

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 IV)

Docket No. 21-CRB-0001-PR
(2023–2027)

**GEORGE JOHNSON’S (“GEO”) RESPONSE IN OPPOSITION TO
PROPOSED MOTION FOR STAY BY THE PARTIES TO CANCEL
SUBPART C HEARING**

As per the Judges’ Order on September 1, 2022, *Order 61 Accelerating Responses to Emergency Motion For Stay (eCRB No. 27223)*¹, Participant George Johnson (“GEO”), a *pro se* Appellant songwriter, respectfully submits this *Response in Opposition to Proposed Motion for Stay by the Parties to Cancel Subpart C Hearing*, in regards to the *Joint Emergency Motion for Stay of Proceedings Pending Resolution of Motion to Adopt Settlement*² (“the Motion”) submitted on August 31, 2022 by “The Parties” (*See below*). The Joint Emergency Motion for stay by the Parties is in conjunction with their Subpart C Proposed Settlement³. GEO respectfully objects to “the Motion” to stay the forthcoming hearing by the National

¹ <https://app.crb.gov/document/download/27227>, September 1, 2022

² <https://app.crb.gov/document/download/27223>, August 31, 2022

³ <https://app.crb.gov/document/download/27222>, August 31, 2022

Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI,") on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (collectively, the "Service Participants" or the "Services"), on the other hand (NMPA, NSAI, and the Service Participants, hereafter, the "Parties"), regarding royalty rates and terms applicable under Section 115 of the U.S. Copyright Act ("Section 115") for Licensed Activity (as defined in 37 C.F.R. Part 385 Subpart A) presently addressed in Subparts C & D of 37 C.F.R. Part 385 (the "Subpart C & D Configurations"), together with certain regulations of general application (e.g., definitions and late fee provisions) applicable to the Subpart C & D Configurations presently addressed in 37 C.F.R. Part 385 Subpart A (collectively, the "Subpart C & D Configuration Rates and Terms").⁴

GEO objects to "the Motion" to stay for the following good reasons and other good cause, including but not limited to:

- 1.) this Participant has worked hard to prepare a Subpart C case to present,
- 2.) GEO was prepared to argue my primary Subpart C issue of the free limited download reproduction without pay, so this important issue would not be presented to the detriment of *all* American songwriters and music publishers, including the 3 major publishers,

⁴ In addition, as per yesterday's telephone conference on September 1, 2022, GEO is filing a *Response in Opposition* to the new Subpart C Proposed Settlement itself at issue here, and that objection will be forthcoming today after filing of this response by 12PM Noon today.

3.) GEO would not be able to argue other important Subpart C issues that I will address in my further Objections as Comments in 30 days, but it is not the same as a hearing.

4.) the issues GEO raises and will raise at hearing are vitally important to the economic survival and creative health of *all* American music creators, including *all American songwriters and music publishers*, including independent publishers and DIY songwriters or self-publishers - **In other words, millions of individual American copyright owner citizens with actual rights v. 3 foreign controlled, self-dealing corporations.**⁵

5.) in addition to the time and effort put into preparing a Subpart C case, this Participant has also put in a great deal of time and effort attempting to secure proper counsel to present these issues, **and still attempting to secure counsel.** Securing counsel for a CRB rate proceeding is a monumental task in itself, added the incredible cost of representation if secured. So, I am still trying to secure counsel as of today for Subpart C, Subpart B, and other serious legal issues I may not be able to argue now.

6.) While a 30 day delay in the hearing start date would give me more time to prepare a better case for Your Honors, I'm prepared to give opening statements

⁵ GEO understands and appreciates the balance of licensees and licensors in the CRB code, but this is something more where individual songwriters are always taken advantage of by these 3 corporations with zero rates, static rates, no sales, \$.00012 "profits" for us, using the CRB code to their advantage with this "voluntary negotiation" process. Furthermore, while individual songwriters are price-fixed at zero by 3 dominant corporations, individual songwriters on Spotify don't get shareholder equity in Spotify based on marketshare or political pull by NMPA, or share in stock profits with Spotify and the 3 labels, or receive a significant share of advertising dollars from any the Services, et al.

