



February 6, 2020

Submitted via regulations.gov Docket No. USTR-2019-0023

Mr. Daniel Lee
Acting Assistant United States Trade Representative
for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: SoundExchange, Inc. Notice of Intent to Testify and Hearing Statement in Response to USTR's Request for Comments and Notice of Public Hearing Regarding the 2020 Special 301 Review, 84 Fed. Reg. 70613 (Dec. 23, 2019)

To the Special 301 Committee:

SoundExchange, Inc. hereby submits its Notice of Intent to Testify and Hearing Statement for the Special 301 Committee Public Hearing scheduled for February 26, 2020.

Under separate cover, SoundExchange, Inc. has formally filed a 2020 Special 301 submission regarding market access barriers that have been imposed on American musical performers and producers in six countries where the full payment of royalties has been denied for uses of American sound recordings on traditional broadcasts, public performances (e.g., "spins" in bars, restaurants and other public venues) and some digital uses.

This letter includes a brief summary of our statement. Participating in the hearing will be:

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Respectfully submitted,

/Eric J. Schwartz/

Eric J. Schwartz, Counsel
SoundExchange, Inc.



**Hearing Statement of
Eric J. Schwartz
Counsel, SoundExchange, Inc.
before the Special 301 Committee
2020 Special 301 Hearing Scheduled for February 26, 2020**

Thank you for the opportunity to testify on behalf of SoundExchange, Inc. in this year's Special 301 review.

SoundExchange—a non-profit organization incorporated in 2003—was formed by and for the recorded music industry to administer royalties for digital transmissions of recorded music. It provides services for royalty payments for sound recordings and publishing, serving as a critical backbone to today's digital music industry. The organization collects and distributes digital performance royalties on behalf of more than 202,000 recording artists' and master (i.e., sound recording) rights owners' accounts. It collects these royalties on behalf of major and independent record labels, performers and their representatives (managers and agents), and unions representing musical performers. Since its founding, SoundExchange has paid out more than \$6 billion in royalties to over 170,000 artists and rights owners globally. It currently administers royalties from over 3,000 digital radio services (such as Sirius XM, Pandora, and iHeart Radio).

This filing focuses on particular market access barriers that have been imposed on American musical performers and producers in a handful of countries where the full payment of royalties has been denied for uses of American sound recordings on traditional broadcasts, public performances (e.g., “spins” in bars, restaurants and other public venues) and some digital uses. In these territories, “local” performers and musical producers are being fully compensated for such uses, while American performers and producers are being denied payments for the exact same uses. This discriminatory treatment is a denial of full national treatment in contravention to the purpose and principles of national treatment obligations found in multilateral treaties and trade agreements, and other bilateral commitments to the United States in each of these countries.

The territories identified in this filing for review under Special 301 are: the **United Kingdom; Australia; Canada** (on the USTR's 2019 Watch List); **France; Japan; and the Netherlands** (collectively, the Six Territories). While there are other foreign territories similarly denying payments to American performers and producers, the Six Territories are the largest markets for the music industry where this is occurring, and thus the focus of this filing.

In the absence of full national treatment, the total amount of monies being denied to American performers and producers in these Six Territories is \$170 million annually. From these Six Territories, in 2018 SoundExchange received approximately \$3.8 million in payments, while making a combined \$100 million in payments to the Six Territories.

The details of how full national treatment is being denied to American producers and/or performers in each of the Six Territories is described in the formal filing.

For all of the reasons stated in the filing, SoundExchange recommends that **Canada** be retained on the Watch List in 2020. In particular, Canada should fully implement the USMCA national treatment obligations and provide full payments to American producers and performers for music streaming services and digital radio in Canada, as well as for traditional broadcasts and other public performances, and for all recordings.

In accordance with U.S. law, the President must certify to Congress that Canada (and Mexico) are in full compliance with the USMCA obligations before the agreement can go into force in the United States. That certification should be withheld until Canada either commences payments or expressly acknowledges it will make payments imminently in accordance with the USMCA and afford full national treatment for American producers and performers for broadcasts, streaming and digital radio, and other communications to the public (e.g., all public performances) in Canada.

For the other countries—the **United Kingdom; Australia; France; Japan; and the Netherlands**—SoundExchange recommends that USTR should prioritize this issue and engage in bilateral discussions with each of these countries, with the goal of each country applying full national treatment for American producers and performers.