

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 SUBMISSION OF SETTling PARTICIPANTS
REGARDING SETTLEMENT AGREEMENT**

National Music Publishers' Association, Nashville Songwriters Association International, Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (collectively, the "Settling Participants") respectfully make this submission to publicly file the Settlement Agreement made by the Settling Participants on August 31, 2022.

As set forth in the September 26, 2022 joint submission of the Settling Participants (eCRB Docket No. 27256, at 2), publicly filing settlement agreements as a matter of course is not the norm because it can impede the settlement process and potentially discourage similar settlements in the future. For that reason, the Settling Participants previously filed their Settlement Agreement in this Proceeding as Restricted under the Protective Order. (*Id.*, Ex. A.) The Settling Participants have nevertheless decided to make that agreement public, including by removing the Restricted designation and attaching it hereto.

The Settling Participants have provided all of the settlement documents and, with this public filing, every interested party can fully evaluate and comment upon the settlement. The Settling Participants thus believe that the Judges have everything necessary to "publish the

settlement in the Federal Register for notice and comment from those bound by the terms, rates, or other determination set by the” Settlement Agreement, as required under 37 C.F.R. 351.2(b)(2). The Settling Participants respectfully request that the Judges inform them if there is any further information that they require.

Dated: October 6, 2022

Respectfully submitted,

By: /s/ Benjamin K. Semel

By: /s/ Joseph R. Wetzel

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Exhibit A
Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between the 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”), on the other hand, in the proceeding before the Copyright Royalty Judges (“CRJs”) captioned In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), Docket No. 21-CRB-0001-PR (2023-2027) (the “Proceeding”). Each such signatory to this Agreement is referred to herein individually as a “Party,” and collectively as the “Parties.” This Agreement is made as of the date it is fully executed by all of the Parties (the “Effective Date”).

WHEREAS, the Parties have reached an agreement concerning the royalty rates and terms that shall be applicable as of January 1, 2023, under Section 115 of the U.S. Copyright Act (“Section 115”) for Licensed Activity (as defined in 37 C.F.R. 385 Subpart A) under Subparts C and 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”); and

WHEREAS, the Parties wish to settle the Proceeding as to the Subpart C & D Configuration Rates and Terms via the proposed regulations agreed by the Parties, attached hereto as Exhibit A (the “Proposed Regulations”) (the “Settlement”); and

NOW, THEREFORE, for and in consideration of the foregoing, of the mutual covenants and undertakings contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Settlement of the Proceeding.

1.1 Settlement Motion. As soon as is practicable after this Agreement has been fully executed by all Parties, the Parties agree to jointly file with the CRJs a Motion to Adopt Settlement in the form of Exhibit B (the “Settlement Motion”) reporting to the CRJs that the Parties have reached the Settlement pursuant to 17 U.S.C. § 801(b)(7) and 37 C.F.R. § 351.2, and seeking adoption of the Proposed Regulations in their entirety as the statutory Subpart C & D Configuration Rates and Terms for the period co-extensive with the time period for which the Proceeding would set rates and terms (the “Time Period”).

1.2. Execution of Settlement. Each Party shall send to Pryor Cashman LLP (“Pryor Cashman”) at the same time it signs this Agreement, via email, a scanned signature page for the Settlement with the original signature of its counsel of record in the Proceeding. Each Party hereby authorizes Pryor Cashman to file with the CRJs the Settlement Motion with electronic signatures once all Parties have signed this Agreement, but not before. After filing the Settlement Motion, the Parties shall in good faith advocate for, and use commercially reasonable efforts to secure, the adoption of the Proposed Regulations in their entirety pursuant to 17 U.S.C.

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§ 801(b)(7) and 37 C.F.R. § 351.2, including without limitation by filing any further briefing or documentation appropriate to support the relief sought in the Settlement Motion. The Parties agree not to take any steps that would undermine the attainment of that result.

1.3. Remainder of Case. Upon filing of the Settlement Motion, the Parties agree to the following for the conduct of the remainder of the Proceeding:

(a) Concurrent with the filing of the Settlement Motion, or as soon thereafter as is practicable, the Parties will jointly file a motion, in the form of Exhibit C, to stay the Proceeding pending the CRJs' decision on the Settlement Motion (the "Motion to Stay").

(b) Upon the filing of the Motion to Stay and pending resolution of the Settlement Motion (*i.e.*, until issuance of the Judges' determination to adopt or decline to adopt the Proposed Regulations), no Party shall file in the Proceeding any further document directed toward the determination of the Subpart C & D Configuration Rates and Terms by litigation process, including conduct any depositions, seek any additional discovery, make any motion, file any brief or testimony, or make an appearance in connection with the Proceeding, unless the CRJs deny the Parties' Motion to Stay or specifically order a filing or appearance by one or more Parties. In either of those events, (i) no Party shall present any argument, evidence, or testimony, or take any other action in the Proceeding inconsistent with the adoption of the Proposed Regulations in their entirety; and (ii) each Party shall either withdraw from the Proceeding or in good faith fully and affirmatively support the adoption of the Proposed Regulations in their entirety, to the maximum extent consistent with law and any orders of the CRJs, the Register of Copyrights, or a court of competent jurisdiction, including at any hearing ordered by the CRJs in the Proceeding.

(c) For the avoidance of doubt, if the CRJs publish the Proposed Regulations for comment or objection as contemplated by 17 U.S.C. § 801(b)(7)(A)(i) and 37 C.F.R. § 351.2(b)(2), no Party shall make any individual filing in connection therewith.

(d) In any case in which action is not prohibited by Section 1.3(b) or (c), for the duration of the Proceeding, including any review of the determination in the Proceeding by the Register of Copyrights, any appeal of the determination in the Proceeding, and any subsequent proceedings relating to adoption of the statutory Subpart C & D Configuration Rates and Terms for the Time Period, (i) no Party shall present any argument, evidence, or testimony, or take any other action in the Proceeding inconsistent with the adoption of the Proposed Regulations in their entirety as the statutory Subpart C & D Configuration Rates and Terms for the Time Period; and (ii) each Party shall either withdraw from the Proceeding or in good faith at appropriate times fully and affirmatively support the adoption of the Proposed Regulations in their entirety as the statutory Subpart C & D Configuration Rates and Terms for the Time Period, to the maximum extent consistent with law and any orders of the CRJs, the Register of Copyrights, or a court of competent jurisdiction. The foregoing agreement to fully and affirmatively support adoption of the Proposed Regulations in their entirety shall not be construed to require any Party to make any particular argument in favor of such adoption.

