

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

In re

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

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

**RECORD COMPANIES' EMERGENCY MOTION TO STAY THE PRODUCTION OF
LICENSING DOCUMENTS AND INFORMATION TO *PHONORECORDS IV*
PARTICIPANTS PENDING RULING ON MOTION FOR LIMITED MODIFICATIONS
OF PROTECTIVE ORDER**

Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (collectively, the “Record Companies”) submit this emergency motion requesting that the Judges stay the production of any Record Company license agreements and other documents or testimony that would disclose the contents of those license agreements from Amazon.com Services LLC (“Amazon”) to certain other *Phonorecords IV* participants. More specifically, the Record Companies request that the Judges—by or before June 24, 2022—preclude Amazon from further producing any Record Company license agreements received pursuant to the subpoenas that Amazon issued to non-party licensees TikTok, Inc. (“TikTok”), Snap Inc. (“Snap”), Equinox Media LLC (“Equinox”), and Echelon Fitness Multimedia, LLC (“Echelon”) (together, the “Non-Party Licensees”), as well as any testimony about Record Company license agreements received pursuant to subpoenas Amazon issued to the Non-Party Licensees, and any documents, testimony, or other materials that would disclose the contents of those license agreements (together the “Licensing Documents and Information”), to certain other *Phonorecords IV* participants. The Record Companies request that the stay remain in place until the Judges resolve the Record Companies’ concurrently filed motion for a limited modification of the

Phonorecords IV Protective Order. See Record Companies’ Motion for a Limited Modification to the Protective Order in the *Phonorecords IV* Proceeding (the “Motion to Modify Protective Order”).

After issuance of the subpoena, Non-Party Licensees served notices indicating that production of record company license agreements was imminent. On June 16, 2022, the Record Companies (through counsel) reached out to each *Phonorecord IV* participant eligible to receive restricted information in this proceeding. Trepp Declaration ¶ 2. The Record Companies inquired whether each participant would stipulate to screen certain outside counsel from any Record Company Licensing Documents and Information. Trepp Declaration ¶ 2. As of the date of this filing, the Record Companies have not reached agreement with each participant eligible to receive restricted information in the *Phonorecords IV* proceeding to stipulate to screen outside counsel who negotiate or assist in negotiating license agreements for digital music services from any Record Company Licensing Documents and Information. Trepp Declaration ¶ 3. Accordingly, this stay is needed to ensure that the Motion to Modify Protective Order is not mooted before the Judges can consider and rule on it.

As set out in the Motion to Modify Protective Order, the Record Companies seek narrow modifications that do not differ materially from relief recently granted to Broadcast Music, Inc. (“BMI”) or relief granted in response to prior motions by the Record Companies. See Motion to Modify Protective Order at 1-2, 5-7.

The Record Companies first ask that the Judges require the *Phonorecords IV* participants to screen outside counsel involved in negotiating license agreements with the Record Companies from Record Company Licensing Documents and Information that may be produced in response to the subpoenas issued by Amazon to the Non-Party Licensees. See Order Granting in Part

Broadcast Music, Inc.’s Motion for a Limited Modification to the Protective Order, Docket No. 21-CRB-0001-PR (2023-2027), at 3 (Mar. 23, 2022) (“BMI Order”) (granting analogous request for relief in circumstances precisely like those at issue).

The Record Companies further ask, in order to prevent serial motions and promote judicial economy, that the *Phonorecords IV* Protective Order (the “Protective Order”) be permanently modified to require such a screen if any Participant subsequently seeks in discovery additional Record Company license agreements—or materials that contain or make use of restricted information that would reveal the contents or negotiation of such agreements, Record Company bargaining objectives, bargaining strategy, or perceptions of bargaining power, or other similar information. *See* BMI Order at 2-3; Order Granting in Part Services’ Motion to Access and to Make Use of the Restricted Web V Materials, Docket No. 21 CRB-0001-PR (2023-2027), at 5 (Mar. 23, 2022) (“Record Company Order”) (granting Record Company request to screen certain outside counsel from materials that contain or make use of information that would reveal record company bargaining objectives, bargaining strategy, perceptions of bargaining power, or other similar information); *see also* Order Granting Services’ Unopposed Motion to Access and Make Use of Restricted Web V Expert Materials and Trial Exhibits, Docket No. 21 CRB-0001-PR (2023-2027), at 2 (Sept. 2, 2021) (same); Order Granting in Part Services’ Motion to Access and to Make Use of the Restricted Webcasting Initial Determination and Future Substantive Rulings, Docket No. 21-CRB-0001-PR (2023-2027), at 2 (Aug. 9 2021) (same).

Because Amazon, Apple, and the Copyright Owners have agreed to be bound by the proposed order submitted with the Motion to Modify Protective Order during the pendency of that motion, Trepp Decl. ¶ 3, the Record Companies do not oppose the production of Licensing

Documents and Information to appropriate outside counsel for those parties under the subpoenas that Amazon issued. However, to ensure that the Motion to Modify Protective Order is not mooted by conduct, and to prevent significant and irreparable harm to the Record Companies, the Record Companies respectfully request that the Judges stay production of the Licensing Documents and Information to other *Phono IV* Participants until the request for a screen is resolved.

