

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

In the Matter of:

Digital Performance in Sound Recordings  
and Ephemeral Recordings

Docket No. 2009-1  
CRB Webcasting III

**SOUNDEXCHANGE’S MOTION FOR AN ORDER  
REQUIRING ALL PARTICIPANTS TO FILE A NOTICE  
OF INTENTION TO SUBMIT A WRITTEN DIRECT STATEMENT**

**Introduction**

SoundExchange, Inc. (“SoundExchange”) respectfully requests that the Copyright Royalty Judges issue an order requiring all participants that filed a Petition to Participate and that intend to file a written direct statement to file a Notice of Intention to Submit a Written Direct Statement. The Notices should indicate whether a participant intends to file a written direct statement by the September 29, 2009 deadline, and whether a participant intends to participate fully in this proceeding. SoundExchange requests that the Judges require the participants to file these Notices no later than September 14, 2009.

SoundExchange believes that such an order will promote efficiency given the large number of parties that remain on the participant list, the uncertainty about which parties actually intend to participate, the expense associated with serving written direct statements, and the need for parties to tailor their cases to the parties that will actually participate in the proceeding.

**Discussion**

All participants in this proceeding must file and serve a written direct statement by September 29, 2009. 37 C.F.R. 351.4(a). A written direct statement includes “witness statements, testimony, and exhibits to be presented in the proceedings,” 17 U.S.C.

803(b)(6)(C)(ii)(II), and must also include a party's requested rate. 37 C.F.R. 351.4(b)(3).

Participants in this proceeding must be prepared to respond to document requests and interrogatories, to subject their witnesses to deposition, to present their witness testimony at a hearing convened by the Judges, and to make their witnesses available for cross-examination. 37 C.F.R. 351.5(b), 351.10(b). All evidence submitted as part of a written direct statement must be offered through a sponsoring witness at the hearing. 37 C.F.R. 351.10(a).

In the Webcasting II proceeding, Docket No. 2005-1 CRB DTRA, the Interim Chief Copyright Royalty Judge issued an order similar to the one SoundExchange requests here. *See* Exhibit A attached hereto at 2 (“[T]he Board is requiring that all parties that filed a Petition to Participate in this proceeding and intend to file a written direct statement submit a Notice of Intention to Submit a Written Direct Statement no later than [two weeks before the deadline for Written Direct Statements].”). The Interim Chief Judge observed that the Library of Congress had issued a similar order in the previous proceeding for the Section 112 and 114 licenses, and that it was “wise to follow” that decision in light of “the large number of parties on the current participant list and the expense associated with serving written direct statements.” *Id.*

The order that SoundExchange requests in this proceeding makes sense for all of the same reasons. There are a large number of parties listed on the participant list, and it can be costly and burdensome to serve all of them with copies of the written direct case. The requested order will help control those costs and burden, as experience in prior proceedings suggests that some of the parties on the participant list will not in fact file written direct statements or otherwise participate in the proceeding.

In addition, SoundExchange and other participants that are planning to participate fully in the proceeding are currently laboring to prepare their written direct statements. At this time,

these parties have no choice but to draft their direct statements to address issues related to all of the parties that remain on the participant list. By requiring parties to file Notices stating whether they intend to participate, the Judges will enable the remaining parties to tailor, and hopefully streamline, their cases. This may also have the beneficial effect of reducing the volume of materials submitted to the Judges and enabling the parties to avoid submitting wholly irrelevant information that relates to parties that do not intend to participate.

### **Conclusion**

For the foregoing reasons, SoundExchange respectfully requests that the Judges issue an order requiring each participant to file and serve a Notice of Intention to Submit a Written Direct Statement by no later than September 14, 2009. The Notices should indicate whether a participant intends to file a written direct statement and whether the participant intends to participate fully in this proceeding.

Respectfully Submitted,



David A. Handzo (DC Bar 384023)  
Michael B. DeSanctis (DC Bar 460961)  
Jared O. Freedman (DC Bar 469679)  
JENNER & BLOCK LLP  
1099 New York Ave., N.W.  
Washington, D.C. 20001  
(v) 202-639-6000  
(f) 202-639-6066  
dhandzo@jenner.com  
mdesantis@jenner.com  
jfreedman@jenner.com

Michael J. Huppe (DC Bar 455161)  
General Counsel  
SoundExchange, Inc.  
1121 14th Street, NW, Suite 700  
Washington, DC 20005  
(v) 202-640-5858  
(f) 202-640-5883  
mhuppe@soundexchange.com

*Counsel for SoundExchange, Inc.*

Dated: August 25, 2009

# **Exhibit A**

COPYRIGHT ROYALTY BOARD

DUPLICATE

Library of Congress - Copyright Royalty Board - P.O. Box 70977 - Southwest Station - Washington, DC 20024-0977  
t: 202/707-8380 - f: 202/252-3423 - www.loc.gov/crb

In the Matter of

Digital Performance Right in Sound  
Recordings and Ephemeral Recordings

Docket No. 2005-1 CRB DTRA

ORDER

In anticipation of the filing deadline for written direct statements on October 31 in the above-captioned proceeding, the Copyright Royalty Board ("Board") is issuing this Order to address several procedural and administrative matters. The Board is resolving a motion filed by SoundExchange, Inc. ("SoundExchange") requesting parties to identify their intention to file a written direct statement and to participate fully in the proceeding, is setting forth the details of service of copies of orders and determinations of the Board, and is directing the parties to negotiate the terms of a protective order to govern the submission of confidential pleadings, documents and information. A separate order will be issued by the Board in the near future regarding the procedures for filing and exchanging the written direct statements.

