

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' STATEMENT OF SEARCH EFFORTS

Pursuant to the Copyright Royalty Judges' (the "Judges") August 25, 2022 Order on Amazon's Motion for Sanctions Against Copyright Owners (the "Order"), the National Music Publishers' Association and Nashville Songwriters Association International (together, "Copyright Owners") submit the following statement updating their prior May 16, 2022 Statement of Search Efforts and indicating the date of each music publishers' last production in response to the Judges' May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel Production of Documents (the "MTC Order").

Neither Amazon nor the Judges' Order addressed the obvious difficulty in complying with a 10-day production deadline when the information sought in response to RFPs 30 and 155 concerned valuations of transactions that are routinely covered by non-disclosure and/or confidentiality agreements, which in any case require notice to the music publishers' contractual counter party. This point was raised by Copyright Owners in opposition to the Services' Motion to Compel Production of Documents and, notwithstanding such fact, the MTC Order issued requiring compliance within 10 days – a literal impossibility. The Order appears to fault Copyright

Owners for not seeking further relief from the Judges to remind them of the fact that compliance would take longer than 10 days, notwithstanding the fact that Copyright Owners did so in opposition to the Services’ Motion to Compel and that the nature of the materials sought in the Order are obviously commercially sensitive and likely to be covered by confidentiality agreements. The complication of strictly complying with the MTC Order in 10 days was further compounded by the MTC Order’s grant of the RFPs as written, calling for broad productions without any balancing of burden and proportionality, contrary to prior rulings of the Copyright Royalty Board, and, indeed, in the case of RFP 30, rewriting the request for “documents. . . concerning the sale and valuation of catalogs owned by your Members” into one calling for documents concerning the *purchase* of catalogs.¹ Despite these significant impediments to strict compliance (all of which were known and documented prior to the issuance of the MTC Order), as demonstrated below, Copyright Owners have substantially complied with the MTC Order and, in all events, music publishers whose executives have submitted testimony concerning relevant topics have completed

¹ See, e.g., Nov. 7, 2006 Order Granting in Part and Denying in Part Services’ Motion to Compel Discovery Related to the Promotional Activities and Expenditures of its Member Companies, *In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings (“Web II”)*, Dkt. No. 2005-1 CRB DTRA, at 1 (denying a motion to compel various requests as unduly burdensome); Mar. 28, 2006 Order Granting in Part and Denying in Part The Motion of Digital Media Association and its Member Companies[] to Produce Discovery Relating to the Promotional Value of Airplay, *Web II*, at 2 (denying motion to compel additional interrogatory responses “insomuch as the request is overly broad, unduly burdensome and expensive relative to the amount of evidentiary benefit anticipated “); Jan. 15, 2015 Order Granting in Part and denying in Party Joint motion by Pandora, iHeart, NAB, NRBNMLC and Sirius to Compel SoundExchange to Produce Negotiating Documents, *In re Determination of Royalty Rates and terms for Ephemeral Recordings and Digital Performances of Sound Recordings (“Web IV”)*, Dkt. No. 14-CRB-0001-WR (2016-20), at 4 (denying request to compel production, finding a request for production of the “countless communications” with SoundExchange members to be unduly burdensome); Jan. 15, 2015 Order on iHeartMedia’s Motion to Compel Sound Exchange to Produce Documents in Response to Discovery Requests and On Issues Common to Multiple Motions, *Web IV*, at 3 (addressing - and rejecting – claims in burden in response to a motion to compel, but holding “an assertion that a request is overly burdensome should weigh the claimed burden against the potential impact of the requested information on the significant amount of royalties to be paid and received”); Aug. 26, 2016 Order Granting in Part and Denying in Part Services’ Motion to Set Specific Discovery Deadlines and Compel Copyright Owner Participants’ Adherence to their Discovery Obligations, *In re Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and “Preexisting” Subscription Services (SDARS III)*, Dkt. No. 16-CRB-0001 SR/PSSR (2018-2022) (ordering the parties to meet and confer to tailor requests concerning more than 1,400 agreements over a period of three and a half years because “the Opposing Parties have provided a reasonable basis for the Judges to anticipate that a full production of data for all these agreements *might* constitute an undue burden”) (emphasis added).

their productions. As the MTC Order made no findings consistent with those required by Rule 37 of the Federal Rules of Civil Procedure, nor relied on any applicable, prior authority of the Copyright Royalty Board, Copyright Owners submit that any further order striking testimony that has yet to be identified by Amazon would be arbitrary, capricious, and contrary to the law.

BMG Rights Management (US) LLC (“BMG”)

BMG has completed its production responsive to the requests in the MTC Order. Its last production was made on August 26, 2022.

