



Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
United States of America

T: +1 312 782 0600
F: +1 312 701 7711

mayerbrown.com

Richard M. Assmus
Partner
T: +1 312 701 8623
rassmus@mayerbrown.com

July 22, 2022

FILED VIA eCRB

Chief Judge David P. Shaw
Judge David R. Strickler
Judge Steve Ruwe
Copyright Royalty Board
P.O. Box 70977
Washington, DC 20024-0977

Re: Determination of Rates and Terms for Making and Distributing
Phonorecords (Phonorecords III), Docket No. 16-CRB-0003-PR
(2018-2022) (Remand) – Student and Family Plan Discounts

Dear Chief Judge Shaw, Judge Strickler, and Judge Ruwe:

I write on behalf of counsel for Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”) to provide the Judges with one additional argument with respect to the proposed regulations submitted by the Services on July 18, 2022 (Dkt. 27005). Copyright Owners failed to appropriately confer on a key aspect of their proposed regulations (Dkt. 27011), denying the Services the ability to respond.

In Section 385.22(b), Copyright Owners propose to strike the language regarding the mechanical floors for Family Plans and Student Plans. Copyright Owners acknowledge that the *Johnson* decision affirmed those discounts, but suggest that student and family discounts “were not instituted by the Initial Ruling” and thus should be stricken from the regulations.

That is false. The Initial Ruling states that, “[i]n all ... respects” other than the headline rates, “the rates and structure of the PR II-based benchmark shall be effective ... throughout the *Phonorecords III* period.” Initial Ruling at 113-14. “PR II-based benchmark” is defined as “the Services’ proposed benchmark based on the *Phonorecords II* rates, rate structure, and terms (hereinafter, PR II-based benchmark).” *Id.* at 56. And, in a footnote following that definition, the Initial Ruling recognizes that this benchmark “update[s] the *Phonorecords II* terms to include terms ... that were upheld in *Johnson* ... including terms relating to student and family plan products.” *Id.* at 56 n.84. The Initial Ruling thus adopted the language that Copyright Owners propose to strike.

In addition, the Initial Ruling notes “that *Johnson* affirmed the Majority’s setting of ... family and student plan provisions,” relying on that holding to support its reasoning on the definition of

Chief Judge David P. Shaw; Judge David
R. Strickler; Judge Steve Ruwe
July 22, 2022
Page 2

Service Provider Revenue for bundle offerings (also based on the economic rationale of welfare-enhancing price discrimination). Initial Ruling at 74; *see id.* at 65-70, 73-81, 90-91, and 109-113.

For these reasons, the Initial Ruling ordered that the regulations include the Services' student and family plan language.

Respectfully submitted,

/s/ Richard M. Assmus

Richard M. Assmus

cc: All Participants (via eCRB)

Proof of Delivery

I hereby certify that on Friday, July 22, 2022, I provided a true and correct copy of the Letter to Judges to the following:

Nashville Songwriters Association International, represented by Benjamin K Semel, served via E-Service at Bsemel@pryorcashman.com

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via E-Service at Bsemel@pryorcashman.com

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

Amazon.com Services LLC, represented by Scott Angstreich, served via E-Service at sangstreich@kellogghansen.com

Google LLC, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

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

Signed: /s/ Richard M Assmus