

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2009-1
CRJ Webcasting III

**ORDER GRANTING THE MOTION OF SOUNDEXCHANGE
TO COMPEL REALNETWORKS TO PRODUCE DOCUMENTS**

The Copyright Royalty Judges (“Judges”) have received a motion from SoundExchange seeking to compel RealNetworks to produce certain categories of documents.

The movants have classified the documents they are seeking into three categories: (1) updated versions of financial and subscriber and non-subscriber usage information that RealNetworks has previously produced earlier in the proceeding, including documents showing RealNetworks’ and its Rhapsody service’s revenues, costs and expenses for Fiscal Year 2009, and subscriber and non-subscriber usage data through the last month for which such data is available; (2) “streaming fee reports” or similar documents showing payments by RealNetworks to a limited set of sound recording copyright owners (identified as Exhibit D attached to the motion) for the use of recordings on nonstatutory webcasting services for 2009; and (3) all agreements and other documents that RealNetworks’ witnesses reviewed or relied upon in preparing their written testimony, but that RealNetworks has not produced because third party consent to produce the documents has not been granted.

With respect to the first category of documents, the motion is **granted to the extent that RealNetworks has not already complied with the movants’ request**, inasmuch as RealNetworks has agreed to provide this category of documents.

With respect to the second category of documents, the motion is **granted to the extent that RealNetworks has not already complied with the movants’ request and to the extent that fee reports do not exist for the particular labels identified in Exhibit D to the motion, Real Networks will promptly comply with SoundExchange’s request for an equal number of similar copyright owners not**

considered by RealNetwork's witnesses.¹ With respect to the third category of documents, the motion is **granted to the extent that RealNetworks has not already complied with the movants' request.** RealNetworks indicates that the full production of these two categories of documents have not been made to date due to the lack of consent from some third party copyright owners. Yet, RealNetworks' witnesses have, for example, reviewed or relied upon the agreements referenced in the third category above in preparing their written testimony. The requested documents are clearly in RealNetworks' possession, not burdensome to produce, and relevant to this proceeding. RealNetworks' effort to use documents to support its testimony but to cite to its lack of authority to produce said documents will not be permitted. In an analogous situation in *Webcasting II* in which SoundExchange had sought to rely on audit data in its written testimony while shielding its production by claiming a lack of authority to produce said data, the Judges similarly required production. See *Order on Motion by DiMA, RadioBroadcasters, National Public Radio and Corporation for Public Broadcasting to Compel SoundExchange to Produce Documents Related to the Testimony of Barry Kessler*, Docket No. 2005-1 CRB DTRA at 2 (November 7, 2006).

All documents must be provided no later than ten (10) days after the date of this order.

SO ORDERED.

DATED: March 3, 2010



**James Scott Sledge
Chief U.S. Copyright Royalty Judge**

¹ RealNetworks indicates that it will inform SoundExchange as to which of the listed labels in movants' Exhibit D do not receive fee reports and will provide a list of similar copyright owners as to which "substitute" fee reports will be provided. See RealNetworks' Opposition To SoundExchange's Motion to Compel RealNetworks to produce Documents, Docket No. 2009-1 (February 5, 2010) at 4.