(e) Notwithstanding anything in this Agreement, if the CRJs deny the Settlement Motion by declining to adopt the Proposed Regulations, the limitations this Settlement

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Agreement imposes on arguments and statements the Parties may raise no longer apply. In that event, the Parties agree to cooperate and stipulate as needed to ensure that no Party shall be prejudiced by not having made any filing while the Settlement Motion was pending before the Judges. The Parties further agree to cooperate and stipulate as needed to ensure that no Party shall be prejudiced by not having made any filing while the Motion to Stay was pending before the Judges.

2. Press Release. Promptly upon filing of the Settlement Motion with the CRJs pursuant to Section 1.1, the Parties shall jointly cause to be issued a press release in the form of Exhibit D announcing the settlement of the Proceeding. No Party shall make any public statement concerning this Agreement until the issuance of such press release, and no Party or its representatives shall make any public statement in direct contravention to or that disavows the press release or otherwise disparages this Agreement.

3. Miscellaneous.

3.1. Representations. Each Party represents that it has the right, power, and authority to enter into this Agreement and that this Agreement has been duly and validly executed by its authorized representatives.

3.2. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof).

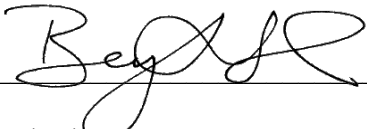
3.3. Amendment. This Agreement may be modified or amended only by a writing signed by each of the Parties.

3.4. Counterparts. This Agreement may be executed in counterparts, including by means of facsimile or PDF, each of which shall be deemed to be an original, but which taken together shall constitute one agreement.

3.5. Entire Agreement. This Agreement expresses the entire understanding of the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

EXECUTION VERSION

In witness whereof, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates shown.

By: 
Date: 08/31/2022

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Exhibit A

Proposed Regulations

Subpart A—Regulations of General Application

§385.1 General.

(a) *Scope.* This part establishes rates and terms of royalty payments for the use of nondramatic musical works in making and distributing of physical and digital phonorecords in accordance with the provisions of 17 U.S.C. 115. This subpart contains regulations of general application to the making and distributing of phonorecords subject to the section 115 license.

(b) *Legal compliance.* Licensees relying on the compulsory license detailed in 17 U.S.C. 115 shall comply with the requirements of that section, the rates and terms of this part, and any other applicable regulations. This part describes rates and terms for the compulsory license only.

(c) *Interpretation.* This part is intended only to set rates and terms for situations in which the exclusive rights of a Copyright Owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this part nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which a user must obtain a compulsory license pursuant to 17 U.S.C. 115.

(d) *Relationship to voluntary agreements.* The rates and terms of any license agreements entered into by Copyright Owners and Licensees relating to use of musical works within the scope of those license agreements shall apply *in lieu* of the rates and terms of this part.

§385.2 Definitions.

Unless otherwise specified, capitalized terms in this part shall have the same meaning given to them in 17 U.S.C. § 115(e). For the purposes of this part, the following definitions apply:

Accounting Period means the monthly period specified in 17 U.S.C. 115(c)(2)(I) and in 17 U.S.C. 115(d)(4)(A)(i), and any related regulations, as applicable.

Active Subscriber means an End User of a Bundled Subscription Offering who has made at least one Play during the Accounting Period.

Affiliate means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a Sound Recording Company shall not include a Copyright Owner to the extent it is engaging in business as to musical works.

Artificial Accounts are accounts that are disabled or terminated for having engaged in User Manipulation or other fraudulent activity and for which any subscription revenues are refunded or otherwise not received by the Service Provider.

Bundle means a combination of a Subscription Offering providing Eligible Interactive Streams and/or Eligible Limited Downloads and one or more other products or services having more than token value, purchased by End Users in a single transaction (e.g., where End Users make a single payment without separate pricing for the Subscription Offering component).

Bundled Subscription Offering means a Subscription Offering providing Eligible Interactive

Streams and/or Eligible Limited Downloads included within a Bundle.

Copyright Owner(s) are nondramatic musical works copyright owners who are entitled to royalty payments made under this part pursuant to the compulsory license under 17 U.S.C. 115.

Digital Phonorecord Delivery has the same meaning as in 17 U.S.C. 115(e)(10).

Eligible Interactive Stream means a Stream that is an Interactive Stream as defined in 17 U.S.C. 115(e)(13).

Eligible Limited Download means a Limited Download as defined in 17 U.S.C. 115(e)(16) that is only accessible for listening for—

(1) An amount of time not to exceed one month from the time of the transmission (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use for another time period not to exceed one month), or in the case of a subscription plan, a period of time following the end of the applicable subscription no longer than a subscription renewal period or three months, whichever is shorter; or

(2) A number of times not to exceed 12 (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use of another series of 12 or fewer plays), or in the case of a subscription transmission, 12 times after the end of the applicable subscription.

End User means each unique person that (1) pays a subscription fee for an Offering during the relevant Accounting Period or (2) makes at least one Play during the relevant Accounting Period.

Family Plan means a discounted Subscription Offering to be shared by up to six members of the same family or household for a single subscription price.

Free Trial Offering means a subscription to a Service Provider's transmissions of sound recordings embodying musical works when—

(1) Neither the Service Provider, the Sound Recording Company, the Copyright Owner, nor any person or entity acting on behalf of or *in lieu* of any of them receives any monetary consideration for the Offering;

(2) The usage does not exceed 45 days per subscriber per one-year period, which days may be nonconsecutive;

(3) In connection with the Offering, the Service Provider complies with the recordkeeping requirements in § 385.4 or superseding Copyright Office recordkeeping requirements;

(4) The Free Trial Offering is made available to the End User free of any charge; and

(5) The Service Provider offers the End User periodically during the trial an opportunity to subscribe to, and/or auto-renews the End User into, a non-Free Trial Offering of the Service Provider.

GAAP means U.S. Generally Accepted Accounting Principles in effect at the relevant time, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards in lieu of Generally Accepted Accounting Principles, then that entity may employ International Financial Reporting Standards as “GAAP” for purposes of this subpart.

Licensee means any entity availing itself of the compulsory license under 17 U.S.C. 115 to use copyrighted musical works in the making or distributing of physical or digital phonorecords.

Licensed Activity as the term is used in subparts C and D of this part, means Covered Activity, under voluntary or statutory license, in the form of Eligible Interactive Streams, Eligible Limited Downloads, and Restricted Downloads.

Locker Service means an Offering providing digital access to sound recordings of musical works in the form of Eligible Interactive Streams, Permanent Downloads, Restricted Downloads or Ringtones where the Service Provider has reasonably determined that the End User has purchased or is otherwise in possession of the subject phonorecords of the applicable sound recording prior to the End User’s first request to use the sound recording via the Locker Service. The term Locker Service does not mean any part of a Service Provider’s products otherwise meeting this definition, but as to which the Service Provider has not obtained a section 115 license.

