

**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)**

**ORDER ON 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* (eCRB No. 26696)**

On May 24, 2022, Spotify USA Inc. and Amazon.com Services LLC (collectively, the “Services”) filed a motion to compel the National Music Publishers’ Association, Inc. (“NMPA”) and the Nashville Songwriters Association International (“Copyright Owners”) to produce documents and information related to the litigation and/or settlement of Subpart A/B rates in *Phonorecords I-IV* (“Motion”) (eCRB No. 26696). On June 8, 2022, Copyright Owners filed an Opposition. On June 15, 2022, the Services filed a Reply.

In the Motion, the Services ask the Copyright Royalty Judges (“Judges”) to compel Copyright Owners to produce documents and information related to the litigation and/or settlement of the rates for Subpart B (formerly Subpart A) in *Phonorecords I-IV*. According to the Services, the litigation and agreements setting rates for Subpart B are directly related to Copyright Owners’ case and Copyright Owners have injected these issues into the proceeding through the Written Rebuttal Testimony (“WRT”) of Danielle Aguirre, NMPA’s Executive Vice President and General Counsel, who testified “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. Motion at 1-2, citing WRT of Danielle Aguirre ¶¶ 38-50. In particular, the Services seek documents and information in Requests 16-25 of Amazon and Spotify’s Set of Rebuttal Requests for Production of Documents and Interrogatory 22 in the Services’ Third Set of Interrogatories. *Id.* at 2.

In their Opposition, Copyright Owners contend that the Motion is the Services’ third attempt to compel discovery concerning settlement-related documents and information. Copyright Owners note that the Judges rejected the first two attempts, once in *Phonorecords III* and then in the current proceeding. Opposition at 1. According to Copyright Owners, the only thing that has changed is that the Judges rejected the original proposed Subpart B settlement, which formed the basis of the Services’ proposed rate proposal “benchmark.” *Id.* at 1-2.

Copyright Owners contend that there is no basis for the discovery sought and the Motion was made solely to harass and increase the expense of Copyright Owners. *Id.* at 2. Copyright Owners contend that they did not put the rejected Subpart B settlement at issue, but rather the Services did by offering it as a benchmark. According to Copyright Owners, they simply offered the rebuttal testimony of Ms. Aguirre to “contextualize” why Copyright Owners had chosen in this proceeding to settle with the record labels. *Id.* Copyright Owners contend that Ms. Aguirre did not testify regarding the settlements of *Phonorecords II* and *Phonorecords III*. Rather, her rebuttal testimony presented the written direct and rebuttal testimony and the oral hearing testimony of NMPA’s President and CEO, David Israelite, in *Phonorecords III*, which explained why Copyright Owners had settled with the record labels in *Phonorecords II* and *Phonorecords III*. *Id.* According to Copyright Owners, to the extent Ms. Aguirre testified to the now-rejected original *Phonorecords IV* settlement, she simply explained that the same economic imperatives that persuaded Copyright Owners to settle with the record labels in the two prior Phonorecords proceedings similarly persuaded Copyright Owners here. *Id.* Copyright Owners contend that they have offered nothing new and the Services have offered nothing new that would warrant a different result now than the result obtained in response to the Services’ previous motion, which the Judges denied. *Id.* at 3. Copyright Owners also contend that much of what the Services seek is privileged. *Id.* at 11, citing RFP 20, 17, 22, and 25. Copyright Owners dispute the Services’ contention that Copyright Owners waived any privilege claim (*see* Motion at 10-11), contending that nothing in Mr. Israelite’s or Ms. Aguirre’s testimony discloses privileged communications about NMPA’s decision to settle because they testified only to the economic realities that caused them to settle. *Id.* at 12. Lastly, Copyright Owners contend that a heightened standard should apply to discovery of settlement documents and the Services offered no reason why this standard would not apply here and do not offer any “prejudice” to the Services that would justify the discovery they seek. *Id.* at 13.

### **Ruling**

The Judges have reviewed both parties’ arguments and Ms. Aguirre’s WRT, which the Services cite as justification for their request, and conclude that Copyright Owners accurately characterize that testimony. It merely reiterates the prior testimony of Mr. Israelite and supplements it with publicly available information (*i.e.*, RIAA data on sales of physical recordings and downloads at ¶ 45 and Goldman Sachs research on record label revenue from physical recordings at ¶ 46) to explain why NMPA’s position has not changed since Mr. Israelite testified. The Judges have already rejected the Services’ request for the information they now seek in *Order Denying Motion to Compel Production of Subpart B Settlement Documents* (Apr. 20, 2022). The Services have presented no new arguments or information to suggest that the Judges should revisit that order.<sup>1</sup>

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<sup>1</sup> In light of the conclusion that nothing warrants the Judges to revisit their April 20, 2022 Order, the Judges do not opine on Copyright Owners’ arguments regarding privilege or their proffered standard of discovery for settlement documents.

Therefore, the Motion is **DENIED**.

**SO ORDERED.**

Dated: August 5, 2022

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David P. Shaw  
Chief Copyright Royalty Judge