Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
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)

GEORGE JOHNSON'S RESPONSE IN OPPOSITION TO JOINT RECORD COMPANY PARTICIPANTS' MOTION TO WITHDRAW THEIR EMERGENCY MOTION

Pursuant to 37 C.F.R. §303.6(f), participant George Johnson ("GEO"), a *pro se* Appellant songwriter, respectfully submits this Response in Opposition to the *Joint Record Company Participants' Withdraw of Emergency Motion for Clarification and Request for Extension ("Withdrawal Motion")* filed with the Copyright Royalty Board ("CRB") on May 5, 2022, in *Phonorecords IV,* submitted by the self-styled "Joint Record Company Participants" ("JRCP")[1] which includes Sony Music Entertainment ("SME"), UMG Recordings, Inc. ("UMG"), and Warner Music Group Corp. ("WMG"). The *Emergency Motion*[2] at issue was previously filed by JRCP lobbyists and counsel for the Recording Industry Association of America, Inc. ("RIAA") in support of

[1] Also known as "Record Company Participants" ("RCP") or as GEO previously named the 3 Foreign Headquartered Major Record Labels ("3FHMRL"). WMG is headquartered in the United States, but still foreign owned, as SME is owned by Sony Corp. in Japan, and UMG is owned by Vivendi in France. GEO will correct Headquartered to Owned one day.

[2] https://app.crb.gov/document/download/26431 April 5, 2022, JRCP's *Emergency Motion*.

previous Subpart B related motions and proposed settlements filed by the former "Copyright Owners"[3], now newly renamed "Publisher Songwriter Participants"[4], the National Music Publishers' Association, Inc. ("NMPA") and Nashville Songwriters Association International ("NSAI") — all of the above named "The Participants".

INTRODUCTION

The Participants want Your Honors to once again save them from themselves by now disingenuously claiming "it is no longer necessary for the Judges to address the matters raised in the Motion (*"Emergency Motion")",* yet counsel *knowingly filed* these baseless and outlandish legal claims in the first place.

The *world's number one independent publisher* Bertelsmann Music Publishing ("BMG") recently issued a press statement which states that the Labels could "show some humility", and how Your Honors' ruling is a "wake up call for all those in the industry *who fail to match fine words* about the value of music with a concern for the people who create it"[5], and I could not agree more. It's a problem.

In my experience The Participants all demand respect, but offer none.

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[3] Furthermore, as the Your Honors accurately point out in your Novel Question of Law ("NQL") letter to the Register, "Whether either NMPA or NSAI actually owns or holds a copyright under 17 U.S.C. § 106, and whether that is a relevant issue, are questions that no party has presented directly to the Judges." GEO does think this is a very relevant issue and presents the question here if allowed. If not proper to present here, I can file a motion.

[4] As another "end run" or sleight of hand in plain sight, the "Publisher Songwriter Participants" are neither songwriters nor publishers, then *intentionally* leave out the *actual* 3 Major Publishers as official participants, instead inserting *only themselves*, as publishing lobbyists NMPA and NSAI, as the official "participants" and as willing sellers on the official Licensor side of the equation, which is *not factually true* and completely disingenuous.

[5] https://www.bmg.com/us/news/bmg-statement-us-mechanical-royalty-rates.html May 6, 2022, US: BMG Statement on Proposed Settlement on U.S. Mechanical Royalty Rates.

They only offered the bare-minimum 12 cents because they were *forced* to.[6]

The legal question I still have for the labels and lobbyists is how they can make such a 180 degree turn between — statutory rates and Judges' rulings *do not apply* in their *Emergency Motion,* to now the Judges and statutory rates *do apply*?

The entire purpose of the JCRPs filing their *Emergency Motion* was to subvert the CRB rate process, and the law, with another "end run" around the statutory license as Your Honors accurately explained in your April 28, 2022, *Referral of Novel Material Question of Substantive Law* ("NQL") letter to the Register. This *Withdrawal* and new *Proposed Settlement 2* are also "end runs" too.

