

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

**Digital Performance Right in Sound
Recordings and Ephemeral Recordings**

Docket No. 2005-1 CRB DTRA

ORDER DENYING MOTIONS FOR REHEARING

On March 2, 2007, the Copyright Royalty Judges issued a Determination of Rates and Terms in this matter (“Initial Determination”). Pursuant to 17 U.S.C. § 803(c)(2) and 37 C.F.R. Part 353, the parties in the proceeding filed various motions for rehearing, reconsideration or clarification.¹ On March 20, 2007, the Judges requested that the parties respond to the motions that had been filed to determine the positions of each party on each of the issues raised in these motions and file written arguments to support those positions. Order on Motions for Rehearing. The parties filed various responses per our request.² Having reviewed all motions, responses to those motions, and written arguments, the Judges now deny all such motions. Nevertheless, as discussed below, the Judges have determined that certain areas of the Initial Determination warrant clarification.

The standard for reviewing motions for rehearing is set forth in 17 U.S.C. § 803(c)(2)(A), which states that the Judges may, in exceptional cases, upon a motion of a participant in a proceeding, order a rehearing after the determination in the proceeding is issued, on such matters as the Judges deem to be appropriate. Such exceptional cases require the movant to show that an aspect of the determination is erroneous, without evidentiary support, or contrary to legal requirements. *See* 37 C.F.R. §§ 353.1 and 353.2. The parties made no such showing. Moreover, as we stated in our May 3, 2006 Order Denying SoundExchange’s Motion to Reconsider the Board’s Order Requiring, in Part, the Production of Certain Income Tax Returns, “[m]otions for reconsideration must be subject to a strict standard in order to dissuade repetitive arguments on issues that have already been fully considered by the Board.” Such motions should be granted only where (1) there has been an intervening change in controlling law; (2) new evidence is

¹ Motions were filed by Digital Media Association (“DiMA”), Intercollegiate Broadcasting System, Inc. (“IBS”) (filed jointly with WHRB), National Public Radio (“NPR”), Radio Broadcasters, Royalty Logic, Inc., Small Commercial Webcasters, SoundExchange, Inc., and WHRB (filed jointly with IBS). In its motion, NPR requests that the Judges grant a rehearing, or, in the alternative, that we “stay the application of the aggregate tuning hour threshold and per-performance aspects of the Decision until NPR exhausts its appellate remedies.” NPR Motion at 2. In addition, Collegiate Broadcasters, Inc. (“CBI”) filed a notice of joinder notifying the Judges that it was joining the Radio Broadcasters’ Motion for Rehearing, the Joint Motion of IBS and WHRB for Partial Reconsideration and the Motion for Rehearing of Digital Media Association.

² We received responses from CBI, DiMA, IBS (joint response with WHRB), NPR, Radio Broadcasters, Small Commercial Webcasters, SoundExchange, and WHRB (joint with IBS).

