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") REPLY TO THE JOINT RESPONSE BY THE PARTIES AND REQUEST SUBPART C SETTLEMENT DOCUMENTS BE MADE PUBLIC

Participant George Johnson ("GEO"), a *pro se* Appellant songwriter respectfully submits his *Reply to the Joint Response by the Parties and Request Subpart C Settlement Documents Be Made Public* in response to the *Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63*[1] filed by the Parties[2]. GEO also sincerely thanks Your Honors for *Order 63*.[3]

The purpose of this reply is to respond to the arguments and unfounded assertions made by the Parties in their *Joint Response* so that GEO's earlier Motion

[1] https://app.crb.gov/document/download/27257 September 26, 2022, *Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63*

[2] The National 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").

[3] https://app.crb.gov/document/download/27253 September 26, 2022, *Order 63 To File Certification Or Provide Settlement Agreements.*

("the Motion")[4] to compel the entire proposed Settlement agreement[5] not "be denied as moot" as requested by the Parties in their *Joint Response*, but more importantly, GEO's Motion also be *accepted* and the full un-redacted Settlement agreement be made PUBLIC, and in it's entirety.

If that is not possible at this time due to the Protective Order or other legal reasons, GEO respectfully requests that, at your discretion, Your Honors please make available *a redacted version* of the proposed Settlement suitable for public consumption.

It seems only fair that American songwriters and publishers who would be "subject to"[6] this unreasonable and unfair proposed Settlement *would at least have a chance to read it*.

How are we expected to Comment in the next 30 days if we can't read it?

GEO also prays Your Honors will *simply deny the proposed Settlement as unreasonable* for several good reasons, including some the same reasons the Panel gave in your previous Subpart B declination[7] earlier this year.

Furthermore, in addition to the a.) *3 sentences redacted* from the *Joint Response*, b.) a *sealed* Settlement *makes it impossible for this Participant to simply*

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[4] https://app.crb.gov/document/download/27249 September 12, 2022, GEO's *Motion to Compel Parties to Immediately Submit Actual Signed Proposed Settlement Agreement for Subpart C With Any MOUS or Side Deals,* Corrected/Errata filed September 20, 2022.

[5] https://app.crb.gov/document/download/27222 August 31, 2022, *Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations.*

[6] https://app.crb.gov/document/download/3715 September 29, 2016, *SDARS III*, *Order Denying Services Motion to Dismiss George D. Johnson d/b/a Geo Music Group*.

[7] https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06691.pdf March 30, 2022

know the facts I need to respond to, and that is another good reason why this Settlement should be made PUBLIC, and in full, in the name of *transparency*, especially for a public, government forced, compulsory license on *artists*.

GEO has no way to look at any of this information and I'm simply left in the dark, as are millions of American songwriters who are also *prejudiced* by this deal.

Finally, GEO's motion is clearly *not moot* since this new "under seal" *submission by the Parties is evidence in and of itself* that there **was** an additional agreement and possible additional terms, *different* than the proposed Settlement submitted by the Parties on August 31, 2022.

Austin music attorney and Commenter in this proceeding, Mr. Chris Castle recently writes in his blog Music Technology Policy, about what this new "under seal" proposed agreement might contain:

> "The undisclosed settlement could include things like payment of the publishers' legal fees, a non-recoupable unallocated payment to sweeten the royalty rates for some but not all publishers, or special rights that don't accrue to all songwriters everywhere in the world."[8]

All GEO has asked is that the Parties simply submit an honest, complete, and true copy of their Settlement, un-redacted, including any private side-deals, but that is not in their nature, as evidenced by NMPA's Subpart B private MOU deal.

