form; all software programs used to process, "clean," or otherwise analyze data collected from the survey and the pilot survey; analysis of the survey results; and, all programming instructions used in the survey and the pilot survey (*e.g.*, branch logic, question piping).

145. All studies, analyses, surveys, presentations, memoranda, data or other documents demonstrating, supporting, refuting, or otherwise directly related to:

a. the contention in McFadden Testimony ¶ 45 that "[w]hen there is a free and paid version of the same platform, consumers choose the free version decisively over the paid version";

b. the contentions in McFadden Testimony ¶¶ 54 and 56 that "potential future users" do the following:

   (i) "place a high value on no out-of-pocket expenses"
   (ii) "places lower values on changes to platform features"
   (iii) "regard their use of [music streaming] services as free in the sense that they require no out-of-pocket expenses to listen to music"
   (iv) "represent those who are likely to remain or adopt free plans"
   (v) "best reflects the value of [streaming music service] features to consumers in the future market for streaming services"; and

c. the contention in McFadden Testimony ¶ 56 that "[e]ven for those music streaming services that offer a paid subscription, most rely on advertising for a portion of their revenue."

Document Requests Directly Related to the
<u>Written Direct Testimony of GEO Music Group</u>

146. Each document related to GEO Music Group's assertion that "GEO has been adversely affected by the price-fixing of music royalty rates," including, but not limited to, annual financial statements (including balance sheets, income statements, profit and loss statements, and cash flow statements) for the years 2009 to the present, including documents sufficient to show the company's revenue from statutory licensing, digital downloads, other digital sources, sales of physical units, and any other categories of sales or licensing revenue, a breakdown of GEO Music Group's costs in as much detail as they are maintained in the ordinary course of business, and any financial forecasts and/or projections of revenues and costs covering the time period 2014 to 2020.

147. Each document related to GEO Music Group's assertion that "[d]igital download sales and CD sales have been 'cannibalized' by streaming services," including, but not limited to, the activities engaged in by GEO Music Group and, for each year from 2009 to the present, the amounts spent on each identified activity to obtain play and other exposure of sound recordings on (a) terrestrial radio, and (b) any Digital Service. Please include in your response (i) documents sufficient to show the total number of promotional albums directly or indirectly (through a third party promoter, distributor, or other third party) given to any radio station, radio

station simulcaster, or Digital Service; (ii) documents related to artist visits to any radio station, radio station simulcaster, or Digital Service and documents sufficient to quantify the total number of such visits; (iii) each agreement with any third party (including any independent promoter) concerning the promotion of UMG's recordings to any radio station, radio station simulcaster, or Digital Service, all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other consideration paid to such third parties under each agreement; (iv) each agreement with any radio station, radio station simulcaster, or Digital Service (including the "deals with interactive services" mentioned in paragraph 27 of Mr. Harleston's testimony and any similar or related agreements), all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other thing of value given to any radio station, radio station simulcaster, or Digital Service, or their listeners or customers pursuant to those agreements; (v) all documents reflecting communications related to efforts to obtain airplay for one or more recordings released by UMG for play on any radio station, radio station simulcaster, or Digital Service, including, but not limited to, letters, emails, internal memos, and notes; and (vi) each document concerning any advertisements directed in whole or in part to any radio station, radio station simulcaster, or Digital Service (or programmers thereof), including tip sheets.

October 13, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2014, I caused a copy of the foregoing Public version of the First Set of Requests for Production of Documents to SoundExchange, Inc. and GEO Music Group from Licensee Participants to be served by email to the participants listed below:

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Sabrina A. Perelman
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 21, 2014, I caused a copy of **DECLARATION OF ROSE LEDA EHLER** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

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In re	)	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF RAND LEVIN

I, RAND LEVIN, DECLARE:

1. I am Senior Vice President, Business & Legal Affairs for Universal Music Group ("UMG"), a colloquial umbrella name for a group of recorded music companies. I submit this declaration in support of SoundExchange, Inc.'s Opposition to iHeartMedia, Inc.'s ("iHeart") Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests ("Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. I understand that iHeart's Motion asks the Judges to order SoundExchange to collect and produce from each of the major recorded music companies, including UMG, documents regarding the promotional effect of webcasting services. In particular, I understand that iHeart's Motion asks the Judges to order SoundExchange to collect and produce the following types of documents: "studies, analyses, surveys, presentations, or memoranda" that "refer or relate to" "the existence or nonexistence of a substitutional or promotional effect" from

any statutorily licensed webcasting service "on other sources of record company revenue." I also understand that iHeart has asked the Judges to order that SoundExchange collect such documents from employees in the promotion departments of each record label inside each major record company.

