

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR MAKING AND DISTRIBUTING
PHONORECORDS (Phonorecords IV)**

**Docket No. 21-CRB-0001-PR
(2023-2027)**

**ORDER ON COPYRIGHT OWNERS' MOTIONS TO COMPEL PRODUCTION OF
DOCUMENTS AND INFORMATION RELATING TO PRICING AND BUNDLING**

THIS MATTER is before the Copyright Royalty Judges (Judges) on an omnibus Motion to Compel (Motion) filed by the Copyright Owners participating in the captioned proceeding (Copyright Owners). Copyright Owners filed the Motion on March 2, 2022. In the Motion, Copyright Owners ask the Judges to compel Amazon.com Services LLC (Amazon); Apple Inc. (Apple); Google LLC (Google); Pandora Media, LLC (Pandora); Spotify USA Inc. (Spotify) (Services) to produce certain documents and information concerning their pricing decisions and strategies in connection with their music streaming services, including their bundled offerings. Motion at 1. The Services filed responses in opposition to the Motion on March 11, 2022. Copyright Owners filed replies on March 16, 2022.

Copyright Owners ask the Judges to compel production under Apple RFP 52; Google RFPs 15, 16, 17, and 148; Pandora RFPs 77 and 78; Spotify RFPs 71, 88, 89 (same as Pandora RFP 77), 90 (same as Pandora RFP 78), and 206 (same as Google RFP 148). Copyright Owners also seek to compel information under Interrogatories 2 (from Amazon) and 4 (from Google). Copyright Owners contend that the documents they seek are directly related to some aspect of the respective Services' written direct statements (WDS) and that each of the applicable interrogatories is relevant to the WDS of the respective Service to which that interrogatory is directed.

The Judge considered the entirety of the record presented by the parties. Based upon that consideration, the Judges make the rulings detailed on "Exhibit A" and provide, to the extent necessary, narrative analysis here.

Ruling

As a preliminary matter, the Judges find that the Copyright Owners' Motion is timely. The Judges reject Services' objections based on timeliness.

The Judges hereby **GRANT**, in whole or in part, and **DENY**, in whole or in part, the elements of Copyright Owners' Motion as detailed on the attached table, Exhibit A. To the extent the Motion is granted, Services shall produce responsive documents within ten days of the

date of this Order or, alternatively, provide an affirmative statement that no documents responsive to the subject discovery request(s) exist.

SO ORDERED.

Dated: May 12, 2022

Suzanne M. Barnett
Chief Copyright Royalty Judge

EXHIBIT A
To Order on Copyright Owners’ Motion
Re Pricing and Bundling

No.	Target	Nature of request	Response	Ruling	Notes
RFP 15	Google	Analysis re pricing strategies	Google rate proposal, with a percent of revenue prong, is based on benchmark agreements, thus inquiries related to Google’s actual pricing are not related to WDS. ¹	GRANTED	Percent of revenue rate structures are vulnerable to revenue deferral or displacement. Documents and information relating to Google’s pricing are directly related to Google’s WDS. Google cannot avoid discovery by asserting that it intends to rely completely on benchmark agreements to support its rate proposal.
RFP 16	Google	Analyses of bundle pricing, including impact/s	Same as response to RFP 15.	GRANTED	
RFP 17	Google	Analyses of subscription offerings (four subparts)	Same as response to RFP 15.	GRANTED	
RFP 71	Spotify	Analysis re pricing of music streaming ²	Spotify has produced information relating to actual pricing; potential and competitor pricing are unrelated to Spotify WDS.	Granted in part/Denied in part	Overbroad; Granted with regard to production limited to documents directly related to Kaefer ¶¶ 15, 62; Kung ¶15.
RFP 88	Spotify	Documents re actual or potential pricing strategies	Same as response to RFP 71.	Granted in part/Denied in part	Overbroad; Granted with regard to production limited to documents directly related to Kaefer ¶¶ 15, 62; Kung ¶15.
RFP 78/90	Pandora/ Spotify	Analyses of competitors’ pricing	Pandora: Pandora has produced all responsive documents relating to competitors’ pricing, even though not related to Pandora WDS. Spotify: Same as response to RFP 71.	DENIED	Overbroad

¹ Google contends that Copyright Owners’ analogies to *Phonorecords III* orders are inapposite because in *Phonorecords III*, the Judges weighed what was “directly related” to a party’s WDS in light of a section 801(b)(1) analysis. This attempt at differentiation in this instance is strained, at best.

