

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 MATERIAL**

**(On behalf of 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”) and in support of the Services’ Joint Supplemental Brief and the Written Supplemental Remand Testimony of Leslie M. Marx, PhD. I am authorized by Spotify to submit this declaration on Spotify’s behalf.

2. I have reviewed the Services’ Joint Supplemental Brief (the “Brief”) and the Written Supplemental Remand Testimony of Leslie M. Marx, PhD (the “Supplemental Marx Testimony”). I have also reviewed the definitions and terms provided in the Protective Order. After consultation with my client, I have determined to the best of my knowledge, information and belief that portions of the Brief and the Supplemental Marx Testimony contain information that Spotify has designated as “confidential information” as defined by the Protective Order (“Protected Material”). The Protected Material is shaded in grey highlight in the restricted filings of these submissions and is fully redacted in the public e-filing of these submissions, and is described in more detail below.

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 Spotify at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of Spotify, and jeopardize Spotify's business interests. Information related to confidential contracts or relationships with third-party content providers could be used by Spotify's competitors, or by other content providers, to formulate rival bids, bid up Spotify's payments, or otherwise unfairly jeopardize Spotify's 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 Spotify 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

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*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 Material to the following:

Amazon.com Services LLC, represented by Scott Angstreich, served via ESERVICE at sangstreich@kellogghansen.com

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

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

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

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

Google LLC, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Signed: /s/ Richard M Assmus