The *Emergency Motion* was also designed as a new "end run" around Your Honors' March 30, 2022 *ruling* to the Labels' unreasonable *Proposed Settlement 1.*

The *Emergency Motion* was also designed as a "carve out" to keep the 3 Major Labels' own staff songwriter "costs" down, stable, and for the benefit of the parent record label, not the vertically integrated, *lesser*, publishing division or songwriters.

We pray that their *Emergency Motion* will be allowed to stand for all of the mentioned good reasons and good cause in this Response in Opposition, and for other good cause and reasons that I have failed or forgotten to mention here.

GEO respectfully requests that the *Emergency Motion not* be withdrawn by the record labels and therefore, respectfully request that Your Honors DENY their *Withdrawal Motion* for the following good reasons and good cause.

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[6] As BMG just stated in their May 6, 2022 statement about the 3 record labels and that this new deal "never would have happened if they weren't forced back to the negotiating table."

ARGUMENT

GEO argues the following facts and evidence against the *Withdrawal Motion* for the following good reasons:

The Judges concluded in their letter to the Register, referring the NQL, that "the proposed settlement agreement, not adopted by virtue of the Withdrawal Notice, exists outside the rate-setting proceeding." and "In other words, no party is statutorily bound to comply with the rates and terms of the proposed settlement."

The Participants now claim their *Emergency Motion* must be withdrawn for;

a.) it is "no longer necessary",

b.) and "in view of" their newly submitted May, 5th, 2022, *Joint Motion to Adopt a New Settlement of Statutory royalty Rates and Terms for Subpart B Configurations* ("*Proposed Settlement 2"* or "PS2")[7],

c.) they now "submit that the Judges should withdraw as moot their April 28, 2022, Referral of Novel Material Question of Substantive Law." ("NQL").

I would fully *disagree* with all 3 of those assertions, and the issue is not moot.

Moreover, I would respectfully submit that it is absolutely *necessary* for;

1.) the Judges to file a final Order to address the matters raised by The Participants in their *Emergency Motion*, the matters raised by Your Honors in your letter to the Register, and for the public and other participants to have the full benefit of *your* ruling.

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[7] https://app.crb.gov/document/download/26619 May 5, 2022, submitted by counsel for the RCP and NMPA/NSAI in which GEO will be filing another Response in Opposition to this PS2.

It is also equally necessary for;

> 2.) the Register, and CO attorneys, to file their response to the NQL to address the important matters raised by Your Honors, the matters raised by The Participants in their *Emergency Motion*, and for the public and other participants to have the full benefit of *their* ruling.

The NQL is not "moot" and should *not* be cancelled by The Participants just because it might be critical of them, or create new precedent unfavorable to them.

They opened the door and were *so very confident* in their *Emergency Motion* that I hope Your Honors will let it stand and accept the NQL from the Register.

Furthermore, the Participants still refuse to resolve the laundry list of serious conflicts Your Honors determined on March 30, 2022, and another reason to DENY their *Withdrawal Motion* and let their *Emergency Motion* stand as is.

The Participants also now disingenuously argue that "*in view of*" their new *Proposed Settlement* 2, this should magically cancel out the Novel Question of Law that the Participants themselves specifically *asked for* from Your Honors.

In theory, it may make sense to file a new *Proposed Settlement 2* at a new 12 cent rate, indexed from 2006, to match what Your Honors used as an example in your withdrawal ruling, which the Participants assume is a "signal" from Your Honors as to the scope and path you *might* follow in any final determination.[8] And

[8] GEO notes that it's amazing how the Participants were able to pick up on such subtle cues from Your Honors in submitting their new 12 cent Proposal, yet the same experienced counsel were completely incapable of understanding the plain meaning of the the law and other sections of Your Honors' March 30, 2022, ruling relating to the 1909 statutory license.

while a 2006 indexing may be the most reasonable path forward in this proceeding to satisfy Your Honors' "no more static rates" ruling, the fact that the Participants now use their new PS2 submission *as a reason to forget* about the bizarre and *counterintuative legal claims* they made in their *Emergency Motion* is not a valid reason to withdraw, especially when the new PS2 has the *same old problems*.

