

Before the
COPYRIGHT ROYALTY JUDGES
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)

**JOINT RESPONSE TO GEORGE JOHNSON'S
MOTION TO COMPEL PRODUCTION OF SETTLEMENT AND CRB ORDER 63**

National Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI," and collectively with NMPA, "Copyright Owners,"), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (collectively, the "Service Participants," and the Service Participants and Copyright Owners together, the "Parties), on the other hand, respectfully submit this memorandum in response to the motion of George Johnson ("Mr. Johnson"), which seeks to compel the Parties to submit the "entire" signed settlement agreement (the "Motion"), and CRB Order 63 to File Certification or Provide Settlement Agreements, eCRB Docket No. 27253 (September 26, 2022), which orders a similar submission.

RESPONSE

Mr. Johnson has been a fixture as a participant in Copyright Royalty Board proceedings for many years. He is a songwriter and his willingness to devote himself and his time to these proceedings is to his credit.

PUBLIC VERSION

That said, Mr. Johnson’s attack on the recent settlement between the Service Participants and Copyright Owners is unfounded.

As the record reflects, the Copyright Owners and the Service Participants have been engaged in very contentious, costly and burdensome litigation concerning mechanical royalty rates and terms that, including *Phonorecords III*, the *Phonorecords III* appeal, the ensuing *Phonorecords III* remand, and *Phonorecords IV*, has continued for more than six years. Given the contested litigation that the settlement resolved, there is no substance behind Mr. Johnson’s rhetoric attacking the settlement, *inter alia*, as the result of “self-dealing and conflicts of interest.” (See GEO Response in Opposition to Subpart C Proposed Settlement, eCRB Docket No. 27239 (September 6, 2022), at 26-27.)

With respect to the Motion, the Parties believe that a practice of requiring the public filing of settlement agreements as a matter of course would have a negative impact on settlement discussions in future proceedings. Nonetheless, in order to assist in moving this proceeding forward expeditiously, and to respond to Order 63, the Parties attach the settlement agreement as Exhibit A hereto. The Parties have designated the settlement agreement as Restricted pursuant to Section III of the Amended Protective Order (eCRB Docket No. 25908 (November 4, 2021)) because they believe it properly falls under the provision of the Amended Protective Order concerning interference with the “ability of the Producer to obtain like information in the future.”

The Judges will see that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Parties respectfully request that, for the foregoing reasons, Mr. Johnson’s motion be denied as moot.

Dated: September 26, 2022

Respectfully submitted,

By: /s/ Benjamin K. Semel

By: /s/ Joseph R. Wetzel

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Counsel for Amazon.com Services LLC

Exhibit A

Settlement Agreement

EXHIBIT A
FILED UNDER SEAL

Before the
COPYRIGHT ROYALTY BOARD
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In the Matter of:

DETERMINATION OF RATES
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Docket No. 21–CRB–0001–PR (2023–2027)

**DECLARATION OF BENJAMIN K. SEMEL
REGARDING RESTRICTED INFORMATION**

1. I am an attorney at Pryor Cashman LLP, counsel for the National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI” and, together with the NMPA, the “Copyright Owners”) in the above-captioned proceeding (the “Proceeding”).

2. Pursuant to Section IV.A of the Protective Order issued in the above-captioned Proceeding on July 20, 2021, as amended (the “Protective Order”), I submit this declaration in connection with the September 26, 2022 Joint Response to George Johnson’s Motion to Compel Production of Settlement and CRB Order 63 (the “Response”), filed on behalf of Copyright Owners and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (collectively, the “Service Participants” and, together with Copyright Owners, the “Parties”).

3. I have reviewed the Response. I am also familiar with the definitions and terms set forth in the Protective Order. The Parties have filed the Settlement Agreement as Restricted and

have redacted three related sentences in the Response because they believe that publicly disclosing this material will interfere with their “ability . . . to obtain like information in the future.”

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 26, 2022
New York, New York

/s/ Benjamin K. Semel

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Proof of Delivery

I hereby certify that on Monday, September 26, 2022, I provided a true and correct copy of the Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63 [PUBLIC] to the following:

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

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

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

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

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

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

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

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

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Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at
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Signed: /s/ Benjamin K Semel