

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

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)**

**NOTICE OF PARTICIPANTS,
COMMENCEMENT OF VOLUNTARY NEGOTIATION PERIOD,
AND CASE SCHEDULING ORDER**

By notice published in the *Federal Register* on January 3, 2013, the Copyright Royalty Judges (Judges) initiated this rate proceeding to determine terms and rates for licensees making ephemeral recordings and digital performances of sound recordings. Title 8 of the Copyright Act (Act) and the procedural regulations adopted by the Judges and codified in Chapter III of title 37 of the Code of Federal Regulations (Rules) govern royalty rate proceedings. This scheduling order details the Judges' expectations regarding compliance with the Act and the Rules. The specific schedule dates are set forth on "Exhibit A" to this Notice and Order.

Participation in the Proceeding

Participation in this proceeding is limited to parties in interest who filed a timely Petition to Participate. Attached to this Notice and Order as "Exhibit B" is a list of participants that filed timely Petitions to Participate.

Voluntary Negotiation Period

All participants shall engage directly or by counsel in good faith settlement negotiations aimed at resolving controversies regarding the terms and rates for payment of royalty fees for the years at issue in this proceeding. In addition to all aspects of terms and rates for payment, the negotiations shall address expressly issues relating to categories of licensees, the rate structure, fees, minimum fees, and terms of recordkeeping and reporting.

Five days after the end of the Voluntary Negotiation Period, the participants shall file a Notice of Settlement, only if some or all participants have agreed on the applicable royalty rates for both the ephemeral recording and the digital performance of sound recordings, the category or categories of licensees liable for those rates, a minimum fee, and recordkeeping and reporting

requirements for each category of licensee¹. The Judges will issue an Order for Further Proceedings for all parties not reporting a settlement. Nothing in this Notice and Order or the Order for Further Proceedings limits parties' ability to continue negotiations and reach a settlement of their differences at any time during the course of the proceeding.

Pre-Hearing Procedures

On or before the date noted on Exhibit A to this Notice and Order, any participant having or asserting an issue in controversy shall file its Written Direct Statement and deliver a copy to *all* other remaining participants, whether or not the receiving party believes it has a controversy with a given participant. On or before the date set in Exhibit A to this Notice and Order, each participant may file its Amended Written Direct Statement. The participants shall not further amend their respective Written Direct Statements after the date set in this Notice and Order.

After receiving the participants' Joint Settlement Conference Report, the Judges will proceed to hearing. Approximately 15 days prior to a scheduled hearing, the Judges will facilitate a pre-hearing conference, or telephone conference, to discuss, *inter alia*, issues remaining for evidentiary hearing, order of presentation, exhibit numbering and presentation, scheduling concerns, disabilities to accommodate, or any other matter that might affect conduct of the hearing. Participants in the pre-hearing conference shall have knowledge of the issues and of the availability of all counsel and witnesses.

Not less than ten days prior to the date set for a hearing, all participants shall file and deliver to all other participants a list of witnesses the participant intends to call and a list of exhibits the participant intends to offer into evidence. The witness list shall include the witness's name, contact information, a brief statement of the substance of the witness's testimony, and an estimate of the time required for direct examination of the witness. The exhibit list shall include the exhibit's unique number, the title or a description of the exhibit, and whether the exhibit or any part of it is "restricted" under the terms of any protective order.

Not less than five days prior to the date set for a hearing, the participants shall deliver to the Judges and to (or as directed by) all other participants copies of all exhibits listed on the exhibit list, tabbed in the same order and with the same number as on the exhibit list.

At any time up to and including during the course of a hearing, the participants shall notify the Judges as soon as practicable if the participants, or any of them, reach an accommodation that obviates the need for further participation in the proceeding.

Evidentiary Hearing(s)

The case schedule appended as "Exhibit A" denotes the order of proceedings and the timeline for the proceedings based upon the Judges' interpretation of the requirements of the Act and the Rules. The case schedule provides for a written direct statement, discovery, an amended written direct statement, a settlement conference, a hearing of the direct case, a period to prepare

¹ Parties may notify the Judges of a settlement "in principle," but the Judges expect all parties to follow the case schedule until all terms of their settlement are documented and presented for publication, comment, and approval.