Unfortunately for us songwriters, just like in Subpart B, NMPA counsel is once again attempting to slide thru another faulty and unreasonable settlement

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[8] https://musictechpolicy.com/2022/09/27/the-most-dangerous-companies-in-the-world-hide-the-ball-from-songwriters-again/ September 27, 2022, by attorney Chris Castle, *The Most Dangerous Companies in the World Hide the Ball from Songwriters - AGAIN.*

which would also now *seem to contain "end runs" around the statutory license*, since these *documents were intentionally withheld from the CRB* and not filed with their original August 31, 2022 proposed settlement agreement.

Therefore, for the above good reason alone, if this proposed streaming Settlement *does* contain separate private terms or a private agreement outside the compulsory license scheme, GEO prays Your Honors will immediately DENY the settlement, if true, much less for all of the other good reasons argued in GEO's September 06, 2022, objection *Response in Opposition to the Subpart C Proposed Settlement in Phonorecords IV*[9].

GEO respectfully requests that his September 26, 2022 Motion not "be denied as moot" and *accepted,* and that Your Honors please release the full, un-redacted Settlement agreement or agreements, making them PUBLIC, and in their entirety.

ARGUMENT

The Parties now claim they are immune from revealing the true terms of their self-serving agreement to the public, whom the Parties believe has no right to see *their* agreement for a public compulsory license, that the public is "subject to".

How is it possible that *a public compulsory license must remain secret*?

Aren't millions of American songwriters allowed to know the terms of this secret agreement in which they are all bound to?

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[9] https://app.crb.gov/document/download/27239 September 6, 2022, GEO's *Response in Opposition to the Subpart C Proposed Settlement in Phonorecords IV.*

Or only 8 corporations, many of which are foreign owned or controlled like Vivendi of France, Spotify of Sweden, or Sony Corp. of Japan?

Or add that 3 of the Services, Amazon, Apple, and Google, are *literally trillion-dollar corporations* and some of the largest corporations *in the entire world!*

Millions of American songwriters and DIY publishers don't stand a chance.

COUNSEL IS TIRED OF BURDENSOME, CONTENTIOUS LITIGATION

Here, the Parties falsely accuse me of an "unfounded" "attack on their recent settlement", when it's my job to point out all the legal flaws with their agreement, and well within my rights to do so as an objecting Participant.

The Parties are just upset that someone objected to their faulty Settlement.

But what is interesting is the Parties falsely accuse me of an "attack", but in their next breath state "*As the record reflects*, the Copyright Owners and the Service Participants have been *engaged in very contentious*…litigation.

> "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…"

So, it's the Parties who admit that *it is they who are contentious* and can't stop fighting, yet GEO is simply objecting to their horrible deal, as is his right.

If the Parties are tired of their hyper-contentiousness, they should simply stop being so contentious to each other. But now they point the finger at me?

What is odd about all their bluster and hyperbole, is the Parties are all friends, "*business partners" now as Mr. Israelite likes to say*, so the contentiousness is all an act, a fake "war" as Israelite insists that it really was, just a few short months ago. But it's not a war, it's all show business, posturing, public relations, and lawyering — *for their self-interests*, not songwriters, *even their own,* which is unreal.

If counsel is tired of litigating, which is their job, the Parties should find new, fresh lawyers, who aren't worn out. That may sound harsh, but if their excuse is now the Judges *must accept* this fraudulent settlement *because counsel is tired*, that is a horrible argument and a poor excuse that is also extremely embarrassing.

> "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.)"

Why embarrassing?

Because entitled counsel forgets GEO was also "engaged" in the *exact same* "very contentious, costly and burdensome litigation" as counsel was, except I wasn't being paid $2000 an hour over the past 6 years, *I did it for free*.

I am also not an attorney and have no help, no money for a $2000 per-hour New York city attorney, or even a $200 an hour Abe Lincoln style "country lawyer".

I also don't have a team of well-heeled attorneys writing briefs and managing the case, submitting filings, organizing, creating strategy, plus no Westlaw caselaw.

Counsel forgets that GEO fought NMPA and NSAI in *Phonorecords III*[10] in *6 motions* objecting to "our advocates who represents ALL songwriters" *freezing* the Subpart A (at the time) 9.1 cent mechanical rate!

