

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR MAKING AND DISTRIBUTING  
PHONORECORDS (Phonorecords IV)**

**Docket No. 21-CRB-0001-PR  
(2023-2027)**

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**ORDER 66 DENYING GEO’S MOTION TO AMEND  
AND ORDER REGARDING REDACTIONS**

On March 9, 2023, George Johnson (“GEO”), a pro se participant, filed his “Subpart B Motion For Relief to Amend 12 Cent Judgement to 13.73 Cents on January 1, 2023 to Correct No Proposed Cola by the Parties for 2021 and 2022” (Motion) (eCRB no. 27507) to modify what is characterized as an “unreasonable, unfair, and arbitrary” omission of a “Cost of Living Adjustment . . . indexing to the published rates within Subpart B of the Phonorecords IV rates.”<sup>1</sup> Motion at 1, 3. GEO characterizes the Subpart B rates as, among other things, containing an unreasonable 2-year miscalculation of the Cost of Living Adjustment. *Id.* at 5, 8. The Motion notes that GEO is requesting relief “to correct this miscalculation before any initial determination or motion for rehearing filing 15 days later.” *Id.* at 8.

On March 23, 2023, participants Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (together, “Labels”) filed a Response (Response) in opposition in which they noted that the Subpart B rates are now final and the Judges do not have authority to change the rates as requested. The Labels argue that the only avenues for the Judges to change the rates that they have determined is through either a successful appeal to the D.C. Circuit or through a petition for rehearing. Response at 1-2, citing 17 U.S.C. 803(c) and 803(d)(1). The Labels also observe that the Judges retain certain continuing jurisdiction, which only permits the Judges “to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments.” *Id.* at 1-2, citing 17 U.S.C. 803(c)(4). The Labels conclude that because the action sought in the Motion is not an action that the Judges are empowered to take, the Motion must be denied. *Id.* at 3.<sup>2</sup>

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<sup>1</sup> The Subpart B rates, addressing physical phonorecords, permanent downloads, ringtones and music bundles were proposed as a settlement and adopted by the Judges. *See* Final rule, Determination of Royalty Rates and Terms for Making and Distributing Phonorecords, 87 FR 76937 (Dec. 16, 2022) (“Subpart B Determination”).

<sup>2</sup> The Labels also address GEO’s filing entitled Novel Material Question of Substantive Law . . . (Mar. 20, 2023) (eCRB no. 27814), asserting that the filing suffers from the same defects as the Motion and that procedure for referral of questions is limited to those actually “presented” in a proceeding. Response at 3 n.3, citing Copyright Royalty Judges’ Ability to Set Rates and Terms That Distinguish Among Different Types or Categories of Licensors, 80 FR 76577, 76581 (Dec. 9, 2015).

On March 29, 2023, GEO filed a Reply. In the Reply, GEO appears to express confusion as to whether there has been any final ruling regarding Subpart B. GEO notes that he may have “mistakenly missed my §353.4 ‘initial determination’ deadline on December 31, 2022 to file my motion for rehearing.” Reply at 2. GEO then requests that the Motion be viewed as a timely Motion for Rehearing or a motion to allow GEO to file a proper Motion for Rehearing. *Id.* at 3.

### **Findings, Conclusion, and Order**

In addition to the operative limitations on the Judges authority to modify initial or final determinations, the procedures through which the Subpart B rates have been adopted already considered the reasonableness of all aspects of the settlement. *See* Subpart B Determination.

The Judges specifically addressed the reasonableness of the method of adjusting for inflation in the settlement, stating:

[T]he Judges are not indicating that the particular method of adjusting for inflation in the settlement is superior to methods offered by parties that voiced their opposition to Proposed Settlement 2, or that Proposed Settlement 2 represents an approach to inflation that the Judges would have chosen after a fully contested proceeding. In making this finding, the Judges observe that the Moving Parties clarified that Proposed Settlement 2 was arrived upon in part to avoid costly and uncertain litigation, which would involve a number of disputed issues. Their inflation adjustment is but one of several provisions, and thus is bound-up with the entirety of the parties’ negotiated compromises. In this context, the Judges have no reason to find that the inflation adjustment is unreasonable or should otherwise justify a rejection of the settlement.

*Id.* at 76942.

The Judges do not find that the proposed and adopted rates were the result of a miscalculation or a technical or clerical error. In addition, when the Judges adopt a settlement of rates and terms, with respect to the scope of an adopted settlement, there is no procedural step of issuing an initial determination or consideration of petitions for rehearing. Instead, a proposed settlement undergoes a different procedure, which includes the settlement being published to provide an opportunity for the submission of comments from interested parties or participants.

The Judges therefore **DENY**<sup>3</sup> GEO’s request to modify the Cost of Living Adjustment indexing in Subpart B and his requests related to recharacterizing the motion as one for rehearing.

On September 2, 2022, the captioned proceeding and related deadlines were stayed pending resolution of a motion to adopt a settlement. *See* Order 62 Granting Emergency Motion for Stay. The Judges ultimately adopted the settlement and now lift the stay. In light of the adopted settlement, all motions that were pending at the time of the stay are denied. The parties **SHALL**, however, file an agreed redacted version of the Order Further to Order on Copyright

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<sup>3</sup> The Judges decline to refer any claimed Novel Material Question of Substantive Law in the proceeding as suggested in GEO’s March 9, 2023 filing. The Phonorecords proceeding is closed, and the Judges find no novel legal questions that would be material to the proceeding. Similarly, the Judges decline to substantively address GEO’s November 6, 2023 Notice of Controversy regarding participant Spotify’s allegedly planned copyright infringement, a filing for which the Judges find no authority to address.

Owners' Motions to Compel Amazon to Produce Unredacted Documents & Challenge Clawback Notice (eCRB no. 27191) WITHIN THREE DAYS OF THE DATE OF THIS ORDER.

**SO ORDERED.**

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David P. Shaw  
Chief Copyright Royalty Judge

Dated: January 25, 2024