Mixed Service Bundle means an Offering providing Licensed Activity consisting of Eligible Interactive Streams or Eligible Limited Downloads that meets all of the following criteria:

(1) The Offering is made available to End Users only in combination (i.e., the Offering is not available on a standalone basis) with one or more products or services (including services subject to other subparts) of more than token value as part of one transaction for which End Users make a payment without receiving pricing for the Offering separate from the product(s) or service(s) with which it is made available.

(2) The Offering is made available by a Service Provider that also offers End Users a separate, standalone Subscription Offering.

(3) The Offering offers End Users less functionality relative to that separate, standalone Subscription Offering. Such lesser functionality may include, but is not limited to, limitations on the ability of End Users to choose to listen to specific sound recordings on request or a limited catalog of sound recordings.

Where an Offering could qualify or be considered as either a Bundled Subscription Offering or a Mixed Service Bundle, such Offering shall be deemed a Mixed Service Bundle for the purpose of calculating and paying royalties under Subpart C.

Music Bundle means two or more of physical phonorecords, Permanent Downloads or Ringtones delivered as part of one transaction (e.g., download plus ringtone, CD plus downloads). In the case of Music Bundles containing one or more physical phonorecords, the

Service Provider must sell the physical phonorecord component of the Music Bundle under a single catalog number, and the musical works embodied in the Digital Phonorecord Delivery configurations in the Music Bundle must be the same as, or a subset of, the musical works embodied in the physical phonorecords; provided that when the Music Bundle contains a set of Digital Phonorecord Deliveries sold by the same Sound Recording Company under substantially the same title as the physical phonorecord (e.g., a corresponding digital album), the Service Provider may include in the same bundle up to 5 sound recordings of musical works that are included in the stand-alone version of the set of digital phonorecord deliveries but not included on the physical phonorecord. In addition, the Service Provider must permanently part with possession of the physical phonorecord or phonorecords it sells as part of the Music Bundle. In the case of Music Bundles composed solely of digital phonorecord deliveries, the number of digital phonorecord deliveries in either configuration cannot exceed 20, and the musical works embodied in each configuration in the Music Bundle must be the same as, or a subset of, the musical works embodied in the configuration containing the most musical works.

Offering means a Service Provider's engagement in Licensed Activity covered by subparts C and D of this part.

Paid Locker Service means a Locker Service for which the End User pays a fee to the Service Provider.

Performance Royalty means the license fee payable for the right to perform publicly musical works in any of the forms covered by subparts C and D this part.

Permanent Download has the same meaning as in 17 U.S.C. 115(e)(24).

Play means an Eligible Interactive Stream, or a play of an Eligible Limited Download, lasting 30 seconds or more and, if a track lasts in its entirety under 30 seconds, an Eligible Interactive Stream or a play of an Eligible Limited Download of the entire duration of the track. A Play excludes an Eligible Interactive Stream or a play of an Eligible Limited Download caused by User Manipulation.

Promotional Offering means a digital transmission of a sound recording, in the form of an Eligible Interactive Stream or an Eligible Limited Download, embodying a musical work, the primary purpose of which is to promote the sale or other paid use of that sound recording or to promote the artist performing on that sound recording and not to promote or suggest promotion or endorsement of any other good or service and

(1) A Sound Recording Company is lawfully distributing the sound recording through established retail channels or, if the sound recording is not yet released, the Sound Recording Company has a good faith intention to lawfully distribute the sound recording or a different version of the sound recording embodying the same musical work;

(2) The Service Provider is in compliance with the recordkeeping requirements of § 385.4 or superseding Copyright Office recordkeeping requirements;

(3) For Eligible Interactive Streams of segments of sound recordings not exceeding 90 seconds, the Sound Recording Company delivers or authorizes delivery of the segments for promotional purposes and neither the Service Provider nor the Sound Recording Company creates or uses a segment of a sound recording in violation of 17

U.S.C. 106(2) or 115(a)(2);

(4) The Promotional Offering is made available to an End User free of any charge; and

(5) The Service Provider provides to the End User at the same time as the Promotional Offering Stream an opportunity to purchase the sound recording or the Service Provider periodically offers End Users the opportunity to subscribe to a paid Offering of the Service Provider.

Purchased Content Locker Service means a Locker Service made available to End User purchasers of Permanent Downloads, Ringtones, or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the Permanent Downloads, Ringtones, or physical phonorecords acquired from a qualifying seller. With a Purchased Content Locker Service, an End User may receive one or more additional phonorecords of the purchased sound recordings of musical works in the form of Permanent Downloads or Ringtones at the time of purchase, or subsequently have digital access to the purchased sound recordings of musical works in the form of Eligible Interactive Streams, additional Permanent Downloads, Restricted Downloads, or Ringtones.

(1) A *qualifying seller* for purposes of this definition is the entity operating the Service Provider, including Affiliates, predecessors, or successors in interest, or—

(i) In the case of Permanent Downloads or Ringtones, a seller having a legitimate connection to the locker service provider pursuant to one or more written agreements (including that the Purchased Content Locker Service and Permanent Downloads or Ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords,

(A) The seller of the physical phonorecord has an agreement with the Purchased Content Locker Service provider establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical phonorecord and offer the integrated locker service; or

(B) The Service Provider has an agreement with the entity offering the Purchased Content Locker Service establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical phonorecord and offer the integrated locker service.

Relevant Page means an electronic display (for example, a web page or screen) from which a Service Provider's Offering consisting of Eligible Interactive Streams or Eligible Limited Downloads is directly available to End Users, but only when the Offering and content directly relating to the Offering (e.g., an image of the artist, information about the artist or album, reviews, credits, and music player controls) comprises 75% or more of the space on that display, excluding any space occupied by advertising. An Offering is directly available to End Users from a page if End Users can receive sound recordings of musical works (in most cases this will be the page on which the Eligible Limited Download or Eligible Interactive Stream takes place).

Restricted Download means a Digital Phonorecord Delivery in a form that cannot be retained

and replayed on a permanent basis. The term Restricted Download includes an Eligible Limited Download.

Ringtone means a phonorecord of a part of a musical work distributed as a Digital Phonorecord Delivery in a format to be made resident on a telecommunications device for use to announce the reception of an incoming telephone call or other communication or message or to alert the receiver to the fact that there is a communication or message.

Service Provider means that entity governed by subparts C and D of this part, which might or might not be the Licensee, that with respect to the section 115 license

(1) Contracts with or has a direct relationship with End Users or otherwise controls the content made available to End Users;

(2) Is able to report fully on Service Provider Revenue from the provision of musical works embodied in phonorecords to the public, and to the extent applicable, verify Service Provider Revenue through an audit; and

(3) Is able to report fully on its usage of musical works, or procure such reporting and, to the extent applicable, verify usage through an audit.

