

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

In the Matter of:

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2009-1
CRB Webcasting III

JOINT SCHEDULING PROPOSAL

Five of the six parties that filed written direct statements in this proceeding -- SoundExchange, Inc., RealNetworks, Inc., Live365, Inc., Intercollegiate Broadcasting System, Inc., and Royalty Logic, LLC (collectively, the "Parties") -- jointly submit this scheduling proposal for the remainder of the Webcasting III proceeding.¹ Except as otherwise discussed below with respect to the number of trial days for the direct case and rebuttal case hearings, the Parties agree on all terms of this proposal.

The Parties propose the following schedule dates:

Date	Action
March 22	Motions <i>in Limine</i> on <i>Daubert</i> and Relevance Grounds
April 5	Oppositions to Motions <i>in Limine</i>
April 20	Direct Case Hearing Begins
June 7	File Written Rebuttal Cases
June 14	Discovery Begins -- Serve Documents That Witnesses Reviewed or Relied Upon
June 14	Serve Interrogatories and Document Requests
June 16	Last Day to Notice Depositions
July 9	Produce Documents and Serve Interrogatory Responses and Written Responses to Document Requests
July 16	End of Discovery -- File Motions to Compel
July 22	File Oppositions to Motions to Compel (no replies will be filed).
August 2	Rebuttal Case Hearing Begins
September 10	Findings of Fact and Conclusions of Law
September 27	Replies to Findings of Fact and Conclusions of Law
September 30	Closing Arguments
December 16, 2010	Copyright Royalty Judges' Determination

¹ The sixth party, College Broadcasters, Inc., has represented to the undersigned that it neither joins nor opposes this motion. Instead, it has reserved the right to file separately in the event that it elects to propose an alternative to all or parts of this proposal.

I. Trial Days and Allocation of Time

The Parties propose that direct and rebuttal case hearings will be held Monday through Thursday from 9:30 am to 4:30 pm, for a total of 6.0 hours of hearing per day. Counsel may present opening statements on April 20, 2010. The Parties propose that time will be counted as follows: The time that a party uses to present an opening statement, to argue motions, to present its own witnesses' testimony and to cross-examine witnesses will count against that party. The time consumed by the Judges' questions of a witness will count against the side presenting the witness, and the time consumed by the Judges' deliberation of a motion will count against the side making the motion. Time that is unused on a hearing day because of the absence of a witness will count against the side presenting its case. The Parties propose that the Judges will keep time for each side.²

A. SoundExchange's Proposed Number of Trial Days

SoundExchange proposes six trial days for the direct case hearing, with a total of 36 hours. SoundExchange would have 18 hours, and the other parties collectively would have 18 hours. SoundExchange has estimated the amount of time reasonably needed for each witness, and believes that this is more than enough time for the parties to present and cross-examine witnesses, present opening statements and argue motions. Under SoundExchange's proposal, the parties would need to present between two and three witnesses per day. Given that there are a limited number of expert witnesses (whose testimony typically requires the most trial time) and several witnesses whose direct and cross-examinations are likely to be very short, it should not be difficult to comply with this schedule. There are also fewer exhibits in this proceeding as compared to past proceedings, which should further speed up the trial process. SoundExchange believes that having six trial days will enforce efficiency and avoid wasting the Court's and the parties' time. SoundExchange believes that if the Court orders more trial days, the parties are likely to use the time, and that it will result in needlessly prolonged witness examinations. As we learned in past proceedings, extra trial time does not necessarily result in more informative direct testimony or cross-examination.

SoundExchange proposes five days for the rebuttal hearing, which would provide each side with 15 hours to present testimony, cross-examine witnesses and argue motions. While it is difficult to estimate how much rebuttal trial time is needed before the parties have even identified their rebuttal witnesses, rebuttal hearings in CRJ proceedings have typically been shorter than direct case hearings, and five days seems like a reasonable amount of time to examine what is likely to be a smaller number of witnesses than have been offered in the parties' direct cases.

