Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)	Docket No. 21-CRB-0001-PR (2023-2027)

GEO'S OBJECTION TO FRAUDULENT MOTION TO ADOPT SETTLEMENT OF STATUTORY ROYALTY RATES AND TERMS FOR SUBPART B CONFIGURATIONS BY NMPA, NSAI, RIAA AND 3 FOREIGN HEADQUARTERED CORPORATIONS

American songwriter[1] George Johnson ("GEO"), *pro se* Appellant, respectfully submits the following Objection and Opposition Motion to the *Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations*[2] [3] filed on May 25, 2021 by the National Music Publishers Association ("NMPA") and Nashville Songwriters Association International ("NSAI") along with the 3 Foreign Headquartered Record Labels ("3FHRL") — Warner Music Group Corp. ("WMG"), UMG Recordings, Inc. ("UMG"), and Sony Music Entertainment ("SME").[4]

GEO respectfully objects to any Settlement that freezes Subpart A mechanical royalties for §115 physical phonorecords, permanent digital downloads, as well as any Subpart B Settlement for free limited downloads, music bundles, Subpart B interactive streaming rates, or any changes to definitions and terms.

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[1] "subject to" the 1909 compulsory license at issue in this proceeding under §115 and §385.3 Subparts A and B.

[2] https://app.crb.gov/document/download/25288

[3] Also see *Notice of Settlement in Principle* filed by NMPA and NSAI with 3FHRL on March 2, 2021

[4] WMG is headquartered in Moscow, Russia, UMG in Paris, France and Sony in Minato, Japan.

WMG and WMG Publishing are both owned by Access Industries[5] in Russia.

UMG and Universal Publishing are both vertically integrated and owned by Vivendi[6] in France, while Sony Corp. has always been headquartered in Japan.

The statutory Subpart A rate of 9.1 cents should also be litigated in public, or a separate Settlement reached, since this Settlement does not provide a reasonable basis for setting statutory terms or rates.

Pursuant to 37 CFR §351.2(b)(2)5 regarding Royalty Rate Proceedings,

> "If an objection to the adoption of an agreement is filed, the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement if the Copyright Royalty Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates."

I would kindly ask the Court, that along with this Motion, to also reference GEO's *Objection to Settlement by NMPA, NSAI and 3 Foreign Headquartered Corporations* in response to NMPA and NSAI's May 18, 2021, *Notice of Settlement and Status of Negotiation*[7], that will be *filed tomorrow* on May 27, 2021.

I am currently working on that motion, which is my main motion and it contains *additional arguments* as to why this Settlement should be denied and does not provide a reasonable basis for setting terms or rates.

In other words, both Motions go together, so please reference them *as a pair* if allowed since 1.) I am having to write them both at the same time, and 2.) the issues raised in my Objections apply to both Motions for Settlement by NSAI, NMPA and the RIAA — to me, both Subpart A and B issues here are intertwined.

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5 https://www.accessindustries.com/holdings/warner-music-group/

6 https://www.vivendi.com/en/our-activities/music/

7 https://app.crb.gov/document/download/25150

While I'm writing this Motion to Object to these Settlements, it is also to document NSAI, NMPA and RIAA's *outrageous behavior, additional fraud,* and *lying* in an attempt to get these so-called Settlements published in the Federal Register.

THIS SETTLEMENT IS BASED ON FRAUD AND LYING

Your Honors, regarding NMPA, NSAI and RIAA's *Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations,* I was so *appalled by the outright lies by counsel for NMPA and RIAA,* I wrote Your Honors an email yesterday on May 25, 2021.

GEO Objects to this fraudulent Subpart B Settlement, but also vehemently Objects to *counsel's fraudulent behavior designed to force the Court into publishing this phony settlement based on an insidious twisting of my words that counsel clearly knows is not true.*

This Motion contains the same issues described in that May 25th email to Your Honors and to say the least, **I am extremely upset at counsels' behavior and audacity to lie to this Court about me and my proposals.**

Counsel should apologize to the Court at the bare minimum.

Counsel *knowingly misrepresented my position just to get Your Honors to agree to their fraudulent settlement* **by claiming that I was not proposing any increase in the 9.1 cent rate when they knew that was patently false, but claimed it to be true.**

Therefore, *since counsel knowingly misrepresented my positions* just to get Your Honors to publish their fraudulent Settlement, *I hope you will not publish it and reprimand counsel for their fraud.*

EVIDENCE OF COUNSELS' LYING AND BLATANT FRAUD

On Page 4 of the May 25th, *Motion to Adopt Settlement* by NMPA and RIAA, counsel blatantly lies to the Court by falsely claiming that, "…even Mr. Johnson does not propose different rates…".

