

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of:]	
]	
Digital Performance Right in Sound]	Docket No. 2005-1
Recordings and Ephemeral Recordings]	CRB DTRA Webcasting II
]	

DISCOVERY SCHEDULE ON REMAND

The parties submitted proposals for discovery. SoundExchange proposed a slightly reduced schedule from the typical discovery in the direct phase of a rate determination proceeding. Intercollegiate Broadcasting System proposed a much more expanded discovery. The statute and regulations make no provision for discovery for a proceeding that has been remanded. The Judges seek to afford the parties an efficient way to present their evidence to support their proposals, but without creating a whole new 2 year long proceeding that would end after rates and terms expire. After review of the parties' Written Direct Statements, the Judges permit the parties to conduct discovery for 45 days, as follows:

1. First day of discovery period: February 1, 2010.
2. Last day of discovery period: March 17, 2010.
3. Initial Disclosures. On February 1, 2010, all parties shall produce the documents that witnesses relied upon in preparing their written direct testimony, and the documents that witnesses reviewed in preparing their testimony but did not rely upon, except where third party consent or a court order is required before documents reviewed or relied upon can be produced. In that circumstance, the parties whose witnesses reviewed or relied upon such documents will seek the consent of the third parties prior to February 1, 2010, and on that same date will inform the other parties of the identity and/or nature of the documents for which consent has not been received.
4. Document requests.
 - (a) Limits. The parties are limited to 25 document requests. The requests for documents shall be served on February 1, 2010. Parties must serve written responses/objections and produce responsive documents to these requests for delivery no later than February 15, 2010.
 - (b) Documents Referenced During Depositions. In addition to the document requests described above, parties may request documents referenced by a witness during deposition. Such requests must be made either on the day of the deposition or within the following two business days. Parties must

- serve written responses/objections and/or produce the deposition-related documents within 7 days of receiving the request (even if this period extends beyond February 15, 2010).
5. Interrogatories. The parties may serve one set of up to 25 interrogatories on the other party. The interrogatories shall be served on February 1, 2010. Parties must serve written responses and/or objections to these interrogatories for delivery no later than February 22, 2010.
 6. Depositions.
 - (a) Notice. Deposition notices must provide at least ten days' notice of the date, time and place, unless otherwise agreed upon by the parties. Parties will make a good faith effort to serve deposition notices as early as possible.
 - (b) Availability. Each witness shall be made available once.
 - (c) Dates. Depositions will take place between February 15 and March 17, 2010, unless otherwise agreed upon by the parties. The party noticing a deposition is responsible for informing the Judges in writing of the name of the deponent, location, date, time and contact information for counsel for each deposition.
 7. Motions to Compel. Motions to Compel may be filed at any time during the discovery period, subject to the following requirements. Motions to Compel must be filed by March 17, 2010, or within 7 days of the date on which the requested discovery was first denied, whichever is later, and after the parties have met and conferred about the particular document requests or interrogatories at issue.
 8. Parties shall serve document production requests, interrogatories, deposition notices, and written responses/objections on other parties via email. Parties shall produce documents in useable and legible formats. With Excel spreadsheets and similar documents created by any witness (or by any witness's staff or research team), or created in connection with any witness's testimony, parties shall produce them in native format maintaining all embedded formulas and settings. With respect to other specific Excel spreadsheets and similar documents, parties shall endeavor to produce them in native format maintaining all embedded formulas and settings, but only when specifically requested and with reasonable notice. Parties shall cooperate in good faith with respect to document format and production specifications.
 9. Pursuant to 37 C.F.R. § 3 5 1.5(c), any party may move the Copyright Royalty Board to authorize additional discovery.

Dated. January 20, 2010

SO ORDERED.



James Scott Sledge
Chief US Copyright Royalty Judge