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 ("GEO") OPPOSITION AND MOTION TO DENY FRAUDULENT PROPOSED SETTLEMENT 2 ("PS2") AND "NEW" MEMORANDUM OF UNDERSTANDING ("MOU")

Participant George Johnson ("GEO"), a *pro se* Appellant songwriter, respectfully submits this *Opposition and Motion to Deny Fraudulent Proposed Settlement 2 and "New" Memorandum of Understanding ("MOU")* to the Copyright Royalty Board ("CRB") in *Phonorecords IV* in reply to the *Joint Motion to Adopt a New Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations* ("*Proposed Settlement 2"* or "PS2")[1]. The *Proposed Settlement 2* was filed on May 5, 2022 (but as of May 19, 2022, does not seem to be published in the *Federal*

[1] https://app.crb.gov/document/download/26619 May 5, 2022, PS2. submitted by counsel for the JRCP and NMPA/NSAI.

Register[2]) by the self-styled "Joint Record Company Participants" ("JRCP")[3] which includes Sony Music Entertainment ("SME"), UMG Recordings, Inc. ("UMG"), and Warner Music Group Corp. ("WMG") in conjunction with *their* lobbyists at the Recording Industry Association of America, Inc. ("RIAA") *and* the "Copyright Owners"[4], now newly renamed "Publisher Songwriter Participants"[5], the National Music Publishers' Association, Inc. ("NMPA") and Nashville Songwriters Association International ("NSAI") — all of the above named "The Participants".

GEO is Opposed to this *Proposed Settlement 2* for the following good reasons and respectfully requests Your Honors also DENY this *Proposed Settlement 2* for good cause and on the exact same grounds Your Honors denied the *Proposed Settlement 1* ("PS1")[6], except for the "static" rate issue.

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[2] https://www.federalregister.gov/index/2022/copyright-royalty-board No new PS2 settlement published as of May 19, 2022.

[3] 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. SME is owned by Sony Corp. in Japan, and UMG is owned by Vivendi in France. GEO will correct Headquartered to Owned one day.

[4] 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.

[5] 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.

[6] 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.

INTRODUCTION

As in almost every Subpart B filing by The Participants in this proceeding, they simply want Your Honors to once again *save them from themselves* by now disingenuously claiming that this new PS2 and "new" MOU are suddenly "reasonable" and *different*, while we all know there has been absolutely *no change whatsoever in the MOU or any of the other "totality of the record" self-dealing conflicts* that Your Honors *declined* in PS1.

Furthermore, just like their 1.) previous MOU, 2.) this "new" MOU, 3.) the declined *Proposed Settlement 1*, 4.) this *Proposed Settlement 2*, as well as related open filings like, 5.) the April 5, 2022 *Emergency Motion*[7], 6.) and May 5, 2022 *Withdrawal Motion* by The Participants and their counsel, *are all obvious "end runs" around the statutory license and/or Your Honors' rulings.*

In addition, 4 of the 6 above mentioned motions and filings *are still open*, and then add The Participants' requested Referral of Novel Material Question of Substantive Law ("NQL"), which makes 5 *open filings*, and while their PS1 was declined, the underlying law and conflicts are still at issue.

Moreover, The Participants' requested NQL, which Your Honors referred to the Register on April 28, 2022, was just another "end run" attempt around the statutory license and March 30, 2022 ruling.

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[7] https://app.crb.gov/document/download/26431 April 5, 2022, JRCP's *Emergency Motion* submitted by attorney Ms. Susan Chertkof, lead counsel for RIAA.

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."

For the above (and below) mentioned reasons, this is also why I (GEO) did not think it was *appropriate to accept* any new "offers" from The Participants since it would not only be premature, but only *prudent to wait and see* what Your Honors and the Register rule for PS1 — which contain the *exact same unreasonable and self-dealing conflicts of interest* issues in their "new" PS2.

I also didn't accept this new PS2 because I am concerned *about my own personal liability as an individual in this proceeding,* being continually tricked by these disingenuous lobbyists and their slippery attorneys into signing a "Settlement" that has so many antitrust, vertical integration, self-dealing, competition, willing buyer-willing seller issues *with* warning flags, smoke, possible fire, and other serious legal problems, *only a fool would sign such a document.*

I even asked The Participants for a 2 sentence clause that protects me from any future liability against The Participants not addressing or correcting any of their above mentioned antitrust and self-dealing conflicts of interest, *et al.* Of course, RIAA and NMPA counsel told me they would address these issues, but as usual, *lied to me, refused to negotiate, and did whatever they wanted.* All the while

telling me "how much they respect my passion", which is very weird, and how "the door is always open".

I guess the labels still have no respect for the me as a person, nor the dollars I am asking for, yet they still send out press releases to Billboard claiming to "stand" with songwriters, while filing motions to keep their own songwriters static at 9.1 cents to keep their record label costs down. So, we are back to their inability to match fine works with actually caring about individuals that write their songs.

Again, I am attempting to deal with labels, lawyers, and lobbyists who *do not negotiate, refuse to negotiate ever,* and *all RIAA and NMPA lawyers do to me* is delay, deny, play dumb, deceive and deflect…while making a ton of money off of price-fixing the *private property* of all American songwriters, *their competitors,* at 9.1 cents and $.00012 cents, with no consequence, accountability, or end in sight.

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"[8], and I could not agree more. It's a problem.

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

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

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[8] 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.

