

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

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<i>In re</i>	)	
	)	
	)	
<b>DETERMINATION OF ROYALTY</b>	)	<b>DOCKET NO. 14-CRB-0001-WR</b>
<b>RATES AND TERMS FOR</b>	)	<b>(2016-2020)</b>
<b>EPHEMERAL RECORDING AND</b>	)	
<b>DIGITAL PERFORMANCE OF SOUND</b>	)	
<b>RECORDINGS (<i>WEB IV</i>)</b>	)	

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**DECLARATION AND CERTIFICATION OF GLENN D. POMERANTZ  
REGARDING RESTRICTED INFORMATION**

1. I am counsel for SoundExchange, Inc. (“SoundExchange”) in Docket No. 14-CRB-0001-WR (2016-2020). I respectfully submit this declaration and accompanying Redaction Log (Attachment A) to comply with the Interim Protective Order, dated October 2, 2014, which directs the parties to redact proposed restricted material in the unrestricted versions of their written direct statements and to provide a log of the same redactions. I am authorized by SoundExchange to submit this declaration on its behalf.

2. I have reviewed SoundExchange’s written direct statement, witness statements, designated testimony, exhibits, and redaction log, all of which are being submitted in this proceeding on October 7, 2014. I also have reviewed the definitions and terms provided in the Joint Motion to Adopt Protective Order, submitted by SoundExchange on September 23, 2014. After consultation with my client, I have determined that portions of SoundExchange’s written direct statement, witness statements, and accompanying exhibits contain information that is “Protected Material” as defined by the proposed Protective Order and that should be treated as “confidential information” under 17 U.S.C. § 803(c)(5). SoundExchange’s Written Direct

Statement Redaction Log (Attachment A) identifies the Protected Material and describes the basis for each redaction. The Protected Material is shaded in the printed copies of the restricted versions of SoundExchange's filed materials, and is further described below.

3. The Protected Material that SoundExchange is submitting includes, among other things, confidential testimony and exhibits relating to or constituting (a) contracts, contract terms or negotiation strategies that are proprietary, not available to the public, commercially sensitive, and/or subject to express confidentiality obligations in agreements with third parties; and (b) internal business information, financial data and projections, and competitive strategy that are proprietary, not available to the public, and commercially sensitive.

4. The public disclosure of the Protected Material that SoundExchange is submitting would be likely to cause significant harm. The disclosure would provide an unfair competitive advantage to competitors and/or current or future negotiating counterparties of those whose information would be disclosed. Many but not all competitors and counterparties also are parties to this proceeding. Public disclosure of this information also would place SoundExchange, the entities whose interests it represents and their business partners, and other entities at a significant commercial disadvantage and would pose serious risk to their business interests and strategies.

5. As summarized below, the following witnesses' written direct statements and/or exhibits thereto contain commercial and/or financial information that is proprietary, not known to the public, and commercially sensitive. SoundExchange's specific redactions are described in more detail in Attachment A hereto.

(a) Dennis Kooker's testimony contains competitively sensitive information that is not publicly known regarding Sony Music Entertainment's costs, revenues, business

strategy, negotiation strategy, and agreements with third parties. Disclosure of this information would place Sony Music Entertainment at a disadvantage in future negotiations with streaming services or other service providers, artists, and/or other third-party business partners. Mr. Kooker's testimony also contains third-party research data provided pursuant to contractual confidentiality provisions. Disclosure of such research data provided under confidentiality obligations threatens to undermine the value of such information and the prospect that third parties would agree to prepare or provide such information in the future.

(b) Ron Wilcox's testimony and exhibits contain competitively sensitive information that is not known to the public regarding Warner Music Group's ("Warner") negotiation strategy, key terms that Warner seeks in negotiating agreements for the use of its content, and terms of Warner's confidential agreements. Disclosure of this information would place Warner at an unfair disadvantage in future negotiations and also threatens to place Warner's counter-parties at a similar disadvantage in their future negotiations with existing or prospective business partners.

(c) Aaron Harrison's testimony and exhibits contain competitively sensitive information that is not known to the public regarding UMG Recordings, Inc.'s ("Universal's) negotiating strategy, the terms of its confidential agreements, its advertising rates, and its revenues and costs. His testimony also includes confidential data regarding the performance and sales of Universal's partners. Disclosure of this information would place Universal and its partners at an unfair disadvantage in the marketplace.

