

**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 62 GRANTING EMERGENCY MOTION FOR STAY (eCRB No. 27223)

On August 31, 2022, the National Music Publishers' Association and the Nashville Songwriters Association International (collectively, "Copyright Owners"), and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (collectively, "Service Participants"), filed a "Joint Emergency Motion for Stay of Proceedings Pending Resolution of Motion to Adopt Settlement" ("Motion for Stay"). In particular, the Copyright Owners and the Service Participants moved to stay the captioned proceeding, including the hearing set to begin on September 7, 2022, and all other deadlines (including any set by any Order of the Judges or by the Judges' regulations) pending resolution of the Parties' Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations. *See Mot.* at 1.

In the Motion for Stay, movants argue, *inter alia*, as follows:

17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2) require publication of the Settlement in the Federal Register for notice and comment before the Judges may adopt the language. It would be inefficient and impractical to proceed with conducting the Hearing on pre-Settlement rate proposals in parallel with the notice and comment period addressing the Settlement, particularly where the Copyright Owners and the Service Participants would not be advancing their pre-Settlement rate proposals (or evidence in support thereof) at the Hearing. To the extent interested parties not joining the Settlement choose to articulate any objections, the notice and comment period is the statutorily-prescribed mechanism for expressing objections to the Settlement, rendering the hearing an unnecessary use of the Copyright Royalty Board's resources. A stay is also consistent with the original scheduling order in this proceeding, which provided that "all participants shall follow the case schedule until all terms of their settlement are documented and presented for publication, comment, and approval." Notice and Order re Participants, Negotiation Period, and Case Schedule, at 2 n.2, dated

February 9, 2021. While there have been subsequent modifications to this order, none provided for a different procedure in the event of settlement.

For the reasons set forth above, the Copyright Owners and the Service Participants request that the Judges order that the Proceeding, including the Hearing and all other deadlines (including any set by any Order of the Judges or by the Judges' regulations), be stayed pending resolution of the Settlement Motion.

Mot. at 1.

On September 1, 2022, a conference was held virtually before the judges of the Copyright Royalty Board ("the Judges"), during which the Motion for Stay was discussed, including an accelerated response time. *See* Tr. 1-28. Also on that date, the Judges accelerated the response time for the Motion for Stay so that any response was to be filed by noon of September 2, 2022. *See* Order No. 61.

On September 1, 2022 participant George D. Johnson ("GEO") filed his "Response in Opposition to Proposed Motion for Stay by the Parties to Cancel Subpart C Hearing." GEO sets forth several arguments against a stay. *See* Resp. at 2-8. GEO requests that "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." *Id.* at 9.

Having reviewed that Motion for Stay, the response in opposition thereto, and in view of the arguments made during the aforementioned conference, the Judges have determined to GRANT the pending motion to the extent that the captioned proceeding is hereby stayed, including the hearing set to begin on September 7, 2022, and all other current deadlines (including any set by any Order of the Judges or by the Judges' regulations) pending resolution of the Parties' Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations.

SO ORDERED.

Dated: September 2, 2022

David P. Shaw
Chief Copyright Royalty Judge