

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
Washington, D.C.

**In the Matter of:**

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

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

**SPOTIFY USA INC. AND AMAZON.COM SERVICES LLC’S MOTION TO  
COMPEL COPYRIGHT OWNERS TO PRODUCE DOCUMENTS RELATED TO THE  
LITIGATION AND/OR SETTLEMENT OF SUBPART A/B RATES IN  
*PHONORECORDS I-IV***

Copyright Owners’ Written Rebuttal Statement leaves no doubt about whether the litigation and agreements setting rates for Subpart B (formerly Subpart A) in *Phonorecords I-IV* are “directly related” to Copyright Owners’ case. Danielle Aguirre, the Executive Vice President and General Counsel of the National Music Publishers’ Association, Inc. (the “NMPA”), testified in her rebuttal statement—at great length and in great detail—to Copyright Owners’ approach to, rationales for, and mindset regarding the litigation or settlement of subpart A/B rates in all four *Phonorecords* proceedings. See Written Rebuttal Testimony of Danielle Aguirre (“Aguirre WRT”) ¶¶ 38-50. Thus, pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b)(1), Spotify USA Inc. (“Spotify”) and Amazon.com Services LLC (“Amazon”) (collectively, the “Services”)<sup>1</sup> hereby move to compel the NMPA and the Nashville Songwriters Association

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<sup>1</sup> Pandora Media, LLC (“Pandora”) joins this Motion as to Interrogatory No. 22. As such, “Services” includes Pandora with respect to Interrogatory No. 22.

International (collectively, the “Copyright Owners”) to produce documents and information related to the litigation and/or settlement of these rates in *Phonorecords I-IV*.

Because Copyright Owners have injected these issues into the proceeding through Ms. Aguirre’s testimony, the documents and information the Services seek are “directly related to [Copyright Owners’] . . . written rebuttal statement” and well within the scope of permissible discovery. 37 C.F.R. § 351.5(b)(1); 17 U.S.C. § 803(b)(6)(C)(v); *see also Copyright Owners’ Rebuttal Introductory Memorandum, Phonorecords IV*, Dkt. No 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26471 (Apr. 22, 2022) at 24 (“Ms. Aguirre also explains why the NMPA entered into settlements with the record labels in both 2012 and 2016 and why it agreed to the now-rejected 2021 settlement.”). The Services seek these documents and information in Request Nos. 16-25 of Amazon and Spotify’s Set of Rebuttal Requests for Production of Documents, which is attached as Exhibit 1, and Interrogatory No. 22 in the Services’ Third Set of Interrogatories,<sup>2</sup> which is attached as Exhibit 2. Copyright Owners have refused to produce any such documents and information.

## **I. BACKGROUND**

On May 25, 2021, Copyright Owners and licensees Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. filed a *Motion To Adopt Settlement Of Statutory Royalty Rates And Terms For Subpart B Configurations* in this proceeding, informing the Judges that a settlement had been reached among those parties regarding the rates and terms under Section 115 for physical phonorecords, permanent digital downloads, ringtones, and music bundles

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<sup>2</sup> All of the services—Spotify, Amazon, Pandora, Apple Inc., and Google LLC—jointly served this third set of interrogatories.

presently addressed in 37 C.F.R. Part 385 Subpart B (the “Rejected Subpart B settlement” or “the Rejected Settlement”).<sup>3</sup> *Phonorecords IV*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 25288. The Rejected Settlement proposed that the rates and terms “presently set forth in 37 C.F.R. Part 385 Subparts A and B should continue to be applicable to the Record Company Participants and all other licensees of ‘mechanical’ rights in musical works for the Subpart B Configurations, for the rate period covered by the Proceeding, with only a few minor editorial changes to the applicable regulations[.]” *Id.* at 3. The Copyright Royalty Judges (“Judges”) rejected that settlement, concluding that the proposed rate was “unreasonable under the current record.” *See Determination of Royalty Rates and Terms*, 87 Fed. Reg. 18342, 18347 (Mar. 30, 2022).

Prior to the settlement’s rejection, Spotify, Amazon, and Pandora filed a motion to compel the production of Subpart B settlement documents. *See Motion to Compel Copyright Owners to Produce Subpart B Settlement Documents*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26023 (Jan. 10, 2022). The Judges denied that motion on the ground that it was not directly related to Copyright Owners’ written *direct* statement and that there was no suggestion that any of Copyright Owners’ witnesses considered the settlement in preparing their *direct* testimony. *Order on Services’ Motion to Compel Production of Subpart B Settlement Documents, Phonorecords IV*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26453 (Apr. 20, 2022) (“Motion to Compel Order”) at 7-9.

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<sup>3</sup> The Rejected Settlement also reached certain definitions applicable to Subpart B rates and terms that are presently addressed in 37 C.F.R. Part 385 Subpart A.

But Copyright Owners have now opened the door to discovery into these Subpart B settlement documents, and others, via their written *rebuttal* statement. They did so by choosing to submit the rebuttal testimony of Danielle Aguirre, which directly references and discusses the Rejected Settlement for purposes of arguing that it is not a “[u]seful [b]enchmark” in this proceeding. Aguirre WRT at 17 (Section Header); *see also, e.g., id.* ¶ 38 (“I do want to briefly address . . . the most recent proposed settlement that has now been rejected by the Judges”); *id.* ¶ 49 (“For all these reasons and the uncertainty of litigating[,] . . . we agreed to resolve what is now Subpart B by maintaining the prior rates”); *id.* ¶ 50 (noting “all of the factors that [the NMPA] took into account . . . in agreeing to settle [with the record labels] in *Phonorecords IV*”). Ms. Aguirre’s rebuttal testimony similarly references and discusses the litigation and settlement of the then-Subpart A rates in the three prior *Phonorecords* proceedings—and Copyright Owners’ strategies behind such litigation and settlements. *See, e.g., id.* ¶¶ 39-40 (discussing “the costs that were devoted to the litigation [of the then-Subpart A rate] in *Phonorecords I*” and the outcome of the litigation); *id.* ¶ 41 (explaining that, entering *Phonorecords II*, “the parties . . . were fully aware of the massive costs that had accompanied the fight over mechanical rates for physical product and digital downloads a mere two years earlier” and that the “NMPA was mindful that the cost and effort had achieved virtually nothing in terms of an increase in rates for physical product and digital downloads”—i.e., a prediction that they would fare no better by litigating the rates under the applicable standard); *id.* ¶¶ 44-45 (describing Copyright Owners’ belief, in the *Phonorecords III* proceeding, that “it did not appear to be the best use of precious resources to fight with record

labels for a rapidly diminishing source of mechanical income” and stating that “it was Copyright Owners’ decision to [therefore] settle again and roll forward the rates from 2012”).<sup>4</sup>

Based on Ms. Aguirre’s explicit testimony concerning the litigation and/or settlement of the Subpart A/B rates in all four *Phonorecords* proceedings, the Services served upon Copyright Owners their Set of Rebuttal Requests for Production of Documents and their Third Set of Interrogatories on May 3, 2022. These sets included Requests related to: (1) the Rejected Subpart B settlement (Request Nos. 24 and 25); (2) the *new* Subpart B settlement that was submitted on May 5, 2022 (Request No. 25)<sup>5</sup>; and (3) the litigation and/or settlement of the then-Subpart A rates in the *Phonorecords I-III* proceedings (Request Nos. 16-23 and Interrogatory No. 22). On May 13, 2022, Copyright Owners objected to these Requests as, *inter alia*, seeking “information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held.” *See* Copyright Owners’ Responses and Objections to the Set of Rebuttal Requests for Production from Amazon.com Services LLC and Spotify USA Inc., attached as Exhibit 3, at 12-17 (Responses to

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<sup>4</sup> In addition to Ms. Aguirre’s rebuttal testimony, Copyright Owners expressly referenced and discussed multiple Subpart A/B settlements in their rebuttal introductory memorandum. *See, e.g.*, Copyright Owners’ Rebuttal Introductory Memorandum at 22 (stating that the Rejected Settlement “was motivated by litigation expense and strategy concerns”); *id.* at 24 (“Ms. Aguirre also explains why the NMPA entered into settlements with the record labels in both 2012 and in 2016 and why it agreed to the now-rejected 2021 settlement.”).

<sup>5</sup> After the rebuttal submission deadline—indeed, even after the Services served their Set of Rebuttal Requests for Production of Documents on Copyright Owners—the parties to the Rejected Settlement filed a *Joint Motion to Adopt New Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations* on May 5, 2022. *Phonorecords IV*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26619. Although the Services’ rebuttal requests for production of course do not mention this new settlement by name (as it did not exist at the time of the requests’ service), the text of Rebuttal Request for Production No. 25 encompasses *both* the new Subpart B settlement *and* the Rejected Settlement. For the same reasons that Copyright Owners have put at issue the Rejected Settlement, they have similarly put at issue—and therefore opened discovery into—the new settlement.

Request Nos. 16-17, 19-20, 22-25).<sup>6</sup> Copyright Owners stood on this objection during the meet-and-confer process despite the obvious change in circumstances presented by the introduction of Ms. Aguirre’s rebuttal testimony in this proceeding.<sup>7</sup>

## II. ARGUMENT

A straightforward application of the governing regulations dictates the outcome of this Motion. Because documents concerning the litigation and/or settlement of Subpart A/B rates in the *Phonorecords I-IV* proceedings are “directly related” to Copyright Owners’ written rebuttal statement—namely, to the rebuttal case Copyright Owners’ set forth in Ms. Aguirre’s Written Rebuttal Testimony—the Services are entitled to obtain these documents through discovery. *See* 37 C.F.R. § 351.5(b)(1).

Ms. Aguirre’s testimony could not be clearer. It “address[es] the history of the Copyright Owners’ settlements with the record labels, *including the most recent proposed settlement that has now been rejected by the Judges.*” Aguirre WRT ¶ 38 (emphasis added). More specifically, Ms. Aguirre testified to “the NMPA’s approach[.]” to “the *Phonorecords IV* proceeding,” including how the NMPA “examined where best to allocate [its] limited resources[.]” *Id.* ¶ 47. What is more, she set forth the purported “reasons” why the NMPA “agreed to resolve what is now Subpart B by maintaining the prior rates” in the Rejected Settlement. *Id.* ¶ 49. And she claimed that “all

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<sup>6</sup> Copyright Owners similarly objected to Request No. 18 on the ground that it is “unrelated to this proceeding” and to Request No. 21 on the ground that it is “not directly related to [Copyright Owners’] Written Rebuttal Statement.” *See* Ex. 3 at 13-15 (Responses to Request Nos. 18, 21). They likewise objected to Interrogatory No. 22, claiming it seeks “information wholly irrelevant to the instant proceedings.” *See* Copyright Owners’ Responses and Objections to the Services’ Third Set of Interrogatories, attached as Exhibit 4, at 18 (Response to Interrogatory No. 22).

<sup>7</sup> Pursuant to 37 C.F.R. § 351.5(b)(1), the Services certify that they met and conferred with Copyright Owners on this issue in a good faith effort to resolve the dispute raised in this Motion, including in a teleconference on May 17, 2022.

of the factors that [the NMPA] took into account . . . in agreeing to settle” with the record labels in this proceeding “are completely inapplicable to the Service Participants.” *Id.* ¶ 50. In short, she testified to the reasoning and motivations behind Copyright Owners’ decision to enter into the Rejected Settlement (and the new settlement) and did so in support of Copyright Owners’ argument that any Subpart B settlement is irrelevant to this proceeding. Put differently, she testified to Copyright Owners’ mindset as it relates to the build up to and negotiation of the Rejected Subpart B settlement and the new Subpart B settlement. By including this testimony, Copyright Owners opened the door to discovery into the Rejected Settlement and the new settlement.

Copyright Owners’ rebuttal case similarly put at issue the litigation and/or settlement of the then-Subpart A rates in the earlier *Phonorecords I-III* proceedings by submitting Ms. Aguirre’s detailed testimony on that topic. In particular, Ms. Aguirre testified to Copyright Owners’ litigation strategies and judgments and their evaluations of the likely outcomes of litigation in the prior *Phonorecords* proceedings. *See, e.g.*, Aguirre WRT ¶ 38 (“I do want to briefly address the history of Copyright Owners’ settlements with the record labels”); *id.* ¶ 39 (discussing “the costs that were devoted to the litigation [of the then-Subpart A rate] in *Phonorecords I*”); *id.* ¶ 41 (explaining that, entering *Phonorecords II*, “the parties . . . were fully aware of the massive costs that had accompanied the fight over mechanical rates for physical product and digital downloads [in *Phonorecords I*]” and that the “NMPA was mindful that the cost and effort had achieved virtually nothing in terms of an increase in rates for physical product and digital downloads”); *id.* ¶¶ 44-45 (describing Copyright Owners’ belief that, in the *Phonorecords III* proceeding, “it did not appear to be the best use of precious resources to fight with record labels for a rapidly

diminishing source of mechanical income” and stating that “it was Copyright Owners’ decision to [therefore] settle again and roll forward the rates from 2012”). Simply put, all the Services’ Requests regarding the litigation and/or settlement of the Subpart A/B rates in *Phonorecords I-IV*—which are expressly tied to Ms. Aguirre’s rebuttal testimony through both quotations and citations—seek documents directly related to Copyright Owners’ written rebuttal statement and therefore fall well within the bounds of appropriate rebuttal discovery.

And, contrary to Copyright Owners’ assertions, the Judges have never held otherwise. In denying the Services’ earlier motion to compel the production of Subpart B settlement documents, the Judges, relying on a *Phonorecords III* order,<sup>8</sup> emphasized that “[t]he testimony the Services highlight in support of the Motion does not refer to the [Subpart B] settlement” and that “[t]he services do not suggest that any of Copyright Owners’ witnesses considered the settlement in preparing their testimony.” Motion to Compel Order at 7. That is no longer true. Copyright Owners have put the Subpart B settlement directly at issue through Ms. Aguirre’s rebuttal testimony. That testimony explicitly and repeatedly “refer[s] to the settlement,” and she undoubtedly “considered the settlement in preparing [her] testimony.” *Id.*; see Aguirre WRT ¶¶ 38, 47-50. The Judges’ conclusion that the Services’ earlier requests were not directly related to Copyright Owners’ *direct* submission provides no support for Copyright Owners’ refusal to produce documents that are directly related to topics that Copyright Owners themselves put at issue through their written *rebuttal* statement.

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<sup>8</sup> See *Order Denying Services’ Motion to Compel Copyright Owners to Produce Documents Relating to Subpart A Settlement, Phonorecords III*, Dkt. No. 16-CRB-0003-PR (2018-2022) (Feb. 14, 2017).



Copyright Owners argued during the May 17, 2022 meet-and-confer teleconference that the Services are not entitled to the requested documents because David Israelite’s *Phonorecords III* testimony already included explanations for why Copyright Owners have entered into settlements with the record labels in the past. That is a non sequitur. The Services’ Requests seek discovery that is “directly related” to Copyright Owners’ written rebuttal statement in this case. In light of Ms. Aguirre’s testimony, there can be no serious doubt that the relevant Requests satisfy this standard. The fact that the Services either did not seek or did not move to compel similar discovery based on Mr. Israelite’s *Phonorecords III* rebuttal testimony does not prevent them from seeking that relevant discovery now. Indeed, Copyright Owners merely aim to continue a pattern they began in *Phonorecords III*: hide the ball on direct, refuse to produce Subpart A/B settlement documents, and then have a rebuttal witness testify to or argue whatever they want regarding those settlements with impunity on rebuttal, without affording the Services an opportunity to test Copyright Owners’ self-serving assertions. The discovery rules do not countenance this behavior.

Regardless, Ms. Aguirre’s rebuttal testimony in this proceeding is broader than, and differs in material respects from, Mr. Israelite’s testimony in *Phonorecords III*. For instance, Ms. Aguirre testified that, as a justification for entering into the Rejected Settlement, the NMPA “agreed to resolve what is now Subpart B by maintaining the prior rates” in part due to “the uncertainty of litigating with record labels that were *adamantly opposed to increasing their costs for the part of their business that had already eroded so materially in recent years*[.]” Aguirre WRT ¶ 49 (emphasis added). Mr. Israelite provided no such similar testimony in the *Phonorecords III* proceeding. And, of course, Mr. Israelite’s *Phonorecords III* testimony did not relate to the Rejected Subpart B settlement or the new Subpart B settlement in *this* proceeding.

Copyright Owners also objected to many of these Requests as seeking privileged communications. *See* Ex. 3 at 12-17 (Responses to Request Nos. 16-17, 19-20, 22-25). But Copyright Owners waived those privileges when they affirmatively chose to include testimony from the NMPA’s General Counsel regarding the NMPA’s litigation judgments, evaluations of the likely outcome of litigation, and strategy for this proceeding in their rebuttal case. *See, e.g., Aguirre* WRT ¶ 47 (describing “the NMPA’s approach[] [to] the *Phonorecords IV* proceeding, including how it “examined where best to allocate [its] limited resources” and explaining that “[a]ddressing that source of mechanical income [streaming] needed to be our primary focus and where we directed our resources in a costly and burdensome rate proceeding”); *id.* ¶ 48 (stating that, entering the *Phonorecords IV* proceeding, the NMPA was “mindful that the mechanical rate . . . had not changed since before *Phonorecords I*, despite [its] having spent millions of dollars in unsuccessfully seeking to increase that rate in the litigated *Phonorecords I* proceeding”); *id.* ¶ 49 (“For all of these reasons and the uncertainty of litigating with record labels that were adamantly opposed to increasing their costs for the part of their business that had already eroded so materially in recent years since *Phonorecords I*, we agreed to resolve what is now Subpart B by maintaining the prior rates”). And they did the same when they chose to include testimony regarding Copyright Owners’ litigation evaluations and strategies from the past *Phonorecords* proceedings, including by designating David Israelite’s *Phonorecords III* rebuttal and hearing testimony into the record as part of their direct case. *See, e.g., id.* ¶ 41 (explaining that, entering *Phonorecords II*, the “NMPA was mindful that the cost and effort [from *Phonorecords I*] had achieved virtually nothing in terms of an increase in rates for physical product and digital downloads”); *id.* ¶¶ 44-45 (explaining that Copyright Owners decided “to settle again” in *Phonorecords III* because “it did

not appear to be the best use of precious resources to fight with record labels for a rapidly diminishing source of mechanical income”).

Copyright Owners may not treat privilege as both a sword and a shield, waiving privilege over Ms. Aguirre’s and other Copyright Owners attorneys’ impressions and communications when it benefits them, but asserting privilege over the same topics to prevent the Services from obtaining discovery into them. *See, e.g., In re Grand Jury Proceedings*, 219 F.3d 175, 182 (2d Cir. 2000) (“[A] party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.”) That is not how discovery works, and it is certainly not how privilege works—as Copyright Owners know all too well. *See Copyright Owners’ Motion to Compel Amazon to Produce Unredacted Documents and Challenge to Amazon’s Clawback Notice, Phonorecords IV*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26407 (Mar. 30, 2022) at 16 (quoting *In re Grand Jury Proceedings*, 219 F.3d at 182).<sup>9</sup>

Finally, the Services expect that Copyright Owners will argue, as they previously have, that a “heightened standard typically applie[s] to discovery requests seeking settlement communications.” *Memorandum in Opposition of Motion to Compel Copyright Owners to Produce Subpart B Settlement Documents, Phonorecords IV*, Dkt. No. 21-CRB-0001-PR (2023-2027), eCRB Dkt. No. 26042 (Jan. 19, 2022) at 6. Even accepting *arguendo* that such a standard

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<sup>9</sup> Copyright Owners misuse these principles in challenging Amazon’s redactions, as Amazon has explained separately. *See Amazon’s Opposition to Copyright Owners’ Motion to Compel Amazon to Produce Unredacted Documents and Challenge to Amazon’s Clawback Notice* at 8-15 (Apr. 8, 2022). Unlike Amazon, Copyright Owners here have offered testimony from an attorney about her litigation judgments. That effects a subject-matter waiver, whereas Amazon’s far more limited testimony—from a non-attorney—did not.

is indeed “typically” applied, the Services remain unaware of any instance in which that standard has been applied to immunize from discovery communications regarding a consummated settlement intended to establish *industry-wide statutory royalty rates*, rather than terms that apply only to the settling parties. Regardless, any confidentiality concerns are substantially outweighed by the prejudice that would result from allowing Copyright Owners to block the communications that *Copyright Owners* have directly put at issue through Ms. Aguirre’s Written Rebuttal Testimony, and that relate to one of the Services’ proposed benchmarks, which the Judges have held to be at least informative of the range of reasonable rates for musical works rights required for the Services. *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*, 84 Fed. Reg. 1918, 1946-47 (Feb. 5, 2019) (“The Judges find that the subpart A benchmark determined by this second approach is useful . . . to incorporate into the development of a zone of reasonableness of royalty rates within the rate structure adopted by the Judges in this proceeding.”).