A stay is particularly appropriate in this case because the Record Companies are very likely to succeed on the merits of their Motion to Modify Protective Order. *See* Motion to Modify Protective Order at 5-9; BMI Order at 3-4; Record Company Order at 5. Further, as set forth in the Protective Order Motion, the Record Companies would suffer irreparable harm were Licensing Documents and Information produced to outside counsel involved in negotiating license agreements with the Record Companies on behalf of digital music services. *See* Motion to Modify Protective Order at 5-7. Under the circumstances, any balance of equities surely favors a brief stay of further production to resolve the Motion to Modify Protective Order, including because the stay would not preclude Amazon (the only participant that sought the subpoena) from obtaining requested materials, because the stay would not preclude Amazon from making a further production of Licensing Documents and Information to appropriate outside counsel for parties that agree to be bound by the screening procedure during the pendency of the Motion to Modify Protective Order, and because the stay would not preclude Amazon from making a further production of materials that do not constitute Licensing Documents and Information. Certainly, there is a public interest in ensuring that parties have an opportunity to enforce confidentiality provisions that facilitate the exchange of confidential information, including by bringing motions for or to modify a protective order. And there is likewise public interest in forestalling the identifiable risk of competitive harm (and market distortions) that would result from premature

disclosure of Licensing Documents and Information to outside counsel involved in negotiating license agreements with the Record Companies on behalf of digital music services. For each of these reasons, the requested stay should issue.

Dated: June 21, 2022

Respectfully submitted,

By: /s/ Alex Trepp

Alex Trepp (D.C. Bar No. 1031036)
ATrepp@jenner.com
Loreal Rock (D.C. Bar No. 1656476)
LRock@jenner.com
JENNER & BLOCK LLP
1099 New York Avenue, N.W., Suite 900
Washington, DC 20001
Tel.: 202-639-6000
Fax: 202-639-6066

*Counsel for Sony Music Entertainment, UMG
Recordings, Inc., Warner Music Group Corp.*

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

In re

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

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

**DECLARATION OF ALEX TREPP IN SUPPORT OF RECORD COMPANIES’
EMERGENCY MOTION TO STAY THE PRODUCTION OF LICENSING
DOCUMENTS AND INFORMATION TO *PHONORECORDS IV* PARTICIPANTS**

1. I am counsel for Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp. (together “Record Companies”) in the above-captioned case. I am familiar with the facts, circumstances, and proceedings at issue. I submit this declaration in support of the Record Companies’ Emergency Motion to Stay the Production of Licensing Documents and Information to *Phonorecords IV* Participants (the “Stay Motion”).

2. On June 16, 2022, I contacted outside counsel for each *Phonorecords IV* participant eligible to receive restricted information in the above captioned proceeding. I inquired whether each participant eligible to receive restricted information would stipulate to screen outside counsel who negotiate license agreements with the Record Companies on behalf of digital music services from license agreements, licensing information, or testimony obtained pursuant to subpoenas that Amazon issued to non-party licensees TikTok, Inc. (“TikTok”), Snap Inc. (“Snap”), Equinox Media LLC (“Equinox”), and Echelon Fitness Multimedia LLC (“Echelon”) (together, the “Non-Party Licensees”).

3. Thereafter, the Record Companies separately conferred with Amazon, Apple, and the Copyright Owners, and reached an agreement. Under the agreement, Amazon, Apple, and

the Copyright Owners agreed to be bound by the limitations that the Record Companies requested in the Record Companies' motion for a limited modification of the *Phonorecords IV* Protective Order, during the pendency of that motion. See Proposed Order to Record Companies' Motion for a Limited Modification to the Protective Order in the *Phonorecords IV* Proceeding (the "Motion to Modify Protective Order"). At the time this Declaration was finalized, the Record Companies had not been able to confirm whether other *Phonorecord IV* participants eligible to receive restricted information would also agree to be bound by the limitations requested in the Motion to Modify Protective Order.

Pursuant to 28 U.S.C. § 1746, I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: June 21, 2022



Alex Trepp (D.C. Bar No. 1031036)
atrepp@jenner.com
JENNER & BLOCK LLP
1099 New York Ave., NW, Suite 900
Washington, D.C. 20001
Tel.: 202-637-6300
Fax: 202-639-6066

Proof of Delivery

I hereby certify that on Wednesday, June 22, 2022, I provided a true and correct copy of the Record Companies' Emergency Motion to Stay the Production of Licensing Documents and Information to Phonorecords IV Participants Pending Ruling on Motion for Limited Modifications of Protective Order to the following:

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

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

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

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

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

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

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

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

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

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

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

Sony Music Entertainment, 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

Signed: /s/ Alex S. Trepp