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 *PS1,* to rulings and statutory licenses suddenly *do apply in their PS2*?

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 *Proposed Settlement 2* and "new" MOU are just new "end runs" too.

It's important to remember here that the still open *Emergency Motion* was also designed, just like PS1, as a "carve out" to keep the 3 Major Labels' *own staff songwriter* "costs" static, stable, and for the benefit of the parent record label, not the vertically integrated, *lesser*, publishing divisions or songwriters. Again, The Participants only went to 12 cents because they were forced to by Your Honors.

It's clear from this PS2 that The Participants are simply trying to further delay the proceedings in hopes of not litigating Subpart B, which they clearly thought was another "slam dunk" or sure thing. The 3 Major Labels arrogantly assumed their 9.1 cent static rate PS1 would be instantly approved, so apparently they never filed a Written Direct Statement — "The Parties further request that the Judges stay and *not* move forward with litigation of statutory royalty rates and terms for Subpart B Configurations while the Settlement is under consideration."

Maybe it's time for WMP, SMP, and UMP inside counsel to defend themselves instead of RIAA, NSAI, and NMPA running cover for them as almost a

"front" since they play games with who the actual participants are in this proceeding, and with an actual significant interest, i.e., the actual 3 Major Publishers, not their disingenuous lobbyists, with $2 million dollar salaries, who also don't own one copyright, nor have never written a song.

ARGUMENT

Your Honors denied PS1 because of the "*totality of the record*" which included several unreasonable proposals, as well as the non-static rate for Subpart B.

These "totality of the record" self-dealing conflicts of interest, vertical integration, and other MOU *problems have not changed in PS2,* and therefore, GEO respectfully submits that Your Honors should also DENY PS2 for the exact same reasons Your Honors declined PS1, except for the "static" rate issue.

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.

Other than the non "static" rate adjustment, which The Participants *were forced to to change*[9] by Your Honors, the commenters, and this participant, *nothing substantial has changed from PS1 to PS2,* including the quid pro quo and end run MOU, as well as their other self-dealing "totality of the record" conflicts and vertical integration problems the Labels absolutely refuse to correct and hope and pray Your Honors "sweep under the rug".

[9] 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."

Additionally, this "new" MOU, by itself, is absolutely *no* different than the "irrelevant" MOU proposed by The Participants in their PS1. One reason Your Honors denied PS1 as not reasonable was because of the "smoke" and "possible fire" related to the MOU and the Participants have completely ignored Your Honors' rulings by not addressing these problems, simply refiling PS1 as PS2 at 12 cents.

The MOU by itself is directly tied to the vertical integrations and self-dealing conflicts of the 3 Major Record Labels, which are all foreign owned, and 2 of those labels are foreign headquartered where overall decisions and strategies are not made under the jurisdiction of United States law, which is a factor.

All 3 Major Record Labels are vertically integrated and owned by their parent companies, Vivendi, Sony Corp, and Access Industries, which also own the 3 Major Publishing Companies, who all self-deal and negotiate with themselves.

GEO is also not sure if the PS1 was also withdrawn because of the additional self-dealing conflicts and problems described in Footnote 5 of this filing, which to GEO is one of the most *fundamental frauds* by NMPA, NSAI (and the 3 Major Record Labels and lobbyist RIAA), acting as legitimate participants in place of the 3 Major Publishing Companies as "willing seller" or Licensor . (*See* more below)

Again, like the declined PS1, this PS2, the *Emergency Motion,* and *Withdrawal Motion* all provide *no legal basis or evidence* as to why any of their illogical filings and self-dealing settlements were reasonable, much less legal according to U.S. law.

Again, GEO is Opposed to this *Proposed Settlement 2* and respectfully requests Your Honors' DENY this *Proposed Settlement 2* on many of the same grounds Your Honors denied PS1, except for the "static" rate issue.

ADDITIONAL "TOTALITY OF THE RECORD" ARGUMENTS

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," or "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 since it is allegedly "no longer necessary" and "in view of" their newly submitted May, 5th, 2022 PS2, 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* since the NQL is *not moo*t and *absolutely necessary*.

In fact, I am starting to get to the point where it is clear that NMPA and NSAI, and Pryor Cashman attorneys should possibly no longer be allowed to participate simultaneously in their *dual roles* as attorneys for the Music Licenseing Collective ("MLC") and in this CRB proceeding which seems like another conflict.

Especially when NMPA and Pryor Cashman brag about *creating* the MLC.

Dual legal roles as MLC attorneys, while *also* NMPA attorneys *in these CRB proceedings* seems to be yet *another fundamental conflict of interest* for a laundry

list of reasons, in addition to NMPA owning no copyrights, "advocating for" while lying to their "own" staff songwriters about secretly freezing their royalty rates for 15 years, presenting this Panel with "disingenuous" arguments, lying about GEO *not being an objecting participant who was only proposing a BUY button*, as well as their serious self-dealing antitrust issues, *setting all their U.S. competitors at $.000 cents per stream*, while these billion-dollar corporations enjoy *stock options in these trillion-dollar monopoly Services*, ad-sales revenue, subscription revenue, download revenue, bonuses, salaries, personal expenses, personal stock options, 401k's, health benefits, *et al*, — all of which should be referred to the Department of Justice's ("DOJ") Antitrust Division and Congress for a comprehensive review in this participant's opinion.

