

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Digital Performance Right in Sound  
Recordings and Ephemeral Recordings

Docket No. 2009-2  
CRB Webcasting III

DISCOVERY SCHEDULE

All of the parties to this proceeding that filed written direct statements jointly moved for issuance of a discovery schedule pursuant to 37 C.F.R. § 351.5(a). The Copyright Royalty Judges grant the motion and adopt the discovery schedule jointly proposed for the direct phase of this proceeding. The provisions of the Proposed Discovery Schedule, numbered paragraphs 1-10, are incorporated herein as if set in full. The joint motion is attached to this order for ease of reference.

SO ORDERED.



James Scott Sledge  
Chief U.S. Copyright Royalty Judge

DONE: November 10, 2009

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*Copyright Royalty Board*

**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 MOTION FOR ISSUANCE OF DISCOVERY SCHEDULE**

All of the parties to this proceeding that filed written direct cases jointly move the Copyright Royalty Judges (“CRJs”) to issue a discovery schedule pursuant to 37 C.F.R. § 351.5(a) adopting the proposed discovery schedule identified below for discovery in the direct phase of the proceeding. In addition, the parties request that upon reasonable notice, the CRJs will arrange for one or more Judges to be available by telephone during depositions to resolve disputes that may arise.

**Proposed Discovery Schedule**

1. First day of discovery period: December 1, 2009.
2. Last day of discovery period: January 29, 2010.
3. Initial Disclosures. On December 1, 2009, 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 on such documents will seek the consent of the third parties prior to December 1, 2009, and on December 1, 2009, 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. In the direct case phase of discovery, SoundExchange shall be limited to 125 document requests, and the services (RealNetworks, Inc.; Live365, Inc.; College Broadcasters, Inc.; and Intercollegiate Broadcasting System and Harvard Radio Broadcasting Co., Inc.) are collectively limited to 150 document requests. SoundExchange, the commercial services collectively (RealNetworks, Inc.; and Live365, Inc.), and the noncommercial services collectively (College Broadcasters, Inc.; and Intercollegiate Broadcasting System and Harvard Radio Broadcasting Co., Inc.) each may serve no more than two sets of document requests on each other party.

(b) First Set of Document Requests and Responses. Parties' first set of requests shall be served on December 1, 2009. Parties must serve written responses/objections and produce responsive documents to these requests for delivery no later than December 21, 2009.

(c) Second Set of Document Requests and Responses. Parties' second set of requests may be served at any time from January 5, 2010, through January 8, 2010. Parties must serve written responses/objections and produce responsive documents to these requests 21 days after receiving them.

(d) Documents Referenced During Depositions. In addition to the two sets of 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 three business days. Requests for specific documents referenced in a deposition that are responsive to a previously served document request or should have been included in an initial disclosure will not count against the total number of document requests identified above. Parties must serve written responses/objections and/or produce the deposition-related documents within 14 days of receiving the request (even if the 14-day period extends beyond January 29, 2010).

5. Interrogatories.

(a) Limits. In the direct case phase of discovery, SoundExchange, the commercial services collectively (RealNetworks, Inc.; and Live365, Inc.), and the noncommercial services collectively (College Broadcasters, Inc.; and Intercollegiate Broadcasting System and Harvard Radio Broadcasting Co., Inc.) each may serve no more than two sets of interrogatories on each other party.

(b) First Set of Interrogatories. Parties' first set of interrogatories shall be served on December 1, 2009. Parties must serve written responses and/or objections to these interrogatories for delivery no later than December 21, 2009.

(c) Second Set of Interrogatories. Parties' second set of interrogatories may be served at any time from January 5, 2010 through January 8, 2010. Parties must serve written responses and/or objections to these interrogatories 21 days after receiving them.

6. Depositions.

(a) Notice. Deposition notices must provide at least ten days' notice of the deposition's date, unless less notice is mutually agreed upon by the parties. Parties will make a good faith effort to serve deposition notices as early as possible.

(b) Availability. Each witness will be made available once. Parties that choose to depose a witness early in the Discovery Period bear the risk that relevant documents may not have been produced at the time of the deposition. That is not a basis for re-deposing a witness or keeping a deposition open until a later date.

(c) Dates. Depositions will not take place between December 21, 2009, and January 4, 2010, unless expressly agreed to by the witness and parties. The party noticing a deposition is responsible for informing the CRJs 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 January 29, 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 respect to 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. § 351.5(c), any party may move the Copyright Royalty Board to authorize additional discovery.

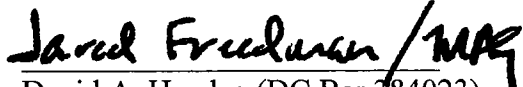
10. Pursuant to 37 C.F.R. § 351.7, the parties will hold the post-discovery settlement conference no later than February 19, 2010. Immediately after the conference, the parties shall file with the CRJs a written Joint Settlement Conference Report indicating the extent to which they have reached a settlement.

Respectfully submitted,



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Dated: November 4, 2009