Counsel knew this was untrue since…

1. Counsel well knows I spent all of *Phonorecords III* working to raise the 9.1 cents to 50 cents to adjust for inflation as my central and number one issue.

2. Counsel well knows they spent all of *Phonorecords III* working as hard as they could to OPPOSE any increase of the 9.1 cents rate to 50 cents to adjust for inflation, just as they are now.

3. Counsel well knows I appealed *Phonorecords III* to the DC Circuit[8], (again by myself, *pro se*, and with no law degree) in *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020), to continue to raise the 9.1 cents rate to 50 cents as my central issue.

4. But what really demonstrates counsels' disingenuousness is I included in my April 19, 2021 motion[9] a list of main proposals, *one being where I would still like to raise the 9.1 cents for inflation*, so it was clear that would once again be a proposal by me.

In fact, *in that exact same motion they reference from April 19, 2021, as their proof that I only want a BUY button*, I write:

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[8] *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020). https://www.cadc.uscourts.gov/internet/opinions.nsf/720464D843B0D6C7852585C10074B11B/$file/19-1028-1856124.pdf

[9] https://app.crb.gov/document/download/23883 *See* Page 3 of GEORGE JOHNSON'S NOTICE OF MOTION OBJECTING TO NMPA, NSAI, SME, UMG, and WMG's SETTLEMENT and PENDING "MOTION" on April 19, 2021.

> "And just as in *Phonorecords III,* this *Notice of Settlement in Principle* by NMPA, NSAI, WMG, UMG and SME is clearly designed to shut down any public Subpart A or B litigation in the sunshine while stopping all of GEO's rate proposals to 1.) add a voluntary BUY button, 2.) **increase the Subpart A 9.1 cent mechanical for long overdue inflation,** and 3.) elimination of the Subpart B free limited download with no sale.[6]"

So, counsel flat-out lied to this Court.

5. And if that were not enough, to prove counsels' willingness to twist my words, while ignoring relevant facts, which is also a lie, in my May 18, 2021 *Notice of Status of Negotiations*, filed almost an entire month later after my "BUY button at 9.1 cents" option, I wrote,

> "GEO has reached out to all of the Services, NMPA, NSAI, and RIAA *with several proposals and will continue to offer additional options to these proposals* to all Participants — one being a *full sales model on streaming platforms, completely replacing the subscription model*."

So, on May 18th, I once again made it perfectly clear to counsel that I had offered them "several proposals" and "will continue to offer additional options to these proposals", i.e., *like an option to see if the 3 record labels would even accept a BUY button if the 9.1 cents stayed the same.*

Of course, they never were going to accept anything, simply shut me down with a handshake deal behind closed doors, just like in *Phonorecords III.*

This Settlement only hurts hundreds of thousands of American songwriters and music publishers as well as the next several generations of American music creators with no sales and only $.00012 per stream to act as our "incentive".

6. And if that wasn't enough, in that very same sentence on May 18th, a month after I proposed a BUY button at 9.1 cents, *I offered a new proposal of a full sales model instead of subscription model, and one that would surely raise rates.*

So, for NMPA, NSAI and RIAA's counsel, *who all know better, to try and tell this Court that a BUY button with no 9.1 cent increase was my ONLY proposal, and I had no intention of offering a rate increase, is outrageous behavior***,** and my own motions are evidence that counsel is clearly out of bounds and should be reprimanded for lying to this Court.

Furthermore, *counsel lied to get a fraudulent Settlement forced through*, against the interests of songwriters who NMPA and NSAI claim to represent but clearly do not.

NMPA and RIAA only represent the 3FHRL that pay them dues and their salaries.

So, my last attempt at negotiating a BUY button *during the voluntary negotiation period* in *no way implied that I was <u>not</u> going to propose any new rates*, or was not going to propose a long overdue rate adjustment to the §115 mechanical from 9.1 cents to around 50 cents per song, like I had done before.

Of course I was, and counsel knew it.

My track record with the 9.1 cents to 50 cents is clear in the CRB record, even before *Phonorecords III*, and in *Web IV* and *SDARS* of all proceedings.

Again, *on April 19th I said that I was going to propose an inflation increase for the 9.1 cent mechanical,* but counsel chose to lie about it anyway.

ADDITIONAL INFO

The BUY button at 9.1 cents idea was a last ditch effort to negotiate with people who don't negotiate and play games instead of good faith voluntary negotiations.

I offered that proposal, nobody accepted the offer, voluntary negotiations ended on May 18th, and I moved on to a full sales model since the 3FHRL rejected the 9.1 cents BUY button proposal.