(d) Jeffrey Harleston's testimony contains competitively sensitive information regarding Universal's investments in its artists and recordings, the market consideration it receives from digital services, and the costs Universal bears in marketing and developing artists. Disclosure of this business information to its competitors would place Universal at an unfair disadvantage in the marketplace.

(e) Simon Wheeler's testimony contains competitively sensitive information regarding the confidential deals that Beggars Group has entered into with streaming services, its negotiating strategy, financial information regarding its costs, and information from internal analyses of confidential usage data. Disclosure of this information would provide an advantage to Beggars Group's competitors and counter-parties in future business negotiations.

(f) Darius Van Arman's testimony contains the terms of an existing confidential agreement and proposed terms of a potential confidential agreement between Secretly Group and a streaming service that, if disclosed, could place Secretly Group, the service, or both, at a competitive disadvantage. Mr. Van Arman also sponsors an exhibit that contains the confidential proposed terms.

(g) Dr. Thomas Lys's testimony and report involve an analysis and discussion of certain terms in agreements between rights owners and streaming services that are confidential and not publicly known. Disclosure of this information would place the parties involved at a competitive disadvantage with respect to their current or future negotiating counter-parties by disclosing terms to which the parties involved have been willing to agree. Dr. Lys's testimony also includes an appendix that discloses the existence

of certain confidential agreements between content owners and services. Disclosure of the existence of these agreements would place the parties involved at a competitive disadvantage by disclosing whether and how they operate pursuant to licenses.

(h) Dr. Daniel Rubinfeld's testimony and exhibits involve an analysis and discussion of the rates and terms contained in agreements between streaming services and labels that are confidential and not known to the public. Dr. Rubinfeld's report also includes confidential financial data regarding the royalties paid by numerous streaming services. Disclosure of this information would place the parties involved at a competitive disadvantage with respect to their current and prospective counter-parties by disclosing terms and rates to which they have been willing to agree. The report also contains performance data that would place service providers and content owners at a competitive disadvantage if disclosed. Dr. Rubinfeld also sponsors an exhibit that contains third-party research data that was obtained pursuant to contractual confidentiality provisions. Disclosure of such research data provided under confidentiality obligations threatens to undermine the value of such information and the prospect that third parties would agree to prepare or provide such information in the future.

(i) Dr. David Blackburn's testimony contains financial information regarding the total and relative amounts paid by certain statutory webcasters as royalties. Disclosure of this information would place those webcasters at an unfair disadvantage with respect to their competitors as well as in future negotiations with content owners. Dr. Blackburn's testimony also contains third-party research data that was obtained pursuant to contractual confidentiality provisions. Disclosure of such research data provided under confidentiality

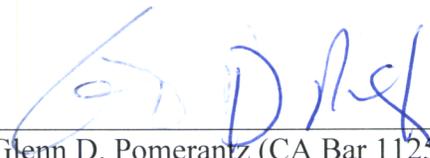
obligations threatens to undermine the value of such information and the prospect that third parties would agree to prepare or provide such information in the future.

6. The commercial and financial information from the written direct statement, designated testimony, and exhibits detailed above is proprietary, not known to the public, and commercially sensitive. SoundExchange respectfully submits that this information can and should be treated as “Protected Material” in order to prevent business and competitive harm that would result from the disclosure of such information. At the same time, “Protected Material” treatment will enable SoundExchange to provide the Copyright Royalty Board with the most complete record possible on which to base its determination in this proceeding.

7. A limited subset of competitively sensitive information has been redacted even from SoundExchange’s “Restricted” submissions. This is because shortly before the filing of written direct statements SoundExchange received objection to the disclosure of such information by the related service. Unfortunately, SoundExchange has not been able to resolve these disputes but continues to attempt to do so. SoundExchange hopes to share this important but sensitive information with the Judges, and will be happy to file corrected testimony either upon resolution of the dispute or upon order of the Judges to disclose the information.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: October 6, 2014