The fact is, in their new PS2, counsel still *denies and ignores* all the same *huge reasons why their PS1 wasn't approved* by Your Honors the first time around.

The primary issue that has emerged for me in these proceedings is exactly how the 3 Major Record Labels are using their marketshare dominance and "complementary oligopoly power" ("COP") to price-fix *all* of their U.S. music *competitors* at 9.1 cent per sale or $.000 per stream, but with no real *sales*, that have been substituted, or "cannibalized", by the *access* model of streaming songs.

And for what sales are left, the 3 Major Record Labels have managed to price-fix all of that 9.1 cent song sales income, keep it "static", to keep their "costs" down, actively phasing out that *sales* income, in exchange for a "superior" *access* model.

The one fact that the labels now love to ignore is that this 9.1 cent "cost" is actually "income" or "profit" to their publishing division, paid by the customer or end user and at the most is a "pass through" expense for the record label side.

However, on the publishing side, it's *real income* and *profit*, plus it's real income and revenue *for all the co-writers and co-publishers* of these songs, and songs that will make more money from any new settlement or determination here.

Moreover, Warner, Universal, and Sony all administer *other people's catalogues* for 15% of royalties, so GEO, the Commenters, and Your Honors have already substantially increased the 3 Record Labels' admin. revenues quite a bit.

GEO respectfully asks relief from, but not limited to, The Participants' continued self-dealing, conflicts of interest, vertical integration, price-fixing of *all* U.S. competitors' sales income, price-fixing *all* U.S. competitors' streaming income at $.0012 per stream, lack of transparency, "warning flags", "smoke" with "possible fire", the side deal Memo of Understanding ("MOU"), *et al.*, inside this proceeding.

GEO also asks relief from The Participants' continuing "end runs" around the law and statutory licenses, as well as their disingenuous arguments to the Panel regarding Your Honors' rulings, the plain meaning of the law, and even toward my proposals. Having to then defend myself against their endless *twisting of all known words* is not only a colossal waste of time for me, but Your Honors and all of us. It's a *tremendous amount of unnecessary extra work, just like this* Response in Opposition.

On the bright side, the NQL and Your Honors' Order should make good law.

These conflicts and end runs are also the same exact reasons to DENY this *Withdrawal Motion* since all of these problems have been ignored in their newly submitted *Proposed Settlement 2* ("PS2")[9], and are still at issue in *Withdrawal Motion*, *Emergency Motion*, and in this proceeding.

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[9] GEO is also filing a forthcoming Reply in Opposition to the JRCP's *Proposed Settlement 2*.

PARTIAL LIST OF ODD LEGAL CLAIMS MADE IN EMERGENCY MOTION

The following is a partial list of odd legal claims made by counsel in their *Emergency Motion,* which include:

1. "That is, Section 801(b)(7)(A)(ii) authorizes the Judges to decline to adopt the Settlement only as to Mr. Johnson, the sole licensor participant that is not a party to the Settlement."

2. "Unfortunately, certain industry observers have misreported the issue, creating the potential for confusion about what remains to be litigated."

3. "That reporting suggests a perception that the participants will now litigate Subpart B Rates and Terms as to all copyright owners."

4. "The Judges Should Clarify that They Have Declined to Adopt the Settlement Pursuant to Section 801(b)(7)(A)(ii) Only as to Mr. Johnson."

5. "Such a result would be contrary to the express and unambiguous terms of the Copyright Act."

6. "The Joint Record Company Participants urge the Judges to make this explicit before the filing of the cases the Withdrawal Notice anticipates."