In contrast, American staff songwriters lucky enough to be *on a draw they have to pay back to their independent or major publisher,* are "paid" $.00012 cents per stream, by force, with no sales, frozen rates, no inflation adjustments, 113 years of below market rates, and no way to sue since the MMA, created by NMPA and NSAI, removed all liability for copyright infringement of songs by the Services.

If Your Honors agree with any portion of GEO's argument and are allowed to refer criminal or unethical attorney behavior to the Register, the DOJ Antitrust Division, or Congress who has oversight, then I would be willing to support any of those possible actions if allowed. If I have to file a motion or refer my own NQL regarding the self-dealing and conflicts of interest to the Register, I will be happy to do so, but also do not want to add any more unnecessary work to Your Honors'

caseload nor slow this process down like the Participants have attempted to do with this new PS2 and all their recent motions regarding Subpart B.

The reason is, this is a clear NMPA / Pryor Cashman strategy of having attorneys in every corner of the government process which is also a very serious conflict of interest, unethical, and these experienced attorneys at Pryor Cashman *who know better* are simply trying to get away with whatever they can.

It's *disgusting* what Pryor Cashman has been allowed to get away with their *dual role* as *counsel* for the MLC and as a creator of the MMA (which I thought of).

Pryor Cashman and RIAA counsel portrait their role here like "two separate hands" in these *Phonorecords proceedings* the past 15 years, which is more like a stranglehold on all American songwriters with "one hand" on the left side of a songwriter's neck, and "the other hand" on the right side of the songwriter's neck.

The NMPA, Pryor Cashman, and RIAA's iron fists and stranglehold on the entire compulsory royalty system must be stopped and I pray Your Honors have the legal power to simply stop them cold in their tracks once and for all. It's wrong.

None of us American songwriters can breathe anymore with Pryor Cashman and NMPA's *hands* around all of our necks at $.000 per stream, with no sales, for the benefit of Pryor Cashman's own self interests, the benefit of a $2 million dollar per year salary for Mr. David Israelite, and for the benefit of 3 corporations, foreign owned, to DESTROY THEIR AMERICAN COMPETITORS, which they all have accomplished brilliantly the past 15 to 20 years at $.00012 cents per stream, with no sales. This evidence is why Music Row went from 4000 publishing deals to 400.

In addition to thinking this new end run around the statutory license will work this time, The Participants' PS2 was also apparently designed to delay the CRB another few months, to buy the 3 labels more time for several reasons, since they keep saying in this filing and in public that they need "more time".

Their partial strategy for filing this new PS2 seems to be that Your Honors will be forced to publish *a new comment period* and to GEO, this PS2 is not only a second end run attempt around the statutory license and CRB rulings, but this PS2 buys them more time to think of a way to get out of this dilemma that they created.

The Participants have to know Your Honors *might not accept a new Settlement that brazenly ignores ALL of their other major problems*, but these lobbyists, lawyers, and labels think that by only adjusting the 9.1 cents to 12 cents (It's actually up to 13 cents now here in May 2022) will be enough to deflect from their long list of conflicts of interest, self dealing, vertical integration, and the same old MOU this time around, *et al*.

The Participant's excuses, like in their *Emergency Motion* are exactly like a Star Wars inspired *wave of the hand* trick with, "these are not the droids you're looking for," when the droids are clearly standing right there in front of everyone.

It's like the Participants told Your Honors, "these are not the statutory licenses you're looking for," but fortunately, the wave of the hand trick did not work.

When you think about it, if The Participants's legal strategy and end runs were successful, and they were able to fool Your Honors and Register into thinking PS1 was "reasonable", what would that world look like?

Hypothetically, taking their legal arguments to their logical conclusions…

Thank goodness Your Honors did not allow that to happen and unfortunately we songwriters, not just GEO, *still need protection* from the end runs and chicanery from this powerful cabal of disingenuous lobbyists, major labels, and their lawyers.

GEO respectfully asks relief from, but not limited to, The Participants' continued and disingenuous 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.

These conflicts and end runs are also the same exact reasons to DENY this *Proposed Settlement 2* ("PS2") since all of these problems have been ignored in their newly submitted PS2 and are still the exact same conflicts and serious problems that are still open issues in the *Withdrawal Motion*, *Emergency Motion*, the NQL, and PS1.

The *one primary issue that has emerged* 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.

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 argues the following facts and evidence against the *PS2* for the following good reasons.

BEST REASONS TO DENY PROPOSED SETTLEMENT 2 AND NEW MOU

The following facts, arguments and evidence are good reasons to DENY the newest *Proposed Settlement 2* ("PS2") since, besides the static rate issue, they are also the *exact same fundamental reasons why* Your Honors denied the *Proposed Settlement 1* ("PS1") in the first place.

Most importantly, Your Honors suggested in your filings that The Participants address 3 primary issues to remedy the problems which were the:

a.) Static Rate Issue

b.) Vertical Integration and Self-Dealing "Warning Flags" in the Proceeding.

c.) The Memorandum of Understanding is an "End Run" around the License.

Unfortunately, the Participants chose to *only* address 1 out of the 3 issues, and *then ignored these other 2 main issues.*

Then they still filed a new PS2 regardless, praying it would work at 12 cents.

