

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In the Matter of:

Determination of Rates and Terms for
Making and Distributing Phonorecords
(Phonorecords III)

Docket No. 16-CRB-0003-PR (2018-2022)

**PARTICIPANTS' JOINT MOTION TO MODIFY
THE JUDGES' CASE SCHEDULING ORDER**

Pursuant to 37 C.F.R. § 351.5(a), Amazon Digital Services, LLC, Apple Inc., George Johnson, Google Inc., Nashville Songwriters Association International (NSAI), National Music Publishers' Association (NMPA), Pandora Media, Inc., Sony Music Entertainment, and Spotify USA Inc. (the "Participants")¹ jointly move the Copyright Royalty Judges ("Judges") to modify the schedule established by the Judges in their *Notice of Amended Participant List and Order for Further Proceedings* (June 14, 2016) ("Case Scheduling Order"). Appendix A to this motion compares the dates established in the Judges' Case Scheduling Order (left-hand column)² and the revised dates requested by the Participants (right-hand column).

Preliminary Disclosure and Discovery. As the Judges are aware, the commencement of the Preliminary Disclosure and Discovery Period was delayed from June 1 to June 14, 2016. The Case Scheduling Order currently sets the conclusion of the Preliminary Disclosure and

¹ All participants have joined this motion, other than Mr. David Powell.

² The dates set for the Commencement of the Voluntary Negotiation Period, End of Voluntary Negotiation Period, and Parties Notice of Settlement were set by the Judge in their February 19, 2016 Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order.

Discovery Period for August 1, 2016. The Participants have been working cooperatively and in good faith to resolve disputes over the scope of preliminary discovery without burdening the Judges. That effort is continuing notwithstanding the August 1 deadline. To facilitate ongoing efforts to complete productions and resolve discovery disputes, the Participants respectfully request a formal extension of Preliminary Disclosure and Discovery Period until **September 1, 2016**.

Filing of Written Direct Statements. The Case Scheduling Order directs the participants to file their Written Direct Statements on Monday, October 3, 2016. The participants request additional time to prepare the written direct statements for several reasons. First, as noted above, the Participants are still working to complete preliminary discovery. Second, and as noted in the Judges' Case Scheduling Order, the voluntary negotiation period was extended "until June 13, 2016, to facilitate all parties' continued negotiations and to encourage settlement of the proceeding." Pursuant to 17 U.S.C. § 803(b)(6)(C)(i), written direct statements may not be filed "earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period." Therefore, participants may file written direct statements no *earlier* than October 13, 2016, and should be permitted to file the statements on or before November 13, 2016. Third, the current deadline for filing written direct statements falls on the Jewish holiday of Rosh Hashanah (Oct. 3-4) and shortly before the Jewish holiday of Yom Kippur (Oct. 12). Many attorneys for various Participants, including both outside and in-house counsel, will be out of the office for several days in observance of those holidays. Accordingly, the participants request an adjournment of this deadline to **November 1, 2016**, to finalize and file their Written Direct Statements. In the event the Judges deny this request, participants request an adjournment of this

deadline to a date *after* **October 16, 2016** (in which case the other dates should be extended accordingly, as well), to avoid conflicting with the Jewish holidays.

Discovery Period.

Appendix A, attached, proposes revised dates for the Discovery Period commensurate with the filing of Written Direct Statements on November 1, 2016. As in *Webcasting IV* and *SDARS III*, it provides a short period of time between that November 1 filing date and the commencement of discovery (November 4) so that the parties have time to review the other Written Direct Statements (which are typically voluminous) before formulating their document requests and interrogatories. This adjustment is consistent with the statute, which contemplates the passage of at least some time between the filing of written direct statements and the commencement of discovery. *See* 17 U.S.C. § 803(b)(6)(C)(ii)(I). Discovery would be completed by **January 10, 2017**.

Settlement Conference Period and Joint Settlement Conference Report. The Participants propose to defer the completion of the Settlement Conference Period and the filing of the Joint Settlement Conference Report until after the New Year. Extending the Settlement Conference Period until **January 27, 2017**, and shifting the deadline to file the Joint Settlement Conference Report until **February 1, 2017**, would allow a meaningful, albeit brief, window for additional settlement discussions after clients return from any year-end holidays.

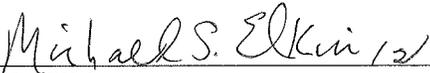
Filing of Written Rebuttal Statements. The Participants propose moving the date for filing Written Rebuttal Statements from January 20, 2017 to **February 15, 2017**. This proposed change follows from the proposal to shift the discovery period to end on January 10, 2017, and seeks to provide for sufficient time to prepare rebuttal statements after the year-end holiday

period. In *Webcasting IV*, the Judges set a similar schedule, with discovery ending on December 29, 2014 and written rebuttal statements filed on February 23, 2015.

Hearing. The current Case Scheduling Order sets the hearing in this proceeding to begin on March 6, 2017. The participants propose moving the start date of the hearing to **March 22, 2017** or as soon thereafter as the Judges are available.

Dated: August 25, 2016

Respectfully submitted,



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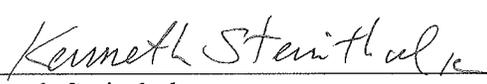
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Appendix A

Case Event	CRB Case Scheduling Order	Participants' Proposal
Commencement of Voluntary Negotiation Period	February 19, 2016	No change
End of Voluntary Negotiation Period	May 19, 2016 (extended until June 13, 2016)	No change
Parties Notice of Settlement	June 13, 2016	No change
IF THE PARTIES DO NOT SETTLE or if the Judges decline to adopt the settlement		
Order for Further Proceedings	June 14, 2016	No change
Begin Preliminary Disclosure and Discovery	June 14, 2016	No change
End Preliminary Disclosure and Discovery	August 1, 2016	September 1, 2016
File Written Direct Statements	October 3, 2016	November 1, 2016
Commencement of Discovery Period	October 3, 2016	November 4, 2016
End of Discovery Period	December 2, 2016	January 10, 2017
End of Settlement Conference Period	December 24, 2016	January 27, 2017
Deadline for Joint Settlement Conference Report	December 29, 2016	February 1, 2017
File Written Rebuttal Statements	January 20, 2017	February 15, 2017
Hearing	March 6, 2017	March 22, 2017
File Proposed Findings and Conclusions	TBD	TBD
File Reply Findings and Conclusions		two weeks after the submission of proposed findings and conclusions
Issuance of Determination	Not later than December 15, 2017	No change

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2016, I caused a copy of the Participants' Joint Motion to Modify the Judges' Case Scheduling Order to be served by overnight mail to:

David Powell
P.O. Box 010950
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Jennifer Ramos