THE MANY REASONS TO DENY THE WITHDRAWAL MOTION IN FULL SO THAT THE EMERGENCY MOTION AND NQL CAN STAND

While many of the below mentioned facts, arguments and evidence are good reasons to DENY the newest *Proposed Settlement 2* ("PS2"), they are also the same fundamental reasons why Your Honors should DENY this *Withdrawal Motion* itself and in full, and let the *Emergency Motion* stand is because:

1. Again, GEO respectfully submits that because the Novel Question of Law *was already referred* to the Register of Copyright on April 28, 2022, especially after waiting 7 more days to file this *Withdrawal*, it is now much too late to take back.
2. These important legal questions *really must be resolved* for the benefit of all American musical work creators, their investors, and other copyright owners.
3. The Participants once again *failed to provide any legal basis or evidence* to support the false claims made in their *Emergency Motion,* which is another good reason to DENY their *Withdrawal Motion.*
4. As mentioned, other than offering a "non-static" rate, The Participants have still not resolved *any* of the extremely serious *conflicts of interest* issues in their *Proposed Settlement 1* ("PS1"), that *are still at issue in this proceeding*, and another reason why Your Honors should DENY this *Withdrawal Motion* in full. The Participants have not resolved, and do not want to resolve, any of their "unreasonable" conflicts of interest that also contributed to the declination of the PS1, or aka, "the totality of the record". In other words, the declination of PS1 was not just about a "static rate" as the Participants hope and pray, but *the*

totality of all their other self-dealing conflicts, *i.e.*, the quid pro quo side MOU, vertically integrated "warning flags", et al., that are clearly "unreasonable" as per copyright law. "The Judges declined to adopt the proposed settlement because they concluded, based on the totality of the record then before them, that the proposal did not provide a reasonable basis for setting statutory rates and terms." 87 FR at 18349.[10] As in No. 6, Subpart C is intertwined with B.

5. While the NQL letter primarily deals with issues surrounding the statutory license and how it relates to objecting participants and non-participants, Your Honors expound in the NQL on *many of these other problems, self dealing conflicts, and serious legal issues* relevant to both of the "voluntary" proposed settlements, PS1 and PS2. This is *why the NQL must be completed* as planned.
6. Since the PS1 was *declined for other reasons* other than just the "static" rate problem and because of the "*totality of the record*" (*See* No. 4 above), it becomes vital to songwriters to let the *Emergency Motion* stand, and therefore let the NQL stand, since new and important legal issues have developed out of this process, primarily, *i.e.* how the Subpart B PS1 declination *made* the entire Subpart C streaming case for NMPA and NSAI <u>*by taking away an important static benchmark for the Services*</u>! A benchmark GEO won them! Now, despite GEO and others accomplishing this *Subpart C gift* to NMPA, NSAI, and RIAA, they all now take credit for raising the Subpart B rate, when *they fought it as*

[10] <u>https://app.crb.gov/document/download/26557</u> filed April 28, 2022 by the CRB, Novel Question of Law to The Register of Copyrights.

hard as they possibly could for going on 7 years now in *Phonorecords III*, the appeal, and now *IV*. They just fought the *past month* to STILL keep their *own* songwriters at 9.1 cents, and then *kept* the 9.1 cent benchmark they KNEW the Services were already using *against their Subpart C case* for songwriters!

7. The same Memo of Understanding ("MOU") conflicts of interest, self-dealing "warning flags", "smoke", "possible fire", et al., raised by Your Honors on Page 3 of your Novel Question letter and March 30, 2022 withdrawal *still exist as is* and *the MOU hasn't changed from PS1 to PS2*. As Your Honor's wrote about the MOU in the NQL, "the Record Companies argued that the MOU represented a "private contract" not to be codified in regulations and not addressing statutory royalty rates," but, "this disingenuous argument ignores the fact that the settling parties were attempting to have the terms adopted as statutory rates and terms, binding on all licensors and licensees under section 115." When you compare these facts to the ridiculous statutory license arguments made by The Participants in their *Emergency Motion*, and their *new* PS2 with the *same* MOU, it becomes clear that *everything* The Participants file is an "end run" around the law, the statutory licenses, or Your Honors' clear and concise rulings.