Therefore, the good cause and best reasons for Your Honors to DENY the *Proposed Settlement 2* ("PS2") and the "new" MOU are:

1. Like the PS2, the "new" MOU itself is *not new* whatsoever and has all the same self-dealing "smoke" and "possible fire" as stated in Your Honors' March 30th, 2022 declination of PS1. Like this PS2, this new "disingenuous" MOU is just another end run around the statutory license and Your Honors' PS1 declination ruling. 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." This includes the Late Fee Waiver provisions for NMPA *members only* that is discriminatory, which is also *another* end run around the statutory license, and must be denied.

2. The Participants refuse to even acknowledge and refuse to deal with the multiple "warning flags" of vertical integration and other conflicts of interest the Judges warned NMPA, RIAA, and the 3 Major Labels about. The Participants continue to sweep their serious anti-trust problems, anti-competitive behavior, and vertically integrated self-dealing under the rug, which is are many of the reasons why we are in this mess.
3. Again, the NQL has not been returned from the Register, is still at issue, and it would be premature for GEO to sign any new agreement without the benefit of the Register and Copyright Office counsel, or until old law can be "clarified", or there is *new law* on these issues.
4. Your Honors have not ruled on the NQL, the *Emergency Motion*, nor the *Withdrawal Motion*, that are still at issue, and therefore it would also be premature for GEO to sign or agree to any new PS2 without having the benefit of Your Honors' rulings.
5. The Participants have not resolved, and do not want to resolve, any of their "the totality of the record" issues like their "unreasonable" conflicts of interest that also contributed to the declination of the PS1. 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]

6. Subpart C is intertwined with B in many new ways 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 *by taking away an important static benchmark for the Services*! 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 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! While it may not be a reason to DENY, it shows how underhanded *our own songwriter advocates are* to songwriters, even those signed with the 3 Major Publishers who NMPA claims to represent.

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

7. As previously discussed in GEO's Motion to Deny for PS1, there is *no willing buyer, willing seller* ("WBWS") since the 3 major record labels like Universal Music Group ("UMG") are "on the one hand", allegedly negotiating with Universal Music Publishing ("UMP") "on the other hand", which is a fraud. This is because the 3 major music publishing companies are under the same corporate umbrella, and therefore negotiating with themselves. This clearly violates the Second rule of the No. 2 *Same Parties*, or *similar* parties rule under WBWS. GEO realizes that WBWS is not an official reason for declination but it's still a self dealing conflict and severely distorts the process, and the setting of reasonable rates and terms for everyone, except 3 foreign owned corporations.
8. The *parent corporations* like **Access Industries** are also negotiating with themselves since they own Warner Music Group and Warner Chappell Publishing. **Vivendi** in France owns Universal Music Group and Universal Music Publishing so this also clearly violates the No. 2 *Same Parties*, or *similar* parties rule under WBWS, now in *two separately* vertically integrated ways.
9. The fact that UMG and UMP and Vivendi negotiated *every* single *Phonorecords* agreement since 2006 *under a false pretense that they are separate parties at arms length*, <u>but instead are negotiating with themselves</u>, is a fraud to the court — those allegedly "voluntary agreements" should all be retroactively terminated under fraud and also *not used as benchmarks*.

10. These 3 major record labels and major music publishers are either headquartered, funded or controlled outside the United States, just like *Sony Japan and Vivendi in France are not fully subject to U.S law and jurisdiction*.
11. PS2 continues *3 foreign owned corporations setting all their American competitors rates*, and all competitors at $.00012 per stream — aka, *all* American musical works copyright creators, investors and property owners.
12. PS2 continues 3 foreign corporations setting *all* §115 royalty rates for *all their American competitors at 9.1 cents (or 12) as well*. While I realize we are setting a statutory rate, The Participants are still price fixing all their *competitors* at $.00012 and 9.1, and both still seem like clear violations of U.S. *antitrust laws*.
13. Add to the practical reality that *if* this process of "voluntary agreements" behind closed doors, REDACTED information, confidential Protective Orders, secret "irrelevant" MOU side agreements worth hundreds of millions of dollars, black boxes with hundreds of millions of dollars, etc. *was not all under the sanction of the U.S. government and the Copyright Office*, everyone would be in jail for colluding to *price-fix rates*, violate anti-trust laws, colluding in secret, and racketeering. In other words, all of this would be extremely illegal if this price-fixing was not sanctioned by Congress, yet it *still has the exact same horrible affect on competition and America citizens* whether it's legally sanctioned by the government *or* made illegal by the government. This is why we have rates of zero for *all* American songwriters — legalized price-fixing and anti-competitive behavior promoted by the federal government — taken advantage of by 3 Labels.

14. The above facts combined — foreign corporations, vertically integrated corporations, literally negotiating with themselves, in an American administrate law proceeding, to set ALL their American competition at literally zero cents, with no sales, *and using our own Copyright Office to take away all our exclusive rights* that were supposed to be protected under Art 1, Sec 8, Clause 8 of the Constitution and §115 of the Copyright Act, is not only astounding, but the *practical reality* these proceedings have led to after 113 years, $.02 to $.00012.