on September 7th if need be. Most importantly, even if the start date is pushed back to September 14th, or 2 weeks or 30 days, **we independents should still have our voice heard in a separate hearing** if this hearing is stayed or delayed and now possibly cancelled. **Subpart C for the rest of us should not be cancelled** because 3 companies know how to game the CRB code to essentially destroy all their songwriting and independent publishing competitors with static nano-penny rates, as they have for decades now. Just because 3 publishers want to agree to their own rate *to once again freeze their own songwriters*⁶ at 15.35% percent for 5 years with no inflation indexing, does not give them the right to freeze all their competitors's royalty rates, despite that being the heart of the compulsory license. It's being abused or weaponized against all the millions of competitors by 3 companies, and now 5 more here in Subpart C. I could say if the 3 labels want to freeze their songwriters at 15.35%, percent then that is their business, but that would defeat the purpose of my participation and **it's downright cruel of the labels to do this to their own songwriters at Warner, Sony, and Universal again and again in this proceeding.** BMG publishing just told the 3 record labels to "humble" themselves and Your Honors just stopped the 3 labels from doing an *unreasonable* Settlement on March 30, 2022, yet they try to freeze their own songwriters' royalty rates once again at 15.35%, ignoring *Web V's* percentage of revenue inflation indexing precedent as well. So, in addition to the 3 labels

⁶ Ignoring the CRB's March 30, 2022, no "static" ruling.

ignoring Your Honor's no static rate ruling in this new Subpart C proposed settlement, no American songwriter or independent publisher should be subjected to 3 companies price-fixing the rest of us in this manner, abusing the compulsory license — **millions of musical American citizens** at zero cents, with no sales, with static rates, no CPI adjustments, no money, and no hope. \$.00012 Subpart C streaming rates are no "incentive" in the first place, as per copyright law, then add all this chicanery by NMPA, NSAI, (RIAA), **the 3 labels**, and now their new "business partners"⁷, the **5 Services — including 3 of the richest (trillion-dollar) companies in the entire world!** Some call them "monopolies".

7.) having to prepare for a 25% percentage of revenue case, which is a huge undertaking, to then have it stripped away by 3 corporations and their lobbyists to benefit only their self interests⁸, *is fundamentally unfair to the millions of American songwriters* and independent publishers NMPA and NSAI do not

⁷ Wasn't NMPA at "war" with the Services just last week? Now they are "business partners", but weren't they always business partners with stock equity and free giveaways like free limited downloads (aka promotion) as long as you keep paying the Services their \$9.99 per month? What day was the Settlement agreement signed on? How long have the Parties known this day was coming, gaslighting us all into thinking a big hearing was forthcoming, and then they pulled the rug out from everyone?

⁸ It's amazing NMPA and NSAI are ONLY worried about **saving litigation fees for themselves as their excuse** for "making a deal" here in Subpart C, not on behalf of "all" songwriters and publishers they preach they represent. Some reports say Pryor Cashman and NMPA made this deal because *they thought they might lose?* My guess is the record labels who pay NMPA to lobby for them like their 15% to 55% percent underlying works to sound recording income ratio. No matter the real reason, NMPA and NSAI **are not representing their own independent publishers or "all American songwriters"**, just 3 record labels, their own salaries and compensation of \$2 million dollars for executives, and now their new 5 "business partners" that they were at war with just last week, and the past 7 years.

represent. NMPA continues to lie to this Court and then the public with 2 different stories that they still represent “every” or “all American songwriters and self-publishers” in public events just a few weeks ago. They have modified their language in this rate proceeding from representing “all” to the majority, or other modifiers, yet in public last week it’s “all American songwriters”? Where have we heard that before? This is part of the NMPA/NSAI gaslight that must stop since they only represent 3 record companies/corporations, and their own bloated salaries and compensations, up to \$2 million dollars for Mr. Israelite. This is not what Congress had in mind and the CRB is supposed to represent all Participants and all individual American songwriter and publishers, not 3 corporations with deep pockets and the best lawyers that money can buy,