8. And while we are here, another good reason to DENY the *Withdrawal Motion* is to stop all these "end-runs" by The Participants. This *Withdrawal Motion* is just another "end run" around the Register's legal opinion, just like their *Emergency Motion* was an "end run" around the statutory licenses, and also an "end run" around Your Honors' March 30, 2022 ruling. Your Honors' "end run"

observations in your NQL letter are right on point stating, "It might be argued that the settling parties were attempting an end-run at modification of regulatory interest terms outside the statutory rate setting procedures. This is a legal question not as yet presented directly in this proceeding and not a part of the referred question." GEO prays their "end run" tactics can be stopped.

9. Furthermore, as a participant and copyright owner with constitutional Art. I, Cl.8, §8 exclusive rights, as well as 5th Amendment property rights in copyright, and other associated rights under §106, et al., I think it's extremely important and "necessary" to make a determination or ruling on "what the law is" on the questions raised in the NQL by Your Honors and by the JRCPs.

10. It's also important to complete the NQL legal review by the Register and CO counsel so that *these Participants can never try to argue such nonsense again.*

11. I also look forward to *knowing what the law is* in this case as a Participant, so as to leave no doubt as to what the law actually *is*. Part of the "fun" of being in these proceedings is to see what Your Honors' legal opinions are, as well as any new law or rate court precedent that is made in this royalty rate process.

12. Considering GEO's proposals and arguments are part of the NQL, I am also naturally interested in the outcome, not just as a Participant in general, but as part of the NQL itself. As Your Honors know, I have completed 4 rate proceedings and 2 appeals *with no pay*, and with no help, so *rulings* by Your

Honors, the Register, CO counsel, the appeals court, etc. are one of the only benefits and ways to learn for this participant.

13. In their *Emergency Motion* The Participants are *simply trying to undo what Your Honors have already ruled*, and again, have no legal basis to do so, and all the more reason to let the Register and Your Honors make final rulings on the NQL and motions before you, for the benefit of all of us, especially us songwriters and independent music publishers who are *bound* by the license.

14. This *Withdrawal Motion* is only designed to *stop* The Register and Your Honors from *making new law*. The Participants absolutely do no want the Novel Question of Law to come back from the Register and are now filing this *Withdrawal Motion* to make sure that Your Honors and the Register *do not rule* and *do not make new law* on these fundamental questions of law *nor* the The Participants' other self-dealing, antitrust, anti-competitive conflicts of interest. Again, since this is under a public statutory license, with oversight by Congress, we should all have the benefit of the Register's legal opinion, and of the excellent counsel at the Copyright Office on these important issues that the Participants not only *raised themselves* in their *Emergency Motion* and new *Proposed Settlement 2* ("PS2"), but *demanded be adjudicated in this* NQL to the Register. Just because they now want their NQL back — because they realized they probably will not fare very well — doesn't mean *the rest of us* no longer need to know the answers to these questions, especially all of us affected by these rates and terms and who use the statutory license.

15. As mentioned previously above, and partially alluded to in the Judges' NQL and various footnotes, but to GEO — the fundamental fraud by NMPA and NSAI is *they are disingenuously portraying themselves as "Willing Sellers" and "Licensors" of copyrights*, fraudulently naming themselves the "Copyright Owners", *yet, they own no copyrights and make no money from licensing copyrights — the basic requirements to have a significant interest as a "participant" in most CRB rate proceedings.* The relevant point is by NMPA and NSAI *acting* as if the *are* Warner Publishing, SMP, and UMP in these "Settlements", PS1 and now PS2, they are *portraying themselves as the willing sellers* and real Licensor*,* just as they are in this *Emergency Motion* here, when they are clearly *not* the Licensor nor the willing seller. While seemingly not that serious, or as serious as all the other actions and conflicts of interest by these Participants, to GEO as a layman, this is probably the most *fundamental* fraud by NMPA and NSAI since it allows the 3 Publishers to *hide* while the 3 Records Labels *are* Participants, which *are* properly represented by RIAA in this proceedings as a their lobbyists. NMPA and NSAI are *not* since they leave out the 3 publishers and the reason why is — they are *already in* the proceedings *underneath* the 3 Record Labels, *but on the Licensee side*. It's a bit confusing because we are going through a charade here since the Services are really the ultimate Licensees, but here, the Labels are the Licensees and the Publishers are the Licensors, but when all the Licensors are *underneath* and

owned by the Licensees, it creates all these dilemmas like the self-dealing, and conflicts of interest, which ultimately *hurts all* individual music creators.