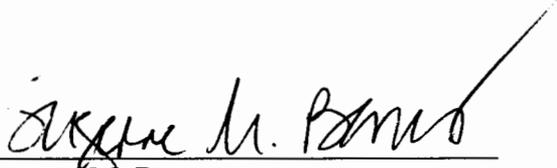
a written rebuttal statement, filing and delivery of a written rebuttal statement², a hearing on the rebuttal case, a delay, and closing argument of counsel. Parties are accustomed to this timeline and the Judges do not intend to change the case schedule *sua sponte*. If all participants agree, however, and make a joint motion for alteration of the case schedule, for example to unify the hearings, or the hearings and closing argument, the Judges will consider and weigh the parties' proposal under their inherent authority to manage the proceedings and the explicit authority granted by section 801(c) of the Act³.

In any event, the Judges remind parties that Written Rebuttal Statements shall be limited to rebuttal testimony of witnesses and legal memoranda addressing solely and directly issues raised in the direct case and remaining for the Judges to hear and determine.

Order

The Judges hereby ORDER that all participants adhere to the case schedule attached to this Notice and Order as "Exhibit A" and refer to the foregoing narrative as needed for interpretation of the schedule. At any time, a participant may file a motion stating good cause to vary the schedule, within the dictates of the statute. A party making a motion to vary the schedule shall deliver copies to all other participants to permit an opportunity for response. The Judges may sanction any participant that fails to follow the schedule or, if in doubt, to seek clarification of the schedule and its requirements.

IT IS SO ORDERED.



Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: February 19, 2014

² Under section 803(b)(6)(C), the Judges, upon consideration of the views of participants, may adopt an additional discovery period after participants file written rebuttal statements.

³ Section 801(c) provides that the Judges "may make any necessary procedural or evidentiary rulings in any proceeding under this chapter [8]...."

EXHIBIT A
Rates and Terms Determination

Case event	Date
Initiation (publication in FR)	January 3, 2014
Deadline for petition to participate	February 3, 2014
Commencement of Voluntary Negotiation Period	February 21, 2014
End of Voluntary Negotiation Period	May 22, 2014
Parties' Notice of Settlement	May 29, 2014
Publication in Federal Register for Comment	June 9, 2014
Deadline for Comments	July 8, 2014
Publication of Revised Regulations reflecting settlement	August 7, 2014
IF PARTIES DO NOT SETTLE or if the Judges decline to adopt the settlement	
Order for Further Proceedings	June 5, 2014
Parties file Written Direct Statements	
Commencement of Discovery Period	October 6, 2014
End of Discovery Period	December 5, 2014
Deadline to file Amended Written Direct Statement	
Commencement of Settlement Conference Period	December 22, 2014
End of Settlement Conference Period	January 12, 2015
Deadline for Joint Settlement Conference Report	January 19, 2015
IF PARTIES DO NOT SETTLE	
Initial Hearing ⁴	commencing on March 23, 2015
Deadline to file Written Rebuttal Statement ⁵	May 7, 2015
Rebuttal Hearing	commencing on May 26, 2015
Closing Argument	June 25, 2015
Initial Determination	not later than December 15, 2015

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

⁵ See *supra* n.2.

EXHIBIT B

[List of participants and counsel]

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
Sirius XM Radio Inc.	Cynthia Greer Patrick Donnelly		1500 Eckington Pl. NE Washington, DC 20002 cynthia.greer@siriusxm.com 1221 Avenue of the Americas 36 th Floor New York, NY 10020 patrick.donnelly@siriusxm.com	P:202-380-1476 F:202-380-4592 P: 212-584-5100 F: 212-584-5200
Pandora Media, Inc.	Christopher Harrison R. Bruce Rich Todd Larson	Weil, Gotshal & Manges LLP	2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com	P: 510-858-3049 F: 510-451-4286 P: 212-310-8170 F: 212-310-8007

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
Sound Exchange (SX)	Glen Pomerantz Kelly Klaus Anjan Choundhury C.Colin Rushing Bradley Prendergast	Munger, Tolles & Olson LLP	355 S. Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560 <u>Glenn.Pomerantz@mto.com</u> <u>Kelly.Klaus@mto.com</u> <u>Anjan.Choudhury@mto.com</u> SoundExchange, Inc. 733 10 th Street, NW, 10 th Floor Washington, DC 20001 <u>crushing@soundexchange.com</u> <u>bprendergast@soundexchange.com</u>	P:213-683-9100 F:213-687-3702 P: 202-640-5858 F: 202-640-5883

