

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 REQUEST ISSUANCE OF AMENDMENT TO DETERMINATION OF  
ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING  
PHONORECORDS (PHONORECORDS IV) PURSUANT TO 17 U.S.C. § 803(C)(4)**

Spotify USA Inc., Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Apple Inc. (collectively, the “Movants”) jointly move to respectfully request that the Copyright Royalty Judges issue an amendment to their Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV) (“Determination”), 87 F.R. 80448, to make the minor modifications detailed below. National Music Publishers’ Association, Inc. and the Nashville Songwriters Association International consent to the relief requested. The requested amendments are proper because they correct technical errors, or modify terms (not rates) of royalty payments that might otherwise frustrate the proper implementation of the Determination. *See* 17 U.S.C. § 803(c)(4).

*First*, 37 C.F.R. section 385.3 currently provides that late fees should accrue from the date payment is due until payment is received by the Copyright Owner. The language thus does not acknowledge that the mechanical licensing collective has responsibility for collecting payment

under the blanket license for digital uses (though payment remains owed to Copyright Owners for non-blanket license uses). *See* 17 U.S.C. § 115(d)(4)(A)(i). The Movants therefore propose the following amendment (shown in bold) to the proposed 37 C.F.R. section 385.3:

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, **except that where payment is due to the mechanical licensing collective under 17 U.S.C. 115(d)(4)(A)(i), late fees shall accrue from the due date until the mechanical licensing collective receives payment.**

*Second*, the Determination omits capitalization from certain words in the headings of subparagraphs in 37 C.F.R. section 385.21(d) that were capitalized in the Proposed Regulations (eCRB Dkt. No. 27278). However, the products described in each of these headings correspond to a defined term in 37 C.F.R. section 385.2. As such, the Movants propose that the Judges revert to the capitalization proposed in the Proposed Regulations (as shown below in bold) in order to make clear that 37 C.F.R. section 385.21(d) concerns the products defined in 37 C.F.R. section 385.2: “Standalone Non-Portable Subscription Offerings—Streaming Only”; “Standalone Non-Portable Subscription Offerings—Mixed”; and “Standalone Portable Subscription Offerings.”

### **Conclusion**

For the foregoing reasons, the Movants respectfully request that the Judges issue the above amendments to the Determination.

DATED: January 10, 2023

Respectfully submitted,

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# Proof of Delivery

I hereby certify that on Tuesday, January 10, 2023, I provided a true and correct copy of the Joint Motion to Request Issuance of Amendment to Determination of Royalty and Terms for Making and Distributing Phonorecords (Phonorecords IV) Pursuant To 17 U.S.C. § 803(C)(4) to the following:

Joint Record Company Participants, represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Copyright Owners, represented by Benjamin K Semel, served via E-Service at [Bsemel@pryorcashman.com](mailto:Bsemel@pryorcashman.com)

Zisk, Brian, represented by Brian Zisk, served via E-Service at [brianzisk@gmail.com](mailto:brianzisk@gmail.com)

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Powell, David, represented by David Powell, served via E-Service at [davidpowell008@yahoo.com](mailto:davidpowell008@yahoo.com)

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at [senglund@jenner.com](mailto:senglund@jenner.com)

Johnson, George, represented by George D Johnson, served via E-Service at [george@georgejohnson.com](mailto:george@georgejohnson.com)

Apple Inc., represented by Mary C Mazzello, served via E-Service at [mary.mazzello@kirkland.com](mailto:mary.mazzello@kirkland.com)

Amazon.com Services LLC, represented by Joshua D Branson, served via E-Service at [jbranson@kellogghansen.com](mailto:jbranson@kellogghansen.com)

Google LLC, represented by Gary R Greenstein, served via E-Service at  
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Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at  
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Signed: /s/ Joseph Wetzel