

**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)**

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**ORDER DENYING COPYRIGHT OWNERS’ REQUEST FOR RELIEF**

Pursuant to their [Order Scheduling Teleconference](#) (Apr. 15, 2021), the Copyright Royalty Judges (Judges) conducted a teleconference with the participants in the captioned proceeding on April 16, 2021. The purpose of the teleconference was to address a request for relief made by the National Music Publishers’ Association and the Nashville Songwriters Association International (collectively, Copyright Owners) in their April 13, 2021 letter to the Judges ([April 13 Letter](#)). Specifically, Copyright Owners sought clarification from the Judges that their *Order Adopting Schedule for Proceedings on Remand* (Dec. 23, 2020) ([Scheduling Order](#)) required Amazon.com Services LLC, Google LLC, Pandora Media LLC, and Spotify USA Inc. (collectively, Services) to make initial disclosures of certain categories of documents on April 1, 2021.

The Judges heard oral arguments from counsel for Copyright Owners and counsel for the Services, with Amazon’s attorney serving as lead counsel. Counsel also responded to questions from the Judges. The Judges then announced their ruling based on the presentations of counsel, the April 13 Letter, the Services’ April 14 letter responding to the April 13 Letter ([Response](#)), and Copyright Owners’ April 14 letter replying to the Response ([Reply](#)). The Judges ruled as follows.

**Ruling**

The operative portion of the *Scheduling Order* requires filing of evidence and initial disclosure of

all documents relied upon in connection with the evidence (including agreements with record companies covering the period between January 1, 2016, and the present, and documents concerning the actual or expected impact the uncapped TCC prong has had or will have on company growth, revenues, profits, company value, brand, or ecosystem).

*Scheduling Order* at 1.

Copyright Owners argue that the parenthetical is a freestanding obligation to produce “agreements with record companies ... and documents concerning the actual or expected impact” of an uncapped TCC prong. *See* April 13 Letter at 3. The Services argue that the parenthetical is

a list of examples that relate to the obligation to produce “documents relied upon in connection with the [new] evidence’ submitted in the remand proceeding ....” Response at 2 (quoting *Scheduling Order*). The Judges find that the Services’ position is a fairer reading of that language. The obligation is to produce “documents relied upon in connection with the evidence.” The parenthetical phrase is a nonexhaustive list of examples of the types of documents one might reasonably expect to be relied upon in this context.

As to the meaning of “relied upon,” the Judges have neither read nor heard anything that would lead them to conclude that the Services have adopted an unreasonable interpretation of that phrase. Ultimately, it is up to each participant to identify the documents on which it relied. If the factual statements in a participant’s remand submission rely upon documentary evidence and the testimonial recollections of witnesses, then that evidence and testimony is what the *Scheduling Order* required the participant to produce on April 1, 2021. To be sure, the Judges have the authority and duty to make inferences, presumptions, findings, and conclusions with regard to the relevancy and weight, if any, they will give to *categories* of evidence and testimony, and to *particular* evidence and testimony, that the parties have proffered, *or have failed to disclose or proffer*.

Consequently, the Judges rule that the Services did not violate the initial disclosure obligation set forth in the *Scheduling Order*. Copyright Owners’ request for relief is thus **DENIED**.

This ruling is limited to interpreting the scope of the initial disclosure obligation in the *Scheduling Order*. The Judges do not rule on whether the Services must produce in discovery the documents that Copyright Owners sought as initial disclosures and also are seeking through discovery. *See* Reply at 1. Based on the Reply, the Judges are aware that Copyright Owners have propounded discovery requests for that material and claim that there is a dispute among the participants concerning its production. That question is not yet ripe, and the Judges do not decide it at this time.

**SO ORDERED.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

Dated: April 20, 2021