### **III. CONCLUSION**

For the foregoing reasons, the Services respectfully request that the Judges compel Copyright Owners to produce documents related to the litigation and/or settlement of Subpart A/B rates in *Phonorecords I-IV*, which the Services seek in Request Nos. 16-25 of their Set of Rebuttal Requests for Production of Documents and Interrogatory No. 22.

Respectfully submitted,

By: /s/ Joseph R. Wetzel

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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
Washington, D.C.

**In the Matter of:**

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

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

**DECLARATION OF IVANA DUKANOVIC IN SUPPORT OF SPOTIFY USA  
INC. AND AMAZON.COM SERVICES LLC'S MOTION TO COMPEL COPYRIGHT  
OWNERS TO PRODUCE DOCUMENTS RELATED TO THE LITIGATION AND/OR  
SETTLEMENT OF SUBPART A/B RATES IN *PHONORECORDS I-IV***

I, Ivana Dukanovic, declare as follows:

1. I am a member in good standing of the State Bar of California. I am an associate at Latham & Watkins LLP and counsel for Spotify USA Inc. ("Spotify") in this proceeding. I submit this Declaration in support of Spotify and Amazon.com Services LLC's ("Amazon") Motion to Compel Copyright Owners to Produce Documents Related to the Litigation and/or Settlement of Subpart A/B Rates in *Phonorecords I-IV*. I have personal knowledge of the facts set forth in this Declaration and, if called to testify as a witness, I could and would testify competently.

2. On May 3, 2022, Spotify and Amazon served their Set of Rebuttal Requests for Production of Documents on the National Music Publishers' Association and the Nashville Songwriters Association International (collectively, the "Copyright Owners"). Attached hereto as **Exhibit 1** is a true and correct copy of Amazon and Spotify's Set of Rebuttal Requests for Production of Documents.

3. Also on May 3, 2022, Spotify, Amazon, Apple Inc., Google LLC, and Pandora Media, LLC (collectively, the “Services”) served their Third Set of Interrogatories on Copyright Owners. Attached hereto as **Exhibit 2** is a true and correct copy of the Services’ Third Set of Interrogatories.

4. On May 13, 2022, Copyright Owners submitted Responses and Objections to Amazon and Spotify’s Set of Rebuttal Requests for Production of Documents. Attached hereto as **Exhibit 3** is a true and correct copy of Copyright Owners’ Responses and Objections to Amazon and Spotify’s Set of Rebuttal Requests for Production of Documents.

5. Also on May 13, 2022, Copyright Owners submitted Responses and Objections to the Services’ Third Set of Interrogatories. Attached hereto as **Exhibit 4** is a true and correct copy of Copyright Owners’ Responses and Objections to the Services’ Third Set of Interrogatories.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this Declaration on May 24, 2022 in San Francisco, California.



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Ivana Dukanovic

# **EXHIBIT 1**

**PUBLIC VERSION**



**Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.**

**In the Matter of:**

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

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

**AMAZON AND SPOTIFY’S SET OF REBUTTAL REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO THE COPYRIGHT OWNERS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq.; 37 C.F.R. § 351.5; and the Copyright Royalty Judges’ (the “Judges”) Order Following April 7, 2022 Status Conference, dated April 8, 2022 (“April 8 Order”), Amazon.com Services LLC (“Amazon”) and Spotify USA Inc. (“Spotify”) hereby requests that the National Music Publishers’ Association (“NMPA”) and Nashville Songwriters Association International (“NSAI”) (collectively, the “Copyright Owners”) produce all Documents responsive to this Set of Rebuttal Requests For Production of Documents (the “Requests”), subject to the definitions and instructions set forth below. Pursuant to the April 8 Order and the parties’ email agreement, written objections and responses to these Requests must be delivered to Amazon on or before May 13, 2022, and production of Documents responsive to these Requests must be substantially completed by no later than May 18, 2022.

**DEFINITIONS**

1. The term “Communications” means the transmittal of information in the form of facts, ideas, inquiries, or otherwise, in any medium, including without limitation, paper and email correspondence.

2. The term “concerning” means relating to, discussing, describing, evidencing, constituting, comprising, memorializing, or analyzing.

3. The terms “Copyright Owners,” “You,” and “Your” mean the NMPA and the NSAI. The term “Your members” refers to the Music Publishers whose executives sit on the NMPA Board of Directors, including without limitation, The Richmond Organization; Sony Music Publishing (“SMP”); Universal Music Publishing Group (“UMPG”); Warner/Chappell Music (“WCM”); Kobalt Music Group; Round Hill Music; BMG Rights Management; Downtown Music Publishing; Reservoir Media Management; ABKCO Music & Records, Inc.; Leeds Music; Disney Music Group; peermusic; Big Machine Music; Hipgnosis Songs Group; Concord Music Group; Spirit Music Group; Liz Rose Music Publishing; Mayimba Music; Primary Wave Music; and any parents, subsidiaries, affiliates, or agents of each of them.

4. “Current Proceeding” refers to the current proceeding before the Copyright Royalty Board for the Determination of Rates and Terms for Making and Distributing Phonorecords (*Phonorecords IV*), Docket No. 21-CRB-0001-PR (2023-2027).

5. “Digital Music License” refers to any agreement by which the holder of a copyright in a musical composition grants, restricts, or otherwise defines the scope or terms of use of a Digital Music Licensee’s authorization to use recordings of musical compositions, whether in audio or audiovisual format, whether in whole or in part.

6. “Digital Music Licensee” means any service that transmits sound recordings or audiovisual works embodying musical compositions to the public digitally (not including services primarily engaged in the transmission of film or television), including without limitation, by way of Permanent Download, Limited Download, Interactive Stream, or Non-Interactive Stream, whether for free or by subscription, whether offering a single type of music

service or bundling together different music services (*e.g.*, without limitation, offering both Interactive Streams and Non-Interactive Streams, or Interactive Streams and Permanent Downloads), and whether such transmissions are to a personal computer, television, receiver, set-top box, mobile/cellular phone, other portable device (*i.e.*, iPad, smartphone, tablet computer, laptop, etc.), in-car dashboard, connected speaker, fitness equipment, or any other electronic device or platform, and whether or not such services are accompanied by or bundled with other service offerings.

7. The terms “Document” and “Documents” shall have the same meaning as the term “document” in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall include all such items, including electronically-stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agendas, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email, or any other data compilations from which information can be obtained or translated. The term “Document” also means every copy of a document where such a copy is not an identical duplicate of the original, whether because of deletions, underlining, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind. The term “Document” encompasses Communications.

8. “Interactive Stream” or “Interactive Streaming” refers to the digital transmission of a sound recording or audiovisual works embodying a musical composition to a computer or other electronic device at the specific request of an end user in order to allow the end user to

listen to or view the recording or work contemporaneously with the user's request. Interactive Streams are sometimes referred to in the industry as "on-demand" streams.

9. "Interactive Streaming Service" means any service that allows its users to access musical compositions by way of Interactive Streams (not including services primarily engaged in the transmission of film or television), without regard to whether the service provider also offers Non-Interactive Streaming or other service offerings.

10. A "Limited Download" is a digital phonorecord that is delivered electronically to a computer or other electronic device to reside there on a limited basis, such that the recipient is restricted to playing the digital phonorecord for a limited amount of time (such as, for example, for 30 days) or a limited number of times (such as, for example, 12 times), after which the digital phonorecord can no longer be played by the recipient. Limited Downloads are sometimes referred to in the industry as "tethered downloads."

11. "Major Labels" refers to UMG Recordings, Inc., Warner Music Group Corp., and Sony Music Entertainment, and all of their affiliated Recording Companies.

12. "Mechanical License" refers to the statutory license provided by Section 115 of the Copyright Act or any agreement by which a Music Publisher or other holder of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of a license to make and distribute copies of the copyright holder's musical composition in a phonorecord or phonorecords, whether or not the agreement also grants rights other than reproduction and distribution. It includes, for purposes of these Requests, Interactive Streaming.

13. "Mechanical Royalty" means any royalty paid pursuant to a Mechanical License.

14. "MLC" refers to the Mechanical Licensing Collective.

15. “Music Publisher” means any person, entity, or business unit that owns, controls, or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, musical compositions, in whole or in part, including without limitation, any companies represented on the board of the NMPA or otherwise referenced in the Written Direct Statement of the Copyright Owners (*e.g.*, SMP, UMPG, WCM, BMG Rights Management, Downtown Music Publishing, Kobalt Music Group). Any references to a Music Publisher specifically by name shall likewise be construed to include any and all parent, subsidiary, affiliate, successor, or predecessor companies of that Music Publisher that also serve or served as Music Publishers.

16. “NMPA” refers to the National Music Publishers’ Association, and its directors, officers, shareholders, board members, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, and anyone else acting on their behalf, as well as the Music Publishers whose executives sit on the NMPA Board of Directors.

17. “Non-Interactive Stream” or “Non-Interactive Streaming” refers to a transmission eligible for licensing pursuant to 17 U.S.C. § 114.

18. “Non-Interactive Streaming Service” means any service that makes digital audio transmissions of sound recordings embodying musical compositions by way of Non-Interactive Streams, without regard to whether the service provider also separately offers Interactive Streaming or other service offerings.

19. “NSAI” refers to the Nashville Songwriters Association International, and its directors, officers, shareholders, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, NSAI members, and anyone else acting on their behalf.

20. “Partial Phonorecords III Settlement” refers to *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III); Subpart A Configurations of the Mechanical License*, 82 Fed. Reg. 15297 (Mar. 28, 2017).

21. “Performance License” refers to any agreement by which a Music Publisher, Songwriter, or other holder or administrator of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of, a license to publicly perform the copyright holder’s musical composition, whether or not the agreement also grants rights other than public performance, whether directly or through a third party such as a PRO.

22. “Performance Royalty” refers to any royalty paid pursuant to a Performance License.

23. “Performing Rights Organization” or “PRO” refers to any organization whose primary role is to collect Performance Royalties on behalf of Songwriters (*e.g.*, the American Society of Composers, Authors & Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), the Society of European Stage Authors and Composers, and Global Music Rights (“GMR”) and its directors, officers, shareholders, board members, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, and anyone else acting on their behalf.

24. A “Permanent Download” is an individual delivery of a phonorecord by digital transmission of a sound recording embodying a musical composition that results in a reproduction made by or for the recipient which may be retained and played by the recipient on a permanent basis.

25. The term “person” is defined as any natural person or any legal entity, including without limitation, any business or governmental entity or association.

26. “Phonorecords I” refers to *In re Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding*, Dkt. No. 2006-3 CRB DPRA.
27. “Phonorecords I Settlement” refers to *Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding*, 74 Fed. Reg. 4510 (Jan. 26, 2009).
28. “Phonorecords II” refers to *In re Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords*, Dkt. No. 2001-3 CRB Phonorecords II.
29. “Phonorecords II Settlement” refers to *Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords*, 78 Fed. Reg. 67938 (Nov. 13, 2013).
30. “Phonorecords III” refers to *In re Determination of Rates and Terms for Making And Distributing Phonorecords (Phonorecords III)*, Dkt. No. 16-CRB-0003-PR, including the remand and any related appeals already decided or decided in the future.
31. “Phonorecords III Original Determination” refers to the Final Determination in *In re Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*, Docket No. 16-CRB-0003-PR (2018-2022), published at 84 Fed. Reg. 1918 (Feb. 5, 2019).
32. “Record Company” means any person, entity, or business unit that owns or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, sound recordings. “Record Companies” include, but are not limited to, the Major Labels.
33. “Recording Artist” refers to any individual who performs a musical work embodied in a sound recording.

34. “Rejected Phonorecords IV Settlement” refers to the proposed partial settlement rejected in *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)*, 87 Fed. Reg. 18342 (Mar. 30, 2022).

35. “Songwriter” refers to: (1) any individual or entity who has composed, written, or received credit for all or any portion of the music or lyrics for any musical composition, or (2) any client or royaltor of a Music Publisher entitled to receive royalties as a result of the licensing of a musical composition.

36. “Sound Recording Royalties” refers to any royalty paid pursuant to a copyright license with respect to sound recordings.



## **INSTRUCTIONS**

1. These Requests are continuing in nature, and in the event that You become aware of additional responsive information or Documents at any time between the date of these Requests and the time a determination is issued in the Current Proceeding, You are requested to promptly produce such additional information or Documents.

2. Each Request should be answered separately and in order. For each Request, the response must state the Documents that will be produced and by when the production will be made.

3. Responsive Documents shall be produced in a manner organized and labeled to correspond with the categories in these Requests or as kept by You in the ordinary course of business. Electronically stored information (“ESI”) shall be produced in a format with metadata to be agreed upon by the parties or as ordered by the Judges.

4. If, based upon any objection other than a claim of privilege, You refuse to respond to any Request, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of the propriety of such refusal and the manner and extent to which You will limit Your production based upon such objection. If Your objection is only to part of the Request, You must specify the part and the basis for the objection, and produce the rest of the responsive Documents.

5. If You object to any Request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents constitute attorney work product, You are hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document’s

originator, the name of the person(s) to whom it is addressed, the names of all person(s) who were shown copies or to whom copies were distributed, and the names of each person participating in the preparation of the Document or in whose name the Document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the Document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. Whenever appropriate in these Requests, the singular form shall include the plural and vice-versa. The connectors "and" and "or" are terms of inclusion and not exclusion, and shall be construed as necessary to bring within the scope of each Request each Document and thing that if construed otherwise might be considered to be outside of its scope. "Including" means "including but not limited to." The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Request.

7. If You produced all Documents responsive to a Request during the Exchange of Preliminary Disclosures or Direct Discovery, You may satisfy the Request by citing to the Bates numbers of the previously produced Documents.

8. Unless otherwise specified or apparent from the nature of the Request (*e.g.*, Requests for Documents concerning a particular settlement or event), each Request set forth below is directed to You and all of Your members, and seeks Documents dated, created, modified, or in effect from January 1, 2017 through April 22, 2022 (the "Time Period").

9. Unless otherwise specified or apparent from the nature of the Request, each Request to directed to all of Your members.

## REQUESTS FOR DOCUMENTS

1. All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following agreements and their amendments<sup>1</sup>:

- a. [REDACTED] Brodsky WRT ¶ 57.
- b. [REDACTED] Brodsky WRT ¶ 58.
- c. [REDACTED] Brodsky WRT ¶ 60.
- d. [REDACTED] Brodsky WRT ¶ 60.
- e. [REDACTED] Brodsky WRT ¶ 67.
- f. [REDACTED] Brodsky WRT ¶ 67.
- g. [REDACTED] Brodsky WRT ¶¶ 80-81.
- h. [REDACTED] cited in paragraph 15, 18, 19, 22, 31, and 37 of the Kokakis WRT.
- i. [REDACTED] Kokakis WRT ¶¶ 46, 48, 50.
- j. [REDACTED] Madaj WRT ¶¶ 10-30.

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<sup>1</sup> Consistent with its position during direct discovery, Spotify joins Request No. 1 and any similar Requests except to the extent they call for extensive searches and production of internal analyses or email communications regarding licensing negotiations referenced therein.

2. All currently operative agreements between Music Publishers and Songwriters. *E.g.*, Beekman WRT ¶¶ 21, 28, 35, 44, 46, 71 (making claims about all or most Songwriter agreements); Kelly WRT ¶¶ 29, 32, 36-37, 39, 59 (same).<sup>2</sup>
3. All Songwriter-related Documents that You agreed to produce pursuant to the compromise reached on January 14, 2022, but have thus far failed to produce. *E.g.*, Beekman WRT ¶¶ 21, 71 (making claims about UMPG’s Songwriter agreements); Kelly WRT ¶¶ 32, 59 n.12 (making claims about SMP’s Songwriter agreements).
4. For each calendar year since 2009, Documents sufficient to show the U.S. market share attributed by You to each of Your members in the United States. Aguirre WRT ¶ 6.
5. All Documents concerning “the anti-piracy campaigns of the NMPA and the RIAA and their members.” Aguirre WRT ¶ 12; *see also* Brodsky WRT ¶¶ 82-83.
6. All Documents concerning the effect that Interactive Streaming Services have had on music piracy from 2001 to the present. Brodsky WRT ¶¶ 82-84.
7. All Documents concerning the efforts by the Copyright Owners and Record Companies, including the RIAA, to bring lawsuits against Napster, Grokster, MP3.com, and “against the most egregious individual users,” including but not limited to any Documents and

<sup>2</sup> As the Judges recently held, “the issue of songwriter shares of publisher royalty income” and “publisher-songwriter contracts” appear “irrelevant” in this proceeding. Order on Google’s Motion to Compel at 5 (Apr. 28, 2022); Order Granting In Part and Denying In Part Services’ Motion to Compel at 5 (May 2, 2022). Thus, the Judges have invited the Copyright Owners to “withdraw[] any argument, evidence, and testimony regarding the level of songwriter income derived from publisher contracts.” Order on Google’s Motion to Compel at 5 (Apr. 28, 2022). If the Copyright Owners do so, Amazon and Spotify will agree to withdraw any Requests that are keyed to such withdrawn testimony. In the meantime, however, Amazon and Spotify serve certain Requests to preserve their rights to rebut the Copyright Owners’ testimony, even testimony that Amazon and Spotify believe is irrelevant under the Judges’ ruling. Nothing in those Requests should be construed as a concession that the Copyright Owners’ testimony is relevant under the willing-buyer-willing-seller standard.

Communications regarding public perception of these suits. Brodsky WRT ¶ 83. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “stream ripping.” Aguirre WRT ¶ 11; *see also* Brodsky WRT ¶ 84.

8. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact of streaming on “other forms of income.” Aguirre WRT ¶ 19.

9. Documents sufficient to show all charges that You or Your members billed to or recouped from Songwriters or Recording Artists for legal fees arising out of the actions listed in Aguirre WRT ¶ 13.

10. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the negotiation and drafting of the bill that became the MMA.” Aguirre WRT ¶ 7; *see also id.* ¶ 30; Beekman WRT ¶ 57.

11. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the unpaid royalties that the Services delivered to the MLC in February 2021. Aguirre WRT ¶¶ 20-24; Beekman WRT ¶¶ 56, 60; Kelly WRT ¶¶ 69, 73.

12. Documents sufficient to show each Music Publishers’ costs of licensing administration for Section 115 royalties at the most detailed level at which such records are kept in the ordinary course of business. Aguirre WRT ¶¶ 27-33.

13. Documents sufficient to show all costs incurred by Music Publishers to register their musical work information with the MLC. Aguirre WRT ¶ 29.

14. Documents sufficient to show any and all costs incurred by the MLC to ensure that the MLC database is accurate and up to date. Aguirre WRT ¶ 29.

15. All Documents concerning the establishment of the Musical Works Database (“MWD”), the completeness of the MWD, and any known issues, problems, deficiencies, and

problems therewith, including any complaints registered by any Music Publisher or third party with the MLC regarding the MWD. Aguirre WRT ¶ 34.

16. All Documents concerning the negotiation of the Phonorecords I Settlement. Aguirre WRT ¶¶ 39-40.

17. All Documents concerning the negotiation of the Phonorecords II Settlement, Aguirre WRT ¶¶ 8, 41-45, including all Documents concerning the NMPA's alleged perception that "nothing substantial had changed [by 2011] that made it appear that the Copyright Owners could expect that they would achieve some meaningful increase in the mechanical rate" in *Phonorecords II*, *id.* ¶ 41.

18. All Documents concerning the origin of the 10.5% revenue rate.

19. All Documents concerning the costs that You incurred for participating in any rate proceeding before the Copyright Royalty Board, including but not limited to Documents sufficient to identify the relevant proceeding and how You allocated such costs among Your members, including any charges based upon any market share data that You possess. Aguirre WRT ¶ 40.