Service Provider Revenue. (1) Subject to paragraphs (2) through (5) of this definition and subject to GAAP, Service Provider Revenue shall mean, for each Offering subject to Subpart C of this Part:

(i) All revenue from End Users recognized by a Service Provider for the provision of the Offering;

(ii) All revenue recognized by a Service Provider by way of sponsorship and commissions as a result of the inclusion of third-party “in-stream” or “in-download” advertising as part of the Offering, i.e., advertising placed immediately at the start or end of, or during the actual delivery of, a musical work, by way of Eligible Interactive Streams or Eligible Limited Downloads; and

(iii) All revenue recognized by the Service Provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a Relevant Page of the Service Provider or on any page that directly follows a Relevant Page leading up to and including the Eligible Limited Download or Eligible Interactive Stream of a musical work; provided that, in case more than one Offering is available to End Users from a Relevant Page, any advertising revenue shall be allocated between or among the Service Providers on the basis of the relative amounts of the page they occupy.

(2) Service Provider Revenue shall:

(i) Include revenue recognized by the Service Provider, or by any associate, Affiliate, agent, or representative of the Service Provider *in lieu* of its being recognized by the Service Provider; and

(ii) Include the value of any barter or other nonmonetary consideration; and

(iii) Except as expressly detailed in this part, not be subject to any other deduction

or set-off other than refunds to End Users for Offerings that the End Users were unable to use because of technical faults in the Offering or other bona fide refunds or credits issued to End Users in the ordinary course of business.

(3) Service Provider Revenue shall exclude revenue derived by the Service Provider solely in connection with activities other than Offering(s), whereas advertising or sponsorship revenue derived in connection with any Offering(s) shall be treated as provided in paragraphs (1), (2) and (4) of this definition.

(4) For purposes of paragraph (1) of this definition, advertising or sponsorship revenue shall be reduced by the actual cost of obtaining that revenue, not to exceed 15%.

(5) In instances in which a Service Provider provides a Bundled Subscription Offering to End Users, the revenue from End Users deemed to be recognized by the Service Provider for the Offering for the purpose of paragraph (1) of this definition of Service Provider Revenue shall be as follows:

(i) For Bundled Subscription Offerings where both (a) each component of the Bundle is a product or service of the Service Provider (including Affiliates) and (b) the Service Provider (including Affiliates) makes the Bundle available to End Users directly, then the revenue from End Users deemed to be recognized by the Service Provider for the purpose of paragraph (1) of this definition shall be the aggregate of the retail price paid for the Bundle (i.e., all components for one retail price) multiplied by a fraction where the numerator is the standalone retail price of the Subscription Offering component in the Bundle and the denominator is the sum of the standalone retail prices of each of the components in the Bundle (e.g. if a Service Provider sells the Subscription Offering component on a standalone basis for \$10/month and a separate product and/or service on a standalone basis for \$5/month, then the fraction shall be \$10 divided by \$15, i.e. $\frac{2}{3}$, resulting in Service Provider Revenue of \$8,000 if the aggregate of the retail price paid for the Bundle is \$12,000).

(ii) For Bundled Subscription Offerings where either (a) one or more components of the Bundle are not products or services of the Service Provider (including Affiliates) or (b) the Service Provider (including Affiliates) does not make the Bundle available to End Users directly, then the revenue from End Users deemed to be recognized by the Service Provider for the purpose of paragraph (1) of this definition shall be the revenue recognized by the Service Provider from the Bundle multiplied by a fraction where the numerator is the standalone retail price of the Subscription Offering component in the Bundle and the denominator is the sum of the standalone retail prices of each of the components of the Bundle. Notwithstanding the preceding sentence, where the Service Provider does not recognize revenue for one or more components of the Bundle, then the standalone price(s) of the component(s) for which revenue is not recognized shall not be included in the calculation of the denominator of the fraction described in this sub-paragraph (e.g., where a Bundle of three services, each with a standalone price of \$20/month, sells for \$50/month, and the Service Provider recognizes \$30,000 of revenue from the provision of only two of those services, one of which is a Subscription Offering, then the fraction shall be \$20 divided by \$40, i.e. $\frac{1}{2}$, resulting in Service Provider Revenue of \$15,000).

(iii) For the calculations in paragraphs (5)(i) and (ii) of this definition, in the event that there is no standalone published price for a component of the Bundle, then the Service Provider shall use the average standalone published price for End Users for the most closely

comparable product or service in the U.S. or, if more than one comparable exists, the average of standalone prices for comparables. If no reasonably comparable product or service exists in the U.S., then the Service Provider may use another good faith, reasonable measure of the market value of the component.

Sound Recording Company means a person or entity that:

- (1) Is a copyright owner of a sound recording embodying a musical work;
- (2) In the case of a sound recording of a musical work fixed before February 15, 1972, has rights to the sound recording, under chapter 14 of title 17, United States Code, that are equivalent to the rights of a copyright owner of a sound recording of a musical work under title 17, United States Code;
- (3) Is an exclusive Licensee of the rights to reproduce and distribute a sound recording of a musical work; or
- (4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of a person identified in paragraph (1) through (3).

Standalone Limited Offering means a Subscription Offering providing Eligible Interactive Streams or Eligible Limited Downloads for which—

- (1) An End User cannot choose to listen to a particular sound recording (*i.e.*, the Service Provider does not provide Eligible Interactive Streams of individual recordings that are on-demand, and Eligible Limited Downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or
- (2) The particular sound recordings available to the End User over a period of time are substantially limited relative to Service Providers in the marketplace providing access to a comprehensive catalog of recordings (*e.g.*, a product limited to a particular genre or permitting Eligible Interactive Streams only from a monthly playlist consisting of a limited set of recordings).

Standalone Non-Portable Subscription Offering—Streaming Only means a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection.

Standalone Non-Portable Subscription Offering—Mixed means a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted.

Standalone Portable Subscription Offering means a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device.

Stream means the digital transmission of a sound recording of a musical work to an End

User—

(1) To allow the End User to listen to the sound recording, while maintaining a live network connection to the transmitting service, substantially at the time of transmission, except to the extent that the sound recording remains accessible for future listening from a Streaming Cache Reproduction;

(2) Using technology that is designed such that the sound recording does not remain accessible for future listening, except to the extent that the sound recording remains accessible for future listening from a Streaming Cache Reproduction; and

(3) That is subject to licensing as a public performance of the musical work.