3. UMG owns several U.S. record labels with promotion departments, including, among others, Interscope Geffen A&M Records, Island Records, Def Jam Records, and Republic Records. Based on my experience and understanding, I believe it is unlikely that "studies, analyses, surveys, presentations, or memoranda" of the type described above are generated or regularly maintained in the promotion departments at UMG's record labels. The labels' promotion departments focus primarily on promoting releases by their artists on terrestrial radio. As a general matter, the promotion departments do not focus on promotional activities on statutorily licensed webcasting services.

4. If a record label engages promotional activities through a statutorily licensed webcasting service, the label generally does so through its marketing or sales departments. That type of marketing activity, in general, would be in the nature of short-term programming or commercials focusing on a particular artist or release. I am informed and believe that, in the ordinary course of their work, the labels' promotion, marketing and sales departments do not create "studies, analyses, surveys, presentations, or memoranda" regarding the promotional or substitutional effects that statutorily licensed webcasting services have on other sources of record company revenue.

5. I am informed and believe that, such studies, to the extent they exist at all at UMG, would be most likely to exist at the UMG corporate level.

6. I also understand that iHeart's Motion appears in part to ask that SoundExchange collect and produce documents described as: "all documents" "relating to" "the existence or nonexistence of a substitutional or promotional effect by" "terrestrial radio on other sources of record company revenue." I also understand that iHeart asks the Judges to order the collection of such documents from the promotion departments of individual record labels, and covering a time period from 2009 to the present.

7. It would be incredibly burdensome to search for and collect the documents just described. In the first place, the phrase documents "relating to" a "promotional effect" on record company revenue from terrestrial performances is vague and extremely overbroad. People who work in promotion departments try to get their label's artists played on terrestrial radio, in the hope that increased plays could help lead to increased record sales. In other words, almost everything these employees do "relates" in some sense to the possibility that terrestrial radio plays could positively affect record sales. These employees' documents are extremely likely to "relate to" this broad description. I believe that it would be very difficult, if not impossible, to come up with a means for searching for documents that "relate to" "terrestrial radio" having a positive "promotional effect" on record company revenue that would not produce an extraordinarily large number of documents.

8. The number of custodians whose files would have to be searched for documents of the type described above would be massive. There have been hundreds of employees from 2009 to the present in promotion-related positions at UMG's U.S. labels. Including former employees (assuming they could even be located), that number would increase substantially. Adding all present (let alone past) independent contractors and interns who might have been involved in promotions would substantially increase this number.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 20, 2014

RAND LEVIN

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 21, 2014, I caused a copy of **DECLARATION OF RAND LEVIN** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

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Karen Easton

Karen Easton

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

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Copyright Royalty Board

In re **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)**	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF PAUL M. ROBINSON

I, PAUL M. ROBINSON, DECLARE:

1. I am Executive Vice President and General Counsel, Warner Music Group Corp. ("WMG"). I submit this declaration in support of SoundExchange, Inc.'s Opposition to iHeartMedia, Inc.'s ("iHeart") Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests ("Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

iHeart's Motion to Compel Production of Internal WMG Documents Related to the Negotiation of the WMG-iHeart Agreement

2. I understand that iHeart's Motion asks the Judges to order SoundExchange to produce non-privileged, internal WMG communications from WMG's negotiation of the agreement with iHeart that contain analysis or valuation of the proposed transaction. When WMG entered into this agreement, iHeart was named Clear Channel Communications, Inc. In

this declaration, I use the name "iHeart" to refer to Clear Channel while the company had that name.

3. WMG commenced discussions with iHeart regarding a potential agreement in approximately October 2011. The agreement was concluded in October 2013. I was involved in internal discussions at WMG regarding the negotiations. I also participated in direct discussions with iHeart regarding the agreement.

4. I am informed and believe that SoundExchange's attorneys have collected emails from 10 WMG custodians who were integrally involved in the negotiations with iHeart. I am informed and believe that SoundExchange's attorneys have reviewed and produced in excess of 2,000 WMG emails (including attachments) that WMG exchanged with iHeart in connection with the negotiations. I am further informed and believe that, after applying electronic search terms, SoundExchange's attorneys have identified more than 30,000 additional internal WMG emails (along with attachments, where applicable) that potentially relate to the analysis or valuation of some or all elements of the proposed transaction. These additional emails would have to be reviewed both for responsiveness and privilege in order to comply with the search and production of the type that iHeart requests in its Motion.