20. All Documents concerning Your alleged perception that "it did not appear to be the best use of precious resources" to litigate over the Subpart A rates in *Phonorecords III*, Aguirre WRT ¶ 44, including any forecasts or projections of the cost associated with such litigation; any forecasts or projections of the mechanical rate that You thought such litigation would obtain; and any forecasts or projections about the overall volume of sales or revenues from physical sales or permanent digitals during the time period covered by *Phonorecords III*. This Request includes responsive Communications between the NMPA and any outside counsel retained to potentially litigate or settle the Subpart A rates in *Phonorecords III*.

21. All analyses, memoranda, presentations, studies, surveys, and research findings that support or contradict the assertion that mechanical income from physical sales “would increasingly become a less consequential part of the income of Songwriters and Music Publishers during the five-year period of *Phonorecords III*.” Aguirre WRT ¶ 44.

22. All Documents concerning the negotiation of the Partial *Phonorecords III* Settlement, including all email or other Communications relating to that settlement between You and Record Companies. Aguirre WRT ¶¶ 8, 44-45.

23. All Documents concerning “the Copyright Owners’ decision to settle” with Record Companies in *Phonorecords III*, including but not limited to all Documents concerning Your “belief that mechanical income from the sale of physical recordings and digital downloads was going to continue to diminish.” Aguirre WRT ¶ 45.

24. All Documents concerning the negotiation of the Rejected *Phonorecords IV* Settlement, Aguirre WRT ¶¶ 8, 47-49, including all email and other Communications between You and Record Companies concerning Record Companies’ alleged “adamant[ ] oppos[ition] to increasing” the mechanical rate for Subpart B services in the Current Proceeding, *id.* ¶ 49.

25. All analyses, memoranda, presentations, studies, surveys, and research findings concerning Your assessment of the costs or benefits of litigating the Subpart B rate in the Current Proceeding, including any analysis of where You should “allocate [Your] limited resources,” any “assessment of what sources of mechanical income were most valuable to rightsholders,” or any forecasts about the amount of resources You would have to devote to litigating any “costly and burdensome rate proceeding” with Record Companies. Aguirre WRT ¶ 47. This Request includes responsive Communications between the NMPA and any outside counsel retained to potentially litigate or settle the Subpart B rates in *Phonorecords IV*.

26. Documents sufficient to show the process by which the proposal to include plays of public domain works in the number of plays would “artificially reduce[ ]” the Per-Work Royalty Allocation of the Payable Royalty Pool. Aguirre WRT ¶ 52.

27. All sales decks, prospectuses, securities filings, risk factor analyses, studies, and surveys concerning the sale and valuation of catalogs owned by Your members.

28. All analyses, memoranda, presentation decks, prospectuses, risk disclosures, studies, and research findings, concerning private equity and investor-backed entities such as Hipgnosis, Round Hill, Downtown, Spirit, and Primary Wave, and the financial investments made for new and existing Songwriters.

29. All Documents concerning the difference in financial investments, costs, and risks undertaken as between full-service Music Publishing and private equity or investor-backed publishing entities.

30. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the values that private equity investors have been paying for a certain limited number of catalogues.” Aguirre WRT ¶ 8.

31. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the reasons for, valuation of, or negotiations over the following acquisitions:

- a. UMPG’s acquisition of the Bob Dylan catalog. Aguirre WRT ¶¶ 61-62.
- b. Warner Chappell’s acquisition of the Bruno Mars catalog. Aguirre WRT ¶¶ 61-62.
- c. SMP’s acquisition of the Paul Simon catalog. Aguirre WRT ¶¶ 61-62.



32. All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following agreements and their amendments:<sup>3</sup>

a. [REDACTED]  
Bebawi WRT ¶ 25 n.7.

b. [REDACTED]  
Bebawi WRT ¶ 25 n.7.

c. [REDACTED]  
Bebawi WRT ¶ 25 n.7.

d. [REDACTED]  
Bebawi WRT ¶ 25 n.7.

33. All Documents, including but not limited to licensing agreements, concerning negotiated agreements in European and other ex-U.S. territories, including Canada. Bebawi WRT ¶ 5.

34. All Documents concerning the total payments to Your members in Europe for sound recordings and musical works, including the composition and allocation of those payments to rightsholders (*e.g.*, Record Companies, Music Publishers, PROs).

35. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the ratio between Mechanical Royalties and Performance Royalties in jurisdictions

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<sup>3</sup> Amazon does not believe that Mr. Bebawi's testimony about European licensing deals was properly included in the Copyright Owners' Written Rebuttal Statement, and Amazon intends to move to strike it. The Services are including Request Nos. 32-36 and 38-51 about those deals solely to preserve their rights in the event that the Judges allow Mr. Bebawi's improper rebuttal testimony to stand.

outside the United States, including but not limited to Tier 1 European countries as referenced in the Bebawi WRT.

36. All analyses, memoranda, presentations, studies, surveys, and research findings concerning [REDACTED] referenced in Request No. 19.

37. All Documents supporting or contradicting the contention that “licensees are in most cases not focused on optimizing the value of the music element of what they do.” Bebawi WRT ¶ 22.

38. All Documents comparing the Mechanical Royalties actually paid to Songwriters from ex-U.S. Interactive Streaming to the Mechanical Royalties actually paid to Songwriters from U.S. Interactive Streaming. Bebawi WRT ¶¶ 24-30.

39. All analyses, memoranda, presentations, studies, surveys, and research findings relating to the Music Publishers’ analysis of the “legitimate expectation of songwriters” regarding the value of Songwriters’ rights licensed by Music Publishers. Bebawi WRT ¶ 23.

40. All agreements between Music Publishers and European collecting societies (SACEM, ICE, PRS, GEMA, STIM, etc.).

41. All Documents, including email Communications, between Music Publishers and the European collecting societies (SACEM, ICE, PRS, GEMA, STIM, etc.), including but not limited to Documents concerning licenses between those collecting societies and Interactive Streaming Services, and Documents concerning any competitive authority (*i.e.*, the European Commission).

42. All Documents reflecting the rates paid for musical works licensing (“Rate Cards”) in territories outside of the United States.

43. All Documents reflecting the Music Publishers' and European collecting societies' views on the allocation of royalties between Mechanical Royalties and Performance Royalties.

44. Documents sufficient to show which, if any, Music Publishers, or representatives or agents of Music Publishers, sit on the boards of directors of any European collecting societies.

45. All analyses, memoranda, presentations, studies, surveys, and research findings, concerning similarities or differences between the U.S. digital music market and the European digital music market. Bebawi WRT ¶ 8.

46. All Documents concerning the relationship between SOLAR and any Music Publisher. Bebawi WRT ¶ 10.

47. All Documents concerning the musical-works licensing strategy or licensing analysis of any Music Publisher, including but not limited to all Documents concerning U.S. musical-works licensing, European musical-works licensing, Canadian musical-works licensing, audiovisual licensing, differences in licensing strategy across markets, or differences in licensing across service types (*e.g.*, audiovisual vs. audio streaming). Bebawi WRT ¶¶ 14, 23; Kokakis WRT ¶ 50.

48. All European or Canadian musical-works licenses entered into by Music Publishers or affiliates of Music Publishers. Bebawi WRT ¶¶ 8-30.

49. All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the licenses responsive to Request No. 23, including but not limited to the licenses cited in paragraph 25 of Mr. Bebawi's WRT.

50. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.7. Bebawi WRT ¶ 29 n.10.

51. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.8. Bebawi WRT ¶ 30 n.12.

52. All Documents concerning [REDACTED]  
[REDACTED]. Bebawi WRT ¶ 31.

53. All Documents concerning [REDACTED]  
[REDACTED]. Bebawi WRT ¶ 32.

54. All Documents concerning [REDACTED]  
[REDACTED] that is discussed in paragraph 32 of the Bebawi WRT.

55. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the evolution over time of “music publishing agreements with songwriters.” Beekman WRT ¶ 7.

56. All agreements between Songwriters and Music Publishers requiring Songwriters to reimburse expenses paid by Music Publishers in *Phonorecords I*, *Phonorecords II*, *Phonorecords III*, or the Current Proceeding. Beekman WRT ¶ 16; Kelly WRT ¶ 22.

57. All Documents concerning UMPG’s creation of the “music rights management system” referenced in paragraph 21 of the Beekman WRT.

58. All Documents concerning “the worldwide consolidation in the music publishing business” and its effect of that consolidation on the royalties Music Publishers expect to earn related to Songwriters’ rights licensed by Music Publishers. Beekman WRT ¶ 43.

59. All Documents concerning “the worldwide consolidation in the music publishing business” and its effect of that consolidation on Music Publishers’ payments to Songwriters.

Beekman WRT ¶ 43.

60. All Documents concerning the type and level of Music Publishers’ costs related to Interactive Streaming, including both service-specific costs, if any, and costs related to all Interactive Streaming Services.

61. All Documents concerning the two audits performed by Wayne Coleman that are discussed in the Beekman WRT. Beekman WRT ¶¶ 21, 23, 45, 47.

62. All Documents concerning any claims for “black box” income in audits performed by Wayne Coleman. Beekman WRT ¶ 45.

63. Documents sufficient to identify (i) all audits that resulted in Music Publishers paying Songwriters inappropriately withheld royalties and (ii) any amounts paid to Songwriters as a result of such audits. Beekman WRT ¶ 21.

64. All analyses, memoranda, presentations, studies, surveys, and research findings of “controlled composition clauses.” Beekman WRT ¶ 32.

65. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the advances that Music Publishers pay to Songwriters, including but not limited to analyses or memoranda concerning the amount of an advance that a Music Publisher should pay to a particular Songwriter. Beekman WRT ¶¶ 30, 38; Kelly WRT ¶ 66.

66. All Documents concerning the allocation of lump-sum payments, breakage, or flat fees to Songwriters. Beekman WRT ¶ 40; Kelly WRT ¶¶ 34-35.

67. Documents sufficient to show the [REDACTED]

[REDACTED] Beekman WRT ¶ 44.

68. Documents sufficient to show all instances in which an agreement between a Music Publisher and a Songwriter authorized the Music Publisher to charge an administrative, equivalency, or other fee or charge but the Music Publisher declined to do so. Kelly WRT ¶ 36; Beekman WRT ¶¶ 41, 44.

69. Documents sufficient to show the proportion of currently operative agreements between Music Publishers and Songwriters containing administration or equivalency fees. Beekman WRT ¶ 41.

70. All currently operative agreements between Music Publishers and PROs, including PRO administrative agreements. Beekman WRT ¶¶ 68-70; Kelly WRT ¶¶ 9, 49-51; Madaj WRT ¶ 28.

71. Documents sufficient to show all fees charged to Music Publishers by PROs for the administration, collection, or distribution of Performance Royalties. Beekman WRT ¶¶ 67-70; Kelly WRT ¶¶ 9, 49-50, 56; Madaj WRT ¶ 28.

72. All Documents concerning the Music Publishers' attempt to "withdraw their digital rights from ASCAP and BMI to license them directly[.]" Brodsky WRT ¶ 5 n.4.

73. All Documents, including [REDACTED]

[REDACTED], concerning [REDACTED]

[REDACTED]. Brodsky WRT ¶ 10.

74. All Documents, including email Communications between SMP and PROs, concerning the “non-payment of performance income” under Amazon’s 2016 license with SMP for Prime Music. Brodsky WRT ¶ 13.

75. All Communications between SMP and Amazon, between SMP and Record Companies, or between SMP and any third party in which SMP inquired, either specifically or generally, about the “terms of [Amazon’s] record label agreements.” Brodsky WRT ¶ 14.

76. All Documents concerning [REDACTED]

[REDACTED]

[REDACTED] Brodsky WRT ¶ 15.

77. All Documents concerning [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Brodsky WRT ¶¶ 18-19.

78. All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized [REDACTED]

[REDACTED]

[REDACTED]. Brodsky WRT ¶¶ 33-34 & n.11.

79. All Documents in which any of Your members, including SMP, inquired about, analyzed, estimated, projected, or otherwise discussed “the amount of Prime Music revenues [or] the number of Prime Music users.” Brodsky WRT ¶ 17.

80. All analyses, memoranda, presentations, studies, surveys, and research findings concerning SMP’s calculation of [REDACTED] as the amount of “digital breakage” under the 2019 Amazon-Sony licensing agreement. Brodsky WRT ¶ 37.

81. All analyses, memoranda, presentations, studies, surveys, and research findings related to the minimum guarantee calculations reflected in CO-Ex. 2.36.

82. All Documents relating to the calculations reflected on CO-Ex. 2.37. Brodsky WRT ¶ 38.

83. All analyses, memoranda, and presentations concerning the purpose of mechanical floors (*e.g.*, a mechanical-only per-subscriber minimum) and all-in minima (*e.g.*, an all-in per-subscriber minimum) in license agreements for Interactive Streaming, the Phonorecords I Settlement, and the Phonorecords II Settlement, including, but not limited to, whether they are designed to protect against revenue deferral or displacement. Brodsky ¶¶ 69-70; Cohan ¶ 23; Kokakis ¶ 13.

84. All Documents supporting the contention that “the complex Phonorecords II structure does not reflect the current marketplace.” Brodsky WRT ¶ 79.

85. All Documents concerning Cohan’s contention that the “[peermusic] ultimately ha[s] no ability to say no to a license” with Interactive Streaming Services. Cohan WRT ¶ 4.

86. All Documents concerning [REDACTED]  
[REDACTED] Cohan WRT ¶ 8; *see also id.* ¶¶ 8-10.

87. All Documents analyzing, considering, projecting, or discussing the possibility of a “potential legal challenge” to [REDACTED]  
[REDACTED] under the Phonorecords III Original Determination. Cohan WRT ¶ 11.

88. All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized [REDACTED]  
[REDACTED] referenced in paragraphs 8-9 of the Cohan WRT.



89. All Documents concerning the reasons that [REDACTED]

[REDACTED] Cohan WRT ¶ 12.

90. All Documents concerning [REDACTED]

[REDACTED]  
Cohan WRT ¶ 12.

91. All Documents concerning [REDACTED]

[REDACTED].  
92. All Documents concerning the alleged [REDACTED]

[REDACTED]  
Copyright Owners' Intro Mem. at 26; *see* Cohan WRT ¶ 12.

93. All analyses, memoranda, presentations, studies, surveys, and research findings concerning [REDACTED]

[REDACTED]. Cohan WRT ¶¶ 13-18.

94. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the revenue-related strategies allegedly employed by the Services (*e.g.*, revenue displacement, revenue diminution, revenue deferral). *See, e.g.*, Brodsky WRT ¶ 68; Cohan WRT ¶ 23; Eisenach WRT § IV.

95. All Documents concerning the impact of “information asymmetry” on licensing negotiations, including but not limited to any “information asymmetry” that exists on the music publishing side of such negotiations. Eisenach WRT ¶¶ 109-111; *see also, e.g.*, Brodsky WRT ¶¶ 4, 7, 17; Kokakis WRT ¶ 45.

96. All Documents concerning the creation and operation of SCORE. Kelly WRT ¶¶ 12, 25-27.

97. All Documents concerning the creation and operation of the “Cash Out” service available through Score. Kelly WRT ¶ 26.

98. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the business model used by “private equity and fund investors who, in recent years, have poured hundreds of millions of dollars into buying existing successful song and record catalogues,” including but not limited to any analysis comparing these “private equity and fund investors” to traditional Music Publishers. Kelly WRT ¶ 46.

99. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the relative value of Mechanical Royalties and Performance Royalties to Music Publishers and Songwriters. Kelly WRT ¶¶ 50-51.

100. All Documents concerning [REDACTED] referenced in paragraph 65 of the Kelly WRT.

101. All Documents proposing to give or analyzing the possibility of giving a Songwriter an advance in excess of one million dollars, including but not limited to any analysis used by a Music Publisher used for internal approvals or submitted to an affiliated company for review and approval. Beekman WRT ¶ 38.

102. All Documents concerning the creation and operation of the Songwriters Forward Initiative, including but not limited to all Documents memorializing the business rationale for creating the Songwriters Forward Initiative. Kelly WRT ¶ 67.

103. Documents sufficient to show (i) the number of Songwriters who allegedly benefited from the Songwriters Forward Initiative and (ii) the amount of each Songwriter’s unrecouped advance as of July 20, 2021. Kelly WRT ¶ 67. All Documents concerning the

creation and operation of the Songwriter Assistance wellness program, including but not limited to Documents sufficient to show the cost of the program. Kelly WRT ¶ 68.

104. All Documents that support or contradict the assertion that UMPG “would not have agreed to the *Phonorecords II* rates under the current market conditions.” Kokakis WRT ¶ 6.

105. All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following licenses between Amazon and UMPG, *see* Kokakis WRT ¶¶ 16, 21-22:<sup>4</sup>

- a. The April 15, 2019 Amendment No. 1 to the Music Publishing Rights Agreement for Prime Music;
- b. The April 23, 2020 Amendment No. 2 to the Music Publishing Rights Agreement for Prime Music;
- c. The April 23, 2020 U.S. Term Sheet for Amazon Music Unlimited.

106. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the estimated all-in effective per-play rate that Amazon paid UMPG for Prime Music over the life of [the Amazon-UMPG] deal,” including but not limited to all “calculat[ions] by UMPG’s royalty department.” Kokakis WRT ¶ 22.

107. All Documents, including UMPG’s internal email Communications, relating to UMPG’s drafting, or contemporaneous understanding, of the following clauses:

<sup>4</sup> Amazon believes that Dr. Eisenach’s and Mr. Kokakis’s testimony about these Amazon-UMPG licenses is improper and violates the terms of Amazon’s contracts with UMPG. Amazon therefore intends to move to strike this testimony. Amazon serves Request Nos. 70-73 about the Amazon-UMPG licenses solely to preserve its rights in the event that the Judges allow the Copyright Owners’ testimony about these licenses to stand.

- a. Section 8 of the April 15, 2019 Amendment No. 1 to the Music Publishing Rights Agreement for Prime Music;
- b. Section 6 of the April 23, 2020 Amendment No. 2 to the Music Publishing Rights Agreement for Prime Music;
- c. The “Experimental and Non-Precedential Nature” paragraph on page 2 of the April 23, 2020 U.S. Term Sheet for Amazon Music Unlimited.

108. All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized [REDACTED] [REDACTED] concerning the agreements identified in Request No. 70, specifically including their conversations on March 7, 2019 and March 26, 2019.

109. All Documents concerning [REDACTED] [REDACTED], including but not limited to all Documents concerning [REDACTED] [REDACTED]. Kokakis WRT ¶¶ 23-24.

110. All Documents concerning any negotiations that UMPG had with any party in which UMPG requested a percentage-of-revenue royalty rate and eventually agreed to a licensing agreement that had no percentage-of-revenue component. Kokakis WRT ¶¶ 37-38.

111. All Documents supporting or otherwise concerning the contention that if UMPG were not bound by the compulsory license, it would be able to negotiate Mechanical Royalties that are higher than the U.S. statutory mechanical rates. Kokakis WRT ¶ 42.

112. All Documents concerning any instance in which UMPG has refused to license any third party, either directly or through any other entity (*e.g.*, a PRO), to prohibit that third party from engaging in any activity where UMPG had knowledge that such third party was already licensed by one or more other Music Publishers. Kokakis WRT ¶ 43.

113. All licensing-related Communications between UMPG or the NMPA, and “the [startup or new] services,” discussed in the Kokakis WDT. Kokakis WRT ¶ 50 (“With respect to virtually all of the services and agreements I testified about (*e.g.*, [REDACTED]), the services were startup companies (or companies just entering the digital space) that reached out to us seeking to license our music. There were no litigation threats made.”).

114. All Documents concerning Your members’ strategies with respect to negotiating licensing agreements with audiovisual streaming services. Kokakis WRT ¶ 50.

115. All Documents in which You or any of Your members – or any agent or consultant retained, employed, or directed by You or any of Your members – inquired about, analyzed, estimated, projected, attempted to quantify, or otherwise discussed the “complementary value of music streaming to the Services” or their corporate affiliates. Eisenach WRT ¶ 4.