16. This *Withdrawal Motion* now affects hundreds of thousands of American songwriters at the very least, if not millions of music creators, and most certainly the fate of *millions of §115 copyrighted musical works,* and therefore, it's vitally important for songwriters that the rule of law on these issues be resolved and clear.

17. If Your Honors DENY the *Withdrawal Motion* it will provide accountability and *transparency*, and also transparency with the MOU. The JCRP's insisted that the CRB and the Register "clarify" these issues and I argue that you both should. The Participants still want zero transparency on the MOU in the PS2. For a public compulsory license for all American songwriter and publishers it's vitally important that these issues are transparent and in the sunshine and that is what the labels are most afraid of — sunshine and transparency.

18. Even the media can see the self-dealing and fraud by NMPA, *How the CRB Blew Out the NMPA's Gaslight on Songwriters*[11] by Ms. Judy Dunitz. "NMPA tried valiantly to serve the labels, its real patrons", "But, alas, the CRB rejected the NMPA's pact with the labels", and "The CRB ruling is a treasure trove of findings that *should forever disqualify the NMPA from pretending to protect and enrich songwriters.* Could its songwriter gaslighting days be over?"

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[11] https://www.digitalmusicnews.com/2022/04/19/crb-nmpa-gaslight-mechanical-license/ April 19, 2022, Digital Music News, *How the CRB Blew Out the NMPA's Gaslight on Songwriters* by Ms. Judy Dunitz.

THE NOVEL QUESTION OF LAW SHOULD BE ALLOWED TO STAND

In response to the March 30, 2022, withdrawal of the "*Proposed Settlement 1"* ("PS1")[12], on April 5, 2022, the Joint Record Company Participants filed their *Emergency Motion for Clarification and Request for Extension* ("*Emergency Motion*")[13] in which *they insisted*[14] on a Novel Question of Law ("NQL")[15].

Again, one overriding common sense reason and good cause why Your Honor's should DENY this *Withdrawal Motion* in full is because the Novel Question of Law had already been referred to the Register of Copyright on April 28, 2022, *and* The Participants waited 7 days after the Register and CO had started work.

It's like submitting homework in school and then 7 days later you tell the teacher you not only want your homework back, *but it doesn't count*, *and* that you really didn't mean one word that you wrote.

If the *Withdrawal Motion* was submitted before the NQL was referred, then that would be a different set of circumstances.

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[12] https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06691.pdf March 30, 2022, *Federal Register*, Withdrawal of Proposed Rule by CRB.

[13] https://app.crb.gov/document/download/26431 RIAA *Emergency Motion,* filed April 5, 2022.

[14] "To the extent that the Judges believe that Section 801(b)(7)(A)(ii) might empower them to decline to adopt a settlement as the basis for statutory terms and rates for anyone other than Mr. Johnson, the Joint Record Company Participants respectfully submit that any such interpretation – which is contrary to the plain statutory language – would raise a novel question of law that would need to be referred to the Register of Copyrights pursuant to Section 802(f)(1)(B), and this motion should be considered a motion for such a referral." Page 6 of *Emergency Motion*.

[15] https://app.crb.gov/document/download/26557 April 28, 2022, CRB refer Novel Question of Law.

Why wait 7 days to ask for a withdrawal on May 5th, 2022?

Why not ask for withdrawal on April 29, 2022, or even have the good sense to ask on April 6, 2022, one day after filing their illogical *Emergency Motion?*

It's only now they want to withdraw their *Emergency Motion* since it did not go as planned, and again they don't want any kind of legal ruling or precedent set.

