

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

*In re*

Determination of Royalty Rates and Terms  
for Making and Distributing  
Phonorecords  
(Phonorecords IV)

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

**GEO’S MOTION FOR RELIEF FROM SPOTIFY TO COMPLY WITH §385  
SUBPART C AND CEASE & DESIST FROM COMBINING AUDIOBOOK  
ROYALTIES WITH MUSIC ROYALTIES TO LOWER STREAMING RATES  
FOR ALL AMERICAN SONGWRITERS**

Participant George Johnson (“GEO”), a *pro se* Appellant songwriter respectfully submits this Motion for Relief from participant Spotify to cease and desist from *lowering* 37 C.F.R. §385 Subpart C songwriter and music publisher royalty rates by unlawfully “bundling” *audiobooks* with music streaming royalties, to save costs by diluting the royalty pool<sup>1 2</sup>. These new lower rates and terms *were not agreed to* in Your Honors’ Subpart C<sup>3</sup> final rule, and were never mentioned in NMPA’s proposed voluntary settlement. GEO objects to these actions and

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<sup>1</sup> <https://www.billboard.com/pro/spotify-price-increase-lower-royalty-rate-us-songwriters/> April 19, 2024 by Kristin Robinson of Billboard. *Why Spotify’s Latest Price Hike Means A Lower Rate for U.S. Songwriters.*”

<sup>2</sup> <https://www.billboard.com/business/streaming/spotify-songwriters-less-mechanical-royalties-audiobooks-bundle-1235673829/> May 9, 2024 by Kristin Robinson, *Spotify to Pay Songwriters About \$150 Million Less Next Year With Premium, Duo, Family Plan Changes.*

<sup>3</sup> <https://www.govinfo.gov/content/pkg/FR-2022-12-30/pdf/2022-28316.pdf> December 30, 2022, Subpart C Rule

respectfully requests relief from Spotify's<sup>4</sup> shocking misuse and intentional misreading of the §385 Subpart A definitions, §385 Subpart C codes<sup>5</sup>, 17 U.S.C. §115, et al., and the federal compulsory license — all to fraudulently lower songwriter rates even further than the current average \$.00012 cent rate.

Billboard writes, “By adding books to plans, the streamer says it qualifies for rate discounts. Billboard estimates this will slash U.S. mechanical royalties by nine figures in its first year.”<sup>6</sup>

“By adding audiobooks to Spotify's premium tier, the streaming service says it qualifies for a U.S. mechanical royalty rate discount. The NMPA calls it "potentially unlawful.”

“Spotify argues that adding audiobooks reclassifies the service from a “standalone portable subscription” to a “bundled subscription offering”, according to the royalty rate formula provided in Phonorecords IV.”<sup>7</sup>

As per §385.2 Definitions<sup>8</sup> *audiobooks* are not included, and it's for music:

*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.

*Bundled Subscription Offering* means a Subscription Offering providing Eligible Interactive Streams and/or Eligible Limited Downloads included within a Bundle.

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<sup>4</sup> And presumably participants RIAA, DiMA, NMPA, NSAI, and their counsel Pryor Cashman who all proposed this Subpart C “voluntary settlement” and knew what was in it.

<sup>5</sup> <https://www.ecfr.gov/current/title-37/chapter-III/subchapter-E/part-385> 37 C.F.R. §385

<sup>6</sup> How can Spotify increase subscription rates, but songwriter rates keep going down?

<sup>7</sup> <https://www.billboard.com/business/publishing/spotify-songwriter-royalty-cuts-music-industry-reactions-1235681499/>. May 13, 2024 by Kristin Robinson of Billboard. *Spotify's Estimated \$150M Songwriter Royalty Cuts: Music Industry Reactions (Updating)*

<sup>8</sup> <https://www.ecfr.gov/current/title-37/chapter-III/subchapter-E/part-385/subpart-A/section-385.2> §385.2 Subpart A Definitions.

In addition, an audiobook doesn't seem to qualify as an "*eligible*" stream.

This audiobook issue *may* relate to some of the *legal changes* NMPA was making to §385 back when I was filing motions regarding the free "offline listening" issue aka "unlimited limited download" rate-setting in Order 65<sup>9</sup>, *but maybe not*, and since I'm a layman<sup>10</sup> and not an attorney<sup>11</sup> I may misunderstand these *changes*.