Counsel also forgets that GEO fully participated in *SDARS III* and *Web IV*, advocating for inflation indexing even then and testifying, filing, and arguing for increased sound recording rates along side Soundexchange and their counsel Mr. Glenn Pomerantz right through closing arguments.

Counsel forgets it's my name is on the *appeal* to the District of Columbia Circuit in *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020) Case No. 19-1028, August 7, 2020 (Millett, J.)[11], and not NMPA, NSAI, Spotify, David Israelite, or Bart Herbison's name on the case, standing up for songwriters, but hypocritically fighting GEO with all their money and lawyers to keep our rates static! Then they all take credit for the increases I got them.

As a non-attorney I wrote all my own briefs in *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020) and did oral argument in front of the 3 Judges, including Judge Merrick Garland, now U.S. Attorney General.

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[10] https://app.crb.gov/document/download/27063 *Phonorecords III* remand

[11] https://www.cadc.uscourts.gov/internet/opinions.nsf/720464D843B0D6C7852585C10074B11B/$file/19-1028-1856124.pdf *Johnson v. Copyright Royalty Bd.*, Case No. 2019-1028 (D.C. Cir. Aug. 7, 2020) (Millett, J.)

Judge Henderson told the court after I spoke that "Mr. Johnson, you may be in the wrong profession", meaning I should have been a lawyer not a songwriter, which was very kind and meant a great deal to me.

And though I lost my appeal on the inflation indexing and retroactive 9.1 cent adjustment issues, **I did get a favorable ruling this year in *Phonorecords IV***, by the grace of Your Honors, and *on the very same issue* the DC Circuit and Judge Merrick Garland ruled against me on, inflation indexing and a retroactive adjustment to the 9.1 cents mechanical rate, and which I am very proud of.

One quick note worth mentioning, if it weren't for Mr. Wetzel taking my deposition in the *Pandora v. BMI* litigation in 2014[12], which then cost me over $2,000 in legal fees just to defend myself for the privilege, *I definitely would not be here today* arguing to help songwriters get more money. Good thing Mr. Wetzel thought taking my deposition that day would be a good idea.

So, yes counsel to the Parties, **it's also been extremely burdensome for me too the past 8 years**, and **all the songwriters who are starving** at a below market $.00012 per stream and now a paltry 15/58.6% POR songwriter to record label ratio, while *counsel complains they are tired of making $2,000 an hour* for the past 6 years in these proceedings, while I (and the rest of us songwriters) made *nothing*!

[12] Out of 11 publishers (including Kobalt) that withdrew their digital rights, George Johnson Music Publishing was the only publisher during that time allowed to break their private contract with BMI outside their standard renewal period.

THE JUDGES SAID LABELS AND LOBBYISTS HAD THE POTENTIAL FOR "SELF DEALING" AND THEIR VERTICAL "CONFLICTS" "RAISES A WARNING FLAG" SO GEO'S "RHETORIC" DOES HAVE SUBSTANCE

So, when the Parties feign offense because of George accusing them of **"self-dealing and conflicts of interest"**, in reality, it turns out the Judges agreed there is plenty of **"substance"** behind that charge in *their* March 30, 2022 declination — so the Judges are saying this *in their ruling*, not just GEO or the Commenters, but *all of us* are 100% right and this charade and mockery of the CRB process by the Parties has to stop here in Subpart C, and Subpart B, for the record.

> "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.)"

On Page 18348 of the Federal Register, in the March 30, 2022, declination, Your Honors state there is "the potential for self dealing" and "sufficient to question the reasonableness of the settlement" and the issues and facts are exactly the same, and haven't changed here in this Subpart C "voluntary proposed settlement".