116. All Documents supporting Mr. Heimlich’s contention that the “conflicts of interests” arising from Services acting as both “music streaming ad publishers” and “intermediary roles between advertisers and ad publishers . . . can incentivize them to prioritize the gathering of highly valuable listening data to fuel their non-music-streaming endeavors,” including those concerning the specific purported examples cited by Mr. Heimlich for each Service. Heimlich WRT ¶¶ 25-30.

117. All Documents relied on by Mr. Heimlich concerning Spotify’s use of music streaming data to sell and target advertisements across its non-music content. Heimlich WRT ¶ 37.

118. All Documents concerning the contemplated or actual use of a Performance License or Performance Royalties as leverage in negotiations over a Mechanical License or Mechanical Royalties. *See, e.g.*, Brodsky WRT ¶ 78 (asserting that agreements negotiated with the Services “are not appropriate benchmarks . . . as they are made under the shadow of the compulsory license”); Eisenach WRT ¶ 108 (“Rates negotiated under the shadow of compulsory license do not reflect fair market value of the rights at issue and are therefore not appropriate benchmarks.”).

119. All Documents concerning the Sound Recording Royalties charged by Record Companies to Interactive Streaming Services, including but not limited to all Documents concerning the impact of those rates (i) on the development of the interactive streaming market; (ii) on the Mechanical Royalties that Music Publishers are able to negotiate in the interactive streaming market; (iii) on the profitability of Music Publishers or the incomes of Songwriters; and (iii) on the profitability of Interactive Streaming Services. Eisenach WRT § VI.

120. All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that [REDACTED]. Eisenach WRT ¶ 47.

121. All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers’ willingness to pay for HD quality audio. Flynn WRT ¶ 43; Bebawi WRT ¶ 16.

122. All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact that smartphones, smart home speakers and other smart home devices, high-quality headphones, and wearable technology have had on consumers’ music listening

habits, Music Publishers' and Songwriters' revenues, music distribution, and musical works licensing opportunities.

123. For each of Your members, Documents sufficient to show all revenue Your members received from apps distributed through the Apple App Store, Google Play, and Amazon (app store and devices), broken down monthly or at the level of detail such information is maintained in the ordinary course of business.

124. For each of Your members, Documents sufficient to show the percentage of total revenue Your members received from apps distributed through the Apple App Store, Google Play, and Amazon (app store and devices), that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon (app store or devices), respectively, broken down monthly or at the level of detail such information is maintained in the ordinary course of business.

125. All agreements, work papers, computer code, databases, raw data, spreadsheets, underlying analyses, and other Documents prepared, reviewed, or considered by each Copyright Owner expert witness in connection with the expert witness's Written Rebuttal Testimony, to the extent not already produced.

126. All published or unpublished scholarly articles, or drafts of articles, written in whole or in part by each Copyright Owner expert witness that relates to the music publishing industry, the music recording industry, Interactive Streaming Services, music piracy, radio broadcasting, cable or terrestrial television broadcasting, or the delivery of music or audiovisual content to consumers in any format and by any medium, including over the Internet, to the extent not already produced.

127. All Documents constituting or reflecting meetings, discussions or other Communications between each Copyright Owner expert witness and: (1) any fact witness; (2) any Music Publisher personnel, NMPA personnel, NSAI personnel, Music Publisher representatives, NMPA representative, or NSAI representative; and (3) any other meetings, discussions, or Communications that any Copyright Owner expert considered in formulating the expert's opinions, to the extent not already produced.

128. Each Document constituting a report, testimony (whether written or in deposition, trial, or hearing) or opinion, with exhibits, submitted by each Copyright Owner witness in any prior Copyright Arbitration Royalty Panel, Copyright Royalty Board, ASCAP, BMI, or other rate-setting or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his or her Written Direct Testimony, as well as any such Document relating to Interactive Streaming, Non-Interactive Streaming, any Digital Music Licensee, difference among types of Digital Music Licensee, music piracy, the promotional or substitutional effect of Digital Music Licensee, the efforts of Music Publishers to have works available on any Interactive Streaming Service or terrestrial radio, Mechanical Licenses, Performance Licenses, copyright licenses with respect to sound recordings, benchmarking analyses of any type, and rate-setting analyses of any type, to the extent not already produced.



Dated: May 3, 2022

/s/ Joseph R. Wetzel

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# **EXHIBIT 2**

**PUBLIC VERSION**

**Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.**

**In the Matter of:**

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

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

**SERVICES' THIRD SET OF INTERROGATORIES  
TO THE COPYRIGHT OWNERS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq.; 37 C.F.R. § 351.5; and the Copyright Royalty Judges' (the "Judges") Order Following April 7, 2022 Status Conference, dated April 8, 2022 ("April 8 Order"), Amazon.com Services LLC ("Amazon"), Apple Inc. ("Apple"), Google LLC ("Google"), Pandora Media, LLC ("Pandora"),<sup>1</sup> and Spotify USA Inc. ("Spotify") (collectively, the "Services") hereby request that the National Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI") (collectively, the "Copyright Owners") produce all information responsive to this Third Set of Rebuttal Interrogatories (the "Interrogatories"), subject to the definitions and instructions set forth below. Pursuant to the April 8 Order and the parties' email agreement, responses to these Interrogatories must be delivered to the Services on or before May 13, 2022.

**DEFINITIONS**

1. "Composition Royalty" means any Mechanical, Performance, or Synchronization Royalty.

<sup>1</sup> Pandora joins these Interrogatories only with respect to Interrogatory Nos. 17-25. Google joins these Interrogatories only with respect to Interrogatory Nos. 12-14 and 17-25.

2. The terms “Copyright Owners,” “You,” and “Your” mean the NMPA and the NSAI. The term “Your members” refers to the Music Publishers whose executives sit on the NMPA Board of Directors, including without limitation, The Richmond Organization; Sony Music Publishing (“SMP”); Universal Music Publishing Group (“UMPG”); Warner/Chappell Music (“WCM”); Kobalt Music Group; Round Hill Music; BMG Rights Management; Downtown Music Publishing; Reservoir Media Management; ABKCO Music & Records, Inc.; Leeds Music; Disney Music Group; peermusic; Big Machine Music; Hipgnosis Songs Group; Concord Music Group; Spirit Music Group; Liz Rose Music Publishing; Mayimba Music; Primary Wave Music; and any parents, subsidiaries, affiliates, or agents of each of them.

3. “Current Proceeding” refers to the current proceeding before the Copyright Royalty Board for the Determination of Rates and Terms for Making and Distributing Phonorecords (*Phonorecords IV*), Docket No. 21-CRB-0001-PR (2023-2027).

4. “First Use License” refers to the license granted by the owner of the musical-works copyright to a Record Company or artist to make the first recording of the musical work.

5. “Major Labels” refers to UMG Recordings, Inc., Warner Music Group Corp., and Sony Music Entertainment, and all of their affiliated Recording Companies.

6. “Mechanical License” refers to the statutory license provided by Section 115 of the Copyright Act or any agreement by which a Music Publisher or other holder of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of a license to make and distribute copies of the copyright holder’s musical composition in a phonorecord or phonorecords, whether or not the agreement also grants rights other than reproduction and distribution.

7. “Mechanical Royalty” means any royalty paid pursuant to a Mechanical License.

8. “Music Publisher” means any person, entity, or business unit that owns, controls, or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, musical compositions, in whole or in part, including without limitation, any companies represented on the board of the NMPA or otherwise referenced in the Written Direct or Rebuttal Statements of the Copyright Owners (*e.g.*, SMP, UMPG, WCM, BMG Rights Management, Downtown Music Publishing, and Kobalt Music Group). Any references to a Music Publisher specifically by name shall likewise be construed to include any and all parent, subsidiary, affiliate, successor, or predecessor companies of that Music Publisher that also serve or served as Music Publishers.

9. “Performance License” refers to any agreement by which a Music Publisher, Songwriter, or other holder or administrator of a copyright in a musical composition grants, restricts, or otherwise defines either the scope or terms of use of, a license to publicly perform the copyright holder’s musical composition, whether or not the agreement also grants rights other than public performance, whether directly or through a third party such as a PRO.

10. “Performance Royalty” refers to any royalty paid pursuant to a Performance License.

11. “Performing Rights Organization” or “PRO” refers to any organization whose primary role is to collect Performance Royalties on behalf of Songwriters (*e.g.*, the American Society of Composers, Authors & Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), the Society of European Stage Authors and Composers, and Global Music Rights (“GMR”) and its directors, officers, shareholders, board members, employees, personnel, subsidiaries, parents, divisions, affiliated entities, agents, servants, and anyone else acting on their behalf.

12. “Phonorecords I Settlement” refers to *Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding*, 74 Fed. Reg. 4510 (Jan. 26, 2009).
13. “Phonorecords II Settlement” refers to *Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords*, 78 Fed. Reg. 67938 (Nov. 13, 2013).
14. “Record Company” means any person, entity, or business unit that owns or administers a copyright interest in, or otherwise has the authority to grant copyright licenses with respect to, sound recordings. “Record Companies” include, but are not limited to, the Major Labels.
15. “Songwriter” refers to: (1) any individual or entity who has composed, written, or received credit for all or any portion of the music or lyrics for any musical composition, or (2) any client or royaltor of a Music Publisher entitled to receive royalties as a result of the licensing of a musical composition.
16. “Sound Recording Royalty” means any royalty paid pursuant to a Sound Recording License.
17. “Sound Recording License” refers to any agreement by which a Record Company, recording artist, or other holder of a copyright in a sound recording, grants, restricts, or otherwise defines either the scope or terms of use of a license to make and distribute copies of, publicly perform, or reproduce in timed relation to any visual media, a sound recording, whether or not the agreement also grants other rights.
18. “Stream Share” refers to the number of streams of a particular Music Publisher’s songs on a particular service, adjusted for fractional ownership of individual musical works, divided by the total number of streams on that service.

19. “Synchronization License” refers to any agreement by which a Music Publisher, Songwriter, or other holder of a copyright in a musical composition, grants, restricts, or otherwise defines either the scope or terms of use of, a license to reproduce a musical composition in timed relation to any visual media regardless of duration (*e.g.*, without limitation, film, television shows, advertisements, music videos, user-generated videos, fitness, exercise, or wellness videos, video games, website content, movie trailers, etc.), or to distribute, or make copies of, an audiovisual work embodying a musical composition, whether or not the agreement also grants rights other than reproduction in the form of synchronization. A covenant not to sue permitting the reproduction of a musical composition in timed relation to visual images shall be deemed a “Synchronization License.”

20. “Synchronization Royalty” means any royalty paid pursuant to a Synchronization License.

### **INSTRUCTIONS**

1. Unless otherwise specified or apparent from the nature of the Interrogatory, each Interrogatory is directed to all of Your members.

2. These Interrogatories are continuing in nature, and in the event that You become aware of additional responsive information at any time between the date of these Interrogatories and the time a determination is issued in the Current Proceeding, You are requested promptly to provide such additional information and/or amend Your responses.

3. Whenever appropriate in these Interrogatories, the singular form shall include the plural and vice-versa. The connectors “and” and “or” are terms of inclusion and not exclusion, and shall be construed as necessary to bring within the scope of each Interrogatory information that if construed otherwise might be considered to be outside of its scope. “Including” means

“including but not limited to.” The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

4. If You produced information responsive to an Interrogatory during the Exchange of Preliminary Disclosures or Direct Discovery, You may satisfy the Interrogatory by citing to the Bates numbers of the previously produced documents containing that information.

5. Unless otherwise specified or apparent from the nature of the Interrogatory, each Interrogatory set forth below seeks information pertaining to the period from January 1, 2017 through April 22, 2022 (the “Time Period”).

6. Any Interrogatory that asks for You to identify Songwriters should identify them both by name and by any alphanumeric identifier You or Your Music Publishers uses to identify Songwriters.



## INTERROGATORIES

12. Identify, on an annual basis and by Songwriter, all advances Your members have paid to Songwriters and the recoupment status of each of Your members' Songwriters who received an advance during the Time Period. For any advances that are unrecouped in any year, Your answer should identify the amount of the unrecouped balance on an annual basis.

13. For each of Your members, identify every agreement under which Your member has acquired a share of or entire interest in an existing musical-works copyright, the musical works acquired, the price Your members paid under the agreement, and, on annual basis, the Mechanical, Performance, and Synchronization Royalties Your member receives from its ownership interest in those works.

14. Identify and describe the substantive terms of any currently operative contracts between any of Your members or their Songwriters and any Record Company or recording artist, including any First Use License, in which: (a) Your member (or Songwriter) agreed to pay the Record Company (or artist) to record a composition; (b) the Record Company (or artist) agreed to pay Your member (or Songwriter) for the right to record a composition; (c) Your member (or Songwriter) agreed to attribute to or share with the Record Company (or artist) some or all of its Composition Royalties; or (d) the Record Company (or artist) agreed to attribute to or share with Your member (or Songwriter) some or all of its Sound Recording Royalties.

15. State the basis for [REDACTED]  
[REDACTED]  
[REDACTED] P4-SMP00003481,  
including [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>2</sup>

16. Identify any Music Publisher, sub-publisher, catalog, or repertoire whose mechanical rights [REDACTED] licensed using the compulsory license for [REDACTED] during the Relevant Time Period, for which [REDACTED]

[REDACTED]. For any such Music Publisher, sub-publisher, catalog, or repertoire, Your answer should describe in detail the basis (including any contractual terms) on which [REDACTED] (or any of its predecessors or affiliates) had the right to obtain [REDACTED] royalty reporting, the date on which it acquired that right, and whether and when it availed itself of that right.

17. Identify the Stream Share for each of Your members on each Interactive Streaming Service, globally and separately by geographic market, including but not limited to the United States, Canada, and Europe, on a monthly basis from January 2017 through March 2022.<sup>3</sup>

18. State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forgo a license from a Music Publisher with a Stream Share of each of Your members identified in Interrogatory 17,

<sup>2</sup> Interrogatory Nos. 15 and 16 are on behalf of Amazon only.

<sup>3</sup> Amazon, Spotify, Pandora, Google, and Apple do not believe that Mr. Bebawi's testimony about European licensing deals was properly included in the Copyright Owners' Written Rebuttal Statement, and some Services intend to move to strike it. The Services are including Interrogatory Nos. 17 and 23 as they apply to ex-U.S. territories solely to preserve their rights in the event that the Judges allow Mr. Bebawi's improper rebuttal testimony to stand.

without a material impact on the short or long term profitability of the Service, and identify all facts that support Your position.

19. State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forgo a license from a Music Publisher with (a) █% or (b) █% Stream Share on that Service without a material impact on the short or long term profitability of the Service, and identify all facts that support Your position.

20. State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forgo a license from a Record Label with (a) █% or (b) █% Stream Share on that Service without a material impact on the short or long term profitability of the Service, and if You so contend, identify all facts that support Your contention.

21. Identify and describe in detail the reasons why Your members agreed to the Interactive Streaming rates and rate structure in the *Phonorecords I* Settlement and the *Phonorecords II* Settlement, including by identifying any documents or other contemporaneous records memorializing those reasons or otherwise supporting each member's answer.

22. Describe in detail the basis for, or origin of, the key economic terms in the *Phonorecords I* and *Phonorecords II* settlements, including but not limited to the 10.5% headline rate, the 22% TCC prong for ad-supported services, other TCC rates, TCC caps, specific mechanical-only floor amounts and their relationship to the public performance fee deduction term, the public performance fee deduction, and the pass through rates applicable if sound recording companies secured licenses for Interactive Streaming.

23. Identify and describe in detail each of Your members' effective rates for licensing of musical works in each jurisdiction they do business, including the split of royalties between mechanical and performance rights.

24. Identify the volume of "stream ripping," as that term is used in paragraph 11 of the Aguirre WRT, that occurred during the Relevant Time Period, and describe in detail: (a) all specific data or other evidence supporting Ms. Aguirre's or Mr. Brodsky's assertion that such "stream ripping" is occurring, *see* Aguirre WRT ¶¶ 11, 14; Brodsky WRT ¶ 84; (b) the degree to which such "stream ripping" substitutes for paid streaming (or purchases of physical music or permanent digital downloads), and all specific data or other evidence supporting Your answer; (c) how the use of "stream ripping" compares to paid streaming (or purchases of physical music or permanent digital downloads); (d) all efforts that You or Your members have taken to combat such "stream ripping"; and (e) every instance in which You or Your members have asked any Service Participant to take any steps to combat it.

25. For each license in which any of Your members licensed Performance Rights directly, identify: (a) the headline rate and effective rate that the licensee paid for Performance Rights; (b) the identified and effective split between Mechanical and Performance Royalties that Your members agreed to and collected under the license with a licensee; (c) the basis on which Your member adopted an internal split between Performance Royalties and Mechanical Royalties in an instance where a split was not negotiated in a license agreement with a licensee, including any analysis Your member performed in adopting or calculating it; and (d) all fees, commissions, or similar charges Your member paid to any PRO for administering Performance Royalties received under the license, including by describing how those fees, commissions, or charges were calculated.

Dated: May 3, 2022

/s/ Joseph R. Wetzel

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# **EXHIBIT 3**

**PUBLIC VERSION**

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

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

Docket No. 21–CRB–0001–PR (2023–2027)

**COPYRIGHT OWNERS’ RESPONSES AND OBJECTIONS TO THE FIRST  
SET OF REBUTTAL REQUESTS FOR PRODUCTION FROM  
AMAZON.COM SERVICES LLC AND SPOTIFY USA INC.**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 *et seq.*, 37 C.F.R. § 351.5; the Copyright Royalty Judges’ (the “Judges”) Order Following April 7, 2022 Status Conference, dated April 8, 2022 (“April 8 Order”) and the May 3, 2022 Stipulation between National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI” and, together with NMPA, the “Copyright Owners”), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”), Copyright Owners hereby submit their Responses and Objections to the First Set of Rebuttal Requests for Production of Documents (“Requests”) from Amazon.com Services LLC (“Amazon”) and Spotify USA, Inc. (“Spotify”) (together, the “Requesting Parties”).

**GENERAL OBJECTIONS**

1. Copyright Owners object to the definition of “NMPA,” “Your Members,” “You” and “Your” in the Requests as including the music publishers whose executives sit on the NMPA Board of Directors, none of which are Participants in this proceeding. NMPA does not have



possession, custody or control of the documents of its board members' companies and is not responding or objecting to these Requests on behalf of them. Moreover, notwithstanding the NMPA's lack of possession, custody or control over the documents of its board members' companies, the suggestion that Copyright Owners search and produce information on behalf of 20 companies in the three-week period allotted for the completion of rebuttal discovery is manifestly unreasonable, unduly burdensome and disproportionate to the needs of this proceeding.<sup>1</sup> Indeed, the propounding of 128 requests to Copyright Owners as if directed to these 20 independently operated companies would comprise 2,560 distinct document requests. Music publishers peermusic, Sony Music Publishing ("SMP"), Universal Music Publishing Group ("UMPG") and Warner Chappell Music, Inc. ("WCM") (collectively, the "Publisher Witnesses"), whose executives sit on the NMPA board and who submitted Written Rebuttal Testimony in this proceeding on behalf of the Copyright Owners, will respond and/or object to these Requests, through the Publisher Witnesses' undersigned counsel, as if the Requests were made directly to each of the Publisher Witnesses.

2. Copyright Owners object to the definition of "NSAI" in the Requests as including NSAI's songwriter members. NSAI does not have possession, custody or control over the documents of its members and is responding and objecting to these Requests only on its own behalf.

3. Copyright Owners object to the definition of "Recording Artist" in the Requests as overbroad, nonspecific, and unduly burdensome.

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<sup>1</sup> Moreover, the Requests identify Round Hill Music as among the music publishers whose executives sit on the NMPA Board of Directors, which is not accurate. See <https://www.nmpa.org/boardmembers/> (last accessed May 5, 2022).

4. Copyright Owners object to the Requests to the extent they seek the production of documents or information already produced by Copyright Owners and the Publisher Witnesses, and other music publishers, in the course of this proceeding or in the *Phonorecords III* proceeding. Copyright Owners will not produce documents or information in response to these Requests if they previously produced such Documents.

5. Copyright Owners object to the Requests to the extent they are overly broad, unduly burdensome and harassing.

6. Copyright Owners object to the Requests to the extent they are vague, ambiguous and incomprehensible.

7. Copyright Owners object to the Requests to the extent they are duplicative.

8. Copyright Owners object to the Requests to the extent they seek broad, nonspecific discovery and discovery that is not directly related to the Written Rebuttal Statement submitted by Copyright Owners, in violation of 37 C.F.R. § 351.5(b)(1).

