

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)**

GOOGLE AND NMPA’S JOINT NOTICE OF LODGING

Google LLC (“Google”) and National Music Publishers’ Association (“NMPA”) respectfully submit this Joint Notice of Lodging in response to Order 63 to File Certification or Provide Settlement Agreements, eCRB Docket No. 27253 (September 26, 2022) (the “Order”).

As stated in the Settling Participants’ Joint Response to George Johnson’s Motion to Compel Production of Settlement and CRB Order 63 (eCRB Docket No. 27256), the Settlement Agreement and attached regulations reflect the full agreement of the settling participants and the complete terms and conditions agreed upon by the parties, and the Settlement Agreement’s merger clause makes clear that is the case.

However, the Judges’ Order calls for any “other clauses” – there are none – and “related agre[e]ments.” While it is unclear to Google and NMPA what is meant by “related agre[e]ments,” out of an abundance of caution, Google and NMPA are broadly construing the Order’s reference to “related agre[e]ments” to include certain letter agreements executed between Google, on the one hand, and certain music publishers and the NMPA, on the other hand, on or around the execution date of the settlement agreement, and will lodge such letter agreements concurrently with this filing. To be clear, neither Google nor the NMPA, nor the

certain music publishers to the letter agreements, believe these letter agreements are substantively related to the parties' settlement agreement.

The letter agreements are not part of the settlement agreement or understanding of the settling participants concerning the subject matter of the settlement agreement, and do not supersede any part of the settlement agreement with respect to the settling participants' proposed *Phonorecords IV* rates and terms. Further, the letter agreements do not change or modify application of the terms to be codified at 37 C.F.R. 385 Subparts C and D, including as they apply to any participant. Rather, the letter agreements simply concern Google's current allocation practices to avoid the double payment of royalties arising from YouTube's having entered into direct agreements with certain music publishers while simultaneously operating under the Section 115 statutory license.

Because the letter agreements are subject to confidentiality restrictions and have each only been disclosed to their individual signatories, each such music publisher having an extant direct license agreement with Google, Google and NMPA are lodging the letter agreements directly with the Copyright Royalty Judges, who may then make a determination as to whether the letter agreements are relevant and what, if anything, should be disclosed notwithstanding the confidentiality restrictions in each of the letter agreements.

Dated: October 3, 2022

Respectfully submitted,

/s/ Gary R. Greenstein

/s/ Benjamin K. Semel

Gary R. Greenstein (DC Bar No. 455549)
WILSON SONSINI GOODRICH &
ROSATI
1700 K Street, N.W., 5th Floor
Washington, DC 20006
Tel. (202) 973-8849
Fax: (202) 973-8899
ggreenstein@wsgr.com

Benjamin K. Semel (N.Y. Bar No. 2963445)
Frank P. Scibilia (N.Y. Bar No. 2762466)
Donald S. Zakarin (N.Y. Bar No. 1545383)
PRYOR CASHMAN LLP
7 Times Square
New York, New York 10036-6569
Telephone: (212) 421-4100
bsemel@pryorcashman.com
fscibilia@pryorcashman.com
dzakarin@pryorcashman.com

Victor Jih (Cal. Bar No. 186515)
Lisa D. Zang (Cal. Bar No. 294493)
Ryan Benyamin (Cal. Bar No. 322594)
WILSON SONSINI GOODRICH &
ROSATI
633 West Fifth Street, Suite 1550
Los Angeles, CA 90071-2027
Tel.: (323) 210-2900
Fax: (866) 974-7329
vjih@wsgr.com
lzang@wsgr.com
rbenyamin@wsgr.com

*Counsel for the National Music Publishers'
Association*

Maura L. Rees (Cal. Bar No. 191698)
WILSON SONSINI GOODRICH &
ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
Tel.: (650) 493-9300
Fax: (866) 974-7329
mrees@wsgr.com

Jeremy Auster (NY Bar No. 5539101)
WILSON SONSINI GOODRICH &
ROSATI
1301 Avenue of the Americas 40th Floor
New York, NY 10019-6022
Tel.: (212) 999-5800
Fax: (212) 999-5899
jauster@wsgr.com

Counsel for Google LLC

Proof of Delivery

I hereby certify that on Monday, October 03, 2022, I provided a true and correct copy of the Google and NMPA's Joint Notice of Lodging to the following:

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

UMG Recordings, Inc., 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

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

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

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

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

Joint Record Company Participants, represented by Steven R. Englund, served via

E-Service at senglund@jenner.com

Signed: /s/ Gary R Greenstein