8.) as mentioned, **there are millions of independent American songwriters and self-publishers, sometimes referred to as “do-it-yourself” (“DIY”) who are not represented by these 3 corporations nor their lobbyists**, all 3 of which are foreign controlled, and 2 are headquartered overseas. By some accounts *the 3 major publishers only account for 2% of the worldwide publishing and songwriting market.* An honest accounting of marketshare would also include the millions of DIY American songwriters, which the 3 labels or NMPA never include in their marketshare calculation, and this is fundamentally unfair. It all depends on how you measure markets, or marketshare, so NMPA and the 3 labels are self-serving in their marketshare calculations. While other accounts show that independents make up roughly 35% of the market and the 3 majors

make up 65%, **35% independents is a huge market share** that is unfortunately never argued in CRB proceedings until now. 35% is not insignificant and basically makes up a 4th “major” group that is either ignored, or closed from participating by shady “proposed settlements” such as this one, and both Subpart B proposed settlements, where the record companies abuse the “voluntary settlement” negotiation process **by weaponizing it against ALL their competitors**, especially their American songwriter and DIY publishing competitors, which makes this a serious anti-trust issue as well. 3 corporations setting the rates of all their competitors at zero, and freezing their rates again and again and again. This seems like a grave injustice considering the CRB is tasked with setting rates and terms for **all** American songwriters, American publishers, individual songwriters, and millions of self-publishers as well, not just 3 overseas corporate bullies.

9.) Additional reasons to not cancel the Subpart C hearing include:

a.) 15.35 % percent is not enough of an increase for songwriters & publishers,

b.) there is no CPI-U inflation indexing attached to the 15.35% in light of the March 30, 2022 Subpart B ruling by the CRB that “static” rates are unreasonable, in addition to rate court precedent in *Web V* that percentage of revenue rate calculations are subject to CPI-U inflation indexing.

c.) The Parties know GEO has a limited download issue in Subpart C and this would possibly eliminate arguing this issue.

d.) 3 record labels and are determining the royalty rates for millions of their competitor songwriters, publishers, and do it yourself (“DIY”) self publishing songwriters who have an exclusive right that has been eviscerated through these rate proceedings.

10) Lastly, and ironically, in GEO’s forthcoming objection to the Proposed Settlement for the exact same 3 reasons the CRB denied the first Proposed Settlement in Subpart B including,

1.) no static rates

2.) self-dealing and conflicts of interest, (add no willing buyer, willing seller)

3.) a possible side deal on late fees similar if not the same as the Memorandum of Understanding (“MOU”).

So, in other words, if we cancel this hearing because of a proposed settlement that is going to possibly be denied on possibly the some of same grounds as their Subpart B proposed settlement, still not ruled on, that would be a huge waste of time for all of us. The “static” rate of 15.35% percent of revenue with no inflation indexing seems like enough to deny these new Subpart C settlement alone?

In addition, the Parties state in their motion that “Proposed regulations implementing the agreed-upon Subpart C & D Configuration Rates and Terms (the “Proposed Regulations”) are attached hereto”, yet *no actual Settlement Agreement* nor any agreement *containing signatures* is attached.

GEO as a Participant is entitled to see this agreement and we hope Your Honors Order that the Parties immediately file the actual agreement on the eCRB electronic system.

GEO respectfully requests relief from this motion for a stay of the Subpart C hearing.

CONCLUSION

GEO respectfully submits the Proposed Stay be denied by the CRB, or a new Subpart C hearing schedule be worked out for GEO so independent songwriters and publishers can be heard on our own important and vital Subpart C issues.

Respectfully,

By: /s/ George D. Johnson

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Friday, September 2, 2022

Proof of Delivery

I hereby certify that on Friday, September 02, 2022, I provided a true and correct copy of the GEO Response in Opposition to Proposed Stay of Subpart C Hearing to the following:

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

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

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

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

Joint Record Company Participants, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

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

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

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

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

jbranson@kellogghansen.com

Signed: /s/ George D Johnson