9. Copyright Owners object to the Requests to the extent they seek discovery that is not relevant to the willing buyer-willing seller rate standard set forth in 17 U.S.C. § 115(c)(1)(F).

10. Copyright Owners object to the Requests to the extent they call for the disclosure of materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part. Copyright Owners will exclude from their production all documents or parts of documents protected by any applicable privilege, doctrine or immunity.

11. Copyright Owners object to the Requests to the extent they seek the production of documents or information that is publicly available.

12. Copyright Owners object to the Requests to the extent they seek the production of documents created, generated or obtained beyond the period between January 1, 2017 and the present. Except as specifically noted otherwise below in response to specific Requests, Copyright Owners shall produce documents created, generated or obtained between January 1, 2017 and the present.

13. Copyright Owners object to the Requests to the extent they seek the production of documents or information already in the possession of any of the Requesting Parties or which is generated by or originated with the Requesting Parties.

14. Copyright Owners object to the Requests to the extent they seek the production of documents in the possession, custody or control of third parties.

15. Use of the term “including” as used throughout this documents means “including but not limited to.”

16. Copyright Owners object to the Requests to the extent they request “all” or “any” documents or purport to impose similar obligations on Copyright Owners. Subject to their objections, Copyright Owners will search those files in their possession or control where there is a reasonable likelihood that responsive documents may be located and will make a good-faith effort to produce non-privileged, responsive documents.

17. Given the limited schedule for rebuttal discovery and for the avoidance of doubt, unless otherwise stated in response to a specific Request, Copyright Owners will not engage in extensive searches and production of internal analyses or email communications. These searches are unduly burdensome and disproportionate to the needs of the proceeding at this stage.

18. Copyright Owners object to the Requests to the extent they call for the creation of new documents, reports, spreadsheets or data compilations. Copyright Owners will produce

documents generated or maintained in the ordinary course of business and will not create documents that do not presently exist.

19. Copyright Owners reserve the right to modify, supplement, or amend any or all of these responses, if necessary or appropriate, and to produce additional non-privileged, responsive documents if they are located.

20. By agreeing to conduct a reasonable search for responsive documents, Copyright Owners do not represent that any such documents exist in their possession, custody or control and, as a result, no documents may be produced notwithstanding any Copyright Owner's agreement.

21. By agreeing to conduct a reasonable search for responsive documents or information, or producing responsive documents or information, Copyright Owners do not concede either the relevance or admissibility of such documents or information and affirmatively reserve their rights to challenge or dispute the relevance or admissibility of any such documents or information.

22. These General Objections apply in response to all requests and are incorporated by reference into each and every specific objection below to the extent applicable. Various objections may be referred to in the responses below for purposes of clarity. Failure to incorporate specifically an objection, however, does not constitute a waiver of any such objection.

### **SPECIFIC OBJECTIONS AND RESPONSES**

**REQUEST NO. 1:** All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following agreements and their amendments:

a.

[REDACTED] Brodsky WRT ¶ 57.

b.

[REDACTED] Brodsky WRT ¶ 58.

- c. [REDACTED] Brodsky WRT ¶ 60.
- d. [REDACTED] Brodsky WRT ¶ 60.
- e. [REDACTED] Brodsky WRT ¶ 67.
- f. [REDACTED] Brodsky WRT ¶ 67.
- g. [REDACTED] Brodsky WRT ¶¶ 80-81.
- h. [REDACTED] cited in paragraph 15, 18, 19, 22, 31, and 37 of the Kokakis WRT.
- i. [REDACTED] Kokakis WRT ¶¶ 46, 48, 50.
- j. [REDACTED] Madaj WRT ¶¶ 10-30.

**RESPONSE TO REQUEST NO. 1:**

Copyright Owners object to this Request to the extent it requires the review and production of internal e-mail communications, which are unduly burdensome and disproportionate to the needs of the proceeding at this stage. Copyright Owners further object to this Request to the extent it calls for production of information in the possession of the Services who are participants in this proceeding. Copyright Owners further object to this Request as unduly burdensome insofar as it calls for the production of “[a]ll Documents.” Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will conduct a reasonable and proportionate search for approval memoranda and internal valuation documents concerning the licenses identified in this Request.

**REQUEST NO. 2:** All currently operative agreements between Music Publishers and Songwriters. *E.g.*, Beekman WRT ¶¶ 21, 28, 35, 44, 46, 71 (making claims about all or most Songwriter agreements); Kelly WRT ¶¶ 29, 32, 36-37, 39, 59 (same).

### **RESPONSE TO REQUEST NO. 2:**

Copyright Owners object to this Request as unduly burdensome because it calls for the production of all “currently operative” agreements with Songwriters, which likely number in the hundreds of thousands. Copyright Owners further object to this Request as violative of the participants’ agreement concerning the production of Songwriter-related documents, whereby the Services proposed selections of clients for whom agreements and financial information was produced subject to such production not being unduly burdensome, which has been done. Indeed, as detailed in Copyright Owners’ March 22, 2022 Memorandum in Opposition to Amazon’s, Pandora’s and Spotify’s Motion to Compel the Copyright Owners to Produce Songwriter Documents, the production of “currently operative” songwriter agreements is, in fact, burdensome for several music publishers, as such agreements may date back decades, not exist in electronic form, and require manual review and retrieval in order to produce. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 3:** All Songwriter-related Documents that You agreed to produce pursuant to the compromise reached on January 14, 2022, but have thus far failed to produce. *E.g.*, Beekman WRT ¶¶ 21, 71 (making claims about UMPG’s Songwriter agreements); Kelly WRT ¶¶ 32, 59 n.12 (making claims about SMP’s Songwriter agreements).

### **RESPONSE TO REQUEST NO. 3:**

Copyright Owners object to this Request as duplicative. Copyright Owners further object to this Request as it misstates the compromise reached on January 14, 2022, wherein Copyright Owners undertook to produce Songwriter-related documents to the extent such production was not unduly burdensome, which they have done. Finally, Copyright Owners object to this Request to the extent it seeks to require production of materials that are subject to a pending motion to compel before the Copyright Royalty Judges in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 4:** For each calendar year since 2009, Documents sufficient to show the U.S. market share attributed by You to each of Your members in the United States. Aguirre WRT ¶ 6.

**RESPONSE TO REQUEST NO. 4:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 5:** All Documents concerning “the anti-piracy campaigns of the NMPA and the RIAA and their members.” Aguirre WRT ¶ 12; *see also* Brodsky WRT ¶¶ 82-83.

**RESPONSE TO REQUEST NO. 5:**

Copyright Owners object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request to the extent it calls for the production of publicly available information and information that was provided in connection with *Phonorecords III*. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 6:** All Documents concerning the effect that Interactive Streaming Services have had on music piracy from 2001 to the present. Brodsky WRT ¶¶ 82-84.

**RESPONSE TO REQUEST NO. 6:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production

of “[a]ll Documents.” Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 7:** All Documents concerning the efforts by the Copyright Owners and Record Companies, including the RIAA, to bring lawsuits against Napster, Grokster, MP3.com, and “against the most egregious individual users,” including but not limited to any Documents and Communications regarding public perception of these suits. Brodsky WRT ¶ 83. All analyses, memoranda, presentations, studies, surveys, and research findings concerning “stream ripping.” Aguirre WRT ¶ 11; *see also* Brodsky WRT ¶ 84.

**RESPONSE TO REQUEST NO. 7:**

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners further object to this Request to the extent it calls for the production of publicly available information, information provided in connection with *Phonorecords III* and information that is or should already be in the possession of the Services. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 8:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact of streaming on “other forms of income.” Aguirre WRT ¶ 19.

**RESPONSE TO REQUEST NO. 8:**

Copyright Owners object to this request as duplicative of prior requests in this proceeding. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Subject to and without waiver of the foregoing objections, Copyright Owners will conduct a reasonable search for and produce documents responsive to this Request in the possession, custody or control of the NMPA to the extent not already produced in this proceeding.



**REQUEST NO. 9:** Documents sufficient to show all charges that You or Your members billed to or recouped from Songwriters or Recording Artists for legal fees arising out of the actions listed in Aguirre WRT ¶ 13.

**RESPONSE TO REQUEST NO. 9:**

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this request as duplicative of prior requests in this proceeding, in which extensive information concerning advances, recoupment and client charges were produced. Copyright Owners further object to this request overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Subject to and without waiver of the foregoing objections and General Objections and as limited thereby, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 10:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the negotiation and drafting of the bill that became the MMA.” Aguirre WRT ¶ 7; *see also id.* ¶ 30; Beekman WRT ¶ 57.

**RESPONSE TO REQUEST NO. 10:**

Copyright Owners object to this request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Copyright Owners further object to this Request to the extent it seeks the production of publicly available information. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 11:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the unpaid royalties that the Services delivered to the MLC in February 2021. Aguirre WRT ¶¶ 20-24; Beekman WRT ¶¶ 56, 60; Kelly WRT ¶¶ 69, 73.

**RESPONSE TO REQUEST NO. 11:**

Copyright Owners object to this request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this request to the extent it calls for the production of documents that should be in the possession of the Services, not Copyright Owners, and/or should be MLC documents, over which Copyright Owners lack possession, custody, or control. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of the proceeding. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 12:** Documents sufficient to show each Music Publishers' costs of licensing administration for Section 115 royalties at the most detailed level at which such records are kept in the ordinary course of business. Aguirre WRT ¶¶ 27-33.

**RESPONSE TO REQUEST NO. 12:**

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners further object to this Request as duplicative of prior requests seeking financial and cost-related information from Copyright Owners, which have already been produced. Copyright Owners also object to this Request as it is not limited to Section 115 licenses issues and administered by the MLC and is therefore overbroad. Subject to and without waiver of the foregoing objections and General Objections and as limited thereby, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 13:** Documents sufficient to show all costs incurred by Music Publishers to register their musical work information with the MLC. Aguirre WRT ¶ 29.

**RESPONSE TO REQUEST NO. 13:**

Copyright Owners object to this request as not directly related to the Written Rebuttal Statement of Copyright Owners and therefore not discoverable. Copyright Owners object to this Request as duplicative of prior requests seeking financial and cost-related information from

Copyright Owners, which have already been produced. Subject to and without waiver of the foregoing objections and General Objections and as limited thereby, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 14:** Documents sufficient to show any and all costs incurred by the MLC to ensure that the MLC database is accurate and up to date. Aguirre WRT ¶ 29.

**RESPONSE TO REQUEST NO. 14:**

Copyright Owners lack possession, custody or control over the MLC and its documents, and therefore have no documents to produce in response to this Request.

**REQUEST NO. 15:** All Documents concerning the establishment of the Musical Works Database (“MWD”), the completeness of the MWD, and any known issues, problems, deficiencies, and problems therewith, including any complaints registered by any Music Publisher or third party with the MLC regarding the MWD. Aguirre WRT ¶ 34.

**RESPONSE TO REQUEST NO. 15:**

Copyright Owners object to this request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this request to the extent it calls for the production of MLC documents, over which Copyright Owners lack possession, custody, or control. Copyright Owners further object to this request as unduly burdensome to the extent it calls for the production of “[a]ll Documents.” Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 16:** All Documents concerning the negotiation of the Phonorecords I Settlement. Aguirre WRT ¶¶ 39-40.

**RESPONSE TO REQUEST NO. 16:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request to the extent it seeks the production of information that has already

been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 17:** All Documents concerning the negotiation of the Phonorecords II Settlement, Aguirre WRT ¶¶ 8, 41-45, including all Documents concerning the NMPA's alleged perception that "nothing substantial had changed [by 2011] that made it appear that the Copyright Owners could expect that they would achieve some meaningful increase in the mechanical rate" in *Phonorecords II*, *id.* ¶ 41.

**RESPONSE TO REQUEST NO. 17:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 18:** All Documents concerning the origin of the 10.5% revenue rate.

**RESPONSE TO REQUEST NO. 18:**

Copyright Owners object to this Request as vague and incomprehensible in its use of "origin." Copyright Owners further object to this Request as it seeks information unrelated to this proceeding. Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 19:** All Documents concerning the costs that You incurred for participating in any rate proceeding before the Copyright Royalty Board, including but not limited to Documents sufficient to identify the relevant proceeding and how You allocated such costs among Your members, including any charges based upon any market share data that You possess. Aguirre WRT ¶ 40.

**RESPONSE TO REQUEST NO. 19:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information wholly unrelated to this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 20:** All Documents concerning Your alleged perception that “it did not appear to be the best use of precious resources” to litigate over the Subpart A rates in *Phonorecords III*, Aguirre WRT ¶ 44, including any forecasts or projections of the cost associated with such litigation; any forecasts or projections of the mechanical rate that You thought such litigation would obtain; and any forecasts or projections about the overall volume of sales or revenues from physical sales or permanent digitals during the time period covered by *Phonorecords III*. This Request includes responsive Communications between the NMPA and any outside counsel retained to potentially litigate or settle the Subpart A rates in *Phonorecords III*.

**RESPONSE TO REQUEST NO. 20:**

Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 21:** All analyses, memoranda, presentations, studies, surveys, and research findings that support or contradict the assertion that mechanical income from physical sales “would increasingly become a less consequential part of the income of Songwriters and Music Publishers during the five-year period of *Phonorecords III*.” Aguirre WRT ¶ 44.

**RESPONSE TO REQUEST NO. 21:**

Copyright Owners object to this Request as duplicative and cumulative. Copyright Owners further object to this Request as seeking information that is not directly related to its Written Rebuttal Statement. Copyright Owners further object to this Request to the extent it seeks the production of information that has already been produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 22:** All Documents concerning the negotiation of the Partial *Phonorecords III* Settlement, including all email or other Communications relating to that settlement between You and Record Companies. Aguirre WRT ¶¶ 8, 44-45.

**RESPONSE TO REQUEST NO. 22:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 23:** All Documents concerning “the Copyright Owners’ decision to settle” with Record Companies in *Phonorecords III*, including but not limited to all Documents concerning Your “belief that mechanical income from the sale of physical recordings and digital downloads was going to continue to diminish.” Aguirre WRT ¶ 45.

**RESPONSE TO REQUEST NO. 23:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners

further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 24:** All Documents concerning the negotiation of the Rejected Phonorecords IV Settlement, Aguirre WRT ¶¶ 8, 47-49, including all email and other Communications between You and Record Companies concerning Record Companies’ alleged “adamant[] oppos[ition] to increasing” the mechanical rate for Subpart B services in the Current Proceeding, *id.* ¶ 49.

**RESPONSE TO REQUEST NO. 24:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 25:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning Your assessment of the costs or benefits of litigating the Subpart B rate in the Current Proceeding, including any analysis of where You should “allocate [Your] limited resources,” any “assessment of what sources of mechanical income were most valuable to rightsholders,” or any forecasts about the amount of resources You would have to devote to litigating any “costly and burdensome rate proceeding” with Record Companies. Aguirre WRT ¶ 47. This Request includes responsive Communications between the NMPA and any outside counsel retained to potentially litigate or settle the Subpart B rates in *Phonorecords IV*.

**RESPONSE TO REQUEST NO. 25:**

Copyright Owners object to this Request to the extent it seeks the production of information protected by the attorney-client privilege and/or work product doctrines. Copyright Owners

further object to this Request as it seeks information unrelated to this proceeding, which the Copyright Royalty Judges have repeatedly held. Copyright Owners also object to this Request as it substantially duplicates a request made by the Services in *Phonorecords III* which the Judges rejected and it is, if possible, even less proper in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 26:** Documents sufficient to show the process by which the proposal to include plays of public domain works in the number of plays would “artificially reduce[]” the Per-Work Royalty Allocation of the Payable Royalty Pool. Aguirre WRT ¶ 52.

**RESPONSE TO REQUEST NO. 26:**

Copyright Owners object to this Request to the extent it requires Copyright Owners to create documents or information to support a facially logical proposition and it duplicates the Services’ own information showing that by increasing the denominator by including works that will not receive any royalty payment, it reduces the payments. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 27:** All sales decks, prospectuses, securities filings, risk factor analyses, studies, and surveys concerning the sale and valuation of catalogs owned by Your members.

**RESPONSE TO REQUEST NO. 27:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this request as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services’ Motion to Compel Production of Documents in this proceeding.



**REQUEST NO. 28:** All analyses, memoranda, presentation decks, prospectuses, risk disclosures, studies, and research findings, concerning private equity and investor-backed entities such as Hipgnosis, Round Hill, Downtown, Spirit, and Primary Wave, and the financial investments made for new and existing Songwriters.

**RESPONSE TO REQUEST NO. 28:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents in this proceeding.

**REQUEST NO. 29:** All Documents concerning the difference in financial investments, costs, and risks undertaken as between full-service Music Publishing and private equity or investor-backed publishing entities.

**RESPONSE TO REQUEST NO. 29:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents in this proceeding.

**REQUEST NO. 30:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning "the values that private equity investors have been paying for a certain limited number of catalogues." Aguirre WRT ¶ 8.

**RESPONSE TO REQUEST NO. 30:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of

Copyright Owners. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding as it seeks “all” documents concerning a given subject. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services’ Motion to Compel Production of Documents in this proceeding.

**REQUEST NO. 31:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the reasons for, valuation of, or negotiations over the following acquisitions:

- a. UMPG’s acquisition of the Bob Dylan catalog. Aguirre WRT ¶¶ 61-62.
- b. Warner Chappell’s acquisition of the Bruno Mars catalog. Aguirre WRT ¶¶ 61-62.
- c. SMP’s acquisition of the Paul Simon catalog. Aguirre WRT ¶¶ 61-62.

**RESPONSE TO REQUEST NO. 31:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as unrelated to the Written Rebuttal Statement of Copyright Owners. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding as it seeks “all” documents concerning a given subject. Copyright Owners will not be independently producing documents responsive to this Request, though responsive documents will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services’ Motion to Compel Production of Documents in this proceeding.

**REQUEST NO. 32:** All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following agreements and their amendments:

a.

[REDACTED] Bebawi WRT ¶ 25 n.7.

b.

[REDACTED]  
Bebawi WRT ¶ 25 n.7.

c.

[REDACTED] Bebawi WRT ¶ 25 n.7.

d.

[REDACTED]  
Bebawi WRT ¶ 25 n.7.

**RESPONSE TO REQUEST NO. 32:**

Copyright Owners object to this Request to the extent it requires the review and production of internal e-mail communications, which are unduly burdensome and disproportionate to the needs of the proceeding at this stage. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request to the extent it calls for production of information in the possession of the Services who are participants in this proceeding. Copyright Owners further object to this Request as unduly burdensome insofar as it calls for the production of “[a]ll Documents.” Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will conduct a reasonable and proportionate search for approval memoranda and internal valuation documents concerning the licenses identified in this Request.

**REQUEST NO. 33:** All Documents, including but not limited to licensing agreements, concerning negotiated agreements in European and other ex-U.S. territories, including Canada. Bebawi WRT ¶ 5.

**RESPONSE TO REQUEST NO. 33:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning all licensing worldwide, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 34:** All Documents concerning the total payments to Your members in Europe for sound recordings and musical works, including the composition and allocation of those payments to rightsholders (*e.g.*, Record Companies, Music Publishers, PROs).

**RESPONSE TO REQUEST NO. 34:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning European rightsholder payments, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 35:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the ratio between Mechanical Royalties and Performance Royalties in jurisdictions outside the United States, including but not limited to Tier 1 European countries as referenced in the Bebawi WRT.

**RESPONSE TO REQUEST NO. 35:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning the ratio of Mechanical Royalties and Performance Royalties worldwide, which is disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 36:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning [REDACTED] referenced in Request No. 19.

**RESPONSE TO REQUEST NO. 36:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 37:** All Documents supporting or contradicting the contention that “licensees are in most cases not focused on optimizing the value of the music element of what they do.” Bebawi WRT ¶ 22.

**RESPONSE TO REQUEST NO. 37:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request to the extent it seeks production of information already produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 38:** All Documents comparing the Mechanical Royalties actually paid to Songwriters from ex-U.S. Interactive Streaming to the Mechanical Royalties actually paid to Songwriters from U.S. Interactive Streaming. Bebawi WRT ¶¶ 24-30.