> "Conflicts are inherent if not inevitable in the composition of the negotiating parties. *Vertical integration linking music publishers and record labels raises a warning flag*. No party opposing the present settlement has evinced actual or implied evidence of misconduct, other than the corporate structure of the record labels on the one hand and the publishers on the other. While corporate relationships alone do not suffice as probative evidence of wrongdoing, *they do provide smoke*; the Judges must therefore assure themselves that *there is no fire*. *The potential for self-dealing present in the negotiation of this proposed settlement* and *the questionable effects of the MOU are sufficient to question the reasonableness of the settlement at issue as a basis for setting statutory rates and terms*. (emphasis added)"

So, when the Parties claim, "Given the contested litigation that the settlement resolved, there is no substance behind Mr. Johnson's rhetoric attacking the settlement…", is just more deflection and doesn't even make sense.

How does the fact the *Parties chose to litigate and not resolve their contentious, burdensome "war" for 6 long years*, making a ton of money in attorney fees, have anything to do with the substance of my arguments? But also the substance of Your Honors' March 30, 2022 ruling that the *3 record labels and their lobbyists still have the real "potential" for "self-dealing" and vertically integrated "conflicts"*?

The Parties then claim that their agreement cannot be made public because it might interfere "with the ability of the Producer to obtain like information in the future."

> 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."

What about *this* Producer of music and *this* Participant's ability to obtain vital information *now*? What about the millions of American songwriters' exclusive rights and property rights to their own creations and copyrights *now*?

FREE STOCK EQUITY IS CONFLICT OF INTEREST AND SELF-DEALING

The 6%, 5%, and 4% percent stock equity stakes the 3 Major Labels *received for free in exchange for consideration* in their licensing agreements with the "upstart" Spotify, is a serious *conflict of interest and self-dealing* from these "business partners" and the stock equity issue has never been fully addressed in any CRB proceeding and I pray Your Honors can in this proceeding.

When the Services and 3 record labels swap stock for considerations in licensing, *the Parties are already self-dealing with another serious conflicts of interest.*

In fact, one of the headings in the March 30, 2022, declination by the Judges is "Conflicts of Interest". Conflict(s), implying more than one.

Even if you take away the Services' conflicts with giving stock equity to the 3 Labels, the 3 Labels are still self-dealing and conflicted *on their own* with vertical integration with their sister publishing arms in Subpart C, again, even without the Services self-dealing stock swaps for licensing.

In addition, it is well publicized that for example Sony and Spotify "are so incentivized to work well together that it can be hard to tell portions of their investor presentations apart."[13]

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[13] https://seekingalpha.com/article/4516217-spotify-labels-interdependent June 03, 2022, Spotify and the Labels are Dependent on Each Other by Eric Sprague. "Sony and Spotify are so incentivized to work well together that it can be hard to tell portions of their investor presentations apart." And, "Sony now uses Spotify as the bellwether for chart success."

> "**AS CONTROVERSIAL AS it is to talk about in the music industry,** major record labels of the world still own sizable chunks in Spotify." (emphasis and links already added)
>
> "It started in 2008 when, according to documented evidence, the major record companies plus indie body Merlin each received equity stakes in Spotify as a result of their licensing agreements with the upstart streaming company. Sony BMG (now Sony Music) got the biggest stake of at 6%; Universal Music Group got 5%; Warner Music Group got 4%; EMI Music got 2%; Merlin got 1%."[14] (links already added)

So, this is hard evidence that the labels and streamers *were already* "business partners" for the past 14 years and the 3 labels got FREE STOCK in Spotify in exchange for licensing agreements, "the major record companies…each **received equity stakes** in Spotify *as a result of their licensing agreements* with the upstart streaming company." (emphasis added)

So, how is this fair, or not an end-run around the compulsory license, and not self-dealing or a huge conflict of interest, as the Parties now feign it's not?

If it turns out this proposed Settlement is just another "private contract", or contains an additional private contract, the Judges have ruled that this is *relevant*.

