

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

In re

**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) New Subscription III**

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

By notice published in the *Federal Register* on January 3, 2014, 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 parties that filed timely Petitions to Participate.¹

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 calendar 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 structure, and

¹ SoundExchange filed a motion to dismiss the Petition to Participate filed by the National Music Publishers Association. The Judges' ruling on that motion is forthcoming.

recordkeeping and reporting requirements for each category of licensee². 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

² 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.

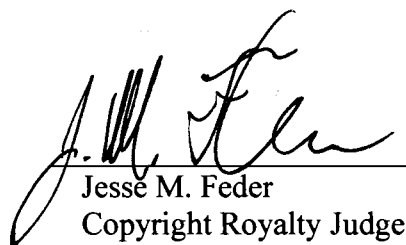
written direct statement, a settlement conference, a hearing of the direct case, a period to prepare a written rebuttal statement, filing and delivery of a written rebuttal statement³, a hearing on the rebuttal case, a delay, and closing argument of counsel. Parties are accustomed to this timeline and 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 Act⁴.

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.



Jesse M. Feder
Copyright Royalty Judge

DATED: April 30, 2014.

³ 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.

⁴ 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	May 1, 2014
End of Voluntary Negotiation Period	August 1, 2014
Parties' Notice of Settlement	August 6, 2014
IF PARTIES DO NOT SETTLE or if the Judges decline to adopt the settlement	
Order for Further Proceedings	August 8, 2014
Parties file Written Direct Statements Commencement of Discovery Period	December 1, 2014
End of Discovery Period	February 2, 2015
Settlement Conference Period	February 2 – 6, 2015
Deadline for Joint Settlement Conference Report	February 9, 2015
Deadline to file Amended Written Direct Statement	February 17, 2015
IF PARTIES DO NOT SETTLE	
Initial Hearing ⁵	commencing on March 23, 2015
Deadline to file Written Rebuttal Statement	May 7, 2015
Rebuttal Hearing	commencing on May 26, 2015
Closing Argument	June 25, 2015
Initial Determination	not later than December 15, 2015

⁵ During this interval, the Judges may schedule a prehearing conference. See 37 C.F.R. § 351.8.

EXHIBIT B
Participant List

Party	Contacts	Telephone/Fax
Music Reports, Inc. (MRI)	William Colitre, Esq. 21122 Erwin Street Woodland Hills, CA 91367 Bcolitre@MusicReports.com	Tel: 818-558-1300 Fax: 818-558-3483
National Music Publishers Association (NMPA)	Jay Cohen Darren Johnson Amy Gold Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019 jaycohen@paulweiss.com djohnson@paulweiss.com agold@paulweiss.com David Israelite Danielle Aguirre 975 F Street NW, Suite 375 Washington, DC 20004 disraelite@nmpa.org daguirre@nmpa.org	Tel: 212-373-3000 Fax: 212-575-3990 Tel: 202-393-6672 Fax: 202-393-6673
Sirius XM Radio Inc. (SXM)	Patrick Donnelly 1221 Avenue of the Americas, 36 th Floor New York, NY 10020 patrick.donnelly@siriusxm.com Cynthia Greer 1500 Eckington Pl. NE Washington, DC 20002 cynthia.greer@siriusxm.com	Tel: 212-584-5100 Fax: 212-584-5200 Tel: 202-380-1476 Fax: 202-380-4592

Party	Contacts	Telephone/Fax
SoundExchange (SX)	<p>Glen Pomerantz Kelly Klaus Anjan Choudhury Munger, Tolles & Olson LLP 355 S. Grand Avenue, 35th Floor Los Angeles, CA 90071-1560 Glenn.Pomerantz@mto.com Kelly.Klaus@mto.com Anjan.Choudhury@mto.com</p> <p>C. Colin Rushing Bradley Prendergast SoundExchange, Inc. 733 10th Street NW, 10th Floor Washington, DC 20001 crushing@soundexchange.com</p>	<p>Tel: 213-683-9100 Fax: 213-687-3702</p> <p>Tel: 202-640-5858 Fax: 202-640-5883</p>
Spotify USA Inc. (Spotify)	<p>James Duffett-Smith Jared Grusd Spotify USA Inc. 45 W. 18th Street, 7th Floor New York, NY 10011 james@spotify.com Jared@spotify.com</p>	<p>Tel: 917-565-3894 Fax: N/A</p>