Streaming Cache Reproduction means a reproduction of a sound recording embodying a musical work made on a computer or other receiving device by a Service Provider solely for the purpose of permitting an End User who has previously received a Stream of that sound recording to play the sound recording again from local storage on the computer or other device rather than by means of a transmission; provided that the End User is only able to do so while maintaining a live network connection to the Service Provider, and the reproduction is encrypted or otherwise protected consistent with prevailing industry standards to prevent it from being played in any other manner or on any device other than the computer or other device on which it was originally made.

Student Plan means a discounted Subscription Offering available on a limited basis to students.

Subscription Offering means an Offering for which End Users are required to pay a fee to have access to the Offering for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether the End User makes payment for access to the Offering on a standalone basis or as part of a Bundle.

TCC means the total amount expensed by a Service Provider or any of its Affiliates in accordance with GAAP for rights to make Eligible Interactive Streams or Eligible Limited Downloads of a musical work embodied in a sound recording through the Service Provider for the Accounting Period, which amount shall equal the Applicable Consideration for those rights at the time the Applicable Consideration is properly recognized as an expense under GAAP. As used in this definition, “Applicable Consideration” means anything of value given for the identified rights to undertake the Licensed Activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether that consideration is conveyed via a single agreement, multiple agreements and/or agreements that do not themselves authorize the Licensed Activity but nevertheless provide consideration for the identified rights to undertake the Licensed Activity, and including any value given to an Affiliate of a Sound Recording Company for the rights to undertake the Licensed Activity. Value given to a Copyright Owner of musical works that is controlling, controlled by, or under common control with a Sound Recording Company for rights to undertake the Licensed Activity shall not be considered value given to the Sound Recording Company. Notwithstanding the foregoing, Applicable Consideration shall not include in-kind promotional consideration given to a Sound Recording Company (or Affiliate thereof) that is used to promote the sale or paid use of sound recordings embodying musical works or the paid use of music services through which sound recordings embodying musical

works are available where the in-kind promotional consideration is given in connection with a use that qualifies for licensing under 17 U.S.C. 115.

User Manipulation means any behavior that artificially distorts the number of Plays, including, but not limited to, the use of manual (e.g., click farms) or automated (e.g., bots) means.

§385.3 Late payments.

A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment owed to a Copyright Owner and remaining unpaid after the due date established in 17 U.S.C. 115(c)(2)(I) or 17 U.S.C. 115(d)(4)(A)(i), as applicable and detailed in part 210 of this title. Late fees shall accrue from the due date until the Copyright Owner receives payment.

§385.4 Recordkeeping for promotional or free trial non-royalty-bearing uses.

(a) *Effect of Copyright Office recordkeeping regulations.* Unless and until the Copyright Office promulgates superseding regulations concerning recordkeeping for promotional or free trial non-royalty-bearing uses subject to this Part, the recordkeeping provisions in this section shall apply to Service Providers.

(b) *General.* A Service Provider transmitting a sound recording embodying a musical work subject to section 115 and subparts C and D of this part and claiming a Promotional Offering or Free Trial Offering zero royalty rate shall keep complete and accurate contemporaneous written records of making or authorizing Eligible Interactive Streams or Eligible Limited Downloads, including the sound recordings and musical works involved, the artists, the release dates of the sound recordings, a brief statement of the promotional activities authorized, the identity of the Offering or Offerings for which the zero-rate is authorized (including the internet address if applicable), and the beginning and end date of each zero rate Offering.

(c) *Retention of records.* A Service Provider claiming zero rates shall maintain the records required by this section for no less time than the Service Provider maintains records of royalty-bearing uses involving the same types of Offerings in the ordinary course of business, but in no event for fewer than five years from the conclusion of the zero rate Offerings to which they pertain.

(d) *Availability of records.* If the Mechanical Licensing Collective requests information concerning zero rate Offerings, the Service Provider shall respond to the request within an agreed, reasonable time.

**Subpart B – Physical Phonorecords, Permanent Downloads, Ringtones,
and Music Bundles.**

*[RATES AND TERMS FOR THE BIFURCATED SUBPART B REGULATIONS
ARE NOT A PART OF THIS SETTLEMENT]*

Subpart C—Eligible Interactive Streaming, Eligible Limited Downloads, Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Locker Services, and Other Delivery Configurations

§385.20 Scope.

This subpart establishes rates and terms of royalty payments for Eligible Interactive Streams and Eligible Limited Downloads of musical works, and other reproductions or distributions of musical works through Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Paid Locker Services, and Purchased Content Locker Services provided through subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115, exclusive of Offerings subject to subpart D of this part.

§385.21 Royalty rates and calculations

(a) *Applicable royalty.* Licensees that engage in Licensed Activity covered by this subpart pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section.

(b) *Rate calculation.* Royalty payments for Licensed Activity in this subpart shall be calculated as provided in this paragraph (b). If a Service Provider makes available different Offerings, royalties must be calculated separately with respect to each Offering taking into consideration Service Provider Revenue, TCC, subscribers, Plays, expenses, and Performance Royalties associated with each Offering. A Service Provider shall not be required to subject the same portion of Service Provider Revenue, TCC, subscribers, Plays, expenses, or Performance Royalties to the calculation of royalties for more than one Offering in an Accounting Period.

(1) *Step 1:* Calculate the All-In Royalty for the Offering. For each Accounting Period, the all-in royalty for each Offering in this subpart with the exception of Mixed Service Bundles shall be the greater of (a) the applicable percent of Service Provider Revenue, as set forth in Table 1 below, and (b) the result of the TCC Prong Calculation for the respective type of Offering as set forth in Table 2 below. For Mixed Service Bundles, the all-in royalty shall be the result of the TCC Prong Calculation as set forth in Table 2 below.

Table 1					
Royalty Year	2023	2024	2025	2026	2027
Percent of Service Provider Revenue	15.1	15.2	15.25	15.3	15.35

Table 2	
Type of Offering	TCC Prong Calculation
<i>Standalone Non-Portable Subscription Offering—Streaming Only</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Non-Portable Subscription Offering—Mixed</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Portable Subscription Offering</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of \$1.10 per subscriber for the Accounting Period.

Table 2	
<i>Free nonsubscription/ad-supported services free of any charge to the End User</i>	26.2% of TCC for the Accounting Period
<i>Bundled Subscription Offering</i>	24.5% of TCC for the Accounting Period
<i>Mixed Service Bundle</i>	26.2% of TCC for the Accounting Period
<i>Purchased Content Locker Service</i>	26.2% of TCC for the Accounting Period
<i>Standalone Limited Offering</i>	26.2% of TCC for the Accounting Period
<i>Paid Locker Service</i>	26.2% of TCC for the Accounting Period.