15. All the alleged laws in §385 are openly written by Participants and counsel for Google, DiMA ("Digital Media Association"), RIAA, Amazon, Spotify, Apple, Pandora, SiriusXM, iHeart Radio, Universal, Warners, Sony, RIAA, and our own lobbyists at NMPA and NSIA — yet none of these attorneys or companies **have been democratically elected, yet they can freely strip away all our sales, mechanical rights, reproduction rights, performance rights, distribution rights, and ephemeral rights.** This is a real problem I hope the CRB or Congress can correct since in addition to Your Honors determining the law, unelected lawyers are also rewriting copyright "law" every 5 years to fine tune *their business models and stock profits* under the guise of "voluntary negotiations" and primarily by way of the standard §385 Red Line Regulation Submissions included in Written Direct Statements. This is why I call streaming "legal piracy", because it is, and American music copyright law is now being partially written by foreign corporations, trillion-dollar monopolies,

billion-dollar record labels, and Big Tech lawyers, in addition to Your Honors' *rulings*, which should be the *actual rewriting* of copyright law in my opinion.

16. The people who pushed for WBWS in the Music Modernization Act are now the ones abusing it. The very first time it's been used NMPA makes a mockery of it.
17. WBWS was promised as a way to raise rates for songwriters and that is another fraud by NMPA and NSAI, who pushed for WBWS. Now, all of the Services are using WBWS to lower streaming rates *and* based upon the fact that NMPA and NSAI were *intentionally* keeping the 9.1 cents frozen for *4 rate proceedings*.
18. As mentioned before, NMPA, NSAI, RIAA, the RCPs, and their counsel clearly knew that their 9.1 cent freeze in *Phonorecords IV* will also be used by the Services as a benchmark in *Phonorecords V* to lower streaming rates, and that NMPA chose to keep it frozen to hurt their own Subpart C streaming case. This seems unimaginable if I were an attorney who is supposed to be representing songwriters. Counsel tells me they are "offended" by this "mischaracterization", that they are actually working in the interests of the 3 foreign owned record labels who pay their salaries and not the interests of average American songwriters and music publishers — and we now have proven this is 100% true.
19. The Participants are *simply trying to undo what Your Honors have already ruled*, and again, have no legal basis to do so.
20. This new PS2 is also 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 filed their *Withdrawal Motion* and this

PS2 as strategies to make sure that Your Honors and the Register *do not rule* and *do not make new law* on these fundamental questions of law, and on The Participants' litany of self-dealing, antitrust, and anti-competitive conflicts of interest within the CRB proceeding.

21. As mentioned by GEO, and partially alluded to in Your Honors' 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 intros new PS2, 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*. In reality, 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.

22. This *PS2* still 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 made clear.

23. If Your Honors DENY this *PS2* 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 PS2. For a public compulsory license for all American songwriter and publishers its vitally important that these issues are transparent and in the sunshine and that is what the labels are most afraid of — sunshine and transparency.

24. 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

[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.

findings that *should forever disqualify the NMPA from pretending to protect and enrich songwriters.* Could its songwriter gaslighting days be over?"

LIST OF PRYOR CASHMAN LEGAL CONFLICTS MADE BY CRB IN NQL

The following is a list of serious legal conflicts or potential areas of law that Pryor Cashman, NMPA, and CEO Mr. David Israelite are violating or manipulating which are serious concerns of GEO, songwriters that have reached out to me who are affected parties bound by the terms, and other participants in this proceeding.

As Your Honor's alluded to in your NQL letter, GEO would like to *present all the below issues in this proceeding*, but not being an attorney, I'm not quite sure how to go about it other than filing separate motions.

Therefore, if allowed by the CRB code, and Your Honors are permitted to pursue or at least untangle some of *your own* NQL footnote questions that are not formal questions in the NQL as noted, then GEO would respectfully like to *present* these same questions, right back toward Your Honors here. If I may, GEO formally and respectfully requests Your Honors investigate *your* following questions raised in the NQL letter regarding NMPA, NSAI and ultimately Pryor Cashman attorneys conflicts, *et al*. These serious and unresolved issues include:

1. **NMPA and NSAI Owns No Copyrights,** Footnote 5 — "[5] 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."
2. **NMPA and RIAA Willing Buyer, Willing Seller is Contrary to Statutory Requirements and Requires a Factual Determination**,

Footnote 8 — "[8] Some non-participant commenters alleged that the subject settlement was contrary to statutory requirements because it failed to meet the willing buyer-willing seller standard of section 115. *See* 87 Fed. Reg. at 18346. They alleged that the agreement rather represented a willing buyer-*unwilling* seller arrangement. *Id*. The Judges did not decline the settlement on this basis. The willing buyer-willing seller valuation standard requires a factual determination. Unwillingness to accept a settlement does not render the settlement contrary to law."

3. **NMPA and RIAA Multiple "Disingenuous Arguments" Must Be Accounted For,** Footnote 9 — "[9] 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." (This disingenuous argument is just one of many in this proceeding.)

4. **NMPA and RIAA's "New" MOU is the Same Fraudulent "End Run" Around Rulings and License,** Footnote 10 — "[10] The settling parties submitted a narrative description of the settlement as essentially a continuation of the *status quo* for subpart B configurations. They did not file or otherwise provide the Judges with any document incorporating all of the terms of the settlement. After comments objecting to the omission of the fourth iteration of the MOU, the settling parties provided the fourth iteration of the MOU to the Judges and the public as "Exhibit C" to their Further Comments. However, they did not provide (and still have not provided) to the Judges and the public at least three predecessor MOUs that were included by cross reference in the present MOU. The Judges were unable to determine what consideration would flow under the MOU and what impact, if any, that might have on license fees if the Judges were to adopt and apply universally the settlement. Ultimately, the Judges found they had insufficient information upon which to determine whether the settlement was contrary to statutory law, except with regard to 801(b)(7)(A). *See* 87 Fed. Reg. at 18349. This factual issue is, however, only one of the reasons the Judges declined to adopt the settlement as statutory rates and terms. The specific inclusion or exclusion of particular contractual terms is not a part of the Judges' referral of the legal question to the Register. *See* § 802(f)(1)(A)(i) (Judges may consult with Register on any matter other than question of fact). Nonetheless, the Judges found that non-party commenters and the objecting participant compiled a record sufficient to conclude on other grounds that the proposed settlement did not provide a reasonable basis for setting statutory rates and terms."