**RESPONSE TO REQUEST NO. 38:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unreasonable, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 39:** All analyses, memoranda, presentations, studies, surveys, and research findings relating to the Music Publishers’ analysis of the “legitimate expectation of songwriters” regarding the value of Songwriters’ rights licensed by Music Publishers. Bebawi WRT ¶ 23.

**RESPONSE TO REQUEST NO. 39:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unreasonable, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 40:** All agreements between Music Publishers and European collecting societies (SACEM, ICE, PRS, GEMA, STIM, etc.).

**RESPONSE TO REQUEST NO. 40:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all agreements between Music Publishers and European collection societies, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 41:** All Documents, including email Communications, between Music Publishers and the European collecting societies (SACEM, ICE, PRS, GEMA, STIM, etc.), including but not limited to Documents concerning licenses between those collecting societies and Interactive Streaming Services, and Documents concerning any competitive authority (*i.e.*, the European Commission).

**RESPONSE TO REQUEST NO. 41:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as overbroad and unduly burdensome, as it seeks the production of all documents between Music Publishers and European collection societies, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 42:** All Documents reflecting the rates paid for musical works licensing (“Rate Cards”) in territories outside of the United States.

**RESPONSE TO REQUEST NO. 42:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as overbroad and unduly burdensome, as it seeks the production of all documents reflecting the rates paid for musical works licensing worldwide, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 43:** All Documents reflecting the Music Publishers’ and European collecting societies’ views on the allocation of royalties between Mechanical Royalties and Performance Royalties.

**RESPONSE TO REQUEST NO. 43:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this request as vague insofar as it requests documents concerning an entity’s “views on the allocation of royalties between Mechanical Royalties and Performance Royalties.” Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning the ratio of Mechanical Royalties and Performance Royalties worldwide, which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.



**REQUEST NO. 44:** Documents sufficient to show which, if any, Music Publishers, or representatives or agents of Music Publishers, sit on the boards of directors of any European collecting societies.

**RESPONSE TO REQUEST NO. 44:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as it seeks the production of publicly available information – namely, the identity of the members of the boards of directors of European collection societies. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 45:** All analyses, memoranda, presentations, studies, surveys, and research findings, concerning similarities or differences between the U.S. digital music market and the European digital music market. Bebawi WRT ¶ 8.

**RESPONSE TO REQUEST NO. 45:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as vague in its use of “similarities or differences between the U.S. digital music market and the European digital music market.” Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning “similarities and differences between the U.S. digital music market and the European digital music market,” which is disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright

Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 46:** All Documents concerning the relationship between SOLAR and any Music Publisher. Bebawi WRT ¶ 10.

**RESPONSE TO REQUEST NO. 46:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unreasonable and unduly burdensome, as it seeks the production of all documents concerning “the relationship between SOLAR and any Music Publisher,” which is disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 47:** All Documents concerning the musical-works licensing strategy or licensing analysis of any Music Publisher, including but not limited to all Documents concerning U.S. musical-works licensing, European musical-works licensing, Canadian musical-works licensing, audiovisual licensing, differences in licensing strategy across markets, or differences in licensing across service types (*e.g.*, audiovisual vs. audio streaming). Bebawi WRT ¶¶ 14, 23; Kokakis WRT ¶ 50.

**RESPONSE TO REQUEST NO. 47:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unduly burdensome in that it seeks the

production of all documents concerning global licensing strategy or analysis. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 48:** All European or Canadian musical-works licenses entered into by Music Publishers or affiliates of Music Publishers. Bebawi WRT ¶¶ 8-30.

**RESPONSE TO REQUEST NO. 48:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request to the extent it calls for the production of documents that are not in the possession, custody or control of Copyright Owners or the Publisher Witnesses. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 49:** All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the licenses responsive to Request No. 23, including but not limited to the licenses cited in paragraph 25 of Mr. Bebawi's WRT.

**RESPONSE TO REQUEST NO. 49:**

Copyright Owners object to this Request as unintelligible, as it makes references to licenses responsive to Request No. 23, which does not call for the production of licenses and to which Copyright Owners separately objected. Copyright Owners will not be producing documents responsive to this Request.

**REQUEST NO. 50:** All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.7. Bebawi WRT ¶ 29 n.10.

**RESPONSE TO REQUEST NO. 50:**

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of "all" documents. Subject to and without waiver of the foregoing objection and

Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 51:** All analyses, memoranda, presentations, studies, surveys, and research findings supporting or relating to the calculations reflected in CO-Ex. 12.8. Bebawi WRT ¶ 30 n.12.

**RESPONSE TO REQUEST NO. 51:**

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of "all" documents. Subject to and without waiver of the foregoing objection and Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 52:** All Documents concerning [REDACTED]. Bebawi WRT ¶ 31.

**RESPONSE TO REQUEST NO. 52:**

Copyright Owners object to this Request as vague in that it calls for the production of "[a]ll Documents" concerning an e-mail, which e-mail was already produced. Copyright Owners further object to this Request to the extent it seeks the production of information in the possession, custody or control of the Services. Copyright Owners further object to this request as overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 53:** All Documents concerning [REDACTED]. Bebawi WRT ¶ 32.

**RESPONSE TO REQUEST NO. 53:**

Copyright Owners object to this Request as vague in that it calls for the production of "[a]ll Documents" concerning an e-mail, which e-mail was already produced. Copyright Owners further

object to this Request to the extent it seeks the production of information in the possession, custody or control of the Services. Copyright Owners further object to this request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 54:** All Documents concerning [REDACTED] that is discussed in paragraph 32 of the Bebawi WRT.

**RESPONSE TO REQUEST NO. 54:**

Copyright Owners object to this Request as vague in that it calls for the production of “[a]ll Documents” concerning a meeting. Copyright Owners further object to this request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 55:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the evolution over time of “music publishing agreements with songwriters.” Beekman WRT ¶ 7.

**RESPONSE TO REQUEST NO. 55:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 56:** All agreements between Songwriters and Music Publishers requiring Songwriters to reimburse expenses paid by Music Publishers in *Phonorecords I*, *Phonorecords II*, *Phonorecords III*, or the Current Proceeding. Beekman WRT ¶ 16; Kelly WRT ¶ 22.

**RESPONSE TO REQUEST NO. 56:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Moreover, the cited testimony indicates that no such documents exist in any event, as “it [REDACTED]

[REDACTED]

[REDACTED]” (Beekman WRT ¶ 16 (emphasis added)) and “[REDACTED]

[REDACTED]

[REDACTED]” (Kelly WRT ¶ 22 (emphasis added).)

**REQUEST NO. 57:** All Documents concerning UMPG’s creation of the “music rights management system” referenced in paragraph 21 of the Beekman WRT.

**RESPONSE TO REQUEST NO. 57:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and, as a summing up request, is more suited to a deposition question than document request. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 58:** All Documents concerning “the worldwide consolidation in the music publishing business” and its effect of that consolidation on the royalties Music Publishers expect to earn related to Songwriters’ rights licensed by Music Publishers. Beekman WRT ¶ 43.

**RESPONSE TO REQUEST NO. 58:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of

this proceeding and, as a summing up request, is more suited to a deposition question than document request. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 59:** All Documents concerning “the worldwide consolidation in the music publishing business” and its effect of that consolidation on Music Publishers’ payments to Songwriters. Beekman WRT ¶ 43.

**RESPONSE TO REQUEST NO. 59:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and, as a summing up request, is more suited to a deposition question than a document request. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 60:** All Documents concerning the type and level of Music Publishers’ costs related to Interactive Streaming, including both service-specific costs, if any, and costs related to all Interactive Streaming Services.

**RESPONSE TO REQUEST NO. 60:**

Copyright Owners object to this Request as duplicative given the substantial financial information produced by Music Publishers in this proceeding to date. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 61:** All Documents concerning the two audits performed by Wayne Coleman that are discussed in the Beekman WRT. Beekman WRT ¶¶ 21, 23, 45, 47.

**RESPONSE TO REQUEST NO. 61:**

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and

Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 62:** All Documents concerning any claims for "black box" income in audits performed by Wayne Coleman. Beekman WRT ¶ 45.

**RESPONSE TO REQUEST NO. 62:**

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of "all" documents. Subject to and without waiver of the foregoing objection and Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 63:** Documents sufficient to identify (i) all audits that resulted in Music Publishers paying Songwriters inappropriately withheld royalties and (ii) any amounts paid to Songwriters as a result of such audits. Beekman WRT ¶ 21.

**RESPONSE TO REQUEST NO. 63:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 64:** All analyses, memoranda, presentations, studies, surveys, and research findings of "controlled composition clauses." Beekman WRT ¶ 32.

**RESPONSE TO REQUEST NO. 64:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 65:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the advances that Music Publishers pay to Songwriters, including but not



limited to analyses or memoranda concerning the amount of an advance that a Music Publisher should pay to a particular Songwriter. Beekman WRT ¶¶ 30, 38; Kelly WRT ¶ 66.

**RESPONSE TO REQUEST NO. 65:**

Copyright Owners object to this request as duplicative. Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request, though documents responsive to this Request will be produced in response to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents in this proceeding.

**REQUEST NO. 66:** All Documents concerning the allocation of lump-sum payments, breakage, or flat fees to Songwriters. Beekman WRT ¶ 40; Kelly WRT ¶¶ 34-35.

**RESPONSE TO REQUEST NO. 66:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 67:** Documents sufficient to show the [REDACTED]

[REDACTED] Beekman WRT ¶ 44.

**RESPONSE TO REQUEST NO. 67:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is duplicative of information that is contained in the hundreds of millions of pages of documents being produced pursuant to the Judge's recent order. On the basis of the foregoing objections and General Objections, Copyright Owners will not produce any further documents in response to this Request.

**REQUEST NO. 68:** Documents sufficient to show all instances in which an agreement between a Music Publisher and a Songwriter authorized the Music Publisher to charge an administrative, equivalency, or other fee or charge but the Music Publisher declined to do so. Kelly WRT ¶ 36; Beekman WRT ¶¶ 41, 44.

**RESPONSE TO REQUEST NO. 68:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is duplicative of information that is contained in the hundreds of millions of pages of documents being produced pursuant to the Judge's recent order. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 69:** Documents sufficient to show the proportion of currently operative agreements between Music Publishers and Songwriters containing administration or equivalency fees. Beekman WRT ¶ 41.

**RESPONSE TO REQUEST NO. 69:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is duplicative of information that is contained in the hundreds of millions of

pages of documents being produced pursuant to the Judge's recent order. On the basis of the foregoing objections and General Objections, Copyright Owners will not produce any further documents in response to this Request.

**REQUEST NO. 70:** All currently operative agreements between Music Publishers and PROs, including PRO administrative agreements. Beekman WRT ¶¶ 68-70; Kelly WRT ¶¶ 9, 49-51; Madaj WRT ¶ 28.

**RESPONSE TO REQUEST NO. 70:**

Copyright Owners object to this Request as it is not directly related to the Written Rebuttal Statement of Copyright Owners and therefore is not discoverable. Subject to and without waiver of the foregoing objection and Copyright Owners' General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of reasonably accessible records to the extent such documents have not already been produced in this proceeding.

**REQUEST NO. 71:** Documents sufficient to show all fees charged to Music Publishers by PROs for the administration, collection, or distribution of Performance Royalties. Beekman WRT ¶¶ 6770; Kelly WRT ¶¶ 9, 49-50, 56; Madaj WRT ¶ 28.

**RESPONSE TO REQUEST NO. 71:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and is information that should be obtainable from the PROs. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 72:** All Documents concerning the Music Publishers' attempt to "withdraw their digital rights from ASCAP and BMI to license them directly[.]" Brodsky WRT ¶ 5 n.4.

**RESPONSE TO REQUEST NO. 72:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as it was fully addressed in *Phonorecords III* and is a matter of public record readily available to the Services. Copyright Owners also object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 73:** All Documents, including [REDACTED]  
[REDACTED], concerning [REDACTED]

Brodsky WRT ¶ 10.

**RESPONSE TO REQUEST NO. 73:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce e-mail communications with MRI responsive to this Request.

**REQUEST NO. 74:** All Documents, including email Communications between SMP and PROs, concerning the “non-payment of performance income” under Amazon’s 2016 license with SMP for Prime Music. Brodsky WRT ¶ 13.

**RESPONSE TO REQUEST NO. 74:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 75:** All Communications between SMP and Amazon, between SMP and Record Companies, or between SMP and any third party in which SMP inquired, either specifically or generally, about the “terms of [Amazon’s] record label agreements.” Brodsky WRT ¶ 14.

**RESPONSE TO REQUEST NO. 75:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request because it seeks information that is in the possession, custody or control of Amazon, a participant in this proceeding. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 76:** All Documents concerning [REDACTED]

[REDACTED] Brodsky WRT ¶ 15.

**RESPONSE TO REQUEST NO. 76:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request because it seeks information that is in the possession, custody or control of Amazon, a participant in this proceeding. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 77:** All Documents concerning [REDACTED]

[REDACTED] Brodsky WRT ¶¶ 18-19.

**RESPONSE TO REQUEST NO. 77:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 78:** All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized

Brotsky WRT ¶¶ 33-34 & n.11.

**RESPONSE TO REQUEST NO. 78:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 79:** All Documents in which any of Your members, including SMP, inquired about, analyzed, estimated, projected, or otherwise discussed “the amount of Prime Music revenues [or] the number of Prime Music users.” Brotsky WRT ¶ 17.

**RESPONSE TO REQUEST NO. 79:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections,

Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 80:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning SMP's calculation of [REDACTED] as the amount of "digital breakage" under the 2019 Amazon-Sony licensing agreement. Brodsky WRT ¶ 37.

**RESPONSE TO REQUEST NO. 80:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it duplicates the precise calculations reflected in the exhibits to the written rebuttal testimony of Peter Brodsky. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 81:** All analyses, memoranda, presentations, studies, surveys, and research findings related to the minimum guarantee calculations reflected in CO-Ex. 2.36.

**RESPONSE TO REQUEST NO. 81:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 82:** All Documents relating to the calculations reflected on CO-Ex. 2.37. Brodsky WRT ¶ 38.

**RESPONSE TO REQUEST NO. 82:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General

Objections, Copyright Owners will produce documents that Sony Music Publishing locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 83:** All analyses, memoranda, and presentations concerning the purpose of mechanical floors (*e.g.*, a mechanical-only per-subscriber minimum) and all-in minima (*e.g.*, an all-in per-subscriber minimum) in license agreements for Interactive Streaming, the Phonorecords I Settlement, and the Phonorecords II Settlement, including, but not limited to, whether they are designed to protect against revenue deferral or displacement. Brodsky ¶¶ 6970; Cohan ¶ 23; Kokakis ¶ 13.

**RESPONSE TO REQUEST NO. 83:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it duplicates evidence and testimony in the record in *Phonorecords III*, including in the remand proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 84:** All Documents supporting the contention that “the complex Phonorecords II structure does not reflect the current marketplace.” Brodsky WRT ¶ 79.

**RESPONSE TO REQUEST NO. 84:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it duplicates evidence and testimony in the record in *Phonorecords III*, including in the remand proceeding as well as findings of the Judges in *Phonorecords III* to which the Services are invited to review. Copyright Owners will not be producing documents in response to this Request.



**REQUEST NO. 85:** All Documents concerning Cohan’s contention that the “[peermusic] ultimately ha[s] no ability to say no to a license” with Interactive Streaming Services. Cohan WRT ¶ 4.

**RESPONSE TO REQUEST NO. 85:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding and it is a matter of law since the 1909 Copyright Act was adopted. Copyright Owners will not be producing documents in response to this Request and refer the Services to 17 U.S.C. § 115.

**REQUEST NO. 86:** All Documents concerning [REDACTED] Cohan WRT ¶ 8; *see also id.* ¶¶ 8-10.

**RESPONSE TO REQUEST NO. 86:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request because it seeks information that is in the possession, custody or control of Amazon, a participant in this proceeding, including in particular Amazon’s Exhibit 92 and proposed Exhibit 338. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 87:** All Documents analyzing, considering, projecting, or discussing the possibility of a “potential legal challenge” to [REDACTED] under the Phonorecords III Original Determination. Cohan WRT ¶ 11.

**RESPONSE TO REQUEST NO. 87:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General

Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 88:** All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized [REDACTED] referenced in paragraphs 8-9 of the Cohan WRT.

**RESPONSE TO REQUEST NO. 88:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 89:** All Documents concerning the reasons that [REDACTED] Cohan WRT ¶ 12.

**RESPONSE TO REQUEST NO. 89:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 90:** All Documents concerning [REDACTED]

[REDACTED] Cohan WRT ¶ 12.

**RESPONSE TO REQUEST NO. 90:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 91:** All Documents concerning [REDACTED], including [REDACTED].

**RESPONSE TO REQUEST NO. 91:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents concerning the termination of [REDACTED] that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 92:** All Documents concerning the alleged [REDACTED]

[REDACTED] Copyright Owners' Intro Mem. at 26; see Cohan WRT ¶ 12.

**RESPONSE TO REQUEST NO. 92:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 93:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning [REDACTED]

[REDACTED]. Cohan WRT ¶¶ 13-18.

**RESPONSE TO REQUEST NO. 93:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections or General Objections, Copyright Owners will produce documents that peermusic locates following a reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 94:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the revenue-related strategies allegedly employed by the Services (*e.g.*, revenue displacement, revenue diminution, revenue deferral). *See, e.g.*, Brodsky WRT ¶ 68; Cohan WRT ¶ 23; Eisenach WRT § IV.

**RESPONSE TO REQUEST NO. 94:**

Copyright Owners object to this Request as overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request to the extent it seeks production of information already produced in this proceeding or in the *Phonorecords III* proceeding and available to the Services, and also duplicates findings of the Judges in *Phonorecords III* that were affirmed by the D.C. Circuit. Copyright Owners further object to this Request to the extent it seeks the production of information not in the possession, custody or control of Copyright Owners. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 95:** All Documents concerning the impact of “information asymmetry” on licensing negotiations, including but not limited to any “information asymmetry” that exists on the music publishing side of such negotiations. Eisenach WRT ¶¶ 109-111; *see also, e.g.*, Brodsky WRT ¶¶ 4, 7, 17; Kokakis WRT ¶ 45.

**RESPONSE TO REQUEST NO. 95:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 96:** All Documents concerning the creation and operation of SCORE. Kelly WRT ¶¶ 12, 25-27.

**RESPONSE TO REQUEST NO. 96:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 97:** All Documents concerning the creation and operation of the “Cash Out” service available through Score. Kelly WRT ¶ 26.

**RESPONSE TO REQUEST NO. 97:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 98:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the business model used by “private equity and fund investors who, in recent years, have poured hundreds of millions of dollars into buying existing successful song and record catalogues,” including but not limited to any analysis comparing these “private equity and fund investors” to traditional Music Publishers. Kelly WRT ¶ 46.

**RESPONSE TO REQUEST NO. 98:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 99:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the relative value of Mechanical Royalties and Performance Royalties to Music Publishers and Songwriters. Kelly WRT ¶¶ 50-51.

**RESPONSE TO REQUEST NO. 99:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 100:** All Documents concerning [REDACTED] referenced in paragraph 65 of the Kelly WRT.

**RESPONSE TO REQUEST NO. 100:**

Copyright Owners object to this Request as unduly burdensome in that it calls for the production of “all” documents. Subject to and without waiver of the foregoing objection and Copyright Owners’ General Objections, Copyright Owners will produce documents that they locate following a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 101:** All Documents proposing to give or analyzing the possibility of giving a Songwriter an advance in excess of one million dollars, including but not limited to any analysis used by a Music Publisher used for internal approvals or submitted to an affiliated company for review and approval. Beekman WRT ¶ 38

**RESPONSE TO REQUEST NO. 101:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request but note that documents responsive to this Request will be produced pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services’ Motion to Compel Production of Documents.

**REQUEST NO. 102:** All Documents concerning the creation and operation of the Songwriters Forward Initiative, including but not limited to all Documents memorializing the business rationale for creating the Songwriters Forward Initiative. Kelly WRT ¶ 67.