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**ATTACHMENT A**

**SoundExchange's Written Direct Statement Redaction Log**

<b>SoundExchange Witness</b>	<b>Paragraph/Exhibit</b>	<b>Description and Basis for Redaction</b>
Dennis Kooker	p. 4 ¶ 1, p. 4 ¶ 2, p. 4 ¶ 3 , p. 5 ¶ 1, p. 9 ¶ 1	Restricted financial information regarding Sony Music Entertainment's ("Sony Music's") investments and costs with respect to talent, recordings, manufacturing, digital distribution, and marketing. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would place Sony Music at a competitive disadvantage.
	p. 8 ¶ 3 (two redactions), p. 8 ¶ 5 (six redactions), p. 12 ¶ 2 (three redactions)	Restricted financial information regarding Sony Music's revenues from physical products and digital recorded music. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would place Sony Music at a competitive disadvantage.
	p. 10 ¶ 1	Restricted information concerning Sony Music's employee headcount. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would place Sony Music at a competitive disadvantage.
	p. 11 ¶ 1	Restricted information consisting of proprietary data provided by a third party on a confidential basis. Public disclosure of this information would destroy its economic value to the provider and undermine the incentives for gathering such data in the future.

	p. 21 ¶ 3, p. 21 ¶ 4 (two redactions), p. 22 ¶ 1	Restricted information regarding Sony Music’s negotiating strategy, business objectives, and agreement terms. Public disclosure of such information would place Sony Music at a competitive disadvantage.
Ron Wilcox	<p>p. 6 ¶ 2 (four redactions), p. 6 ¶ 3 (two redactions), p. 12 ¶ 4, p. 12 ¶ 5, p. 13 ¶ 2, p. 13 ¶ 3, p. 13 ¶ 4 (2 redactions)</p> <p>p. 9 ¶ 3 (three redactions), p. 9 ¶ 4 (two redactions), p. 10 ¶ 2 (six redactions), p. 10 ¶ 3 (four redactions), p. 11 ¶ 2 (four redactions), p. 11 ¶ 3 (three redactions), p. 12 ¶ 2 (two redactions), p. 12 ¶ 3</p> <p>Wilcox Exs. 1 – 2</p>	<p>Restricted information regarding Warner Music Group’s (“Warner”) negotiating strategy practices and the structure and terms of its confidential agreements that. Public disclosure of such information would place Warner at a competitive disadvantage.</p> <p>Restricted information concerning the terms of a confidential agreement between Warner and iHeartMedia. Public disclosure would place Warner, iHeartMedia, or both, at a competitive disadvantage.</p> <p>Restricted information consisting of confidential agreements between Warner and iHeartMedia. Public disclosure would place Warner, iHeartMedia, or both, at a competitive disadvantage.</p>
Aaron Harrison	<p>¶ 8 (four redactions)</p> <p>¶ 13 (nine redactions), ¶ 27 (two redactions), ¶ 29 (three redactions), ¶ 30 (three redactions), ¶ 31 (ninth redaction), ¶ 33 (five redactions), ¶ 37, ¶ 38, ¶ 39</p>	<p>Restricted financial information regarding UMG Recordings, Inc.’s (“Universal’s”) revenues from Apple iTunes download sales. Public disclosure would place Universal, Apple, or both at a competitive disadvantage.</p> <p>Restricted information concerning the terms of confidential agreements between Universal and multiple streaming services. Public disclosure of such information could place Universal, the services, or all of them,</p>

	<p>(first redaction), ¶ 43  (second redaction) , ¶ 50  (two redactions), ¶ 51, ¶ 52  (three redactions) Harrison  Exs. 2 – 4</p> <p>¶ 15 (four redactions)</p> <p>¶ 16 (three redactions), ¶ 32</p> <p>¶ 19, ¶ 20</p> <p>¶ 31 (first 8 redactions),  ¶ 42, ¶ 43 (first redaction),  Harrison Ex. 1.</p> <p>¶ 34</p>	<p>at a competitive disadvantage.</p> <p>Restricted information disclosing confidential revenue information that Universal receives from subscription services. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information consisting of specific confidential details regarding Universal’s revenues and expenditures. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information regarding the identities of counter-parties that engaged in confidential negotiations with Universal and information that would reveal positions taken by the parties during confidential negotiations. Disclosure of this information would place Universal and/or the counter-parties at a competitive disadvantage.</p> <p>Restricted information consisting of Universal’s confidential negotiation positions, processes, strategies, and goals. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning a streaming service’s performance under an agreement with Universal and terms of a confidential agreement between that service and Universal. Public disclosure would place Universal, the streaming service, or both, at a competitive disadvantage.</p>
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	<p>¶ 39 (second redaction)</p> <p>¶ 45 (three redactions)</p>	<p>Restricted information concerning a streaming service’s confidential rates for advertising that, if disclosed would place that service at a competitive disadvantage.</p> <p>Restricted information concerning the terms of a confidential agreement between Universal and a partner that, if disclosed, could place Universal Music Group, a partner, or both, at a competitive disadvantage.</p>
<p>Jeffrey S. Harleston</p>	<p>¶ 11</p> <p>¶ 13</p> <p>¶ 20</p> <p>¶ 21</p>	<p>Restricted information concerning amounts that Universal spent on talent and product development in 2013. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning the amounts that Universal invested in advances for new artist signings and write offs from established artists in 2013. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning the amounts that Universal spends in pre-release costs for new artists. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning the amounts Universal spends in pre-release costs for established artists. Such information is confidential,</p>