5. **Everything Pryor Cashman, NMPA, NSAI, RIAA, and the 3 JCRP File is an End Run around Ruling and License, Footnote 11** — "[11] 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."

6. **Do NMPA and NSAI Get Expressed Written Permission from Member Publishers and Songwriters, or Board of Directors When Signing Settlements and MOU Contracts?** Footnote 12 — "[12] NMPA and NSAI signed the settlement agreement as "Copyright Owners." NMPA and NSAI are trade organizations representing member music publishers and member songwriters, respectively. The extent of their authority with regard to making contracts binding on their members is a mixed question of fact and law not a part of this referral."

A few additional concerns regarding NMPA and Pryor Cashman counsel are; Your Honors alluded that if any of the participants had any evidence of conflicts of interest regarding NMPA's activities representing both parties then to bring it forward and I believe I do, and as usual, it's hiding in plain sight on Pryor Cashman's own website and in the Mechanical Licensing Collective ("MLC") proceeding Docket 19-CRB-0009 AA, *et al*.

There are at least 4 conflicts I see by NMPA and Pryor Cashman counsel which are now being brought up in this proceeding by Spotify and others and I would like to add a few more to the list that I think are extremely significant and when you combine them all, the picture it paints is crystal clear — Pryor Cashman attorneys, NMPA, and CEO Mr. David Israelite think this is "their" rate proceeding, that the MMA is "their" baby, and therefore, the MLC is theirs, *and seems to be clearly under their control.*

The most obvious conflicts and self dealing are:

1. It's established RIAA and NMPA (and Labels) are negotiating with themself in this proceeding and 3 prior Phonorecords proceedings which is fraud and a clear conflict of interest.
2. According to Pryor Cashman's own website and article titled "*High-Stakes Cases for High-Profile Music Clients"*, regarding partner Mr. Donald Zakarin, it clearly states up front that, **"Don is the go-to lawyer for major record companies, including Capitol Records, Sony Music, UM and Warner Music Group, as well as their most senior executives."**[12] Therefore…

   a.) The 3 Major Record Labels are his PRIMARY clients on his website, then

   b.) Mr. Zakarin also represents the Labels' "most senior executives," second.

   c.) Third, Mr. Zakarin finally states he represents the 3 Major Publishing companies as his other tertiary clients and…

   d.) Fourth, Mr. Zakarin finally gets around to representing lobbyist NMPA as his fourth tier of legal representation, after the 3 Record Labels, their most senior executives, their in-house publishing divisions, and finally the double-crossing lobbyists who are supposed to represent songwriters and publishers, but *actually represent* the 3 Major Labels, just like Mr. Zakarin.

   This is stunning to me, and at the very least, Pryor Cashman are manipulating this process along with Mr. Israelite and the RIAA, and should be removed from any *dual roles* or c*lear conflicts* as seen by Your Honors.

[12] https://www.pryorcashman.com/donald-s-zakarin

3. In 2019 Mr. Scibilia and Mr. Semel got the Songwriters Guild of America ("SGA") dismissed from the MLC proceeding for "owning no copyrights"[13], which is as hypocritical as it gets considering NMPA and NSAI own no copyrights and therefore should be dismissed from *Phonorecords IV* on the exact same grounds, et al. This filing by NMPA to eliminate any competition or criticism during the 2019 MLC creation, against Commenter SGA, leaves this participant speechless and it's clear Pryor Cashman has additional, and multiple conflicts of interest outside of GEO's previous filings.
4. Mr. Semel is representing both the MLC as counsel, and counsel for the NMPA in this proceeding, who also created the MLC, and his *dual role must end.* Of course, this is now a hot topic in these proceedings and when combined with these other Pryor Cashman attorneys representing the 3 Major Record Labels first and foremost, there are multiple unethical legal conflicts at play here.
5. Mr. Semel also represents the major record labels FIRST in this interview with Bloomberg law, *Pryor Cashman Partners Take on Streaming Music Provers (1)* reads, "Scibilia and Semel, who joined Pryor Cashman in 2006 and 1998 respectively, *represent major record labels*, major music publishers—including Sony/ATV and Warner Chappell-and high-profile songwriters and performing artists."[14] (emphasis added)

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[13] *Reply To the SGA Opposition To The Motion to Dismiss Petitions To Participate* filed by Mr. Scibilia and Mr. Semel in the Determination and Allocation of Initial Administrative Assessment to Fund Mechanical License Collective Docket No. 19-CRB-0009-AA

[14] https://news.bloomberglaw.com/us-law-week/pryor-cashman-partners-take-on-streaming-music-providers Feb. 25, 2020, by Mary Ellen Egan

The article also highlights up front that the "Duo crafted deal to create Mechanical Licensing Collective".