*Notice of Intent to File Written Direct Statements*

SoundExchange has submitted a motion requesting the Board to require all parties that have submitted a Petition to Participate in this proceeding to file a notice stating their intention to submit a written direct statement on or before the October 31 deadline, to state their intention to participate fully in the proceeding, and to provide the name and address of the counsel on whom

service should be made. A joint response filed September 28, 2005 on behalf of Beasley Broadcast Group, Inc., Bonneville International Corporation, Citadel Broadcasting Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., Digital Media Association, Entercom Communications Corporation, Greater Media, Inc., Infinity Broadcasting Corporation, The National Religious Broadcasters Music License Committee, Salem Communications Corporation, and Susquehanna Radio Corporation does not object to the request, but takes issue with some of the statements made in SoundExchange's motion regarding participation in the proceeding and the timing of the deadline for submitting a notice of intention to file a written direct statement.

Given the large number of parties on the current participant list and the expense associated with serving written direct statements, the Board believes that it is wise to follow the precedent set forth by the Library of Congress in the previous rate adjustment proceeding for the section 112 and 114 licenses. *See, Order in Docket No. 2000-9 CARP DTRA 1&2* (March 16, 2001). Consequently, the Board is requiring that all parties that filed a Petition to Participate in this proceeding and intend to file a written direct statement submit a Notice of Intention to Submit a Written Direct Statement **no later than October 17, 2005.**

A Notice of Intention to Submit a Written Direct Statement shall state the party's intention to file a written direct statement by the October 31, 2005 deadline, and to be an active participant in this proceeding. No statement is required as to what constitutes active participation. In addition, the Notice shall provide the name, address, facsimile number, and e-mail address of **one** person (counsel, or if not represented by counsel, the party) on whom copies of filings and submissions should be served. The service list for the remainder of the proceeding

will comprise the names and information so provided.

Any party that fails to file a Notice of Intention to Submit a Written Direct Statement by the October 17, 2005, deadline shall forfeit the right to receive service copies of the written direct statements from the parties filed on or before October 31, 2005. Failure to submit a notice, however, does not result in automatic dismissal from this proceeding. A party who fails to file this notice but who, in fact, files a written direct statement on October 31, will be added to the service list. These parties must then be served with copies of the other parties' direct statements by 5 p.m., Thursday, November 3, 2005.

Notices of Intention to Submit a Written Direct Statement must be received by the Board by 3 p.m., October 17, 2005. Due to delays in the handling of mail and the receipt of materials from commercial carriers (FedEX, UPS, etc.), these methods of delivery do not guarantee receipt by October 17. Consequently, the Board recommends that Notices be hand delivered by a private party and brought to the Public Information Office, Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 3 p.m. and the envelope should be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE, Washington, DC 20559-6000. The Board will also accept Notices by facsimile transmission. The facsimile number is (202) 252-3423. Faxes must be received by 3 p.m. on October 17, 2005.

*Service by the Copyright Office*

The Board will serve one copy of its order, announcements and decisions on those parties not represented by counsel, and those parties represented by counsel who does not represent other



parties in this proceeding. Where the same counsel represents two or more parties to this proceeding, that counsel will receive one copy of the Board's orders, announcements and decisions. No additional copies will be provided.

Likewise, the Board will not serve a party directly when that party is represented by counsel, nor will it serve more than one attorney for a party. Each party must designate in its Notice of Intent to Submit a Written Direct Statement a single person for purposes of service by the Board.

*Negotiation of a Protective Order*

Given the volume of confidential material submitted in the last section 112/114 rate proceeding, it is a virtual certainty that parties will seek to submit confidential material in this proceeding. Therefore, the Board is directing the parties to negotiate the terms of a proposed protective order to govern the submission of confidential materials and to submit it to the Board **no later than October 24, 2005**. The Board recommends that the parties use the protective order issued by the Librarian in the previous proceeding as the model. Timely submission of the proposed terms of such an order is critical to the Board issuing the order before the submission of written direct statements, and the same procedures for filing Notices of Intent to File a Written Direct Statement should be followed.

SO ORDERED.



Bruce G. Forrest,  
Interim Chief Copyright Royalty Judge.