Furthermore, NSAI and NMPA are supposed to be working for American songwriters, not 3 foreign corporations in Russia, France and Japan.

Since I'm not an attorney I have no way to fight back against them lying about my proposals, so this is the best I can do.

What NMPA, NSAI and RIAA are doing is a fraud in so many ways.

Their last motion about my proposals was a pure fraud and based on that alone this one-sided Settlement that only hurts American songwriters should not be rushed through, especially on a lie.

NMPA and RIAA are also acting as proxies or strawmen for 3 foreign headquartered corporations *that are simply negotiating with themselves.* I will expand on this in my motion that will be filed tomorrow.

You don't have to be a Yale Law School graduate to figure out that *WMG, UMG, and Sony are all negotiating with themselves via NMPA and RIAA* on each "hand" and it's simply atrocious if allowed to continue.

You have a parent company, WMG the record label, telling the publishing arm at WMG what to do, *but negotiating as if they are separate*, in a supposed arms length negotiation, and it is a total and clear fraud.

While these vertically integrated corporations have their U.S. divisions which have a large market share, these corporations are all foreign controlled and funded.

Therefore, American small businesses are left to suffer under a compulsory license, as their competition in Russia, France and Japan force *all* American songwriters to accept nano penny rate with no sales, and forever it now appears.

It's not even a fair fight since foreign corporations have billions of dollars and the best American attorneys money can buy to get this accomplished for their own self-interests overseas.

The only reason they get away with it is the rules were written by them in *Phonorecords I* in 2006, to only benefit them and it has worked brilliantly for them.

We beg the Court to recognize this fraud of these corporations negotiating with themselves and please change what you are allowed to change*, sua sponte.*

These foreign corporations should not be allowed to re-write U.S. Copyright Law to benefit themselves and then use outright fraud to help accomplish this goal.

In closing, in this Motion I wanted to let the Court know that counsel for NMPA/NSAI and RIAA have spun their facts out of thin air as to my proposals, using fraud to force this settlement through as fast as they could to help these foreign corporations that pay their salaries and underwrite these proceedings.

A SEPARATE DEAL?

One last issue is On Page 3 of the May 25th, *Motion to Adopt Settlement* by NMPA and RIAA, where there seems to be a separate deal or side agreement made with the 3FHRL's, and that should be made public considering this license is compulsory and statutory.

> "Concurrent with the settlement, the Joint Record Company Participants and NMPA have separately entered into a memorandum of understanding addressing certain negotiated licensing processes and late fee waivers."

Did NMPA and RIAA trade the frozen rate for something else of value or some other quid pro quo?

WILLING BUYER, WILLING SELLER?

And lastly, while we're on the May 25th, *Motion to Adopt Settlement* by NMPA and RIAA, On Page 4, right before falsely claim, "…even Mr. Johnson does not propose different rates,…", counsel also claims that "because the Settlement *represents the consent of buyers and sellers*…the Settlement provides "a reasonable basis.""

1. Except how can you have a willing seller and a willing buyer if the parties on one side of the table are owned by the others on the other side?

2. And how is a Settlement supposed to be made on "a reasonable basis" if both parties are owned by the same corporations, negotiating with themselves?

Here are 2 additional legal reasons to deny this fraudulent Settlement.

CONCLUSION

So, I hope this Court will be sympathetic to the issue of a layman like GEO providing proof to the Copyright Judges and on complicated matters of economics when the very people whose interests (and lives) are *burdened* by these rates and terms don't have the money to hire the very economists or lawyers needed to make that proof.

I also hope the Court will not be forced to publish this *fraudulent settlement with foreign companies negotiating with themselves*, counsel lying about my proposals, and our own songwriter lobbyists abusing the voluntary negotiation process to the detriment of all American songwriters and music publishers.

GEO continues to be open to any and all suggestions or proposals by any of the Participants.

Respectfully submitted,

/s/ George D. Johnson

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Date: May 26, 2021

Proof of Delivery

I hereby certify that on Thursday, May 27, 2021, I provided a true and correct copy of the 2021-05-26 - 21-CRB-0001-PR (2023-2027) Phonorecords IV GEO's Objection to Notice of Settlement by NMPA, NSAI, RIAA and 3 Foreign Headquartered Record Labels to the following:

Google LLC, represented by Gary R Greenstein, served via ESERVICE at ggreenstein@wsgr.com

Spotify USA Inc., represented by Joseph Wetzel, served via ESERVICE at joe.wetzel@lw.com

Copyright Owners, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kellogghansen.com

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Signed: /s/ George D Johnson