Kobalt Music Publishing America, Inc. (“Kobalt”)

Kobalt has completed its production in response to the MTC Order. Its last production volume, consisting of 6,041 records totaling 32,571 pages, was produced on August 9, 2022.

peermusic

As stated in Copyright Owners’ May 16, 2022 Statement of Search Efforts, peermusic has completed its production in response to the MTC Order.

Round Hill Music

Round Hill Music has completed its production in response to the MTC Order. Its last production (of a single document) was made on August 26, 2022.

Sony Music Publishing (“SMP”)

SMP has completed its productions in response to the MTC Order. Its last production was made on May 31, 2022.

Universal Music Publishing Group (“UMPG”)

UMPG has completed its productions in response to the MTC Order. Its last production was made on June 28, 2022.

Warner Chappell Music (“WCM”)

WCM has substantially completed its productions in response to the MTC Order, which production is made contemporaneously herewith. Documents relating to two acquisition transactions have yet to be produced, as notices concerning them are still outstanding (and neither the MTC Order nor the Protective Order in this action abrogated contractual notice provisions).

Dated: August 30, 2022
New York, New York

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EXHIBIT A

Before the
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Pursuant to the Copyright Royalty Judges' (the "Judges") May 2, 2022 Order Granting in Part and Denying in Part Services' Motion to Compel production of Documents (the "Order"), the National Music Publishers' Association and Nashville Songwriters Association International (together, "Copyright Owners") submit the following statement concerning Copyright Owners' search efforts complying with the Order.¹

The search efforts and status of production of each of the music publishers whose documents are subject to the Order are described below.

¹ Copyright Owners submit this "statement of search efforts" notwithstanding, for example, with respect to RFPs 37-48 and 51, Copyright Owners already made such affirmative statements where warranted (or produced documents on behalf of the identified publishers) as stated in Opposition to the Services' Motion to Compel Production of Documents. In addition, Copyright Owners note that the Judges have imposed this certification requirement solely on Copyright Owners, leaving the Services free to resist and delay production, even of materials they have been ordered to produce. This is despite the fact that Copyright Owners' production of documents, even before the Motions to Compel (as to which, in compliance with the Judges' Order, Copyright Owners produced in excess of another *quarter of a billion pages of documents*) had dwarfed the collective production of the Services, and which have continued to dribble out production months after it should have been fully completed. This is also despite the Services' well-documented history of refusing to discuss or disclose their searches in any way in this proceeding. See Opposition at 1 ("the Motion ignores that COs agreed to conduct reasonable and proportionate searches for responsive information, *which they did and confirmed in writing to the Services*") (emphasis added); see also *id.*, Exhibit A (identifying documents produced by peermusic and UMPG responsive to RFP 30 and 74, respectively). Copyright Owners are simply noting their concerns about the imbalance in both the discovery burdens that have been imposed and in the obligation to provide certifications of compliance.

BMG Rights Management (US) LLC (“BMG”)

RFP 155

In order to identify documents responsive to this request, BMG queried its personnel in its frontline creative, frontline publishing, investments, and finance departments, including the managing executives responsible for each such department. In the normal course of its business, BMG prepares a financial analysis of songwriter advances, called a “Deal Calculation Tool.” BMG personnel identified and collected (i) BMG’s template “Deal Calculation Tool”; (ii) the financial analyses for each of BMG’s songwriter advances for 2017 and 2018; and (iii) BMG’s policies and best practices documentation for advance calculations, which is being produced today. Additionally, for songwriter advances since 2018, BMG’s processes have transitioned to an online pipeline and approval process. At this time, while such information is not readily available in the form requested (and hence may not be subject to production under the Order), BMG is nonetheless working to identify a process to extract responsive data from this online tool for production.

RFPs 37-48 and 51

BMG personnel in its frontline creative, investments, global digital licensing, income tracking and administration departments, including the managing executives responsible for each department, were consulted in order to identify documents responsive to these requests. Such consultations involved the contacted personnel relying on their personal recollection of their roles and work performed, as well as manual searches of such personnel’s network folders and e-mail inboxes. Following such reasonable and proportionate searches, no responsive documents were identified. Accordingly, BMG has no documents to produce responsive to RFPs 37-48 and 51.

RFPs 30, 74 & 75

With respect to RFP 30, BMG's mergers & acquisition team maintains files on each closed catalog acquisition. Such information typically includes (i) the seller's initial pitch deck (where available); (ii) an investment valuation model; and (iii) an approval memorandum and asset description. BMG's mergers and acquisitions department collected the catalog acquisition files from its network shared drives, as well as provided the files to counsel for review for responsiveness and compliance with any notice provisions of applicable non-disclosure agreements. Responsive documents will be produced expeditiously after the completion of such review and, should any information require notice, expiration of the applicable notice period to the counterparty. Regarding RFPs 74 and 75, BMG has consulted with personnel who would be responsible for discussing and/or analyzing competition, who confirmed that BMG does not have documents responsive to these requests.