² Royalty Logic is participating in the direct case hearing on a limited basis, and requires no allocation of time at present. Should SoundExchange or any other party seek the adoption, pursuant to a settlement or otherwise, of terms that may prejudice the ability of the Royalty Logic affiliates to receive accurate, transparent, and timely accountings in respect of the Sections 114 and 112 statutory licenses, then Royalty Logic will propose and seek terms designed to ensure that such Royalty Logic affiliates will not be adversely affected.

B. The Services' Proposed Number of Trial Days

RealNetworks, Live365 and the Intercollegiate Broadcasting System, Inc. (the "Services") propose ten trial days for the direct case hearing, with 30 hours allotted to SoundExchange and 30 hours to the other parties collectively. While the Services share SoundExchange's view that unnecessary additional trial days would not result in a more complete record, they believe that a minimum of ten trial days will be needed to allow each party to present its case, cross-examine its opponents' witnesses, and argue motions. Considering that the parties have presented written direct testimony from sixteen witnesses (not counting the witness proposed by Royalty Logic), SoundExchange's belief that the direct hearing might require fewer than ten days seems unreasonably optimistic.

None of the parties appears to believe that a proceeding as drawn out as Webcasting II – which comprised 48 total hearing days – would be necessary or useful. But that is not the only previous CRJ proceeding that should inform the Judges' decision in setting a schedule for this one. In the Section 115 Mechanicals proceeding (Docket No. 2006-3 CRB DPRA), for instance, the Judges allocated 19 direct hearing days for the parties to make opening statements, argue motions, and examine 31 witnesses (which amounts to just over 0.6 days per witness, inclusive of openings and motions practice). In this proceeding, scheduling ten days for the direct case hearing, as the Services propose would, also amounts to just over 0.6 days per witness (inclusive of openings and motions practice). In other words, the Services' proposal is nearly identical to the Judges' allocation of time in the Section 115 Mechanicals proceeding; it is not, as SoundExchange suggests, a request for superfluous time. By contrast, SoundExchange's proposal would allow just 0.38 trial days per witness (inclusive of openings and motions practice) – an unrealistically low allocation of time at odds with the CRJs' precedent. SoundExchange's belief that parties "are likely to use" all the allocated time – and apparent belief that four additional trial days results in an unreasonably lengthy trial – should not undermine the rights of all the parties to put forth their cases without undue restrictions and sufficiently test the opposing case.

The Services propose that the Court schedule six days for the rebuttal hearings. As SoundExchange notes, it is impossible to predict precisely how much time will be needed, since no one has yet identified any rebuttal witnesses. The Services agree with SoundExchange that the rebuttal phase will likely require significantly less time than the direct phase, but they suggest that at least six days will be necessary to ensure that the parties have sufficient time to present their rebuttal cases, cross-examine opponents' rebuttal witnesses, and argue motions.

II. Order of Presentation, Motions, and Rebuttal Discovery

The Parties propose that SoundExchange will present its case first in the direct case hearing, and that the other parties will present their cases after SoundExchange in an order that they will determine later, with at least one week's advance notice to the Court. The Parties propose that in the rebuttal case hearing, the other parties will present their cases first, and that SoundExchange will present its case last. The Parties propose that the order of presentation of closing arguments should be determined at a later time.

The Parties propose filing motions *in limine* and oppositions thereto in advance of the hearing. To the extent possible, the Parties believe that resolution of the motions prior to the beginning of the hearing is desirable. The proposed schedule does not preclude the filing of other motions at subsequent dates.

Finally, with regard to rebuttal discovery, the Parties propose that SoundExchange will be limited to 50 document requests, and that the other parties collectively will be limited to 50 document requests. Each party may serve only one set of document requests.

Dated: February 22, 2010

Respectfully submitted,

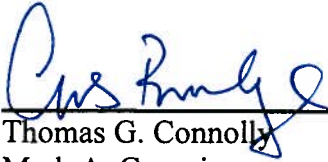
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CERTIFICATE OF SERVICE

I, Charles Breckinridge, do hereby certify that copies of the foregoing Joint Scheduling Proposal were sent via email and first class mail this 22nd day of February, 2010, to the following:

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