I'd guess if the bundling of audiobooks is *now legal*, then the §385 Redline and Submissions changes, plus Agreements<sup>12</sup> made by NMPA, et al., *is why*. Did the *definition changes*, redlines and submissions, and Agreements made by Pryor Cashman, NMPA, NSAI, Spotify, DiMA, RIAA, et. al., *create this audiobook issue?*

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<sup>9</sup> <https://app.crb.gov/document/download/27413> January 05, 2023, *Order 65 Requesting Additional Briefing From Participants*. "unlimited limited download"

<sup>10</sup> See, e.g., *Macklin v. Spector Freight Sys.*, 156 U.S. App. D.C. 69, 78, 478 F.2d 979, 988 (D.C. Cir. 1973) ("It should be remembered that the jurisdictional requirements we are applying here are not aimed at polished lawyers' pleadings, but rather at charges brought, initially, by laymen usually unassisted by attorneys. Thus it makes sense, in our view, to avoid reading them as Baron Parke might have, but rather to read them with considerably more latitude and with weight to the construction given them by the Commission in the matters it proceeds to investigate." (citation omitted)), disapproved on other grounds by *Johnson v. Ry. Express Agency*, 421 U.S. 454 (1975).

<sup>11</sup> On July 21, 2015, on Day 28, closing statements in *Web IV*, Mr. Glenn Pomerantz, lead counsel for SoundExchange kindly said this, but which applies here as a non-attorney.

"Now, SoundExchange wasn't the only advocate for the artists in this hearing room. So was Mr. Johnson. He was advocating for the artists. *Now Mr. Johnson may not phrase things quite the way that lawyers phrase things, and he may not do things quite the way that lawyers do things, but perhaps that makes him more persuasive. Perhaps that makes his message clearer.* Because Mr. Johnson and thousands and thousands of artists are frustrated. They're frustrated that they're not getting a fair share of the streaming revenue. They're frustrated that the executives of the services are getting enriched by their music and they're not sharing in that. And they're frustrated that the royalty terms that are getting -- are getting set without fair consideration of the value that the artists have brought to make Pandora and iHeart multibillion dollar businesses." (emphasis added)

<sup>12</sup> <https://www.nmpa.org/wp-content/uploads/2022/08/CRB-Phono-IV-Settlement-Package.pdf> NMPA and the Parties Agreement on August 31, 2022.

I quote the great former Register of Copyrights Mr. Ralph Oman<sup>13</sup> because Spotify's bundle is another way to "riddle" a songwriter's *exclusive right* with "stingy" "exceptions and limitations", so their work is "...given away free-of-charge".

I also realize CRB Order 66 stated that this proceeding was closed<sup>14</sup>, (and no Motion for Rehearing) however no *Initial Determination* has been filed, as in all other proceedings<sup>15</sup>, therefore, it still appears to be *open* pursuant to §803(c)(2)(B).

§803(c)(2)(B) under "Rehearings" for *Proceedings of Copyright Royalty Judges*

(B) Timing for filing motion. — Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver to the participants in the proceeding their *initial determination*.<sup>16</sup> (emphasis added)

I also believe Your Honors have the authority to address this dire issue.

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<sup>13</sup> <https://cap-press.com/books/isbn/9781611637090/The-Constitutional-Foundations-of-Intellectual-Property> 2015, *The Constitutional Foundations of Intellectual Property, A Natural Rights Perspective*, by [Randolph J. May](#), [Seth L. Cooper](#) "Finally, two talented authors add intellectual heft to the ongoing debate *about the true nature of copyright—as an exclusive private property right, or as a limited right to be doled out stingily, riddled with exceptions and limitations, to be given away free-of-charge*. It has become fashionable in some academic circles to treat copyright exclusivity as a quaint but outmoded notion, and its advocates as hopeless naifs. But Mr. May and Mr. Cooper, by going back to first principles and natural rights, show us that an exclusive property right is at the heart of copyright protection. Their learned analysis should be widely read, especially by Members of Congress and judges, to help them understand the true nature of the debate and the deep roots of the copyright pedigree as a natural private property right—historically unique, socially revolutionary, and worth fighting for. Three cheers for Messrs. May and Cooper!" (emphasis added) — *Ralph Oman, Register of Copyrights of the United States, 1985-1993*

<sup>14</sup> <https://app.crb.gov/document/download/40664> Order 66 on GEO's Motion to Amend. Page 2. "*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.*" (emphasis added)

<sup>15</sup> <https://app.crb.gov/document/download/2288>. *Phonorecords III* Initial Determination.