If this were a civil or criminal case and a participant filed a motion to withdrawal a plea or request *before a hearing took place*, there usually would be no harm done, and the motion probably granted for good cause or a valid reason.

However, the big difference here is that type of withdrawal motion would usually *only affect one participant*, or a handful of participants, or unless the withdrawal motion set some type of court precedent that affected all Americans.

Here, in this proceeding, since this Emergency Motion *affects all* American songwriters and music publishers *bound by these compulsory licenses* created by Congress, this is one more reason why this *Withdrawal Motion* should be denied.

Furthermore, *since copyright is also for the "public good"*, this *Withdrawal Motion* takes on a much greater importance for all of us who are "subject to"[16] the compulsory license, and therefore, another valid reason why I respectfully submit that Your Honors should DENY this *Withdrawal Motion* and let the process work.

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[16] https://app.crb.gov/document/download/3715 September 29, 2016, *SDARS III*, CRB *Order Denying Services' Motion to Dismiss George D. Johnson d/b/a Geo Music Group*. "GEO…*being subject to the license…",* (Judges' emphasis) "…the Services…are free to use GEO's works at any time and GEO would have no say in the matter—that is the essence of a statutory license."

BMG STATEMENT IS THE NORTH STAR IN THIS PROCEEDING WITH A PERFECTLY STATED PRESS RELEASE THAT ALSO CALLS FOR THE 3 MAJOR LABELS TO FINALLY ABOLISH THE CONTROLLED COMPOSITION CLAUSE AT 75% PERCENT OF THE STATUTORY RATE

In response to the Judges' March 30, 2022 ruling and the recent filing of The Participants' new PS2, the *world's 3rd largest music publisher*, and *the world's number 1 independent music publisher*, Bertelsmann Music Group ("BMG") issued a brilliant press release on March 6, 2022, that *perfectly states*[17] the issues regarding the 3 Major Labels, NMPA, NSAI, RIAA, their counsel, their conflicts, as well as "static "Subpart B issues.[18] I realize the CCC is not relevant now, but BMG said it.

While BMG's statement may not be the most important evidence in this Opposition to a Withdrawal Motion for an Emergency Motion, it is entirely relevant since *BMG is the largest independent music publisher in the world*[19] and their statement specifically concerns the 9.1 cent mechanical rate, but also the actions of the labels and lobbyists, and what I might consider BMG's "testimony".

GEO would like to "formally" enter BMG's statement here in the record and if allowed, GEO would like to *join* with BMG's statements as a participant since I could not have said my arguments in this rate proceeding any better. (*See* below)

What is relevant is BMG "slams" the 3 Major Labels and their lobbyists for

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[17] https://www.bmg.com/us/news/bmg-statement-us-mechanical-royalty-rates.html March 6, 2022 Press Release by BMG. *US: BMG Statement on Proposed Settlement on US Mechanical Royalty Rates.*

[18] "industry consensus that turned a blind eye to what has been a 15-year pay freeze for songwriters." BMG Statement.

[19] BMG is really a *major* music publisher and their entire statement is 100% on point.

turning a "blind eye" to songwriters here and then tells the Labels to "*show further humility*" by finally *abolishing all* remaining *controlled composition clauses* ("CCC") at 75% of the statutory license, just as BMG had led the way and abolished[20] all CCC's in all of their contacts, primarily from older purchased catalogs.

BMG estimates that these old CCC's "still cost songwriters around $14 million across the US industry last year." The 3 Major Labels could easily end CCC's in any new voluntary settlement and in the opinion of many, they must end.

Why I bring this up is I specifically asked counsel for RIAA, RCP, and NMPA/ NSAI if they would include an *elimination* of any old CCC's in old contracts in any new Settlement. As usual, The Participants just had NMPA counsel call me to see if I would *join* their new PS2 motion, with no mention of the CCC, no negotiation, nor acknowledgment of any of the issues I asked them to address in good faith.

