

UNITED STATES COPYRIGHT ROYALTY JUDGES

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

REQUEST FOR INTERPRETATION OF A MATERIAL QUESTION OF LAW  
FROM THE REGISTER OF COPYRIGHTS

During the course of discovery on the written direct statements in the above-captioned proceeding, the Copyright Royalty Judges received a motion from RealNetworks, Inc., joined by Live365, Inc., for issuance of subpoenas to nonparticipants. Specifically, the motion requests issuance of subpoenas *ad testificandum* and *duces tecum* to nonparticipants Pandora Media, Inc.; Slacker Inc.; and CBS Interactive, which operates webcasting services including Last.fm Ltd. Pandora, Slacker, and CBS Interactive all oppose the motion, as does SoundExchange, Inc., which is a participant in this proceeding.

The Judges conducted a hearing on the motion on January 12, 2010. Evident from the hearing and the pleadings is a dispute as to whether the Judges have authority under the Copyright Act to issue a subpoena during a rate adjustment proceeding to a nonparticipant. Section 803(b)(6)(C)(ix) of Act provides:

In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness to appear and give testimony, or to produce and permit inspection of documents or tangible things, if the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this clause shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact.

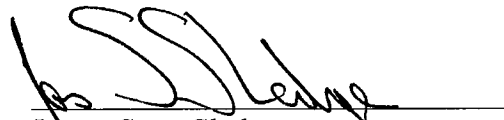
17 U.S.C. § 803(b)(6)(C)(ix).

Pursuant to 17 U.S.C. § 802(f)(1)(A)(ii), the Judges request from the Register of Copyrights an interpretation of the following material question of substantive law:

**QUESTION:** Whether the Copyright Royalty Judges have authority under the Copyright Act to subpoena a nonparticipant to appear and give testimony or to produce and permit inspection of documents or tangible things?

The request is properly made under 17 U.S.C. § 802(f)(1)(A)(ii) as it relates to the construction of provisions of title 17 that arose during the course of the proceeding but does not involve an interpretation of those provisions of the Act that are the subject of the proceeding. *See*, 17 U.S.C. § 802(f)(1)(B). Given that the issue presented has been fully briefed and argued, the Judges are waiving the briefing schedule requirement set forth in 37 C.F.R § 354.1(b)(1) and are forwarding to the Register the filed pleadings, along with a copy of the transcript of the January 12 hearing.

**SO ORDERED.**



James Scott Sledge  
Chief U.S. Copyright Royalty Judge

DATED: January 28, 2010