(2) **Step 2: Subtract Applicable Performance Royalties.** From the amount determined in step 1 in paragraph (b)(1) of this section, for each Offering of the Service Provider, subtract the total amount of Performance Royalties that the Service Provider has expensed or will expense pursuant to public performance licenses in connection with uses of musical works through that Offering during the Accounting Period that constitute Licensed Activity. Although this amount may be the total of the Service Provider's payments for that Offering for the Accounting Period, it will be less than the total of the performance royalties if the Service Provider is also engaging in public performance of musical works that does not constitute Licensed Activity. In the case in which the Service Provider is also engaging in the public performance of musical works that does not constitute Licensed Activity, the amount to be subtracted for Performance Royalties shall be the amount allocable to Licensed Activity uses through the relevant Offering as determined in relation to all uses of musical works for which the Service Provider pays performance royalties for the Accounting Period. The Service Provider shall make this allocation on the basis of Plays of musical works, provided that if the Service Provider is not capable of tracking Play information, including because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings, and further provided that, if the Service Provider is also not capable of utilizing a manner consistent with a methodology used for making royalty payment allocations for the use of individual sound recordings, the Service Provider may use an alternative, good faith methodology that is reasonable, identifiable, and implemented consistently.

(3) **Step 3: Determine the Payable Royalty Pool.** The payable royalty pool is the amount payable for the reproduction and distribution of all musical works used by the Service Provider by virtue of its Licensed Activity for a particular Offering during the Accounting Period.

This amount is the greater of:

- (i) The result determined in step 2 in paragraph (b)(2) of this section, and
- (ii) The royalty floor (if any) resulting from the calculations described in paragraph (d) of this section.

(4) **Step 4: Calculate the Per-Work Royalty Allocation.** This is the amount payable for the reproduction and distribution of each musical work used by the Service Provider by virtue of its Licensed Activity through a particular Offering during the Accounting Period. To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the Offering. The allocation shall be accomplished by the Mechanical Licensing Collective by dividing the payable royalty pool

determined in step 3 for the Offering by the total number of Plays of all musical works through the Offering during the Accounting Period (other than Plays subject to subpart D of this part) to yield a per-Play allocation, and multiplying that result by the number of Plays of each musical work (other than Plays subject to subpart D of this part) through the Offering during the Accounting Period. For purposes of determining the per-work royalty allocation in all calculations under this step 4 only (*i.e.*, after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each Play shall be counted as provided in paragraph (c) of this section.

Notwithstanding the foregoing, if the Service Provider is not capable of tracking Play information because of *bona fide* limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings.

(c) *Overtime adjustment.* For purposes of the calculations in step 4 in paragraph (b)(4) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of Plays as follows.

- (1) 5:01 to 6:00 minutes—Each Play = 1.2 Plays
- (2) 6:01 to 7:00 minutes—Each Play = 1.4 Plays
- (3) 7:01 to 8:00 minutes—Each Play = 1.6 Plays
- (4) 8:01 to 9:00 minutes—Each Play = 1.8 Plays
- (5) 9:01 to 10:00 minutes—Each Play = 2.0 Plays

(6) For playing times of greater than 10 minutes, continue to add 0.2 Plays for each additional minute or fraction thereof.

(d) *Royalty floors for specific types of Offerings.* The following royalty floors for use in step 3 of paragraph (b)(3) of this section shall apply to the respective types of Offerings:

(1) *Standalone Non-Portable Subscription Offerings—Streaming Only.* Except as provided in sub-paragraph (4) and in sub-paragraph (6) with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 18 cents per subscriber per Accounting Period.

(2) *Standalone Non-Portable Subscription Offerings—Mixed.* Except as provided in sub-paragraph (4) and in sub-paragraph (6) with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 36 cents per subscriber per Accounting Period.

(3) *Standalone Portable Subscription Offerings.* Except as provided in sub-paragraph (4) and in sub-paragraph (6) with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 60 cents per subscriber per Accounting Period.

(4) *Bundled Subscription Offerings.* In the case of a Bundled Subscription Offering, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 33 cents per Accounting Period for each Active Subscriber. Notwithstanding the foregoing, solely where the Licensed Activity provided as part of a Bundled Subscription Offering would qualify as a Standalone Limited Offering if offered on a standalone basis, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.

(5) *Mixed Service Bundles.* In the case of a Mixed Service Bundle, the royalty floor for use in step 3 of paragraph (b)(3) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.

(6) *Other Offerings.* A Standalone Limited Offering, a Paid Locker Service, a Purchased Content Locker Service, and a free nonsubscription/ad-supported service free of any charge to the End User shall not be subject to a royalty floor in step 3 of paragraph (b)(3).

(e) *Computation of per-subscriber rates and royalty floors.* For purposes of this section, to determine the per-subscriber rates in Step 1 and the royalty floors in Step 3, as applicable to any particular Offering, the total number of subscribers for the Accounting Period shall be calculated by taking all End Users who were subscribers for a complete Accounting Period, prorating in the case of End Users who were subscribers for only part of an Accounting Period (such proration may take into account the subscriber's billing period), and deducting on a prorated basis for End Users covered by an Offering subject to subpart D of this part, except in the case of a Bundled Subscription Offering, subscribers shall be determined with respect to Active Subscribers. The product of the total number of subscribers for the Accounting Period and the specified number of cents per subscriber (or Active Subscriber, as the case may be) shall be used as the subscriber-based components of the royalty calculation for the Accounting Period. A Family Plan subscription shall be treated as 1.75 subscribers per Accounting Period, prorated in the case of a Family Plan subscription in effect for only part of an Accounting Period. A Student Plan subscription shall be treated as 0.5 subscribers per Accounting Period, prorated in the case of a Student Plan subscription in effect for only part of an Accounting Period. A Bundled Subscription Offering containing a Family Plan with one or more Active Subscriber(s) shall be treated as having 1.75 Active Subscribers. A Bundled Subscription Offering containing a Student Plan with an Active Subscriber shall be treated as having 0.5 Active Subscribers. For the purposes of calculating per-subscriber rates and royalty floors under this section, Artificial Accounts shall not be counted as subscribers, Active Subscribers, or End Users.

Subpart D – Promotional Offerings, Free Trial Offerings and Certain Purchased Content Locker Services

§385.30 Scope.

This subpart establishes rates and terms of royalty payments for Promotional Offerings, Free Trial Offerings, and certain Purchased Content Locker Services provided by subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115.

§385.31 Royalty rates.

(a) *Promotional Offerings.* For Promotional Offerings of audio-only Eligible Interactive Streams and Eligible Limited Downloads of sound recordings embodying musical works that the Sound Recording Company authorizes royalty-free to the Service Provider, the royalty rate is zero.

(b) *Free Trial Offerings.* For Free Trial Offerings, the royalty rate is zero.