	<p>¶ 27</p> <p>¶ 30 (two redactions)</p> <p>¶ 31</p> <p>¶ 32</p>	<p>proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information consisting of competitively sensitive information regarding marketing consideration Universal Music Group has received from digital services. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal, the services, or all of them at a competitive disadvantage.</p> <p>Restricted information concerning the amounts Universal Music Group spent in marketing costs and overhead in 2013. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning the amounts Universal Music Group paid to third parties in manufacturing costs for physical records in 2013. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p> <p>Restricted information concerning the amounts Universal has invested in IT infrastructure and operating costs for efficient digital distribution. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Universal at a competitive disadvantage.</p>
Simon Wheeler	¶ 8 (two redactions)	Restricted information consisting of confidential and competitively

	<p>¶ 12</p> <p>¶ 19, ¶ 21, ¶ 22, ¶ 23</p> <p>¶ 28 (three redactions)</p> <p>¶ 32</p>	<p>sensitive information regarding the number of deals Beggars Group has with digital services and the number of deals with streaming services in particular. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Beggars Group, the services, or all of them at a competitive disadvantage.</p> <p>Restricted financial information regarding the costs for an independent label operating a digital supply chain. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Beggars Group at a competitive disadvantage.</p> <p>Restricted information consisting of Beggars Group’s negotiation positions, strategy, and goals that. Public disclosure would place Beggars Group at a competitive disadvantage.</p> <p>Restricted information consisting of Beggars Group’s confidential financial information, including the proportion of revenues from digital streaming services and the relative importance of streaming services versus sales or downloads to Beggars Group’s revenues. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place Beggars Group at a competitive disadvantage.</p> <p>Restricted information from Beggars Group reflecting internal analysis using confidential usage data. Such information is confidential, proprietary and competitively sensitive. Public disclosure would</p>
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	<p>¶ 238, footnote 114, footnote 116</p> <p>¶ 27, ¶ 84 (two redactions), ¶ 115, ¶ 131, ¶ 139, ¶ 162 (second redaction) ¶ 164, ¶ 165, ¶ 173 ¶ 174(d), ¶ 218 (two redactions), ¶ 221 (two redactions), footnote 70, footnote 102, footnote 107, footnote 108, footnote 109, footnote 129, footnote 130</p> <p>¶ 195, ¶ 241, ¶ 242</p> <p>¶ 236 (table) ¶ 244 (table), Exhibit 13, Exhibit 15, Exhibit 16, Exhibit 17, Appendix 1a Appendix 1c</p> <p>Appendix 1d, Appendix 1f</p>	<p>would place Nokia, the content owners, or both at a competitive disadvantage.</p> <p>Restricted information concerning the terms of confidential agreements that, if disclosed, would place the parties to the agreements at a competitive disadvantage.</p> <p>Restricted information concerning the terms of confidential agreements entered into between certain content owners and YouTube. Disclosure of this information would place YouTube, the content owners, or both at a competitive disadvantage.</p> <p>Restricted information concerning the total royalties, royalty rates or relative royalty rates paid by certain service providers pursuant to confidential agreements. Such information is confidential, proprietary and competitively sensitive. Public disclosure would place the service providers, content owners, or all of them, at a competitive disadvantage.</p> <p>Restricted information concerning the terms of confidential agreements entered into between content owners and service providers that, if disclosed, would place these service providers, content owners, or both, at a competitive disadvantage.</p>
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	<p>Appendix 1e</p> <p>¶ 250(b)</p> <p>Exhibit 7</p> <p>Appendix 2</p>	<p>Restricted information concerning confidential performance data from service providers that, if disclosed, would place these service providers, content owners, or both, at a competitive disadvantage.</p> <p>Restricted information concerning the terms of a confidential agreement and the amounts paid pursuant to that agreement that, if disclosed, would place the parties to the agreement at a competitive disadvantage.</p> <p>Restricted information consisting of proprietary data provided by a third party on a confidential basis. Public disclosure of this information would destroy its economic value to the provider and undermine the incentives for gathering such data in the future.</p> <p>Restricted information disclosing the existence of confidential and competitively sensitive agreements between specific content owners and specific service providers. Disclosure of this information would place certain content owners, certain service providers, or all of them at a competitive disadvantage.</p>
<p>Thomas Z. Lys, Ph.D.</p>	<p>¶ 29 (two redactions), ¶ 33, ¶ 34 (two redactions), footnote 6, footnote 7 (two redactions)</p> <p>¶ 32, Figure 2 (p. 6), Figure 3 (p. 7)</p>	<p>Restricted information concerning the identities of services that entered into confidential agreements that do not contain a greater-of provision for the calculation of royalties. Disclosure of this information would place all parties involved at a competitive disadvantage.</p> <p>Restricted information regarding an analysis of the prevalence of label-service agreements containing a</p>