So, Pryor Cashman is clearly representing the 3 Major Record Labels FIRST, since that is their primary clientele. Pryor Cashman also represents EVERYONE in this proceeding except for GEO and the Services, and that is a serious conflict of interest for any lawyer, especially an experienced attorney *who knows better*.

Mr. David Israelite is also a former DOJ attorney who knows better.

One other small conflict while we are at it is the MLC "data" is primarily populated on, the clearly corrupt, Harry Fox Agency data (*See 8 Mile v. Spotify* with attorney Richard Busch[15] [16]) which was owned by NMPA for decades, run by NMPA CEO David Israelite, offloaded to SESAC in 2015[17], and *HFA filings[18] were directed by Pryor Cashman counsel Mr. Zakarin, et al.*

Again, Pryor Cashman has the bases loaded, hiding in plain sight and now even more "end runs" around the statutory license and legal ethics.

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[15] https://www.digitalmusicnews.com/wp-content/uploads/2019/08/Eminem_v_Spotify.pdf

[16] https://www.bbc.com/news/technology-49436077 Via HFA, Spotify streamed Eminem's songs *billions of times and claimed they couldn't find him to pay him*.

[17] https://musicrow.com/2015/07/sesac-to-acquire-harry-fox-agency-from-nmpa/

[18] https://app.crb.gov/document/download/1850.pdf HFA counsel Mr. Zakarin.

REASONS WHY "NEW" MOU IS UNREASONABLE AND MUST BE DENIED

Many of the reasons to deny the fraudulent Settlement PS2 are the exact same reasons to as above to DENY this "new" MOU between these same parties negotiating with themselves.

Namely, this "new" MOU violates the No. 2 *Same Parties* rule under willing buyer, willing seller ("WBWS") which counsel for NMPA, NSAI, and RIAA clearly knew.

This MOU also seems to be a clear *quid pro quo* to once again freeze the 9.1 cent rate in exchange for Late Fee provisions of 18% interest and other substantial financial consideration *only benefiting members of NMPA* — and not all American songwriters and music publishers "subject to" the compulsory license under §115.

If true, that alone seems incredibly unfair considering this is a public proceeding to set rates for *all* American songwriters and music publishers inside the Copyright Office. This process was not designed to help lobbyists pay their $2 million dollar salaries, or maybe it was?

All of these MOU issues seem extremely anti-competitive and a violation of antitrust laws. These issues are not *irrelevant* like NMPA once claimed to this Panel about the MOU and no longer do.

It's also important to note that this MOU 4 was *formerly secret*, and was only disclosed because of the First Round of Comments by a few songwriters, music attorneys, and our other trade organizations from around the world that spoke up.

They asked Your Honors to act, and you did.

Otherwise, the MOU would not have been disclosed and remained secret.

This is why in the last sentence of their August 10, 2021 Comment, counsel for NMPA, NSAI and RIAA implored the CRB to not only adopt their fraudulent settlement and secret MOU, but to get it done now…

"The Judges should adopt the Settlement, and they should do so *promptly* to streamline this proceeding in anticipation of the deadline for filing written direct statements." (emphasis added)

In other words, NMPA, NSAI, the RIAA and 3 Record Labels wanted the CRJ's to get this process over with as quickly as possible by "promptly" adopting their scheme.

Just as they are now in PS2 and the new MOu…

"The Parties respectfully request that the Judges expeditiously publish the royalty rates and terms described herein and set forth in the Attachment (the "Settlement") in the *Federal Register* for notice and comment in accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2) and adopt the Settlement industry-wide as the statutory royalty rates and terms for Subpart B Configurations."

"Accordingly, the Parties are pleased to have reached the Settlement, and respectfully request that the Judges (1) publish the Settlement for comment expeditiously; (2) promptly adopt the Settlement in its entirety as the Subpart B Configuration Rates and Terms; and (3) stay and not move forward with litigation of statutory royalty rates and terms for Subpart B Configurations while the Settlement is under consideration."

These proceedings are designed to help songwriters, not legally steal the value of their copyrights and property by fraudulent attorneys and lobbyists who claim to be working for the economic interest of songwriters, but are clearly not. It's pure nonsense what these same lobbyists and attorneys have been able to get away with this since 2006 and before. We songwriters beg Your Honors to please finally put a stop to these legal tricks, and help us songwriters get a minimum statutory rate that we can count on and not manipulated in the future by these same lobbyists, labels, and lawyers.

NEW MOU IS CLEARLY A QUID PRO QUO WITH 3 MAJOR LABELS AND IN NMPA'S OWN WORDS

In 2009, NMPA set up a website to direct publishers to their new "MOU 1 NMPA Late Fee Program Group 2" at www.NMPALateFeeSettlment.com which has a few paragraphs titled, "What is the NMPA Late Fee Program about?"[19]

Participant NMPA clearly states in their own words that the MOU is **"in exchange for waivers of certain late fees thought 2012"** and that is an exchange of one consideration for another consideration, or a *quid pro quo*.

> "In exchange for waivers of certain late fees through 2012, the Record Companies had to comply with the provisions of the MOU, including paying participating music publishers and foreign societies their respective publisher share of accrued P&U Royalties."

Apparently, there are *more* exchanges of consideration or *quid pro quos* that many of todays Commenters pointed out and explained much better than I,

[19] http://nmpalatefeesettlement.com/group_2/faq.php

especially attorney Ms. Gwendolyn Seale at link https://app.crb.gov/document/download/25938 who's Comments I 100% endorse and would join with as a Participant if allowed.

