

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of }  
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Digital Performance Right in Sound } Docket No. 2009-1 CRB Webcasting III  
Recordings and Ephemeral Recordings }  
\_\_\_\_\_ }

In the Matter of }  
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Digital Performance Right in Sound } Docket No. 2009-2  
Recordings and Ephemeral Recordings } CRB New Subscription II  
for a New Subscription Service }  
\_\_\_\_\_ }

**ORDER SETTING DEADLINE AND PROCEDURES FOR  
THE FILING OF WRITTEN DIRECT STATEMENTS**

On February 24, 2009, pursuant to 17 U.S.C. § 803(b)(3), the Copyright Royalty Judges announced the three-month voluntary negotiation period to allow the parties to negotiate in an effort to produce settled rates and terms for the Judges to consider. At the conclusion of the negotiation period, the parties notified the Judges that they were unable to reach an agreement. In the absence of such agreement, the Judges announce the deadline for the filing of written direct statements and setting forth the procedures for the filing and exchange of the statements<sup>1</sup>.

Because of the difficulties associated with the receipt and processing of documents at the Library of Congress in general, it is critical that all parties to this proceeding carefully follow the filing requirements contained herein, as well as the requirements for service of the written direct statements on the parties.

**Filing with the Copyright Royalty Judges**

The deadline for filing written direct statements with the Judges is **Tuesday, September 29, 2009**. Written direct statements **MUST** be in the possession of the Judges by 3 p.m. on Tuesday, September 29, 2009. If the statement is not possessed by the Judges by that time, it is considered late. A late-filed written direct statement must be accompanied by a motion requesting that it be

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<sup>1</sup>A number of participants filed motions to accept late filings of negotiations status. No objections to these motions have been filed. The Judges regret the lack of attention to deadlines by these participants, but no cause has been shown why these notices should not be filed. All the pending motions to file the status of negotiations after the deadline are granted.

accepted. The motion must detail the circumstances of why the written direct statement is late and demonstrate good cause for accepting it. *Cf.* 37 C.F.R. § 350.5(b). If no motion is filed within three (3) business days of notification that the statement is late, it will be returned. Questions regarding the timeliness of written direct statements should be directed to the CRB Program Specialist at (202) 707-7658 or e-mail [crb@loc.gov](mailto:crb@loc.gov).

#### *Filing by U.S. Mail and Commercial Carriers*

The written direct statements must be properly addressed and delivered. Experience counsels that parties work on the preparation of their direct statements right up to the time of the filing deadline and seek to file them on the last day. Mailing a statement on that day, or even several days before the deadline, is not sufficient. Likewise, delivering the statement to a commercial carrier on or shortly before the deadline does not guarantee that the Judges will have it by 3 p.m. on September 29. Due to delivery restrictions placed on all Capitol Hill buildings after the anthrax incident, commercial carriers are directed to the Congressional Courier Acceptance Site which can often result in the Judges not receiving the item for several days. Again, what is controlling in this proceeding with respect to timeliness is not whether the party attempted to deliver the written direct statement by 3 p.m. on September 29, 2009, but rather that the Judges received it by that time.

#### *Filing by Hand*

Consequently, unless a party seeks to file its written direct statement well in advance of the September 29 deadline, the Judges strongly recommend that parties hand deliver their written direct statements to the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000. Statements must be delivered by a private person (such as a paralegal from a law firm). If a party's direct statement all fits in one or more envelopes carried by the private person, that person will be allowed access to the building and should proceed to the Public Information Office of the Copyright Office, Room LM-401, which is located on the fourth floor of the Madison Building. The filing may then be made at the Public Information Office. If the party's written direct statement must be placed in one or more boxes, that person must make arrangements to deliver its statement to the Loading Dock of the Madison Building. Parties will be required to furnish their own cart or dolly, if needed, to transport their box(es) from the Loading Dock to the fourth floor. Specific procedures for delivering items to the Loading Dock will be sent to the parties closer to the September 29 deadline.


The Judges must receive the correct number of copies of the written direct statements, which is an original, five paper copies, and one electronic copy as required by 37 C.F.R. § 350.4(a). If the filing does not contain the correct number of copies, both paper and electronic, or an original, it will be returned.

#### **Service on the Parties**

One copy of a party's written direct statement must be served on each person who appears in the "Counsel or Representative" box on the service list. If a party files its statement with the Judges on the September 29 deadline, then it must take steps to assure that all persons on the service

list receive the statement by 5 p.m. that same day. Parties may choose their own delivery methods for serving written direct statements on other parties.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'James Scott Sledge', written over a horizontal line.

James Scott Sledge,  
Chief Copyright Royalty Judge.

**Dated:** June 24, 2009