	<p>¶ 62 (four redactions)</p> <p>Appendix B</p>	<p>“greater-of” structure that, if disclosed, would place the parties involved at a competitive disadvantage.</p> <p>Restricted information concerning the identities of the parties to a confidential private agreement providing a label with an equity stake in a service and the terms of that agreement. Disclosure of this information would place the parties involved at a competitive disadvantage.</p> <p>Restricted information disclosing the existence of confidential and competitively sensitive agreements between particular content owners and particular service providers. Disclosure of this information would place the content owners, the service providers, or all of them at a competitive disadvantage by disclosing whether and how they operate pursuant to contractual licenses.</p>
David Blackburn, Ph.D.	<p>¶ 23 (ten redactions), Table 2 (p. 13)</p> <p>¶ 44 (two redactions), Figure 10 (p. 34), ¶ 95 (two redactions), Figure 15 (p. 64).</p>	<p>Restricted information concerning (i) the total amount of all royalty payments paid by the top 10 webcasters by royalty payment fees in 2013 and (ii) the amount and relative share of fees paid by each of these webcasters in 2013. Such information is confidential and proprietary. Disclosure of this information would place these webcasters at a competitive disadvantage.</p> <p>Restricted information consisting of proprietary data provided by a third party on a confidential basis. Public disclosure of this information would destroy its economic value to the</p>

	¶ 51	<p>provider and undermine the incentives for gathering such data in the future.</p> <p>Restricted information concerning the portion of 2013 webcasting payments made by Pandora that, if disclosed, would place Pandora and/or other parties at a competitive disadvantage.</p>
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**SoundExchange’s Provisional Redactions Pending Resolution of Confidentiality Dispute**

<b>SoundExchange Witness</b>	<b>Paragraph/Exhibit</b>	<b>Description and Basis for Redaction</b>
Daniel L. Rubinfeld, Ph.D.	<p>¶ 131, ¶ 218 (two redactions), ¶ 250(b)</p> <p>¶ 221 (two redactions), footnote 129, footnote 130, Appendix 2</p> <p>Rubinfeld Ex. 16a, Appendix 1a, Appendix 1d and footnote 3, Appendix 1e, Appendix 1f, Appendix 2</p>	<p>Provisional redaction of Spotify information pending resolution of dispute described in Paragraph 7 of Pomerantz Declaration.</p> <p>Provisional redaction of Spotify information pending resolution of dispute described in Paragraph 7 of Pomerantz Declaration.</p> <p>Provisional redaction of Beats, MOG, and Spotify information pending resolution of dispute described in Paragraph 7 of Pomerantz Declaration.</p>
Thomas Z. Lys, Ph.D.	<p>Figure 3 (three redactions)</p> <p>Appendix B</p>	<p>Provisional redaction of information pending resolution of dispute described in Paragraph 7 of Pomerantz Declaration.</p> <p>Provisional redaction of information pending resolution of dispute described in Paragraph 7 of Pomerantz Declaration.</p>