**RESPONSE TO REQUEST NO. 102:**

Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 103:** Documents sufficient to show (i) the number of Songwriters who allegedly benefited from the Songwriters Forward Initiative and (ii) the amount of each Songwriter's unrecouped advance as of July 20, 2021. Kelly WRT ¶ 67. All Documents concerning the creation and operation of the Songwriter Assistance wellness program, including but not limited to Documents sufficient to show the cost of the program. Kelly WRT ¶ 68.

**RESPONSE TO REQUEST NO. 103:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 104:** All Documents that support or contradict the assertion that UMPG "would not have agreed to the *Phonorecords II* rates under the current market conditions." Kokakis WRT ¶ 6.

**RESPONSE TO REQUEST NO. 104:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 105:** All Documents, including any analyses, projections, approval memoranda, presentations, or email Communications, concerning the negotiation, valuation, terms, or internal approval of the following licenses between Amazon and UMPG, *see* Kokakis WRT ¶¶ 16, 2122:

- a. The April 15, 2019 Amendment No. 1 to the Music Publishing Rights Agreement for Prime Music;
- b. The April 23, 2020 Amendment No. 2 to the Music Publishing Rights Agreement for Prime Music;
- c. The April 23, 2020 U.S. Term Sheet for Amazon Music Unlimited.

**RESPONSE TO REQUEST NO. 105:**

Copyright Owners object to this Request to the extent it requires the review and production of internal e-mail communications, which are unduly burdensome and disproportionate to the needs of the proceeding at this stage. Copyright Owners further object to this Request to the extent it calls for production of information in the possession of the Services who are participants in this proceeding. Copyright Owners further object to this Request as unduly burdensome insofar as it calls for the production of “[a]ll Documents.” Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce approval memoranda concerning the licenses identified in this Request that Universal Music Publishing Group locates reasonable and proportionate search of reasonably accessible records.

**REQUEST NO. 106:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning “the estimated all-in effective per-play rate that Amazon paid UMPG for Prime Music over the life of [the Amazon-UMPG] deal,” including but not limited to all “calculat[ions] by UMPG’s royalty department.” Kokakis WRT ¶ 22.

**RESPONSE TO REQUEST NO. 106:**



Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 107:** All Documents, including UMPG's internal email Communications, relating to UMPG's drafting, or contemporaneous understanding, of the following clauses:

- a. Section 8 of the April 15, 2019 Amendment No. 1 to the Music Publishing Rights Agreement for Prime Music;
- b. Section 6 of the April 23, 2020 Amendment No. 2 to the Music Publishing Rights Agreement for Prime Music;
- c. The "Experimental and Non-Precedential Nature" paragraph on page 2 of the April 23, 2020 U.S. Term Sheet for Amazon Music Unlimited.

**RESPONSE TO REQUEST NO. 107:**

Copyright Owners object to this Request to the extent it seeks production of information protected by the attorney-client privilege or work product protection. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 108:** All Documents, including but not limited to electronic or handwritten notes, or electronic Communications, that memorialized, analyzed, described, or summarized [REDACTED] concerning the agreements identified in Request No. 70, specifically including their conversations on March 7, 2019 and March 26, 2019.

**RESPONSE TO REQUEST NO. 108:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request insofar as it seeks discovery of information within the possession, custody or control of the Services. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 109:** All Documents concerning [REDACTED] including but not limited to all Documents concerning [REDACTED] Kokakis WRT ¶¶ 23-24.

**RESPONSE TO REQUEST NO. 109:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 110:** All Documents concerning any negotiations that UMPG had with any party in which UMPG requested a percentage-of-revenue royalty rate and eventually agreed to a licensing agreement that had no percentage-of-revenue component. Kokakis WRT ¶¶ 37-38.

**RESPONSE TO REQUEST NO. 110:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 111:** All Documents supporting or otherwise concerning the contention that if UMPG were not bound by the compulsory license, it would be able to negotiate Mechanical Royalties that are higher than the U.S. statutory mechanical rates. Kokakis WRT ¶ 42.

**RESPONSE TO REQUEST NO. 111:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright

Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 112:** All Documents concerning any instance in which UMPG has refused to license any third party, either directly or through any other entity (*e.g.*, a PRO), to prohibit that third party from engaging in any activity where UMPG had knowledge that such third party was already licensed by one or more other Music Publishers. Kokakis WRT ¶ 43.

**RESPONSE TO REQUEST NO. 112:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 113:** All licensing-related Communications between UMPG or the NMPA, and “the [startup or new] services,” discussed in the Kokakis WDT. Kokakis WRT ¶ 50 (“With respect to virtually all of the services and agreements I testified about (*e.g.*, [REDACTED]), the services were startup companies (or companies just entering the digital space) that reached out to us seeking to license our music. There were no litigation threats made.”).

**RESPONSE TO REQUEST NO. 113:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 114:** All Documents concerning Your members’ strategies with respect to negotiating licensing agreements with audiovisual streaming services. Kokakis WRT ¶ 50.

**RESPONSE TO REQUEST NO. 114:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is

not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 115:** All Documents in which You or any of Your members – or any agent or consultant retained, employed, or directed by You or any of Your members – inquired about, analyzed, estimated, projected, attempted to quantify, or otherwise discussed the “complementary value of music streaming to the Services” or their corporate affiliates. Eisenach WRT ¶ 4.

**RESPONSE TO REQUEST NO. 115:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 116:** All Documents supporting Mr. Heimlich’s contention that the “conflicts of interests” arising from Services acting as both “music streaming ad publishers” and “intermediary roles between advertisers and ad publishers . . . can incentivize them to prioritize the gathering of highly valuable listening data to fuel their non-music-streaming endeavors,” including those concerning the specific purported examples cited by Mr. Heimlich for each Service. Heimlich WRT ¶¶ 25-30.

**RESPONSE TO REQUEST NO. 116:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 117:** All Documents relied on by Mr. Heimlich concerning Spotify’s use of music streaming data to sell and target advertisements across its non-music content. Heimlich WRT ¶ 37.

**RESPONSE TO REQUEST NO. 117:**

Copyright Owners object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners will produce documents that they locate after a reasonable and proportionate search of readily accessible sources.

**REQUEST NO. 118:** All Documents concerning the contemplated or actual use of a Performance License or Performance Royalties as leverage in negotiations over a Mechanical License or Mechanical Royalties. *See, e.g.*, Brodsky WRT ¶ 78 (asserting that agreements negotiated with the Services “are not appropriate benchmarks . . . as they are made under the shadow of the compulsory license”); Eisenach WRT ¶ 108 (“Rates negotiated under the shadow of compulsory license do not reflect fair market value of the rights at issue and are therefore not appropriate benchmarks.”).

**RESPONSE TO REQUEST NO. 118:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not produce documents in response to this Request.

**REQUEST NO. 119:** All Documents concerning the Sound Recording Royalties charged by Record Companies to Interactive Streaming Services, including but not limited to all Documents concerning the impact of those rates (i) on the development of the interactive streaming market; (ii) on the Mechanical Royalties that Music Publishers are able to negotiate in the interactive streaming market; (iii) on the profitability of Music Publishers or the incomes of Songwriters; and (iii) on the profitability of Interactive Streaming Services. Eisenach WRT § VI.

**RESPONSE TO REQUEST NO. 119:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 120:** All analyses, memoranda, presentations, studies, surveys, and research findings supporting or refuting the claim that [REDACTED]. Eisenach WRT ¶ 47.

**RESPONSE TO REQUEST NO. 120:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 121:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning consumers' willingness to pay for HD quality audio. Flynn WRT ¶ 43; Bebawi WRT ¶ 16.

**RESPONSE TO REQUEST NO. 121:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 122:** All analyses, memoranda, presentations, studies, surveys, and research findings concerning the impact that smartphones, smart home speakers and other smart home devices, high-quality headphones, and wearable technology have had on consumers' music listening habits, Music Publishers' and Songwriters' revenues, music distribution, and musical works licensing opportunities.

**RESPONSE TO REQUEST NO. 122:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 123:** For each of Your members, Documents sufficient to show all revenue Your members received from apps distributed through the Apple App Store, Google Play, and Amazon

(app store and devices), broken down monthly or at the level of detail such information is maintained in the ordinary course of business.

**RESPONSE TO REQUEST NO. 123:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 124:** For each of Your members, Documents sufficient to show the percentage of total revenue Your members received from apps distributed through the Apple App Store, Google Play, and Amazon (app store and devices), that is attributable to subscribers or users joining the app through the Apple App Store, Google Play, and Amazon (app store or devices), respectively, broken down monthly or at the level of detail such information is maintained in the ordinary course of business.

**RESPONSE TO REQUEST NO. 124:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 125:** All agreements, work papers, computer code, databases, raw data, spreadsheets, underlying analyses, and other Documents prepared, reviewed, or considered by each Copyright Owner expert witness in connection with the expert witness's Written Rebuttal Testimony, to the extent not already produced.

**RESPONSE TO REQUEST NO. 125:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request as beyond the scope of the

participants' stipulation governing expert discovery in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 126:** All published or unpublished scholarly articles, or drafts of articles, written in whole or in part by each Copyright Owner expert witness that relates to the music publishing industry, the music recording industry, Interactive Streaming Services, music piracy, radio broadcasting, cable or terrestrial television broadcasting, or the delivery of music or audiovisual content to consumers in any format and by any medium, including over the Internet, to the extent not already produced.

**RESPONSE TO REQUEST NO. 126:**

Copyright Owners object to this Request to the extent it calls for the production of publicly available information. Copyright Owners' expert witnesses have identified their professional publications in connection with each of their reports. Copyright Owners will meet and confer concerning any specific requests that the Services may have concerning such publications.

**REQUEST NO. 127:** All Documents constituting or reflecting meetings, discussions or other Communications between each Copyright Owner expert witness and: (1) any fact witness; (2) any Music Publisher personnel, NMPA personnel, NSAI personnel, Music Publisher representatives, NMPA representative, or NSAI representative; and (3) any other meetings, discussions, or Communications that any Copyright Owner expert considered in formulating the expert's opinions, to the extent not already produced.

**RESPONSE TO REQUEST NO. 127:**

Copyright Owners object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Request as beyond the scope of the participants' stipulation governing expert discovery in this proceeding. Copyright Owners will not be producing documents in response to this Request.

**REQUEST NO. 128:** Each Document constituting a report, testimony (whether written or in deposition, trial, or hearing) or opinion, with exhibits, submitted by each Copyright Owner witness in any prior Copyright Arbitration Royalty Panel, Copyright Royalty Board, ASCAP, BMI, or other rate-setting or regulatory proceeding that discusses or otherwise relates to any of the subjects




discussed in his or her Written Direct Testimony, as well as any such Document relating to Interactive Streaming, Non-Interactive Streaming, any Digital Music Licensee, difference among types of Digital Music Licensee, music piracy, the promotional or substitutional effect of Digital Music Licensee, the efforts of Music Publishers to have works available on any Interactive Streaming Service or terrestrial radio, Mechanical Licenses, Performance Licenses, copyright licenses with respect to sound recordings, benchmarking analyses of any type, and rate-setting analyses of any type, to the extent not already produced.

**RESPONSE TO REQUEST NO. 128:**

Copyright Owners object to this Request as duplicative of prior requests in this proceeding. Copyright Owners further object to this Request as it seeks the production of information that is not directly related to its Written Rebuttal Statement and is therefore not discoverable. Copyright Owners further object to this Request as unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners will not be producing documents in response to this Request.

Dated: May 13, 2022  
New York, New York

PRYOR CASHMAN LLP

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*Attorneys for Copyright Owners*

# **EXHIBIT 4**

**PUBLIC VERSION**

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

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

Docket No. 21–CRB–0001–PR (2023–2027)

**COPYRIGHT OWNERS’ RESPONSES AND OBJECTIONS  
TO THE SERVICES’ THIRD SET OF INTERROGATORIES**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 *et seq.*, 37 C.F.R. § 351.5, the Copyright Royalty Judges’ (the “Judges”) Order Following April 7, 2022 Status Conference, dated April 8, 2022 (“April 8 Order”) and the May 3, 2022 Stipulation between National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI” and, together with NMPA, the “Copyright Owners”), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”), on the other (such Stipulation, the “Participants’ Discovery Stipulation”), Copyright Owners hereby serve the following Responses and Objections to the Third Set of Interrogatories from the Services (the “Interrogatories”).

**GENERAL OBJECTIONS**

1. Copyright Owners object to the Interrogatories, and all Instructions and Definitions thereto, to the extent they impose any obligations on the Copyright Owners beyond those imposed by 37 C.F.R. § 351.5(b), 17 U.S.C. § 803(b)(6)(C)(v), and the Participants’ Discovery Stipulation.

2. Copyright Owners object to the definition of “Your Members” in the Interrogatories as including the music publishers whose executives sit on the NMPA Board of Directors, none of which are Participants in this proceeding. NMPA does not have possession, custody or control of the documents of its board members’ companies and is not responding or objecting to these Interrogatories on behalf of them. Music publishers peermusic, Sony Music Publishing (“SMP”), Universal Music Publishing Group (“UMPG”) and Warner Chappell Music, Inc. (“WCM”) (collectively, the “Publisher Witnesses”), whose executive sit on the NMPA board and who submitted Written Rebuttal Testimony in this proceeding on behalf of the Copyright Owners, will respond and/or object to these Interrogatories, through the Publisher Witnesses’ undersigned counsel, as if the Interrogatories were made directly to each of the Publisher Witnesses.

3. Copyright Owners object to the definition of “Music Publishers” in the Interrogatories as overbroad and disproportionate to the needs of this proceeding, particularly with respect to its inclusion of “any and all parent, subsidiary, affiliate, successor, or predecessor companies.” As previously stated, the Publisher Witnesses will respond and/or object to these Interrogatories, through the Publisher Witnesses’ undersigned counsel, as if the Interrogatories were made to each of the Publisher Witnesses.

4. Copyright Owners object to the definition of “Your members” in the Interrogatories. NMPA does not have possession, custody or control of the documents of its board members’ companies, or “any parents, subsidiaries, affiliates, or agents of each of them,” and is not responding or objecting to these Interrogatories on behalf of its board members’ companies other than with respect to the responses and objections provided by the Publisher Witnesses.

5. Copyright Owners object to the Interrogatories to the extent they seek information already produced by Copyright Owners and the Publisher Witnesses, and other music publishers, in the course of this proceeding or in the *Phonorecords III* proceeding. Copyright Owners will not produce documents or information in response to these Interrogatories, if they previously produced such Documents.

6. Copyright Owners object to the Interrogatories to the extent they are overly broad, unduly burdensome and harassing.

7. Copyright Owners object to the Interrogatories to the extent they are vague, ambiguous and incomprehensible.

8. Copyright Owners object to the Interrogatories to the extent they are duplicative.

9. Copyright Owners object to the Interrogatories to the extent they include discrete sub-parts, which count as separate Interrogatories, and to the extent that they exceed the limit on interrogatories set forth in 37 C.F.R. § 351.5(b)(2).

10. Copyright Owners object to the Interrogatories to the extent they seek broad, nonspecific discovery and/or discovery that is not relevant to the claims or defenses of any participant in this proceeding. 37 C.F.R. § 351.5(b)(2).

11. Copyright Owners object to the Interrogatories to the extent they seek discovery that is not relevant to the willing buyer/willing seller rate standard set forth in 17 U.S.C. § 115(c)(1)(F).

12. Copyright Owners object to the Interrogatories to the extent they call for the disclosure of materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part. Copyright

Owners will exclude from their production all documents or parts of documents protected by any applicable privilege, doctrine or immunity.

13. Copyright Owners object to the Interrogatories to the extent they seek the production of documents or information that is publicly available.

14. Copyright Owners object to the Interrogatories to the extent they seek the production of documents created, generated or obtained beyond the period between January 1, 2017 and the present. Copyright Owners shall produce documents created, generated or obtained between January 1, 2017 and the present.

15. Copyright Owners object to the Interrogatories to the extent they seek the production of documents or information already in the possession of any of the Services.

16. Copyright Owners object to the Interrogatories to the extent they seek the production of documents or information in the possession, custody or control of third parties.

17. Copyright Owners object to the Interrogatories to the extent they request “all” or “any” information or purport to impose similar obligations on Copyright Owners.

18. Copyright Owners object to the Interrogatories to the extent they purport to require Copyright Owners to compile information in a manner other than the manner in which it is maintained in the ordinary course of business or to create documents that do not presently exist.

19. No response or objection to any Interrogatory is intended to be, nor shall any response be construed as, an admission of the existence of any facts set forth in or assumed by any Interrogatory.

20. These responses and objections are based on the Copyright Owners’ knowledge, information, and belief at this time. Copyright Owners expressly reserve the right to modify,

supplement, or amend any or all of these responses, if necessary or appropriate, pending further discovery or in light of further review.

21. By agreeing to provide information in response to an Interrogatory, Copyright Owners do not concede either the relevance or admissibility of such documents or information and affirmatively reserve their rights to challenge or dispute the relevance or admissibility of any such documents or information.

22. These General Objections apply in response to all Interrogatories and are incorporated by reference into each and every specific objection below to the extent applicable. Various objections may be referred to in the responses below for purposes of clarity. Failure to incorporate specifically an objection, however, does not constitute a waiver of any such objection.

### **SPECIFIC RESPONSES & OBJECTIONS**

#### **INTERROGATORY NO. 12:**

Identify, on an annual basis and by Songwriter, all advances Your members have paid to Songwriters and the recoupment status of each of Your members' Songwriters who received an advance during the Time Period. For any advances that are unrecouped in any year, Your answer should identify the amount of the unrecouped balance on an annual basis.

#### **RESPONSE TO INTERROGATORY NO. 12:**

Copyright Owners object to this Interrogatory insofar as it seeks to compel the organization of advance-related data in a manner not maintained in the ordinary course of business. Copyright Owners further object to this Interrogatory as duplicative and cumulative of Interrogatories propounded in this proceeding. Copyright Owners further object to this Interrogatory as overly broad, unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate

Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2), the Publishers Witnesses have already produced responsive documents concerning their top 1000 advance accounts which, in many instances, exceeds the total advance accounts at the Publisher Witness. Subject to and without waiver of the foregoing objections and General Objections, the Publisher Witnesses identify the following documents in response to this Interrogatory.

*peermusic*

P4-PEERMUSIC00005386

P4-PEERMUSIC00005447

*Universal Music Publishing Group*

P4-UMPG00004168

P4-UMPG00004583

*Sony Music Publishing*

P4-SMP00000908

P4-SMP00002922

*Warner Chappell Music*

P4-WARNER\_CHAPPELL00000288

P4-WARNER\_CHAPPELL00000289

P4-WARNER\_CHAPPELL00000290

P4-WARNER\_CHAPPELL00000291

P4-WARNER\_CHAPPELL00000292

P4-WARNER\_CHAPPELL00001613

P4-WARNER\_CHAPPELL00001614

**INTERROGATORY NO. 13:**

For each of Your members, identify every agreement under which Your member has acquired a share of or entire interest in an existing musical-works copyright, the musical works acquired, the price Your members paid under the agreement, and, on annual basis, the Mechanical, Performance, and Synchronization Royalties Your member receives from its ownership interest in those works.



**RESPONSE TO INTERROGATORY NO. 13:**

Copyright Owners object to this Interrogatory as irrelevant to this proceeding. Copyright Owners further object to this Interrogatory as overly broad, unduly burdensome and disproportionate to the needs of this proceeding as this Interrogatory seeks the identity of every contract acquiring interests in musical works copyrights in the entire Relevant Time Period and associated royalties reporting for the same. The Publisher Witnesses collectively engage in at least hundreds of transactions in musical works each year, and the time and effort necessary to identify, collect and produce information responsive to this Interrogatory (including the need to review related non-disclosure agreements and send compliance notices to counterparties) is wholly disproportionate to the needs of this proceeding and unduly burdensome. Indeed, as reflected in Copyright Owners' response to Interrogatory No. 10, the Publisher Witnesses added [REDACTED] [REDACTED] of compositions to their respective repertoires for [REDACTED] since 2017 and their systems do not readily distinguish between musical works acquisitions and newly composed works. The effort required to respond to this Interrogatory is unquantifiable given the necessary and manual review of client agreements. Copyright Owners further object to this Interrogatory to the extent it concerns information being produced by Copyright Owners pursuant to the May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). Copyright Owners have already provided voluminous information concerning their receipt of royalties throughout the Relevant Time Period and object to this Interrogatory insofar as it seeks to require the rearrangement of such data in ways

not maintained in the normal course of business. On the basis of the foregoing objections and General Objections, Copyright Owners will not respond further to this Interrogatory.