5. A privilege review of the WMG internal communications that iHeart seeks would be essential. As with any significant transaction, WMG attorneys were involved in providing privileged legal advice in connection with the negotiation of the agreement. With respect to the agreement with iHeart, six different lawyers provided substantial legal advice in connection with the agreement. The counsel for WMG included the following lawyers who work at WMG: Ron Wilcox, Virginia Lockhart, Jon Glass, and me. Steven Englund, a lawyer at Jenner & Block LLP, and Orin Synder, a lawyer at Gibson, Dunn & Crutcher LLP, also provided legal advice to

WMG in connection with the transaction. Based on my experience in connection with the negotiation of the WMG-iHeart agreement, in-house and outside attorneys were frequently consulted for legal advice in communications that relate to the analysis or valuation of some or all elements of the transaction.

6. A privilege review of WMG's internal communications would be very time-consuming and costly. As is not uncommon for a transaction of the size and complexity of the WMG-iHeart agreement, numerous legal questions arose throughout the negotiations. Requests for privileged legal advice and responses providing such advice often were set forth in email communications within WMG and/or with outside counsel. And those communications frequently were forwarded to, or included as part of the email reply chains of, other WMG custodians. Accordingly, a privilege review of a single email could, and in many cases would, involve the review of multiple embedded email messages.

7. A privilege review of WMG's internal communications also would require complex and time-consuming analysis of individual communications. As with many transactions, the WMG attorneys involved in the WMG-iHeart negotiations participated in business as well as legal discussions. The question whether a particular communication reflects a request for legal or business advice often is not self-evident and requires an understanding of the context surrounding particular discussions. In my experience, it is not uncommon for a single communication with an in-house lawyer to involve both legal and business issues. Accordingly, a privilege review of WMG's internal communications very likely would involve a significant number of sentence-by-sentence, or paragraph-by-paragraph, privilege issues. Such a review almost certainly would require a significant number of redactions.

iHeart's Motion to Compel Production of Documents from Individual Record Labels' Promotion Departments Regarding the Promotional Effects of Webcasting and Terrestrial Radio

8. I understand that iHeart's Motion also asks the Judges to order SoundExchange to collect and produce from each of the major recorded music companies, including WMG, documents regarding the promotional effect of webcasting services. In particular, I understand that iHeart's Motion asks the Judges to order SoundExchange to collect and produce "studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or nonexistence of a substitutional or promotional effect" by any webcasting service operating pursuant to a statutory license "on other sources of record company revenue." I further understand that iHeart's Motion asks the Judges to order SoundExchange to undertake this collection from individuals within the promotion departments of each record label within each such company.

9. Based on my experience and understanding, it is unlikely that documents of the type described in quotations in the preceding paragraph would be found within the promotion departments of WMG's record labels. WMG owns several U.S. record labels with promotion departments, including Warner Bros. Records ("WBR"), Atlantic Records ("Atlantic"), and Warner Music Nashville ("WMN"). The promotion departments within each label focus on promoting releases by that label's artists through terrestrial radio. The labels' promotion departments generally do not engage in promotional activities with webcasting services that operate pursuant to the statutory license.

10. To the extent a label engages in any type of promotional activity with webcasting services that operate pursuant to the statutory license, those activities generally take place through the label's marketing and sales departments. I understand that such activity, to the extent it happens at all, generally consists of discrete, short-term programming or commercials

featuring or focusing on a specific artist or release. I am informed and believe that neither the labels' promotion departments nor their marketing or sales departments create in the ordinary course of their work "studies, analyses, surveys, presentations, or memoranda" regarding the promotional or substitutional effects that webcasting services operating pursuant to the statutory license have on other sources of record company revenue.

11. To the extent that WMG engages at all in creating "studies, analyses, surveys, presentations, or memoranda" regarding the promotional or substitutional effects that webcasting services operating pursuant to the statutory license have on other sources of record company revenue, I believe that such documents would be created at the WMG corporate level.

12. I understand that at least some portion of iHeart's Motion appears to ask the Judges to order SoundExchange to collect and produce, among other things, "all documents" "relating to" "the existence or nonexistence of a substitutional or promotional effect by" "terrestrial radio on other sources of record company revenue." I further understand that iHeart's request that the Judges order SoundExchange to collect documents from within the promotion departments of each record label would apply to this request. I further understand that iHeart's requests are directed at all responsive documents from 2009 to the present.

13. The process of searching for and collecting documents of the type described in the preceding paragraph would be an enormous undertaking. It is not clear what is meant by a document that "relates to" performances on "terrestrial radio" having a "promotional effect." Generally speaking, the people in a promotion department focus on promoting releases by that label's artists through terrestrial radio. Therefore, much of what promotional employees do in their daily work could be said to "relate to" the possibility of terrestrial radio performances having a positive effect on record sales. I believe that it would be extremely difficult to isolate,

from within all documents in the promotion departments related to promoting the play of records on terrestrial radio, documents that could be said to "relate to" "terrestrial radio" having a "promotional effect" on record company revenues.

