

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 Written Supplemental Rebuttal Remand Testimony of Leslie M. Marx, PhD (the “Supplemental Rebuttal Marx Testimony”). I am authorized by Spotify to submit this declaration on Spotify’s behalf.

2. I have reviewed the Supplemental Rebuttal 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 Supplemental Rebuttal Marx Testimony contain information that Spotify and other participants (each a “Designating Participant”) 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 the Supplemental Rebuttal Marx Testimony and is fully redacted in the public e-filing of Supplemental Rebuttal Marx Testimony, 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 the Designating Participant at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of the Designating Participant, and jeopardize the Designating Participant's business interests. Information related to confidential contracts or relationships with third-party content providers could be used by the Designating Participant's competitors, or by other content providers, to formulate rival bids, bid up the Designating Participant's payments, or otherwise unfairly jeopardize the Designating Participant'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: February 24, 2022

/s/ Margaret L. Wheeler-Frothingham

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Counsel for Spotify USA Inc.

Proof of Delivery

I hereby certify that on Thursday, February 24, 2022, I provided a true and correct copy of the Declaration and Certification of Margaret L. Wheeler-Frothingham Regarding Restricted Material to the following:

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

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

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

Signed: /s/ Richard M Assmus