**INTERROGATORY NO. 14:**


Identify and describe the substantive terms of any currently operative contracts between any of Your members or their Songwriters and any Record Company or recording artist, including any First Use License, in which: (a) Your member (or Songwriter) agreed to pay the Record Company (or artist) to record a composition; (b) the Record Company (or artist) agreed to pay Your member (or Songwriter) for the right to record a composition; (c) Your member (or Songwriter) agreed to attribute to or share with the Record Company (or artist) some or all of its Composition Royalties; or (d) the Record Company (or artist) agreed to attribute to or share with Your member (or Songwriter) some or all of its Sound Recording Royalties.


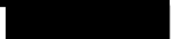
**RESPONSE TO INTERROGATORY NO. 14:**

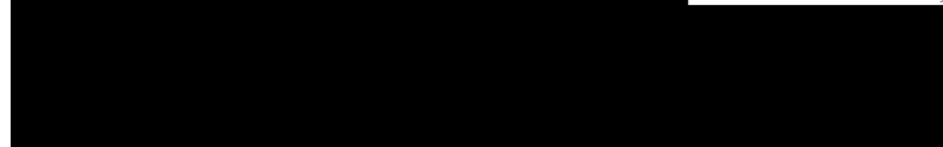
Copyright Owners object to this Interrogatory to the extent it calls for the identification and production of information that is not in the possession, custody or control of Copyright Owners, as the Publisher Witnesses are not routinely in possession of agreements between their clients and Record Companies and, in any event, do not maintain them in a segregated and/or readily identifiable location from client agreements generally. Copyright Owners further object to this Interrogatory as overly broad, unduly burdensome and disproportionate to the needs of this proceeding at this stage as, among other reasons, it calls for the review of every client agreement over a more-than-five-year period. Indeed, as reflected in Copyright Owners' response to Interrogatory No. 10, the Publisher Witnesses added [REDACTED] since 2017. The effort required to respond to this Interrogatory is unduly burdensome given the necessary and manual review of client agreements. Copyright Owners further object to this Interrogatory as overbroad as – even if in the possession, custody and control of the Publishers Witnesses and otherwise identifiable without manual efforts – every agreement between a songwriter and a Record

Company would necessarily include a payment by the Record Company for the right to record a composition, meaning that this Interrogatory facially seeks every license between a songwriter and a Record Company. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). On the basis of the foregoing objections and their General Objections, Copyright Owners will not respond further to this Interrogatory.

**INTERROGATORY NO. 15:**

State the basis for Mr. Abitbol's conclusion that the ".0010 per-stream rate" 

 P4-SMP00003481, including 

 if a written analysis was performed but not produced, whether the analysis was preserved.<sup>1</sup>

**RESPONSE TO INTERROGATORY NO. 15:**

Copyright Owners object to this Interrogatory as improperly compound, requiring Copyright Owners to "state the basis" and "identify" various information in the course of what is purported to be a single interrogatory. Copyright Owners further object to this Interrogatory as it misstates and misinterprets a comment by an individual in an e-mail message as having been "adopted" by Sony Music Publishing. Copyright Owners further object to this Interrogatory to the extent it seeks to impose the same "punitive" burdens rejected by the Judges in their April 20, 2022

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<sup>1</sup> Interrogatory Nos. 15 and 16 are on behalf of Amazon only.

Order on Amazon's Motion to Compel Production of Documents Concerning [REDACTED]

[REDACTED]. Copyright Owners further object to this Interrogatory as overbroad and unduly burdensome to the extent it calls for Copyright Owners to reproduce, in narrative answer format, material that has already been produced in this proceeding. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners respond as follows:

The comment by Mr. Abitbol in his email at P4-SMP00003481 is a reflection of his thinking at the time such email was written. The analyses performed by Sony Music Publishing in connection with the negotiation of the [REDACTED] have been produced after a substantial and burdensome search, including the use of broad, ineffective, and non-specific terms suggested by Amazon. The responsive documents identified as a result of such searches, identified by beginning Bates number, are:

P4-SMP00003512  
P4-SMP00003515  
P4-SMP00003475  
P4-SMP00003516  
P4-SMP00003476  
P4-SMP00003503  
P4-SMP00003509  
P4-SMP00003577  
P4-SMP00003505  
P4-SMP00003507  
P4-SMP00003422  
P4-SMP00003480  
P4-SMP00003567

P4-SMP00003471  
P4-SMP00003517  
P4-SMP00003551  
P4-SMP00003602  
P4-SMP00003396  
P4-SMP00003549  
P4-SMP00003407  
P4-SMP00003437  
P4-SMP00003484  
P4-SMP00003566  
P4-SMP00003424  
P4-SMP00003423  
P4-SMP00003514  
P4-SMP00003486  
P4-SMP00003473  
P4-SMP00003479  
P4-SMP00003513  
P4-SMP00003518  
P4-SMP00003568  
P4-SMP00003552  
P4-SMP00003603  
P4-SMP00003397  
P4-SMP00003594  
P4-SMP00003550  
P4-SMP00003482  
P4-SMP00003465  
P4-SMP00003408  
P4-SMP00003468  
P4-SMP00003438  
P4-SMP00003469  
P4-SMP00003569  
P4-SMP00003385  
P4-SMP00003533  
P4-SMP00003425  
P4-SMP00003467  
P4-SMP00003477  
P4-SMP00003481  
P4-SMP00003609  
P4-SMP00003579

P4-SMP00003491  
P4-SMP00003497  
P4-SMP00003596  
P4-SMP00003470  
P4-SMP00003570  
P4-SMP00003386  
P4-SMP00003534  
P4-SMP00003610  
P4-SMP00003580  
P4-SMP00007510  
P4-SMP00007423  
P4-SMP00007425  
P4-SMP00007511  
P4-SMP00007523  
P4-SMP00007424  
P4-SMP00007572  
P4-SMP00007470  
P4-SMP00007433  
P4-SMP00007537  
P4-SMP00007427  
P4-SMP00007452  
P4-SMP00007573  
P4-SMP00007564  
P4-SMP00007489  
P4-SMP00007566  
P4-SMP00007538  
P4-SMP00007550  
P4-SMP00007667  
P4-SMP00007645  
P4-SMP00007603  
P4-SMP00007576  
P4-SMP00007429  
P4-SMP00007430  
P4-SMP00007431  
P4-SMP00007432  
P4-SMP00007625  
P4-SMP00007606  
P4-SMP00007668  
P4-SMP00007646

P4-SMP00007605  
P4-SMP00007577  
P4-SMP00007589  
P4-SMP00007626  
P4-SMP00007607  
P4-SMP00007565  
P4-SMP00007568  
P4-SMP00007569  
P4-SMP00007570  
P4-SMP00007571

**INTERROGATORY NO. 16:**

Identify any Music Publisher, sub-publisher, catalog, or repertoire whose mechanical rights [REDACTED] licensed using the compulsory license for [REDACTED] during the Relevant Time Period, for which [REDACTED]. For any such Music Publisher, sub-publisher, catalog, or repertoire, Your answer should describe in detail the basis (including any contractual terms) on which [REDACTED] (or any of its predecessors or affiliates) had the right to obtain [REDACTED] royalty reporting, the date on which it acquired that right, and whether and when it availed itself of that right.

**RESPONSE TO INTERROGATORY NO. 16:**

Copyright Owners object to this Interrogatory as improperly compound, requiring Copyright Owners to “identify” and “describe the basis” of various information in the course of what is purported to be a single interrogatory. Copyright Owners further object to this interrogatory as vague and inscrutable. Copyright Owners further object to this Interrogatory as overbroad, unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners further object to this Interrogatory to the extent it seeks the identification of information known or knowable to Amazon in this proceeding. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners respond as follows, to the extent this

Interrogatory seeks information concerning the basis of [REDACTED]

[REDACTED], reference is made to Copyright Owners' response to Interrogatory No. 15.

**INTERROGATORY NO. 17:**

Identify the Stream Share for each of Your members on each Interactive Streaming Service, globally and separately by geographic market, including but not limited to the United States, Canada, and Europe, on a monthly basis from January 2017 through March 2022.<sup>2</sup>

**RESPONSE TO INTERROGATORY NO. 17:**

Copyright Owners object to this Interrogatory to the extent it calls for the identification of information that is outside the possession, custody or control of Copyright Owners, and seeks information that is readily or more accessible to the Services from the Services' own files. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). The information sought by this Interrogatory is information belonging to Interactive Streaming Services, including the Services propounding this Request. Copyright Owners lack knowledge sufficient to respond to this Interrogatory.

**INTERROGATORY NO. 18:**

State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forgo a license from a Music Publisher with a Stream Share of each of Your members identified in Interrogatory 17, without a material impact on the short or long term profitability of the Service, and identify all facts that support Your position.

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<sup>2</sup> Amazon, Spotify, Pandora, Google, and Apple do not believe that Mr. Bebawi's testimony about European licensing deals was properly included in the Copyright Owners' Written Rebuttal Statement, and some Services intend to move to strike it. The Services are including Interrogatory Nos. 17 and 23 as they apply to ex-U.S. territories solely to preserve their rights in the event that the Judges allow Mr. Bebawi's improper testimony to stand.



**RESPONSE TO INTERROGATORY NO. 18:**

Copyright Owners object to this Interrogatory because it calls for conjecture and speculation on an undetermined number of compound or disjunctive hypothetical scenarios. Copyright Owners further object because the request is so vague and unintelligible that Copyright Owners cannot determine the information sought, including that there is no explanation of what is meant by “supracompetitive royalty rate” or the compound/disjunctive “material impact on the short or long term profitability,” and there are multiple undefined terms of art. Copyright Owners further object to this Interrogatory as overbroad and unduly burdensome, including in its request for “all facts.” Copyright Owners further object to this Interrogatory because it requests speculation about hypothetical scenarios that depend upon decisions and information, including concerning profitability, that are in the control of Services and outside the knowledge of Copyright Owners. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). On the basis of the foregoing objections and General Objections, Copyright Owners will not provide further response to this Interrogatory.

**INTERROGATORY NO. 19:**

State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forego a license from a Music Publisher with (a) 1% or (b) 5% Stream Share on that Service without a material impact on the short or long term profitability of the Service, and identify all facts that support Your position.

**RESPONSE TO INTERROGATORY NO. 19:**

Copyright Owners object to this Interrogatory because it calls for conjecture and speculation on an undetermined number of compound or disjunctive hypothetical scenarios.

Copyright Owners further object because the request is so vague and unintelligible that Copyright Owners cannot determine the information sought, including that there is no explanation of what is meant by “supracompetitive royalty rate” or the compound/disjunctive “material impact on the short or long term profitability,” and there are multiple undefined terms of art. Copyright Owners further object to this Interrogatory as overbroad and unduly burdensome, including in its request for “all facts.” Copyright Owners further object to this Interrogatory because it requests speculation about hypothetical scenarios that depend upon decisions and information, including concerning profitability, that are in the control of Services and outside the knowledge of Copyright Owners. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). On the basis of the foregoing objections and General Objections, Copyright Owners will not provide further response to this Interrogatory.

**INTERROGATORY NO. 20:**

State whether or not You contend that an Interactive Streaming Service could, in the event of a licensor demand for a supracompetitive royalty rate, choose to forgo a license from a Record Label with (a) 1% or (b) 5% Stream Share on that Service without a material impact on the short or long term profitability of the Service, and identify all facts that support Your position.

**RESPONSE TO INTERROGATORY NO. 20:**

Copyright Owners object to this Interrogatory because it calls for conjecture and speculation on an undetermined number of compound or disjunctive hypothetical scenarios. Copyright Owners further object because the request is so vague and unintelligible that Copyright Owners cannot determine the information sought, including that there is no explanation of what is meant by “supracompetitive royalty rate” or the compound/disjunctive “material impact on the

short or long term profitability,” and there are multiple undefined terms of art. Copyright Owners further object to this Interrogatory as overbroad and unduly burdensome, including in its request for “all facts.” Copyright Owners further object to this Interrogatory because it requests speculation about hypothetical scenarios that depend upon decisions and information, including concerning profitability, that are in the control of Services and outside the knowledge of Copyright Owners. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). On the basis of the foregoing objections and General Objections, Copyright Owners will not provide further response to this Interrogatory.

**INTERROGATORY NO. 21:**

Identify and describe in detail the reasons why Your members agreed to the Interactive Streaming rates and rate structure in the *Phonorecords I* Settlement and the *Phonorecords II* Settlement, including by identifying any documents or other contemporaneous records memorializing those reasons or otherwise supporting each member’s answer.

**RESPONSE TO INTERROGATORY NO. 21:**

Copyright Owners object to this Interrogatory because it is premised on the incorrect assumption that *members* of the NMPA were parties to the *Phonorecords I* or *Phonorecords II* settlements, when such settlements were agreements with the NMPA, not its members. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). Copyright Owners further object to this Interrogatory as seeking information wholly irrelevant to the instant proceedings. Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners identify the testimony of Mr.

David Israelite from the *Phonorecords III* proceeding, which describes the reasons NMPA agreed to such settlements. *See Phonorecords III* H'rg. Tr. 3550:11 – 3886:25.

**INTERROGATORY NO. 22:**

Describe in detail the basis for, or origin of, the key economic terms in the *Phonorecords I* and *Phonorecords II* settlements, including but not limited to the 10.5% headline rate, the 22% TCC prong for ad-supported services, other TCC rates, TCC caps, specific mechanical-only floor amounts and their relationship to the public performance fee deduction term, the public performance fee deduction, and the pass through rates applicable if sound recording companies secured licenses for Interactive Streaming.

**RESPONSE TO INTERROGATORY NO. 22:**

Copyright Owners object to this Interrogatory as seeking information wholly irrelevant to the instant proceedings. Copyright Owners further object to this Interrogatory as vague and ambiguous, including in its use of “basis” and “origin.” Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2). Subject to and without waiver of the foregoing objections and General Objection, Copyright Owners respond that the “basis” of the key economic terms of the *Phonorecords I* and *Phonorecords II* settlements were what the parties were willing to agree to under the circumstances at the time. Copyright Owners further identify the testimony of Mr. David Israelite from the *Phonorecords III* proceeding, which describes the reasons NMPA agreed to such settlements. *See Phonorecords III* H'rg. Tr. 3550:11 – 3886:25.

**INTERROGATORY NO. 23:**

Identify and describe in detail each of Your members' effective rates for licensing of musical works in each jurisdiction they do business, including the split of royalties between mechanical and performance rights.

**RESPONSE TO INTERROGATORY NO. 23:**

Copyright Owners object to this Interrogatory as vague and ambiguous in its use of “effective rates.” Copyright Owners further object to this Interrogatory as overly broad and unduly burdensome insofar as it seeks to identification and description of musical works licensing rates for any or all manner of licenses in each and every territory in the world. Copyright Owners further object to this Interrogatory as disproportionate to the needs of this proceeding. Copyright Owners further object to the Interrogatory as including discrete sub-parts, which count as separate Interrogatories, and because the Services have exceeded the number of available interrogatories under 37 C.F.R. 351.5(b)(2), On the basis of the foregoing objections and General Objections, Copyright Owners will not provide further response to this Interrogatory.

**INTERROGATORY NO. 24:**

Identify the volume of “stream ripping,” as that term is used in paragraph 11 of the Aguirre WRT, that occurred during the Relevant Time Period, and describe in detail: (a) all specific data or other evidence supporting Ms. Aguirre’s or Mr. Brodsky’s assertion that such “stream ripping” is occurring, *see* Aguirre WRT ¶¶ 11, 14; Brodsky WRT ¶ 84; (b) the degree to which such “stream ripping” substitutes for paid streaming (or purchases of physical music or permanent digital downloads), and all specific data or other evidence supporting Your answer; (c) how the use of “stream ripping” compares to paid streaming (or purchases of physical music or permanent digital downloads); (d) all efforts that You or Your members have taken to combat such “stream ripping”; and (e) every instance in which You or Your members have asked any Service Participant to take any steps to combat it.

**RESPONSE TO INTERROGATORY NO. 24:**

Copyright Owners object to this Interrogatory as improperly compound, insofar as it calls for the identification of evidence supporting two statements and descriptions of several, discrete topics under the guise of a single interrogatory. Copyright Owners further object to this Interrogatory as exceeding the number of permissible interrogatories in this proceeding

considering the Services' prior, improper compound interrogatories. 37 C.F.R. § 351.5(b)(2). Copyright Owners further object to this Interrogatory as overly broad and disproportionate to the needs of this proceeding. Copyright Owners further object to subpart (c) of this Interrogatory as unintelligible. Copyright Owners further object to this Interrogatory as seeking information that is equally accessible to the Service Participants, or in the possession, custody or control of the Service Participants, including, without limitation, subpart (e).

Subject to and without waiver of the foregoing objections and General Objections, Copyright Owners respond that the fact of stream ripping, its increased use, and its effects on the music industry have been discussed in news media for years, and are addressed in Copyright Owners' written testimony. Beyond this, Copyright Owners will not attempt to compile here all of many sources documenting this phenomenon, but just a few can be found at <https://www.forbes.com/sites/hughmcintyre/2017/08/11/what-exactly-is-stream-ripping-the-new-way-people-are-stealing-music/> (last accessed May 11, 2022); <https://www.hollywoodreporter.com/business/business-news/stream-ripping-is-next-frontier-for-piracy-wars-4099909/> (last accessed May 11, 2022); <https://www.nme.com/news/music/stream-ripping-piracy-has-increased-nearly-15-times-over-in-the-last-three-years-2762788> (last accessed May 11, 2022); *see also* PRS for Music, Stream-ripping: Its role in the UK music piracy landscape three years on (September 2020), accessible at <https://www.prsformusic.com/-/media/files/prs-for-music/research/full-stream-ripping-research-report-2020.pdf>. Indeed, public sources reflect that the occurrence and impacts of stream ripping are well known to the Service Participants. *See, e.g.,* <https://completemusicupdate.com/article/spotify-suspends-subscribers-who-stream-rip-via-high-speed-recording-app/> (last accessed May 11, 2022);

<https://musically.com/2020/10/21/youtube-is-trying-to-crack-down-on-stream-ripping-websites/>

(last accessed May 11, 2022).

**INTERROGATORY NO. 25:**

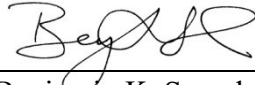
For each license in which any of Your members licensed Performance Rights directly, identify: (a) the headline rate and effective rate that the licensee paid for Performance Rights; (b) the identified and effective split between Mechanical and Performance Royalties that Your members agreed to and collected under the license with a licensee; (c) the basis on which Your member adopted an internal split between Performance and Mechanical Royalties instances where a split was not negotiated in a license agreement with a licensee, including any analysis Your member performed in adopting or calculating it; and (d) all fees, commissions, or similar charges Your member paid to any PRO for administering Performance Royalties received under the license, including by describing how those fees, commissions, or charges were calculated.

**RESPONSE TO INTERROGATORY NO. 25:**

Copyright Owners object to this Interrogatory as improperly compound, insofar as it calls for the identification and descriptions of several, discrete topics under the guise of a single interrogatory. Copyright Owners object to this Interrogatory as exceeding the number of permissible interrogatories in this proceeding considering the Services' prior, improper compound interrogatories. 37 C.F.R. § 351.5(b)(2). Copyright Owners object to this Interrogatory as overly broad, unduly burdensome and disproportionate to the needs of this proceeding. Copyright Owners also refer to their response to Interrogatory No. 5, identifying those licenses by Beginning Bates number in which a Publisher Witnesses directly licensed Performance Rights. On the basis of the foregoing objections and General Objections, Copyright Owners will not respond further to this Interrogatory.

Dated: May 13, 2022  
New York, New York

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# Proof of Delivery

I hereby certify that on Tuesday, May 24, 2022, I provided a true and correct copy of the Spotify USA Inc. And Amazon.Com Services LLC's Motion to Compel Copyright Owners To Produce Documents Related To The Litigation And/Or Settlement Of Subpart A/B Rates In Phonorecords I-IV [Public] to the following:

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

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

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

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

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

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

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

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

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

Signed: /s/ Joseph Wetzel