

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR MAKING AND DISTRIBUTING
PHONORECORDS (Phonorecords III)**

**Docket No. 16-CRB-0003-PR
(2018–2022) (Remand)**

ORDER SCHEDULING TELECONFERENCE

On April 13, 2021, counsel for the National Music Publishers’ Association (NMPA) and the Nashville Songwriters Association International (NSAI) (collectively, Copyright Owners) filed with the Copyright Royalty Judges (Judges) a letter ([Letter](#)) requesting that the Judges hold a teleconference with the participants in the captioned proceeding to resolve an issue concerning the scope of the participants’ obligation to produce documents concurrent with the April 1, 2021 filing deadline set forth in the Judges’ December 23, 2020 *Order Adopting Schedule for Proceedings on Remand* ([Scheduling Order](#)).

On April 14, 2021, counsel for Google LLC (Google), on behalf of Amazon.com Services LLC, Google, Pandora Media LLC, and Spotify USA Inc. (collectively, Services) filed with the Judges a joint response ([Response Letter](#)) to the Letter, arguing that Copyright Owners’ request was procedurally improper, and generally controverting Copyright Owners’ substantive arguments concerning the scope of participants’ obligation to make initial disclosures.

Later on April 14, 2021, Copyright Owners filed a letter replying to the Services’ arguments in the Response Letter ([Reply Letter](#)). Copyright Owners also informed the Judges that they have propounded document requests in discovery seeking the same documents they expected to receive as part of the initial disclosures, and the Services have already refused to produce them.

Discussion

Copyright Owners have invoked a provision of the *Scheduling Order* that states “[t]he participants may request conference calls with the Judges where there is a good-faith belief that such conferences may avoid motion practice” Letter at 1 (quoting *Scheduling Order* at 2). They contend that they have met and conferred with the Services, but have reached an impasse that requires intervention by the Judges. *See id.* While Copyright Owners acknowledge that they could engage in motion practice to enforce the terms of the Scheduling Order (as they interpret it), they contend that “the regulatory time frame for motion briefing would eviscerate the purpose of the Order, namely to advance this core document production in light of the brief time frame to prepare rebuttals.” *Id.*

The Services contend that the Letter is an improper discovery motion, and should be handled in the ordinary course of the discovery process. They argue that the Judges should not

hold any conference with the participants “until after the participants have met and conferred on their respective requests for production and responses and objections to those requests.” Response Letter at 1. They opine that following that process “will either obviate the need for guidance from the Judges on a conference call or identify more specifically where the Judges’ input is needed, whether through a conference call or properly-filed discovery motions.” *Id.*

In reply, Copyright Owners assert that their letter was not a substitute for a discovery motion, but relates to an obligation under the *Scheduling Order* that predates the discovery period.

The Judges find that Copyright Owner’s request for a teleconference is appropriate under the terms of the *Scheduling Order*. The Judges included the teleconference procedure to provide a means of resolving issues expeditiously when necessary and appropriate. The request seeks an interpretation of the scope of the participants’ initial disclosure obligations. The Judges ordered initial disclosures of certain documents that are central to each participants’ case in order to assist all participants in meeting the tight schedule for preparing their rebuttal cases. Two weeks have already elapsed since the initial disclosures were due, so time is of the essence in resolving the issue Copyright Owners have raised. Use of the teleconference procedure is, therefore, appropriate in this instance.

Copyright Owners’ request for a teleconference is **GRANTED**. The Judges **ORDER** the Participants to participate in a Zoom teleconference with the Judges at **12:30 pm EDT on Friday, April 16, 2021**. Copyright Owners may make a statement no longer than 10 minutes summarizing their argument. The Services may make statements no longer than 10 minutes in aggregate responding to the Copyright Owners’ arguments. The Services may designate a single counsel to speak on their behalf, or may divide that time among themselves as they see fit. After the presentation of arguments, the Judges may pose questions to counsel. The Judges anticipate that the teleconference will conclude by 1:15 pm EDT.

Ms. Whittle will circulate the teleconference link to the participants prior to the call.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

Dated: April 15, 2021