

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

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

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

**DECLARATION AND CERTIFICATION OF MARGARET L. WHEELER-
FROTHINGHAM REGARDING RESTRICTED PROTECTED MATERIAL**

(On behalf of Amazon.com Services LLC, Google LLC, Pandora Media, LLC and Spotify USA Inc.)

1. I am counsel for Spotify USA Inc. (“Spotify”) in the above-captioned proceeding. I respectfully submit this declaration and certification pursuant to the terms of the Protective Order issued July 27, 2016 (the “Protective Order”). I am authorized by Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”) to submit this declaration on their behalf.

2. I have reviewed the Services’ Joint Supplemental Brief (the “Supplemental Brief”). I have determined that portions of the Supplemental Brief contain information that the Participants previously designated as “Restricted” under the Protective Order when that information appeared in documents and/or prior filings submitted in this proceeding (the “Protected Material”). The Protected Material is shaded in grey highlight in the restricted filings of the Supplemental Brief, and is fully redacted in the public e-filing of the Supplemental Brief.

3. The Protected Material includes, but is not limited to, testimony or analysis involving (a) contracts and contractual terms (including the negotiation thereof) that are not available to the public, highly competitively sensitive and, at times, subject to express

confidentiality provisions with third parties; and (b) highly confidential internal business information, financial projections, financial data, negotiation correspondence, and competitive strategies that are proprietary, not available to the public, and commercially sensitive.

4. If this contractual, strategic, and financial information were to become public, it would place the Services at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of the Services, and jeopardize their business interests. Information related to confidential contracts or relationships with third-party content providers could be used by the Services' competitors, or by other content providers, to formulate rival bids, bid up Service payments, or otherwise unfairly jeopardize the Services' commercial and competitive interests.

5. The contractual, commercial, and financial information described in the paragraphs above must be treated as Restricted Protected Material in order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling the Services to provide the Copyright Royalty Judges with the most complete record possible on which to base their determination in this proceeding.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: November 15, 2021

/s/ Margaret L. Wheeler-Frothingham

Margaret L. Wheeler-Frothingham
MAYER BROWN LLP
1221 Avenue of the Americas
New York, New York 10020
Tel.: (212) 506-2500
Fax: (212) 849-5895
mwheelerfrothingham@mayerbrown.com

Counsel for Spotify USA Inc.

Proof of Delivery

I hereby certify that on Monday, November 15, 2021, I provided a true and correct copy of the Declaration and Certification of Margaret L. Wheeler-Frothingham Regarding Restricted Protected Material to the following:

Nashville Songwriters Association International, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via ESERVICE at Bsemel@pryorcashman.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Signed: /s/ Richard M Assmus