

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 SETTLEMENT BY NMPA,  
NSAI, AND 3 FOREIGN HEADQUARTERED CORPORATIONS**

American songwriter<sup>1</sup> George Johnson (“GEO”), *pro se* Appellant, respectfully submits the following Objection<sup>2</sup> and Opposition Motion to the *Notice of Settlement and Status of Negotiation*<sup>3 4 5</sup> for §115 mechanical royalties and §385 Subpart B, filed on May 18, 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”).<sup>6</sup>

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<sup>1</sup> “subject to” the 1909 compulsory license at issue in this proceeding under §115 and §385.3 Subparts A and B.

<sup>2</sup> Please use this Motion combined with *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*, filed yesterday on May 26, 2021 objecting to NMPA, NSAI, and RIAA’s *Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations* as a combined pair of motions opposing both Subpart A and Subpart B Settlements. I am writing both motions at the same time and both are relevant to both Settlements.

<sup>3</sup> <https://app.crb.gov/document/download/25150>

<sup>4</sup> Also see *Notice of Settlement in Principle* filed by NMPA and NSAI with 3FHRL on March 2, 2021

<sup>5</sup> <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.

<sup>6</sup> WMG is headquartered in Moscow, Russia, UMG in Paris, France and Sony in Minato, Japan.

GEO respectfully objects to any Settlement of frozen Subpart A mechanical royalties for §115 physical phonorecords, permanent digital downloads, or any Subpart B Settlement without being properly litigated in public and in the sunshine, especially since it's a government imposed compulsory license and statutory rate on *all* U.S. songwriters since 1909.

Yesterday, On May 26, 2021, GEO filed an Objection<sup>7</sup>, *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*, to the *Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations*<sup>8 9</sup> filed by NMPA, NSAI and RIAA on May 25, 2021.

That Objection by GEO goes together with this Objection Motion as a pair.

In their May 25th Motion, *NMPA, NSAI and RIAA attorneys made several fraudulent statements* about GEO's positions and proposals just to get this Court to publish their phony "Settlement" in the Federal Register. They are:

1.) "However, *it appears that Mr. Johnson is not actually opposed to the rates contained in the Settlement, but rather is opposed to the fact that the Settlement does not require streaming services to include a "buy button."*

2.) "And because the Settlement represents the consensus of buyers and sellers representing the vast majority of the market for "mechanical" rights for

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<sup>7</sup> <https://app.crb.gov/document/download/25318> May 26, 2021, *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*.

<sup>8</sup> <https://app.crb.gov/document/download/25288>

<sup>9</sup> Also see *Notice of Settlement in Principle* filed by NMPA and NSAI with 3FHRL on March 2, 2021

Subpart B Configurations, *and even Mr. Johnson does not propose different rates*, the Settlement provides “a reasonable basis” for statutory royalty rates and terms.”

Of course counsel uses “it appears” as if that makes their statement factual.

As I went into detail in my Objection Motion yesterday, in my April 19, 2021 Notice on Page 3<sup>10</sup>, I told the Court that one of my primary issues was an inflation increase for the 9.1 cents mechanical, *so I am opposed to the rates* contained in this one-sided Settlement and I was clearly *going to propose different rates*.

Furthermore, the footnote on Page 3 reads “*These 3 issues are not the only issues that are important to American songwriters*”, so clearly a BUY button was not my only issue and counsel should be reprimanded for their knowingly false statements.

Finally, counsel lies again in their second statement claiming “*and even Mr. Johnson does not propose different rates*” so that it appears there is “no objection” to their Settlement and therefore it has to be published — and this was done by total fraud.

This Settlement also does not represent “the consensus of buyers and sellers” since WMG, UMG, and Sony are all 1. ) *negotiating with themselves*, and so by definition 2. ) *there are no willing buyers nor willing sellers*.

Since the 3 Foreign Headquartered Record Labels (WMG, UMG, and Sony) *are simply negotiating with themselves* and we pray Your Honors can remedy this.