(c) *Certain Purchased Content Locker Services.* For every Purchased Content Locker Service for which the Service Provider receives no monetary consideration, the royalty rate is zero.

Exhibit B

Form of Settlement Motion

**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)**

**MOTION TO ADOPT SETTLEMENT OF STATUTORY ROYALTY RATES
AND TERMS FOR SUBPART C & D CONFIGURATIONS**

The National Music Publishers’ Association (“NMPA”) and Nashville Songwriters Association International (“NSAI,” and collectively with NMPA, the “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”), on the other hand (the Copyright Owners and the Service Participants, hereafter, the “Parties”), hereby notify the Copyright Royalty Judges that they have agreed to a settlement (the “Settlement”) in the above-captioned proceeding (the “Proceeding”) as to the royalty rates and terms that shall be 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”), for the full time period addressed by the Proceeding. Proposed regulations

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implementing the agreed-upon Subpart C & D Configuration Rates and Terms (the “Proposed Regulations”) are attached hereto.

Accordingly, the Parties respectfully submit the Proposed Regulations attached hereto for publication in the *Federal Register* for notice and comment in accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2) and request that the Judges adopt the Proposed Regulations in full and industry-wide as the statutory royalty rates and terms for all Subpart C & D Configurations for the rate period covered by the Proceeding.

I. The Parties

All of the Parties filed petitions to participate in this Proceeding.

NMPA is a trade association representing the U.S. music publishing and songwriting industry. Musical works owned or controlled by NMPA members account for the vast majority of the market for musical work licensing in the U.S.

NSAI is a trade organization serving songwriters of all genres of music, including songwriters who directly publish and license their own music.

The Service Participants provide Offerings of Licensed Activity (as defined in 37 C.F.R. Part 385 Subpart A). Together, the Service Participants account for the vast majority of the licensee market for Licensed Activity in the U.S.

II. Nature of the Settlement

The Parties have agreed to the Subpart C & D Configuration Rates and Terms that are embodied in the Proposed Regulations annexed hereto.

III. Adoption of the Settlement by the Copyright Royalty Judges

Pursuant to 17 U.S.C. § 801(b)(7)(A), the Copyright Royalty Judges have the authority “[t]o adopt as a basis for statutory terms and rates . . . an agreement concerning such matters

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reached among some or all of the participants in a proceeding at any time during the proceeding.” Such an agreement may serve as the basis for proposed regulations if other interested parties who “would be bound by the terms, rates, or other determination” set by the agreement are afforded “an opportunity to comment on the agreement,” *id.* § 801(b)(7)(A)(i), and provided, in the event a participant to the proceeding who would be bound by the agreement raises an objection, the Judges conclude that the rates and terms set forth in the settlement agreement “provide a reasonable basis for setting statutory terms or rates.” *Id.* § 801(b)(7)(A)(ii). Encouraging settlements was a key goal of Congress when it adopted the current rate-setting procedures. H. Rep. No. 108-408, at 30 (Jan. 30, 2004) (“[T]he Committee intends that the bill as reported will facilitate and encourage settlement agreements for determining royalty rates.”).

With the exception of *pro se* participant George Johnson, all of the participants in this Proceeding as it relates to Subpart C & D Configurations have agreed to the Settlement and do not object to its being adopted as the basis for setting statutory Subpart C & D Configuration Rates and Terms for the rate period covered by the Proceeding.¹ The Settlement thus represents the consensus of both licensees and licensors representing the vast majority of the market for

¹ The parties to the Settlement intend to contact Mr. Johnson concerning the Settlement to ascertain his position promptly upon the filing of this motion. To the extent they are still considered as participants, David Powell and Brian Zisk did not file written direct statements and therefore should be dismissed from the Proceeding. 37 C.F.R. § 351.4 (“All parties who have filed a petition to participate in the hearing must file a written direct statement.”); Order, Docket No. 2000-9 CARP DTRA 142, eCRB Docket No. 8037 (“As the Library has made abundantly clear, failure to file a written direct case in this proceeding is grounds for automatic dismissal.”); Order, Docket No. 2005-1 CRB DTRA, eCRB Docket No. 9263 (applying Librarian direction of automatic dismissal to failure to file written direct statements under 37 C.F.R. § 351.4); *see also* Order Dismissing David Powell and Circle God Network, Docket No. 19-CRB-0005-WR, eCRB Docket No. 21969; Order Dismissing David Powell and Circle God Network, Docket No. 2008-3 CRB DD (2007-2011 SRF), eCRB Docket No. 20273. SoundCloud Operations Inc. withdrew from participation in the Proceeding in May 2021.

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rights under Section 115 for Subpart C & D Configurations. In addition, nothing in the Settlement is contrary to the provisions of the applicable statutory license or otherwise contrary to law. As a result, there is no basis for the Judges not to adopt the Settlement as the statutory Subpart C & D Configuration Rates and Terms under Section 115.

Accordingly, the Parties respectfully request that the Judges adopt the Settlement in its entirety as the statutory Subpart C & D Configuration Rates and Terms after its publication and the receipt of any comments.

Dated: _____, 2022

Respectfully submitted,

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**Before the
COPYRIGHT ROYALTY BOARD
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)

**[PROPOSED] ORDER ON MOTION TO ADOPT SETTLEMENT OF STATUTORY
RATES AND TERMS FOR SUBPART C & D CONFIGURATIONS**

On ___, 2022, the National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Associations International (“NSAI,” together 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”), on the other hand, filed a Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations (the “Settlement Motion”).

The Settlement Motion notified the Copyright Royalty Judges (the “Judges”) of a settlement in the above-captioned proceeding between the Copyright Owners and the Service Participants as to the royalty rates and terms under Section 115 of the U.S. Copyright Act for Licensed Activity (as defined in 37 C.F.R. Part 385 Subpart A) presently addressed in 37 C.F.R. Part 385 Subparts C & D (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”) for the full time period addressed by the *Phonorecords IV* proceeding. The Copyright Owners and the Service Participants have submitted with the

(Exhibit B) 7

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Settlement Motion proposed regulations implementing the agreed-upon Subpart C & D Configuration Rates and Terms (the “Proposed Regulations”).

In accordance with § 801(b)(7)(A) of the Copyright Act and 37 C.F.R. § 351.2(b)(2) of the Judges’ regulations, the Judges shall submit the Proposed Regulations for publication in the *Federal Register*. Participants in the proceeding that would be bound by the Proposed Regulations will have an opportunity to comment on and object to the adoption of the Proposed Regulations as a basis for statutory rates and terms. Parties that would be bound but who are not participants in the proceeding will have an opportunity to comment on the Proposed Regulations.