I hope her original Comments as well as attorney Mr. Chris Castle and songwriters, plus songwriter and SGA President Rick Carnes who joined with many songwriter trade groups, are all considered, once again since the reasons for denying for the old MOU have not changed.

As GEO stated before, how do you hold a law license and conveniently forget about a couple hundred million-dollar in MOU payments, then have the audacity to claim that is irrelevant to the Settlement?

Late fees of 1.5% are NOT royalties and these are not shared with songwriters, *so that was additional consideration that was paid to the major publishers by the major labels in return for a static 9.1 cent rate being excepted for another 5 years* — and this is a violation of the statutory license set by Your Honors and classic right pocket, left pocket *fraud that they have been getting away with since 2006.*

Side deals, like the MOU, are not appropriate and especially when everybody does not participate, and especially when these side deal MOU's are not disclosed.

The MOU is clearly part of any Settlement and a private, end run around the statutory license as Your Honors stated.

OTHER REASONS TO DENY NMPA, NSAI & RIAA "NEW" MOU & PS2

In the Phonorecords III determination, Your Honor's wrote:

> "But, Mr. Johnson has not even hinted at evidence to support his argument that the representative negotiators are engaged in anti-competitive price-fixing at below-market rates. The very definition of a market value is one that is reached by negotiations between a willing buyer and a willing seller, with neither party being under any compulsion to bargain."

As stated by GEO before in the last PS1 Comments, I think I've proven this issue here, and that NMPA, NSAI, RIAA, their counsel, and the 3 Major Record Labels *are engaged* in anti-competitive price-fixing of not only *all their own* publishing divisions and songwriters, but *all their American competitors*, et al.

It's an unwritten pact, like professional wrestling, that the publishers always lose to the record labels, and that is now clear.

NMPA and NSAI claim they have a "significant interest in this proceeding", yet I would argue that they don't.

NMPA and NSAI do not represent American songwriters, only foreign owned corporations that literally pay their salaries, including Mr. David Israelite's $2 million-dollar yearly salary (or more).

So, American lobbyists getting paid millions of dollars to help foreign corporations is one additional reason this 'new" MOU and PS2 should be denied in its entirety.

If NMPA were representing American songwriters and really "protecting and advancing" our "interests" they would be fighting to increase the 9.1 cent rate instead of spending hundreds of thousands of dollars on counsel to *fight against* any

rate increase in the 9.1 cents in *Phonorecords III* and *IV*, or working to get rid of all sales.

As I have written before, why would NMPA and NSAI spend so much money paying counsel to STOP the raising of the 9.1 cents in 2 separate rate proceedings if they actually advocated for the "economic interests" of songwriters, which they have fraudulently claimed to this Panel and in public?

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*[20] the issues regarding the 3 Major Labels, NMPA, NSAI, RIAA, their counsel, their conflicts, as well as "static "Subpart B issues.[21] I realize the CCC is not relevant now, but BMG said it.

BMG's statement is entirely relevant to the new PS2 and MOU since *BMG is the largest independent music publisher in the world*[22] and their statement specifically concerns PS1, 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 turning a "blind eye" to songwriters here and then tells the Labels to "*show further*

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[20] 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.*

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

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

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[23] 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*[24].

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

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[23] 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*.

[24] 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 requests that Your Honors' DENY the *Proposed Settlement 2* for the exact same unchanged conflicts of interests and "unreasonable" self-dealing reasons you denied *Proposed Settlement 1*, except for the "static rate" issue[25].

The Participants *offer no legal basis* nor good cause to publish their *Proposed Settlement 2 in the Federal Register as well as no legal basis in defense of their laundry list of self-dealing conflicts of interest and vertical integration "warning flags".*

The Participants also *offer no legal basis* to overturn or even legally defend against Your Honors' March 30, 2022 ruling and also why GEO respectfully requests that Your Honors DENY this unreasonable PS2.

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 addition, if Pryor Cashman counsel are continually permitted to hide, censor, redact, or deceive all of us about the basic facts and evidence, then the

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[25] While the static rate issue seems solved, it is still fraught with *no negotiation or mention* of arcane controlled composition clauses, old rate set date issues and possibly a new controlled compositions clause by the 3 Labels to shave the statutory rate set by Your Honors in response to the new static rate ruling and new Subpart B rate, and as another "end run".

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 set by Your Honors*.

This is also why it's important to DENY the *PS2* 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"), rate set dates, or other strategies to reduce or deduct from the statutory rates and terms Your Honors determine in this rate proceeding.

In conclusion, GEO respectfully submits this Opposition or Motion to Deny the "voluntary" *Proposed Settlement 2* (PS2), the "new" unchanged MOU, and therefore respectfully requests that Your Honors DENY the new unreasonable "settlement" in full, for the above mentioned good reasons, and for good cause.

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

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George D. Johnson (GEO), an individual songwriter and music publisher d.b.a. George Johnson Music Publishing (GJMP) (formerly BMI)

Thursday, May 19, 2022

Proof of Delivery

I hereby certify that on Thursday, May 19, 2022, I provided a true and correct copy of the George Johnson's Response in Opposition or Motion to Deny Fraudulent Proposed Settlement 2 (PS2) and New MOU to the following:

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

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

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

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

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

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

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

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

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

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

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

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

Signed: /s/ George D Johnson