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<sup>10</sup> <https://app.crb.gov/document/download/23883> Page 3 “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.” (See footnote)

We respectfully ask the Court to deny this Settlement at this time *on behalf of hundreds of thousands of American songwriters and music publishers.*

### **BROAD COALITION OF SPONTANEOUS SUPPORT FOR \$115 INCREASE**

In fact, on May 17, 2021, and May 24, 2021<sup>11</sup> a broad coalition of American songwriters and their trade organizations, *actually representing hundreds of thousands of American songwriters, legacy songwriters, and independent publishers spontaneously wrote a letter*<sup>12 13</sup> to this Court to make the point that the 1909 mechanical royalty for phonorecords, and now permanent downloads, must finally be adjusted lost inflation over the past 110 years, but also going forward, with the \$385.3 phonorecord and digital download being pegged to the CPI and automatically adjusted every 2 years by the Copyright Office, *which was the law and rate court precedent for decades until 2009.*

The May 17 letter was co-written by hit songwriter Mr. Rick Carnes, President of the Songwriter's Guild of America ("SGA") and Ms. Ashley Irwin, President of the Society of Composers and Lyricists ("SCL"). Mr. Carnes also participated in *Phonorecords I* from 2006 to 2009, so he has a wealth of knowledge of how this process works, but also first hand experience of being there when this royalty was frozen by the Court in 2009.

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<sup>11</sup> <https://thetrichordist.com/2021/05/25/coalition-of-songwriter-groups-ask-crb-wheres-the-motion-on-insider-deal-for-frozen-mechanicals/> email letter to CRB from Music Creators North America ("MCNA")

<sup>12</sup> May 21, 2021 The Trichordist, Coalition of Songwriter Groups Call on Copyright Royalty Board for Fairness and Transparency on Frozen Mechanicals, <https://thetrichordist.com/2021/05/21/coalition-of-songwriter-groups-call-on-copyright-royalty-board-for-fairness-and-transparency-on-frozen-mechanicals/>

<sup>13</sup> <https://www.billboard.com/articles/business/9577976/songwriters-crb-royalty-rate-comments-letters>

This letter also includes an impressive list of *songwriter trade organizations from around the world* that depend on a stable and fair American royalty system for their livelihood. This list of worldwide songwriter and composer trade organizations includes the: Alliance for Women Film Composers (AWFC), Songwriters Association of Canada (SAC), Screen Composers Guild of Canada (SCGC), Music Creators North America (MCNA), Music Answers (M.A.), Alliance of Latin American Composers & Authors (ALCAMusica), Asia-Pacific Music Creators Alliance (APMA), European Composers and Songwriters Alliance (ECSA), and the Pan-African Composers and Songwriters Alliance (PACSA).

I would respectfully ask that this letter, and others like it, from songwriters, trade groups, and American music publishers, etc. be entered into the record please.

I also understand that the Court did respond to this letter and kindly granted their request for a public comment period, which is greatly appreciated and needed.

Since then, more letters have been written to Congress, like from Austin music attorney Ms. Gwen Seals<sup>14</sup> who is “deeply troubled by the private party settlement” and calls for *transparency* as I do. It’s the one thing all these letters<sup>15</sup> have in common, *transparency*, in addition to *raising the 9.1 cent rate for inflation*.

I thank Your Honors for reading these letters, and responding as you have. I hope instead of just one hopeless individual with no market share or market power, that this real and spontaneous support from songwriter, lyric, and composer trade

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<sup>14</sup> Letter from Austin, TX music attorney Ms. Gwen Seals to Senators Cornyn and Cruz. <https://thetrichordist.com/2021/05/26/another-call-for-congressional-oversight-of-the-proposed-settlement-of-physical-and-download-mechancials/>

<sup>15</sup> Another letter from today May 27, 2021. <https://thetrichordist.com/2021/05/27/professor-kevin-casini-kcesq-asks-congress-and-the-crjs-for-meaningful-public-comment-on-frozen-mechanical-royalty-settement/>

organizations *from literally around the world* has a real impact on the Court as it weighs its decisions.

Most importantly, these trade groups ask the obvious question in their letter that must be addressed which is, “*How can the US music publishing industry’s trade association, and a single music creator organization (which represents at most only a tiny sliver of the music creator community) have agreed to such a proposal?*”

### **NMPA WORK FOR WMG, UMG & SONY ON ONE HAND, RIAA OTHER**

The simple answer is NMPA, NSAI and RIAA *literally work for the foreign records companies, not American songwriters.*

NMPA is paid dues by WMG, UMG and SME on one hand, it’s that simple.

And RIAA is paid dues by WMG, UMG, and SME on the other hand.

This is exactly why the rate structure these 3 groups came up with, along with the Digital Media Association (“DiMA”), in *Phonorecords I* was such a disaster for American songwriters and independent music publishers.