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
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Clear Channel Communications, Inc.	Mark Hansen	Kellog, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.	<p>1615 M Street, NW, Suite 400 Washington, DC 20036 Mhansen@khhte.com</p> <p>Janet Malloy Link Clear Channel Communications, Inc. 75 Rockefeller Plaza, 23rd Floor New York, NY 10018 JanetLink@clearchannel.com</p>	<p>P: 202-326-7900 F: 202-326-7999</p> <p>P: 210-832-3318 F: 210-832-3122</p>
College Broadcasters Inc. (CBI)	David Golden	Constatine Cannon LLP	<p>1301 K Street, N.W., Suite 1050 East Washington, DC 20005 dgolden@constantinecannon.com</p> <p>Catherine Gellis P.O. Box 2477 Sausalito, CA 94966 cathy@cgcounsel.com</p>	<p>P:202-204-3500 F: 202-204-3501</p> <p>P: 202-642-2849</p>

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
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Triton Digital, Inc.	Brendan Collins		15303 Ventura Blvd., Suite 1500 Los Angeles, CA 91403 brendan.collins@tritondigital.com	P: 818-528-8867

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)	Karyn Ablin Jennifer Elgin	Wiley Rein LLP	1776 K St. N.W. Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com Russ Hauth, Executive Director Harv Hendrickson, Chairman 3003 Snelling Avenue, North Saint Paul, MN 55113 russh@saalem.com hphendrickson@unwsp.edu	P: 202-719-7000 F: 202-719-7049 P: 651-631-5000 F: 651-631-5086

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
National Association of Broadcasters (NAB)	Bruce Joseph Karyn Ablin Michael Sturm	Wiley Rein LLP	<p>1776 K Street, NW Washington, DC 2006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com</p> <p>Jane Mago, Esq. Vice President and General Counsel 1771 N Street, NW Washington, DC 20036 jmago@nab.org</p>	<p>P: 202-719-7000 F: 202-719-7049</p> <p>P: 202-429-5459 F: 202-775-3526</p>

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
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PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
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Service List Docket No.14-CRB-0001-WR (2016-2020)
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PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE AND/OR FAX
8tracks, Inc.	Gary Greenstein	Wilson Sonsini Goodrich & Rosati	1700 K Street, N.W., 5 th Floor Washington, DC 20006 ggreenstein@wsgr.com 8tracks, inc. David Porter, Chief Executive Officer 51 Sharon Street San Francisco, CA 94114 dp@8tracks.com	P: 202-973-8849 F: 202-973-8899 P: 415-948-4216
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Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

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Digitally Imported Inc.	David Oxenford Ari Shohat	Wilkinson Barker Knauer, LLP	2300 N Street, N.W., Suite 700 Washington, DC 20037 doxenford@wbklaw.com Digitally Imported, Inc. 3457 Ringsby Court, Suite 212 Denver, CO 80216 ari@di.fm	P: 202-383-3337 F: 202-783-5851 P: 303-997-2202 F: 303-997-1058

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

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Educational Media Foundation	David Oxenford Kevin Blair Brian Gantman	Wilkinson Barker Knauer, LLP	2300 N Street, N.W., Suite 700 Washington, DC 20037 doxenford@wbklaw.com Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com	P: 202-383-3337 F: 202-783-5851 P: 916-251-1600 F: 916-251-1731
Beats Music, LLC	Kenneth Steinthal Joseph Wetzel	King & Spaulding LLP	101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com	P: 415-318-1200 F: 415-318-1300

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
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Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

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Music Reports, Inc.	William Colitre, Esq.		21122 Erwin St. Woodland Hills, CA 91367 Bcolitre@MusicReports.com	P: 818-558-1400 F: 818-558-3484
Intercollegiate Broadcasting System, Inc. (IBS)	William Malone		9117 Vendome Drive West Bethesda, MD 20817 malone@ieee.org	P: 301-365-1175

Service List Docket No.14-CRB-0001-WR (2016-2020)
Determination of Royalty Rates for Digital Performance in
Sound Recordings and Ephemeral Recordings (WebIV)

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Feed Media, Inc.	Gary Greenstein Jeff Yasuda	Wilson Sonsini Goodrich & Rosati	1700 K Street, N.W., 5 th Floor Washington, DC 20006 ggreenstein@wsgr.com 3979 Freedom Circle, Suite 610 Santa Clara, CA 95054 jeff@feed.fm	P: 202-973-8849 F: 202-973-8899 P: 650-479-4881 F: 415-449-6947