GEO absolutely agrees with BMG and respectfully requests from Your Honors that if legal, despite CCC's being private contracts, but since CCCs *are* still attached to the compulsory license, if there anything Your Honors or the CO can do to help eliminate CCCs, we would very grateful. And in light of they *were only designed to eliminate inflation indexing by the CO in 1978, by record executives*[21].

As BMG states, the CCCs are "unfair and anachronistic…deductions which are solely designed to depress songwriter earnings".

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[20] https://completemusicupdate.com/article/bmg-to-eliminate-controlled-composition-deductions-in-all-record-contracts/ October 9, 2020, by Andy Malt, Complete Music Update, *BMG to Eliminate 'Controlled Composition' Deductions in All Record Contracts*.

[21] The CCC was created by former CBS Records executive, Mr. Walter Yetnikoff and one other executive, as I understand it.

US: BMG STATEMENT ON PROPOSED SETTLEMENT ON US MECHANICAL ROYALTY RATES

"The entire songwriter community owes a huge debt of thanks to those who fought for this increase in the face of the opposition of major record companies and indifference of music publishers.

Thanks to them, songwriters will get an effective 32% rate increase on the current 9.1 cents a track mechanical rate for physical products and downloads in the US.

Without their belief and commitment, the RIAA (representing record companies) and the NMPA (representing music publishers) would not have been forced back to the negotiating table.

Music companies have a duty to stand up for artists and songwriters. That is why BMG has put fairness at the heart of our agenda ever since we started business in 2008.

We regret on this occasion that we did not speak out earlier and more robustly against an industry consensus that turned a blind eye to what has been a 15-year pay freeze for songwriters.

More broadly, this case again highlighted the dismissive approach of record companies toward songwriters who just a month ago entered a motion designed to exclude the vast majority of songwriters from benefiting from any rate increase.

Thankfully, they have backed down. They could show further humility by following BMG's example in abandoning unfair and anachronistic controlled composition deductions which are solely designed to depress songwriter earnings.

This episode should be a wake-up call for all those in the industry who fail to match fine words about the value of music with a concern for the people who actually create it."

CONCLUSION

GEO respectfully submits that The Participants *offer no legal basis* nor good cause to withdraw their *Emergency Motion*. The Participants also also *offer no legal basis* to overturn or even legally defend against Your Honors' March 30, 2022 ruling and why GEO respectfully requests that Your Honors DENY The Participants' *Withdrawal Motion* itself, and/or on the contents of, and let their *Emergency Motion* stand transparent in the record.

Their *Emergency Motion* should be ruled on by the Register and Copyright Office counsel in a final answer to the NQL, as well as Your Honors in a final Order.

The public should also have the benefit of the full record in its entirety.

One of the fundamental reasons why we have courts in this country is so that we can eventually get to the truth, or as close as we can.

In this case, if Participants are continually permitted to hide, censor, redact, or deceive all of us about the basic facts and evidence, then the songwriters who are effected by this behavior and bound by the license, *can never get to the truth, nor get an honest and full statutory rate.*

This is also why it's important to DENY the *Withdrawal* so that songwriters and publishers can ensure that their own statutory rate will be bonafide and reasonable for Subpart B, without any old or new controlled composition clauses ("CCC") or other strategies to reduce or deduct from the statutory rates and terms Your Honors determine in this rate proceeding.

In conclusion, GEO files this Response in Opposition and respectfully requests that Your Honors DENY the *Withdrawal Motion* 1.) itself and/or 2.) the contents of the motion, for the above mentioned good reasons and good cause.

By: *__/s/ George D. Johnson__*

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Wednesday, May 11, 2022

Proof of Delivery

I hereby certify that on Wednesday, May 11, 2022, I provided a true and correct copy of the GEORGE JOHNSON'S RESPONSE IN OPPOSITION TO JOINT RECORD COMPANY PARTICIPANTS' MOTION TO WITHDRAW THEIR EMERGENCY MOTION to the following:

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

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

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

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

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

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

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

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

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

Signed: /s/ George D Johnson