DATED: October 5, 2005

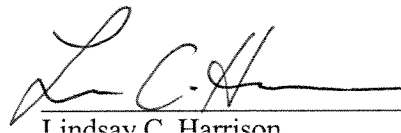
## CERTIFICATE OF SERVICE

I, Lindsay C. Harrison, do hereby certify that copies of the foregoing **SoundExchange's Motion for an Order Requiring All Participants to File a Notice of Intention to Submit a Written Direct Statement** were sent via overnight mail this 25th day of August, 2009 to the following:

<p>William Malone James Hobson Matthew K. Schettenhelm MILLER &amp; VAN EATON, PLLC 1155 Connecticut Avenue, NW, Suite 1000 Washington, DC 20036-4306 wmalone@millervaneaton.com mschettenhelm@millervaneaton.com <i>Counsel for Intercollegiate Broadcasting System, Inc. and Harvard Radio Broadcasting Co. Inc.</i></p>	<p>Stuart Nolan WOOD, MAINES &amp; NOLAN, P.C. 4121 Wilson Boulevard, Suite 101 Arlington, VA 22203 Nolan@LegalCompass.com <i>Counsel for Catholic Radio Association (CRA)</i></p>
<p>David D. Oxenford DAVIS WRIGHT TREMAINE LLP 1919 K Street, N.W., Suite 200 Washington, DC 20006 Fax: 202/973-4499 davidoxenford@dwt.com <i>Counsel for AccuRadio, LLC, Digitally Imported Inc., ioWorldMedia, Inc., and Radio Paradise, Inc</i></p>	<p>Stephen Gajdosik WOOD, MAINES &amp; NOLAN, P.C. 121 Broad Street Charleston, SC 29401 Fax: 509/479-1186 sgajdosik@bellsouth.net <i>Counsel for Catholic Radio Association (CRA)</i></p>
<p>David A. Zapolsky AMAZON.COM, INC. 1200 12th Avenue South Seattle, WA 98144 davidz@amazon.com</p>	<p>Kenneth L. Steinthal WEIL GOTSHAL &amp; MANGES, LLP Fax: 650/802-3100 201 Redwood Shores Redwood Shores, CA 94065 Kenneth.steinthal@weil.com <i>Counsel for Yahoo!, Inc.</i></p>
<p>Cecily Mak REALNETWORKS, INC. 2012 16th Street San Francisco, CA 94103 Fax: 415/934-6728 cmak@real.com</p>	<p>Ian C. Ballon Wendy M. Mantell GREENBERG TRAUERIG, LLP 2450 Colorado Avenue Suite 400E Santa Monica, CA 90404 Fax: (310) 586-7800 <i>Counsel for Slacker, Inc.</i></p>

<p>Colette E. Vogele  VOGELE &amp; ASSOCIATES  12 Geary Street, Suite 701  San Francisco, CA 94108  Fax: 415/358-4975  colette@vogelelaw.com  <i>Counsel for College Broadcasters, Inc. (CBI)</i></p>	<p>Wendy Halley  YAHOO!, INC.  2700 Pennsylvania Avenue  Santa Monica, CA 90404  Fax: 310/526-4400  whalley@yahoo-inc.com</p>
<p>William B. Colitre  ROYALTY LOGIC, LLC  21122 Erwin Street  Woodland Hills, CA 91367  Bcolitre@RoyaltyLogic.com  Fax: 818/558-3484</p>	<p>Philip A. Bonomo  LERMAN SENTER PLLC  2000 K Street, NW, Suite 600  Washington, DC 20006  pbonomo@lermansenter.com  <i>Counsel for Clarke Broadcasting Corporation</i></p>
<p>Bruce Joseph  Karyn Ablin  Matthew Astle  WILEY REIN LLP  1776 K Street, NW  Washington, DC 20006  Fax: 202/719-7049  bjoseph@wileyrein.com  kablin@wileyrein.com  mastle@wileyrein.com  <i>Counsel for Sirius XM Radio Inc.; Counsel for National Religious Broadcasters Music License Committee</i></p>	<p>Suzanne Head  NATIONAL ASSOCIATION OF BROADCASTERS  1771 N Street NW  Washington, DC 20036  shead@nab.org</p>
<p>Brandon Casci  LOUDCITY LLC  411A Higland Avenue #371  Somerville, MA 02144  brandon@loudcity.net</p>	<p>Ara Hovanesian  HOVANESIAN &amp; HOVANESIAN  301 E. Colorado Blvd., Ste. 514  Pasadena, CA 91101-1919  Fax: 626/795-8900  hovanesian@earthlink.net  <i>Counsel for Access2ip; Counsel for LIVE365, Inc.</i></p>

Lee Knife General Counsel DIGITAL MEDIA ASSOCIATION 1029 Vermont Ave., Suite 850 Washington, DC 20005 lknife@digmedia.org	George Cheeks MTV NETWORKS 1515 Broadway New York, NY 10036 Fax: 212/846-1849 George.Cheeks@mtvstaff.com
Kevin Saul, Associate General Counsel Matt Railo, Director, iTunes Legal APPLE 1 Infinite Loop, MS 3-ITS Cupertino, CA Fax: (408) 974-9105 ksaul@apple.com mrailo@apple.com	



Lindsay C. Harrison