

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

In re

Determination of Royalty Rates and Terms
for Making and Distributing
Phonorecords
(Phonorecords III)

Docket No. 21-CRB-0003-PR
(2018–2022)

GEORGE JOHNSON’S (“GEO”) RESPONSE
REGARDING REGULATORY PROVISIONS IN *PHONORECORDS III*

Participant George Johnson (“GEO”), a *pro se* Appellant songwriter, respectfully submits his *Response Regarding Regulatory Provisions* here in *Phonorecords III (Remand)* pursuant to the July 27, 2022, *Order Soliciting Response Regarding Regulatory Provisions*¹. The Order is in response to the *Copyright Owners’ Submission of Regulatory Provisions to Implement the Initial Ruling*² in *Phonorecords III (Remand)* submitted on July 18, 2022, by the National Music Publishers Association (“NMPA”) and Nashville Songwriters Association International (“NSAI”).

GEO is submitting a “possible relevant issue”, but has no position on the other issues since they are beyond my scope as a non-attorney.

¹ <https://app.crb.gov/document/download/27051> July 27, 2022, *Order in Phonorecords III*

² <https://app.crb.gov/document/download/27011> July 18, 2022 by NMPA and NSAI

Not being an attorney, I am not sure if the new March 30, 2022, “no static” ruling in *Phonorecords IV*³ had any legal effect at all on the old 10.5% percent static rate, or new 15.1% in the July 1, 2022, *Phonorecords III (Remand)* determination.

If the new non-static ruling in *Phonorecords IV* does have an effect on *Phonorecords III (remand)*, possibly as precedent, I wanted to mention the following possible relevant issue.

POSSIBLE RELEVANT ISSUE TO PHONORECORDS III

On Page 13 of “Tab A” of their July 18, 2022, submission *Copyright Owners’ Submission of Regulatory Provisions to Implement the Initial Ruling*⁴, NMPA and NSAI’s proposed regulations for the *Phonorecords III* (remand) determination, under §385.11, state that the rate “shall be...9.1 cents” for the 2018 to 2022 *Phonorecords III* rate period.

“§385.11 Royalty rates. (Footnote) 2

- (a) Physical phonorecord deliveries and Permanent Downloads. For every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.”

³ <https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06691.pdf>

⁴ <https://app.crb.gov/document/download/27011>, July 18, 2022 *Copyright Owners’ Submission of Regulatory Provisions to Implement the Initial Ruling, Phonorecords III*

While this may be perfectly fine and proper, it also seems contrary to the:

- a.) March 30, 2022 no “static” rates ruling in *Phonorecords IV*, which also suggests a retroactive 9.1 cent calculation from 2006...
- b.) ...but also contrary to the new *Proposed Settlement 2* by the 3 Major Labels and their lobbyists NMPA, NSAI, and RIAA *who all voluntarily agreed to a retroactive 12 cents inflation adjustment from 2006.*

Therefore, I was not sure if the new ruling applies and the 9.1 cents here...

- a.) was just an oversight by NMPA and NSAI counsel, or,
- b.) if the 9.1 cents here is proper, or,
- c.) if this *Phonorecords III* (remand) regulation should actually read as a *graduated retroactive inflation indexing* from 2018 to 2022 up to 12 cents for this time period, i.e. starting at approximately 10 or 11 cents (as per the Bureau of Labor Statistics)?

Furthermore, counsel adds a Footnote “2” or “Explanatory Note for §385.11” that reads:

“2 EXPLANATORY NOTE FOR §385.11:

While the Ruling discusses Music Bundles in connection with the new Subpart C rates and terms, it is Copyright Owners’ understanding that these Offerings are properly maintained in the new Subpart B, as no party has sought to change the holding in the original Final Determination to address these Offerings in this section.”

If the 9.1 cents is proper here in this §385.11 proposed regulation, and these Music Bundles are as they should be, then please disregard this inquiry.

If this is not proper, or GEO needs to file a motion in *Phonorecords III* “to change the holding in the original Final Determination to address these Offerings in this section”, to reflect the non-static or inflation indexing rulings, if they apply, then GEO will do so immediately. As a non-attorney, I’m also not sure if “these Offerings are properly maintained in the new Subpart B” as claimed.

CONCLUSION

GEO brings these issues to Your Honors’ attention in case they are relevant to the *Phonorecords IV*’s “no static” ruling or the Labels new *Proposed Settlement 2* and should be properly indexed for retroactive inflation in these *Phonorecords III* proposed regulations by NMPA and NSAI.

Respectfully,

By: /s/ George D. Johnson

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*George D. Johnson (GEO), an individual
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Wednesday, August 3, 2022

Proof of Delivery

I hereby certify that on Wednesday, August 03, 2022, I provided a true and correct copy of the GEORGE JOHNSON'S (GEO) RESPONSE REGARDING REGULATORY PROVISIONS to the following:

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

Spotify USA Inc., represented by Richard M Assmus, served via E-Service at rassmus@mayerbrown.com

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

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

Signed: /s/ George D Johnson