Kobalt Music Publishing America, Inc. ("Kobalt")

RFP 155

Kobalt personnel responsible for analyzing songwriter advances were consulted to identify documents responsive to RFP 155, and such personnel ran a source report to identify the responsive deals. Kobalt does not generate financial models and deal packs for every songwriter advance; it only does so for material advances. Models and deal packs are kept in individual deal folders across several network drives, and Kobalt generates over 500 models and deal packs a year, which will likely amount to a production of over a thousand documents in response to this request. It is estimated that the identification and extraction process, which is underway, will take approximately three weeks, since a Kobalt employee must manually retrieve this information.

RFPs 37-48 and 51

Kobalt personnel responsible for licensing were consulted in connection with Kobalt's efforts to identify additional documents responsive to RFPs 37-48 and 51. Those personnel confirmed, based on their personal knowledge and review of their own records, that they have no further documents responsive to RFPs 37-48 and 51. Accordingly, Kobalt has no further documents to produce in response to these requests.

RFPs 30, 74 & 75

Kobalt's process for identifying valuations with respect to catalog acquisitions and sales is analogous to the process described above with respect to songwriter advances in response to RFP 155. Kobalt is identifying and producing responsive files. With respect to RFPs 74 and 75, Kobalt finance personnel were consulted and, based on those consultations and a review of their files, a very limited number of responsive documents have been identified and are being collected for production.

peermusic

RFP 155

Peermusic personnel responsible for analyzing songwriter advances were consulted to identify documents responsive to RFP 155. Such personnel identified every advance granted by peermusic since 2017 and then provided copies of any deal analyses prepared in connection with such transactions from the departmental files on such transactions. The person responsible for preserving these records changed in 2020; however, records prior to 2020 were accessed by current personnel and searched in response to this request. Deal analyses prepared by peermusic and maintained in its deal files in connection with songwriter advances granted since 2017 are being produced herewith.

RFPs 37-48 and 51

peermusic personnel responsible for being knowledgeable about peermusic's competitive landscape, including its top executives, were consulted to identify documents responsive to RFPs 37-48 and 51. No peermusic personnel had any recollection or belief that such documents are created or maintained in peermusic's normal course of business, nor were any documents located by such personnel when they attempted to identify them. Accordingly, peermusic has no documents to produce in response to these requests.

RFPs 30, 74 & 75

Regarding RFP 30, peermusic personnel responsible for catalog acquisitions have confirmed that there have been no US catalog acquisitions since 2017. Accordingly, peermusic has no documents to produce in response to RFP 30. Regarding RFPs 74 and 75, peermusic personnel responsible for being knowledgeable of peermusic's competition, which includes peermusic's top executives, have confirmed that there are no documents or formal analyses responsive to these requests. Two ad hoc email analyses responsive to these Requests were identified and are be produced.

Round Hill Music

RFP 155

Round Hill Music personnel familiar with songwriter advances confirmed that Round Hill does not use models or valuation analyses in connection with determining songwriter advances. Songwriter advances are business decisions Round Hill makes on an *ad hoc* basis, and little to no documentation is created or maintained outside of the fact that such advance being extended. Accordingly, Round Hill Music has no documents to produce in response to these requests.

RFPs 37-48 and 51

Round Hill Music personnel responsible for licensing were consulted in connection with Round Hill Music's efforts to identify additional documents responsive to RFPs 37-48 and 51. Those personnel confirmed, based on their personal knowledge, review of their records, and in consultation with the synchronization licensing department, that Round Hill Music has no documents responsive to RFPs 37-48 and 51. Accordingly, Round Hill Music has no documents to produce in response to these requests.

RFPs 30, 74 & 75

Round Hill Music is identifying and producing valuation documents with respect to its catalog acquisitions. Round Hill has invested in 102 deals since the beginning of 2017 and will need to manually identify and extract responsive documents from Round Hill Music's systems. It is estimated that this will take approximately two to three weeks. Regarding RFPs 74 and 75, Round Hill personnel responsible for being knowledgeable of Round Hill's competition, including its COO, have confirmed that Round Hill Music has no documents responsive to these requests aside from those offering materials and financials relating to Round Hill Music previously produced in response to other requests.

Sony Music Publishing ("SMP")

RFP 155

In order for SMP to identify documents responsive to RFP 155, personnel in SMP's copyright department first generated a list of all U.S. songwriter deals from January 1, 2017 through December 31, 2020. This list was used by SMP's business development department to identify any valuation analyses prepared in connection with advance transactions in its departmental files. In addition, with respect to any advances that were made from SMP's Nashville

office, SMP employees in Nashville also used this list to identify responsive financial analyses. Finally, personnel in SMP's Miami office, which is responsible for SMP's Latin writer advances, identified responsive songwriter advances in their department files. It is estimated that the process for identifying the responsive valuation analyses with respect to these advances will take approximately three weeks, as the identification and collection process requires an individual to manually search a network shared drive, identify the relevant files, and transfer them to a secure location for production.