14. The number of custodians whose files would have to be searched for documents of the type described in the preceding paragraph would be substantial. In their respective promotion departments, Atlantic currently has approximately 60 employees, WBR currently has approximately 31 employees, and WMN currently has approximately 19 employees. Since iHeart's Motion requests documents over the last five years, the potential number of custodians would be even larger due to turnover in these promotion departments. Based on the facts above, I believe that the total number of potential custodians within the promotion departments of WMG's U.S. labels over the last five years would exceed 150.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 20, 2014

PAUL M. ROBINSON

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 21, 2014, I caused a copy of **DECLARATION OF PAUL M. ROBINSON** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

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Karen Easton

Karen Easton

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

RECEIVED
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Copyright Royalty Board

In re **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)**	))))))))	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF JULIE SWIDLER

I, JULIE SWIDLER, DECLARE:

1. I am Executive Vice President Business Affairs and General Counsel for Sony Music Entertainment ("Sony Music"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Opposition to iHeartMedia, Inc.'s ("iHeart") Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests ("Motion"). The matters set forth in this declaration are based on my own personal knowledge or, where indicated, I have been informed of those matters and believe them to be true. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. I understand that iHeart's Motion asks the Judges to order SoundExchange to collect and produce from each of the major recorded music companies, including Sony Music, documents regarding the promotional effect of webcasting services. In particular, I understand that iHeart's Motion asks the Judges to order SoundExchange to collect and produce "studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or

nonexistence of a substitutional or promotional effect" by any webcasting service operating pursuant to a statutory license "on other sources of record company revenue." I further understand that iHeart's Motion asks the Judges to order SoundExchange to undertake this collection from individuals within the promotion departments of each record label within each such company.

3. Based on my experience and understanding, it is unlikely that documents of the type described in quotations in the preceding paragraph would be found within the promotion departments of Sony Music's individual record labels. Sony Music operates several U.S. record labels, including Columbia Records, Epic Records, RCA Records, Sony Music Nashville, Sony Music U.S. Latin, and others, and each has its own separate promotion department. The promotion department within each label focuses on promoting releases by that label's artists through terrestrial radio. The labels' promotion departments generally do not engage in promotional activities with webcasting services that operate pursuant to the statutory license.

4. To the extent a record label engages in any type of promotional activity with webcasting services that operate pursuant to the statutory license, those activities generally take place through the label's marketing department. Such activity, to the extent it happens at all, generally consists of one-off, discrete, short-term programming or commercials featuring or focusing on a specific artist or release. Neither the labels' promotion departments nor their marketing department create in the ordinary course of their work "studies, analyses, surveys, presentations, or memoranda" regarding the promotional or substitutional effects that webcasting services operating pursuant to the statutory license have on other sources of record company revenue.

5. To the extent that Sony Music engages at all in creating "studies, analyses, surveys, presentations, or memoranda" regarding the promotional or substitutional effects that webcasting services operating pursuant to the statutory license have on other sources of record company revenue, such documents would be created at the Sony Music corporate level.

6. I understand that at least some portion of iHeart's Motion appears to ask the Judges to order SoundExchange to collect and produce, among other things, "all documents" "relating to" "the existence or nonexistence of a substitutional or promotional effect by" "terrestrial radio on other sources of record company revenue." I further understand that iHeart's request that the Judges order SoundExchange to collect documents from within the promotion departments of each individual record label would apply to this request. I further understand that iHeart's requests are directed at all responsive documents from 2009 to the present.

7. The process of searching for and collecting documents of the type described in the preceding paragraph would be an enormous undertaking. It is not clear what is meant by a document that "relates to" performances on "terrestrial radio" having a "promotional effect." Generally speaking, the people in a promotion department focus on promoting releases by that label's artists through terrestrial radio, so virtually everything they do "relates to" the possibility that such plays may have a positive effect on recorded music revenue. It would be extremely difficult, if not impossible, to frame a search of electronically stored documents that would help to identify documents that "relate to" "terrestrial radio" having a "promotional effect."

8. The number of custodians whose files would have to be searched for documents of the type described in the preceding paragraph would be massive. There are currently well over a hundred employees in the radio promotion departments at Sony Music's major U.S. labels. Since 2009, there have been over two hundred employees in promotion-related positions

at Sony Music's major U.S. labels. These numbers do not include employees working in marketing departments at those labels.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 20, 2014

Julie Swidler

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 21, 2014, I caused a copy of **DECLARATION OF JULIE SWIDLER** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

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