> Determining relevance is a judgment call reserved to the Judges. The contracting parties cannot hide changed application of a statutory rate scheme behind a "private contract" when that contract has implications for non-contracting parties and the "private contract" details necessarily inform the reasonableness of the proposed settlement. The Judges, not a participant, can and will decide what is "irrelevant" to this rate setting proceeding.

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[14] https://www.rollingstone.com/pro/features/universal-music-spotify-ownership-artists-1126893/ February 11, 2021, by Tim Ingham, Rolling Stone magazine

If I cannot see, or I'm not allowed to see a full, un-redacted copy of the new hidden agreement or private agreements, my Motion should *not* be denied, or denied as moot.

If counsel and the Parties continue to downplay and minimize the importance of individual creators' contributions to increase their quarterly stock price, or *diminish* any other configuration (ie. vinyl, downloads) other than their own streaming *access model with no sales*, they offend and drive way the very talent that drives their businesses and pays their salaries — individual creators, the ones whose rates they freeze so the record side can make more profits, and the Services and 3 Labels can keep their individual songwriter costs low, and static.

But maybe Streamers are only in it for the cash they can grab and loot for a few decades, get in, get out, and if it all goes to heck, so be it — that is the problem here, the songwriters are on the bottom end of the totem pole, and *stock price* at the top to benefit investors, executives, CEO's and CFOs, *which is ALL that matters to them*, and not paying the cost of their primary underlying source of revenue, songs.

SELF-DEALING EXTINGUISHES WILLING BUYER, WILLING SELLER

One last issue, from the way I understand it from speaking to NMPA counsel, in these CRB proceedings, **technically Warner Chappell Publishing is not on one side as Licensor or Willing Seller, but in reality, *with Warner Records on the Licensee side as Willing Buyer***. This goes for Universal and Sony.

Instead, and confusingly, it's NMPA and NSAI *on one side by themselves*, with Warner Records on the other side and Warner Chappell *underneath* Warner Records on that same other side.

So, Warner Records and Warner Publishing are *both on the Willing Buyer side*, which is simply another "hack" of the CRB rate proceeding and another good reason why this Settlement should be denied for obvious and clear self-dealing and conflicts of interest.

Willing Buyer/Licensee	**Willing Seller/Licensor**
Universal Records	NMPA Lobbyists with no significant interest
Warner Records	NSAI Lobbyists with no significant interest
Sony Records	
———	
Universal Publishing	
Warner Chappell Publishing	
Sony Music Publishing	

So, in reality, it's *clear there is no "willing seller" of §115 underlying works* in this CRB proceeding and GEO prays Your Honors can find a solution to this out of control problem, which hasn't changed over the past 15 years, and 4 rate proceedings.

In addition to the obvious above, when the free stock equity given to the 3 record labels by the Services is combined with the new "willing buyer, willing seller" rule, WBWS is instantly undermined since one of the fundamental requirements of WBWS is it's supposed to be in a free market, or simulated free market, which would mean arms length transactions, and there are no such transactions present by these self-dealing Parties.

GEO once again asks for relief by filing this reply to his Motion, by respectfully requesting that Your Honors release the Parties' new Subpart C Proposed Settlement agreement to the public, including any MOUs or side deals, for good reason and other good cause.

CONCLUSION

GEO respectfully requests that Your Honors release the un-redacted PUBLIC version of the Proposed Settlement agreement or agreements in their entirety, in the name of transparency, for good reason, and other good cause.

If for some legal reason, i.e. due to the Protective Order, etc., and Your Honors can only release a redacted version at this time, GEO respectfully requests that Your Honors please release the full un-redacted PUBLIC version if possible, and at your discretion.

Respectfully,

By: */s/ George D. Johnson*

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Friday, September 30, 2022

Proof of Delivery

I hereby certify that on Friday, September 30, 2022, I provided a true and correct copy of the GEO'S Reply to the Joint Response By The Parties and Request Subpart C Settlement Documents to Be Made Public to the following:

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

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

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

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

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

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

UMG Recordings, Inc., 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

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

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

Signed: /s/ George D Johnson