After the close of the settlement comment period, the Judges will adopt the Proposed Regulations or, if a participant objects to the Proposed Regulations and the Judges conclude that the Proposed Regulations do not provide a reasonable basis for setting statutory terms or rates, the Judges will revisit with counsel next steps and appropriate procedures.

SO ORDERED.

Hon. David P. Shaw
Chief Copyright Royalty Judge

Dated: _____, 2022

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Exhibit C

Form of Motion to Stay

**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)**

**JOINT EMERGENCY MOTION FOR STAY OF PROCEEDINGS
PENDING RESOLUTION OF MOTION TO ADOPT SETTLEMENT**

The National Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI," and collectively with NMPA, the "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") on the other hand, hereby move to stay the above-captioned proceeding (the "Proceeding"), including the hearing set to begin on September 7, 2022 (the "Hearing") 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 ("Settlement Motion").

On [date], the Copyright Owners and the Service Participants reached agreement on a settlement (the "Settlement") in the Proceeding as to the royalty rates and terms that shall be applicable under Section 115 of the U.S. Copyright Act for Licensed Activity (as defined in 37

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C.F.R. Part 385 Subpart A) presently addressed in Subparts C and 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”), for the full time period addressed by the Proceeding.

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

EXECUTION VERSION

any set by any Order of the Judges or by the Judges' regulations), be stayed pending resolution of the Settlement Motion.

Dated: _____, 2022

Respectfully submitted,

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By: /s/ Joseph R. Wetzel

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:)	
)	
DETERMINATION OF RATES)	Docket No. 21-CRB-0001-PR
AND TERMS FOR MAKING AND)	(2023-2027)
DISTRIBUTING PHONORECORDS)	
(<i>Phonorecords IV</i>))	
)	

**[PROPOSED] ORDER ON JOINT EMERGENCY MOTION FOR STAY OF
PROCEEDINGS PENDING RESOLUTION OF SETTLEMENT**

On _____, participants National Music Publishers’ Association; Nashville Songwriters Association International; Amazon.com Services LLC; Apple Inc.; Google LLC; Pandora Media, LLC; and Spotify USA Inc. filed a joint emergency motion to stay the above-captioned proceeding (the “Proceeding”) pending resolution of the Parties’ Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations (“Settlement Motion”). Having received and considered the participants’ views, **IT IS HEREBY ORDERED** that the Proceeding, including the September 7, 2022 hearing and all deadlines in this matter (including any set by any Order of the Judges or by the Judges’ regulations), is stayed until the resolution of the Settlement Motion.

SO ORDERED.

DATED: _____, 2022

Hon. David Shaw
Chief Copyright Royalty Judge

Exhibit D

Form of Press Release

[To be inserted]

FINAL JOINT RELEASE

NMPA, NSAI, and DiMA Announce Landmark Agreement for *Phonorecords IV* Proceeding

Settlement delivers higher mechanical rates, bolsters support for songwriters

Washington, D.C. – The National Music Publishers’ Association (NMPA), the Nashville Songwriters Association International (NSAI), and the Digital Media Association (DiMA) today announced a settlement for certain mechanical streaming rates in the U.S. for the years 2023-2027. The agreement will provide higher royalty rates for songwriters and music publishers, promote sustainability, innovation, and continued investment for the entire industry, and usher in a new era of collaboration between all parties.

Per the agreement, the headline royalty rate will be set at 15.35%, which will be phased in over the five-year term. This new rate comes as the Mechanical Licensing Collective is fully operational, delivering commission-free royalty payments as a result of the passage and implementation of the Music Modernization Act (MMA).

The deal also includes a number of changes to other components of the rate, including increases to the per-subscriber minimums and the “Total Content Costs (TCC)” calculations which reflect the rates that services pay to record labels. As streaming services continue to innovate to deliver songwriters’ works to growing numbers of paying fans, the agreement also modernizes the treatment of “bundles” of products or services that include music streaming and updates how services can offer incentives to attract new subscribers into the music ecosystem.

This agreement, supported by DiMA member companies, Amazon, Apple, Google, Pandora, and Spotify, as well as NSAI’s Board of Directors, and the NMPA Board which is comprised of leading independent and major music publishers, ensures that all parties will benefit from the growth of the industry and will be motivated to work together to maximize that growth.

NMPA President & CEO David Israelite said, “This historic settlement is the result of songwriters making their voices heard. Instead of going to trial and continuing years of conflict, we instead move forward in collaboration with the highest rates ever, guaranteed. We thank the digital services for coming to the table and treating creators as business partners. Critically, since this is a percentage rate, we know that as streaming continues to grow exponentially, we will see unprecedented value of songs.”

NSAI Executive Director Bart Herbison said, “This collaborative process will lead to increased songwriter compensation from digital streaming companies and locks in our historic 43.8% increase from the previous CRB proceeding. Along with the upward rate momentum there are also new structures to help ensure minimum payments.”

DiMA President and CEO Garrett Levin said, “This agreement represents the commitment of the streaming services to bringing the best music experiences to fans and growing the streaming ecosystem to the benefit of all stakeholders, including the creative foundation of songwriting. For streaming services, this moment presents an opportunity to pursue new collaborations with

publishers and songwriters in the context of economic certainty that will support continued innovation. Perhaps more than anything, this agreement demonstrates the potential for industry progress when parties come to the table for good faith discussions.”

###

About NMPA:

Founded in 1917, the National Music Publishers’ Association (NMPA) is the trade association representing all American music publishers and their songwriting partners. The NMPA’s mandate is to protect and advance the interests of music publishers and songwriters in matters relating to the domestic and global protection of music copyrights. Learn more at nmpa.org.

About NSAI:

Established in 1967, the Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit songwriters trade organization and has a membership of more than 5,000 spanning the United States and eight (8) foreign countries. Consisting of a body of creative minds, including songwriters from all genres of music, professional and amateur, for over 53 years, NSAI has been committed to protecting the rights and future of the profession of songwriting, as well as carrying a commitment to educate, elevate and celebrate the songwriter, acting as a unifying force within the music community and the community at large. More information can be found **here**.

About DiMA:

The Digital Media Association (DiMA) is the leading organization advocating for the digital music innovations that have created unparalleled consumer choice and revolutionized the way music fans and artists connect. Representing the world’s leading music streaming companies – Amazon, Apple Music, Pandora, Spotify, YouTube – DiMA’s mission is to promote and protect the ability of music fans to engage with creative content whenever and wherever they want and for artists to more easily reach old fans and make new ones. www.DiMA.org

Proof of Delivery

I hereby certify that on Thursday, October 06, 2022, I provided a true and correct copy of the Joint Submission of Settling Participants Regarding Settlement Agreement to the following:

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

Warner Music Group Corp., 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

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

Sony Music Entertainment, 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

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

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

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

Signed: /s/ Benjamin K Semel