² Copyright Owners’ reliance on the “Amazon Prime” order in *Phonorecords III* is misplaced. The “Amazon Prime” order involved a much narrower request.

No.	Target	Nature of request	Response	Ruling	Notes
<p>RFP 148/206</p> <p>RFPs 148 and 206 seek all Analyses of consumers' perception of the value of any of [your] Service Offerings, including of the Prices at which such Service Offerings could or should be offered.</p>	<p>Google/ Spotify</p>	<p>Analyses of consumer perceptions</p>	<p>Google: Same as response to RFP 15.</p> <p>Spotify: Same as response to RFP 89.</p>	<p>Google: DENIED.</p> <p>Spotify: Granted in part; Denied in part</p>	<p>Vague and overbroad</p> <p>Google: Like RFPs 15, 16, and 17, this request is overbroad and vague. Given the imbedded definitions of Analysis and pricing, discussed with respect to RFP 15, it is not readily apparent what the relevance would be of documents (including communications) that could conceivably be responsive to RFP 148. For example, every conceivable communication regarding a Google offering or potential offering could be covered by the request. The communications could come in the form of a letter or email to Google, or a blog post, or an emoji. It is impossible to quantify the potential burden of complying with such a request.</p> <p>Spotify: Overbroad; Granted with respect to Farrell ¶ 13; Kaefer ¶¶15, 75-76; Tschollar ¶13</p>
<p>RFP 89/77</p>	<p>Spotify/ Pandora</p>	<p>Analyses of relationship between pricing and user acquisition or retention</p>	<p>Spotify: produced documents relating to consumer perceptions of current prices; information re potential prices is not related to WDS.</p> <p>Pandora: documents that exist have been produced.</p>	<p>Spotify: Granted in part; Denied in part</p> <p>Pandora: Granted to the extent not already satisfied</p>	<p>Spotify: Overbroad; Granted with respect to Farrell ¶ 13; Kaefer ¶¶15, 75-76; Tschollar ¶13</p>
<p>RFP 206</p>	<p>Spotify</p>	<p>Analyses of consumer perception, including prices at which services could or should be offered.</p>	<p>Same as response to RFP 89.</p>	<p>Granted in part/Denied in part</p>	

No.	Target	Nature of request	Response	Ruling	Notes
RFP 52	Apple	Analyses of bundle pricing, including re consumer willingness to pay	Apple has three bundled offerings that include music. ³ It should not have to produce pricing information about unbundled, non-music products. Apple has already produced information re bundles that include music. Apple does not set bundle price based on a sum of standalone prices.	GRANTED as to the six Apple products Apple actually bundles with music	If Apple claims to have produced all relevant materials, it must state so affirmatively.
Interrog. 2	Amazon	Bundle information: price, components; standalone prices, comparable standalone components		MOOT	Per Parties' Joint Statement filed 4/13/2022
Interrog. 4	Google	Pricing processes/personnel	Same as response to RFP 15.	GRANTED	

³ Apple's three bundled services that include music are: Individual, Family, and Premier. Apple contends that Copyright Owners seek pricing information regarding Apple products that are unbundled, non-music products. Apple then describes three bundled products, each of which includes non-music products that it offers on a standalone basis. Bundle pricing is a significant issue in determining Services' revenue. Each of Apple's bundles includes five or six other non-music services. Verizon also offers a bundle that includes two Apple services and other non-Apple products. *See* Apple Opposition at 3, n.1.