RFPs 37-48 and 51

SMP personnel responsible for licensing were consulted in connection with SMP's efforts to identify additional documents responsive to RFPs 37-48 and 51. Those personnel confirmed, based on their personal knowledge and review of their own records, that they have no further documents responsive to RFPs 37-48 and 51. Accordingly, SMP has no further documents to produce in response to these requests.

RFPs 30, 74 & 75

SMP's process for identifying valuations with respect to catalog acquisitions and sales is analogous to the process described above with respect to songwriter advances in response to RFP 155. SMP is identifying and producing responsive files, if any, from its New York, Nashville and Miami offices. With respect to RFPs 74 and 75, SMP finance personnel confirmed that any discussions and/or analyses responsive to these requests are reflected in documents already produced in this proceeding as responsive to RFPs 18 and 19. *See* P4-SMP00001228; P4-SMP00003266, 3270; P4-SMP00003209; P4-SMP00003026-7; P4-SMP00003077-8; P4-SMP00002952.

Universal Music Publishing Group (“UMPG”)

RFP 155

In connection with songwriter advance transactions, UMPG prepares deal summaries, which include valuation analyses. UMPG’s finance team identified and collected from UMPG’s deal approval system the deal summaries corresponding to all songwriter advances since 2017, which are being produced herewith.

RFPs 37-48 and 51

UMPG personnel responsible for the licensing of mechanical rights were consulted to identify information responsive to RFPs 37-48 and 51. Those personnel confirmed, based on their personal knowledge and review of their own records, that they have no further documents responsive to RFPs 37-48 and 51. Accordingly, UMPG has no further documents to produce in response to these requests.

RFPs 30, 74 & 75

Regarding RFP 30, files concerning catalog acquisitions by UMPG are stored on a network shared drive. Individual catalog acquisition transactions are organized in subfolders on the drive. UMPG personnel identified responsive catalog acquisition transactions from UMPG’s records, which must be manually identified and collected from the network shared drive. This process is underway and will be completed as expeditiously as possible. Non-disclosure agreements concerning transactions for the collected files will be reviewed and, if required, notices will be sent. Responsive documents will be produced if no notice is required or upon expiration of the contractual notice period governing responsive documents. Regarding RFPs 74 & 75, UMPG previously produced documents in response to RFP 74, as indicated in Copyright Owners’ Memorandum in Opposition. After the issuance of the Order, UMPG personnel in the finance

department were consulted to identify any analyses of private-equity and/or investor backed entities responsive to RFPs 74 & 75. In response to those consultations, UMPG's finance team identified an additional 17 documents, all of which originated outside of UMPG and are being produced herewith.

Warner Chappell Music (“WCM”)

RFP 155

WCM's deal office maintains a folder containing deal information, which contains models and memoranda prepared in connection with deals with songwriters, including songwriter advance transactions. This folder contains over 51,000 files and 5,061 subfolders. Based on initial searches by WCM personnel, approximately 1,300 of the subfolders relate to individual artists or companies and may be responsive to RFP 155. In order to identify information therein responsive to these requests, WCM personnel must manually review these 1,300 subfolders to identify and retrieve documents responsive to this request. Such efforts are currently underway.

RFPs 37-48 and 51

WCM personnel responsible for licensing were consulted in connection with WCM's efforts to identify additional documents responsive to RFPs 37-48 and 51. Those personnel confirmed, based on their personal knowledge and review of their own records, that they have no further documents responsive to RFPs 37-48 and 51. Accordingly, WCM has no further documents to produce in response to these requests.

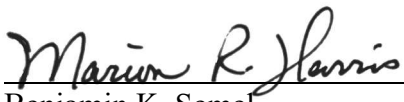
RFPs 30, 74 & 75

WCM stores information concerning its catalog acquisitions in the same folder maintained by WCM's deal team described in response to RFP 155. As with RFP 155, WCM personnel will need to manually review the deal office's network shared folder to identify and retrieve documents

responsive to this request, which efforts are underway. Regarding RFPs 74 & 75, WCM has consulted its CFO, Head of Deals Office and Head of Business Development, in addition to its Global Digital team, to identify documents responsive to these requests, if any. No responsive documents have been located by these individuals, though limited, additional searches of their documents continue as of the date of this Statement.

Dated: May 16, 2022
New York, New York

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Proof of Delivery

I hereby certify that on Tuesday, August 30, 2022, I provided a true and correct copy of the Copyright Owners' Statement of Search Efforts to the following:

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

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

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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

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Signed: /s/ Marion R Harris