<sup>16</sup> <https://www.copyright.gov/title17/92chap8.html>

This is simply another Spotify scheme to change the negotiated Subpart C rates and terms set by Your Honors, and not your intent. It's also a gross misuse of the *compulsory license* to lower their songwriter costs and another "end run".

I guess nobody could foresee that by agreeing to the NMPA Subpart C voluntary settlement that we were all *inadvertently* agreeing to adding audiobooks to dilute the royalty pool for interactive music streams?

My initial reaction was with all the lawyers for participants in this proceeding, and Copyright Office counsel, et al., how did they *not know that adding audio books to lower music streaming rates was a possibility or even a probability?*<sup>17</sup>

In 2022, NMPA stated that Spotify was now their "business partner", so did NMPA, NSAI, and Pryor Cashman *know this audiobook bundling was coming* or a *real possibility* when they proposed their Subpart C voluntary settlement in 2022?

And did NMPA, NSAI, Spotify and DiMA know this *was just another way to lower songwriter costs* for Spotify and other Services? And this clearly hurts *all* American songwriters and music publishers, who also didn't get a streaming COLA.

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<sup>17</sup> <https://www.musicbusinessworldwide.com/spotify-daniel-ek-cashes-out-118-8-million-in-shares/> April 24, 2024 by Tim Ingham for Music Business Worldwide, *Spotify's Daniel Ek Cashes Out \$118.8 Million In Shares*. "This is no arbitrary change: by re-categorizing Premium subscriptions as "bundles", under terms of a 2022 ruling from the US Copyright Royalty Board, Spotify believes it can pay a lower rate of mechanical royalties for the use of music on its platform in the United States."

So, why haven't NMPA, RIAA, NSAI, or DiMA filed a Motion for Relief<sup>18</sup> or similar cease and desist motion *in this proceeding*, despite all their recent public outrage and threats of legal action toward Spotify? Is it because we are now closed?

Statements from participants NMPA and NSAI show they agree with GEO.

“Bundling’ music with other offerings without a music-only option does not comport with our view of the intent of the Copyright Royalty Board (CRB) in recent Phonorecord procedures in which the NSAI participated. Further, this move negates gains awarded to songwriters by the CRB. NSAI will not accept what we view as an attempt to manipulate the intent of the court though a “bundling” gimmick.”<sup>19</sup> — statement by NSAI.

“It appears Spotify has returned to attacking the very songwriters who make its business possible. Spotify’s attempt to radically reduce songwriter payments by reclassifying their music service as an audiobook bundle is a cynical, and potentially unlawful, move that ends our period of relative peace. We will not stand for their perversion of the settlement we agreed upon in 2022 and are looking at all options.”<sup>20</sup> — statement by NMPA

Most importantly, this audiobook scheme only highlights the hollow *promises* and *assurances* from NMPA counsel, Mr. David Israelite, NSAI, and commenters Grammys, AIMP, SONA, et al., how *their* Subpart C voluntary proposal would *increase* songwriter and music publisher payouts, yet none of their predictions have come true as payments have fallen the past 2 years.

In fact, in 2022 Mr. Israelite *promised* his publisher audience at Grammy Week that despite *his* “no COLA for streaming” deal being the #1 complaint about

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<sup>18</sup> Your Honors, I honestly didn't know what to call this Motion, so I chose Relief as you wrote in Order 66. Motion to Compel and Notice of Controversy didn't seem to apply.

<sup>19</sup> <https://www.nashvillesongwriters.com/nsai-calls-out-spotify> 2024 NSAI Statement

<sup>20</sup> <https://musicrow.com/2024/05/nsai-nmpa-more-share-frustration-with-spotifys-payment-change/> May 14, 2024 from Music Row, from NMPA statement by CEO David Israelite.

NMPA's Subpart C settlement, *that when the Services do better, songwriters do better* and that has proven to be fundamentally false, and here once again.