So, it’s not like there are 10 major U.S. headquartered *publishing companies* on one hand in a rich, competitive environment, voluntarily negotiating with 10 different and separate major U.S. headquartered *record labels* on the other hand, which is probably what Congress intended, but that is not what happened.

In reality, in 2021 we have 3 foreign headquartered corporations simply negotiating with themselves to the detriment of all American music creators.

In NMPA and NSAI’s March 2, 2021 *Notice of Settlement in Principle*, these lobbyists don’t even hide it, it’s in plain sight.

Pursuant to the Copyright Royalty Judges’ (“CRJs”) Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order

at 2 n.2 (Feb. 9, 2021), the National Music Publishers' Association, Inc. ("NMPA") and the Nashville Songwriters Association International ("NSAI") (NMPA and NSAI, together, the "Copyright Owners"), **on the one hand**, and Sony Music Entertainment ("SME"), UMG Recordings, Inc. ("UMG"), and Warner Music Group Corp. ("WMG") (SME, UMG, and WMG, together, the "Joint Record Company Participants"), **on the other hand**, hereby notify the CRJs that they have reached an agreement..."

Furthermore, shouldn't NMPA be representing the 3 Major Foreign Music Publishers, *but here in black and white, NMPA is representing the 3 Major Foreign Record Labels*, not their publishing arms? They may claim they are but here it says NMPA represents the record labels. Who is representing the American publishers?

So, the 3FHRL are negotiating with themselves in order to manipulate U.S. Copyright Law to fit their billion dollar business models using lobbyists and proxies that have *no significant interest* in these proceedings (NMPA, NSAI, and RIAA are just DC lobbyists who have never written or published a song in their lives.)

Similar questions have been posed to me by former CRB Chief Judge Susanne Barnette who asked me in *Phonorecords III* why NSAI and NMPA aren't arguing for a 9.1 cent increase and then former USCOA DC Circuit Judge Merrick Garland asked me at oral argument on March 10, 2020 the basic same question.

The answer is unfortunately NMPA works for WMG, UMG and Sony in these rate proceedings as does RIAA and NSAI, not American music creators.

Once again, as in *Phonorecords III*, *3 foreign corporations are literally setting the royalty rate for hundreds of thousands of American songwriters and publishers* and there is something inherently wrong with this.

NMPA and NSAI did the exact same thing in *Phonorecords III* to keep the 9.1 mechanical royalty frozen with no increase, and they are supposed to be on our side.

In reality, Sony Music Publishing, Warner-Chappell Music Publishing and Universal Music Publishing should be filing Petitions to Participate as the entities with the significant interest, not their record label parent companies

Furthermore, all of the corporations being headquartered and financed from foreign countries, allowing foreign companies and also foreign governments to set U.S. music royalty rates is really quite unbelievable.

### **THE HISTORY OF §115 MECHANICAL AND INFLATION INCREASES**

Your Honors, in this Motion I wanted to argue the history of the 9.1 cent mechanical<sup>16</sup> and long history of CPI increases since 1978<sup>17</sup>, which you all know very well, and also why an inflation increase is warranted, but I simply ran out of time.

The long historical precedent by the Copyright Office, through CRT or CART, of incremental 2 year inflation increases pegged to the government CPI since 1978 is something that needs to be explained in greater detail in a Written Direct Statement, but I wanted to explain it all here.

I was going to file an extension to file this motion to give me more time, but I hope that the information I provided in this and yesterdays motions are enough to deny this so-called Settlement, as well as the clear fraudulent behavior of counsel.

I also hope the letters from songwriter trade groups also makes a difference.

GEO respectfully requests that the Court deny this Settlement until further litigation.

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<sup>16</sup> <http://www.copyright.gov/licensing/m200a.pdf>

<sup>17</sup> <https://thetricordist.com/2021/05/06/will-the-copyright-royalty-board-leave-songwriters-in-the-deep-freeze/>



Respectfully submitted,

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Date: May 27, 2021

# Proof of Delivery

I hereby certify that on Thursday, May 27, 2021, I provided a true and correct copy of the 2021-05-27 - 21-CRB-0001-PR (2023-2027) Phonorecords IV GEO's Objection to May 18, 2021 Subpart A and B Notice of Settlement by NMPA, NSAI and 3 Foreign Headquartered Record Labels to the following:

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

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

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

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

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

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

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

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

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

Signed: /s/ George D Johnson