

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

Received
AUG 17 2014
Copyright Royalty Board

In re)
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)
 DETERMINATION OF ROYALTY RATES)
 AND TERMS FOR NEW SUBSCRIPTION)
 SERVICES FOR DIGITAL PERFORMANCE)
 RIGHT IN SOUND RECORDINGS AND)
 EPHEMERAL RECORDINGS)
_____)

Docket No. 14-CRB-0002-NSR
(2016-2020)

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)

JOINT COMMENTS OF SOUNDEXCHANGE AND SIRIUS XM REGARDING CASE
SCHEDULE

SoundExchange, Inc. (“SoundExchange”) and Sirius XM Radio Inc. (“Sirius XM”)¹ appreciate the concerns raised by the Copyright Royalty Judges (“Judges”) in the Order Soliciting Comments Regarding Case Scheduling issued on August 1, 2014. In light of those concerns, these participants propose that the Judges adopt the schedule attached in Appendix A (“Proposed NSR Schedule”) for the above-captioned proceeding.

¹ SoundExchange and Sirius XM consulted with the participants in the *Web IV* proceeding and understand those participants will file a separate statement indicating their lack of objection to the schedule proposed herein. SoundExchange and Sirius XM also contacted Spotify USA Inc. to invite its input, and while it did not indicate any opposition to these comments, it did not opt to join the submission either.

The Proposed NSR Schedule aligns the hearing dates with the unified hearing dates proposed by the participants in the *Web IV* proceeding, with the addition of two days (June 1-2, 2015) to accommodate the likely additional witnesses.² It also synchronizes the deadlines for amended rebuttal statements and *in limine* motions in advance of the hearing. *See* Order Soliciting Comments Regarding Case Scheduling, at 1, Aug. 1, 2014. This would promote certain efficiencies for both the Judges and the three remaining participants in the *New Subscription Services* proceeding, all of whom are also participants in the webcasting proceeding. Notice of Further Proceedings, Aug. 5, 2014.

The Proposed NSR Schedule preserves the December 1, 2014, date for the filing of written direct statements that the Judges set in the original *New Subscription Services* case scheduling order. *See* Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, at Ex. A, Apr. 30, 2014. Because the voluntary negotiation period ended on August 1, 2014, the deadline for the filing of written direct statements can be “not earlier than 4 months . . . after the end of the voluntary negotiation period.” 37 C.F.R. § 351.4(a). Furthermore, since the original case scheduling order issued, the parties have structured their preparation on the understanding that, if written direct statements are necessary, those statements would be due no earlier than December 1, 2014; preserving that filing date is thus consistent with both existing regulations and the parties’ expectations. Finally, preserving that deadline would provide more time for the parties to attempt to reach a settlement and avoid full-blown litigation, as has happened in prior proceedings involving this particular statutory license.

² The Proposed NSR Schedule sets the closing arguments on July 25, 2015, a day after those proposed in *Web IV*. Given the large number of parties in *Web IV*, it appears likely that the closing arguments for that proceeding may take up all or most of July 24.

Given the later filing date for written direct statements, and the coordination of the hearing dates with *Web IV*, the remainder of the Proposed NSR Schedule is substantially more compressed than the schedule proposed in the *Web IV* Joint Motion. The impact of this compression, however, should largely be limited to the participants in the *New Subscription Services* proceeding themselves. The Proposed NSR Schedule avoids scheduling conflicts for the Judges, and should not impact the other participants in *Web IV* at all. In addition, *New Subscription Services* involves a different set of licenses and issues and is much more limited in scope and participants than *Web IV*. Accordingly, should the *New Subscription Service* participants fail to settle, those participants should be able to move forward according to the Proposed NSS Schedule even with its tighter deadlines.

For these reasons, the undersigned participants request the Judges adopt the Proposed NSS Schedule for the *New Subscription Services* proceeding.

Respectfully submitted,

Dated: August 11, 2014

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APPENDIX A

Proposed New Subscription Services Schedule

Case event	Date
Initiation (publication in FR)	January 3, 2014
Deadline for Petition to Participate	February 3, 2014
Commencement of Voluntary Negotiation Period	May 1, 2014
End of Voluntary Negotiation Period	August 1, 2014
IF PARTIES DO NOT SETTLE or if the Judges decline to adopt the settlement	
Order for Further Proceedings	August 4, 2014
Parties File Written Direct Statements	December 1, 2014
Commencement of Direct-Phase Discovery Period ³	December 3, 2014
End of Direct-Phase Discovery Period	February 4, 2015
Settlement Conference Period	February 4-9, 2015
Deadline for Joint Settlement Conference Report	February 11, 2015
Deadline to File Amended Written Direct Statement	February 18, 2015
Deadline to File Written Rebuttal Statement	March 4, 2015
Commencement of Rebuttal-Phase Discovery Period	March 6, 2015
End of Rebuttal-Phase Discovery Period	March 23, 2015
Deadline to File Amended Written Rebuttal Statement	April 7, 2015
IF PARTIES DO NOT SETTLE	
Deadline to File Motions in Limine	April 10, 2015
Unified Hearing ⁴	commencing on April 27, 2015
Closing Argument	July 24, 2015
Initial Determination	not later than December 15, 2015

³ If the participants do not settle, they can propose specific deadlines for the direct-phase discovery period to the Judges by November 4, 2014.

⁴ During this interval, the Judges may schedule a prehearing conference. See 37 C.F.R. § 351.8.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on August 11, 2014, I caused a copy of the **JOINT COMMENTS OF SOUNDEXCHANGE AND SIRIUS XM REGARDING CASE SCHEDULE** to be served by EMAIL and U.S. FIRST CLASS MAIL, if requested, to the Participants as indicated below:

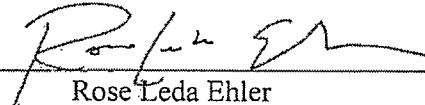
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