Mr. Israelite then *promised* that his expert negotiation and voluntary settlement would *dwarf* his decision to make sure there was NO COLA for *all* songwriters, but as rates continue to fall, *none of it has turned out like he sold us:*

“Now most people who have looked at this settlement have had nothing but praise, but the only criticism that I've heard is “Well, but the 2nd and 3rd tiers don't have cost of living adjustments (COLA), they don't go higher during the 5 year term”. *What's important to understand is that the jumps that we took in the 2nd and 3rd tier are significantly better than if we had a COLA, significantly better, and so we were able to raise those 2 rates to a hard number, starting in year 1, and that will dwarf what would have happened if we instead went by a CPI-U index, which is a Consumer Price Index Urban inflation unit for the 5 year period based on all projections. So, while yes, we would have loved to have both, the fact that we got the giant increases in the numbers originally is better than a CPI-U adjustment. We now look at this as a partnership with the digital streaming companies. We are now in this together. When they do better, we do better.*”<sup>21</sup> (emphasis)

So, Spotify has increased their subscription prices and are doing better, yet *songwriters won't share in these increases as promised?*

And once again, U.S. rates will be *diluted* by schemes from a Swedish corporation to steal the rightful earnings of *every* American songwriter and music publisher *bound* by the U.S. compulsory license?

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<sup>21</sup> [https://vimeo.com/795669420/d4dea2d73f?embedded=true&source=vimeo\\_logo&owner=16656974](https://vimeo.com/795669420/d4dea2d73f?embedded=true&source=vimeo_logo&owner=16656974) February 2, 2023, NMPA CEO David Israelite at Lawry's Steakhouse, Hollywood, California at AIMP Grammy luncheon.

Next, CEO Daniel Ek recently cashed out \$118 million-dollars in shares, approximately \$340 million over the past few years, and according to reports more than Spotify has ever paid songwriters...ever!<sup>22</sup>

Your Honors, how is this fair, or *reasonable*, or “simulating a free market” when the CEO of a Swedish corporation personally makes \$340 million dollars by helping to set the low rate he pays in U.S. rate court? He uses the license to force *all* American songwriters to take \$.00012 for their own property, copyrights, and art.

How have we allowed a CEO of a foreign Swedish corporation to help *set his own costs for all* American songwriters under *our* compulsory license in U.S. courts?

Now, Daniel Ek *disobeys* the 2022 CRB Subpart C Final Rule at issue here by bundling audiobooks with songs while finding new “end runs” around the compulsory license to lower his songwriter costs again — and then he cashes out.

It is the height of arrogance and criminal theft, yet *all* songwriters have *no recourse* at \$.00012 cents, nor under a Congressional compulsory license, nor MMA.

Spotify finds ways to save on songwriter costs by end runs around the license:

- a.) like *not proposing* a Subpart C COLA inflation indexing for songwriters,
- b.) Spotify *stopped paying* artists and songwriters with under 1,000 streams<sup>23</sup>,

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<sup>22</sup> <https://musictechpolicy.com/2024/04/29/on-the-internet-partners-dont-hear-you-scream-daniel-ek-makes-a-bundle-from-the-value-he-wont-share/> April 29, 2024 by attorney Chris Castle on Music Tech Policy, *On The Internet, “Partners” Don’t Hear You Scream: Daniel Ek Makes A “Bundle” From the Value He Won’t Share.*

<sup>23</sup> <https://app.crb.gov/document/download/40664> January 25, 2024, Copyright Royalty Board Order 66 Denying GEO’s Motion to Amend And Order Regarding Redactions.



- c.) Spotify is now using AI Artificial Intelligence<sup>24</sup> *created songs* to dilute the pool,  
d.) and Spotify is now using this *audiobook* scheme to dilute music pool royalties.

Spotify is now making up their own CRB rates and terms mid-5 years, so how do we ask for relief other than file a motion with Your Honors?

It's also relevant that in the current *8 Mile Style v. Spotify* case (See Motion for Summary Judgement too)<sup>25</sup>, Spotify and Harry Fox Agency admit they are mass and willful copyright infringers, sent out *backdated* NOIs (Notice of Intent), and then fraudulently pretended they were using the compulsory license but were not!<sup>26</sup>

By mass *streaming without any licenses*, Spotify has repeatedly abused their privilege to 1.) use the federal compulsory license which is relevant, but equally important, 2.) Spotify may be “foreclosed” *from using the compulsory license* if it is upheld by the Court, having huge implications for Spotify, the Music Modernization Act (“MMA”), and the Music Licensing Collective (“MLC”).

GEO can provide further briefing if necessary but the issue is simple: *can Spotify change Your Honor's rates and terms? And whenever and however it wants?*

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<sup>24</sup> <https://www.bbc.com/news/technology-66882414> September 25, 2023 by Zoe Kleinman for BBC News, *Spotify will not ban AI-made music, says boss*, and [https://www.reddit.com/r/musicindustry/comments/1ao87z5/spotify\\_making\\_their\\_own\\_ai\\_music\\_under\\_fake/](https://www.reddit.com/r/musicindustry/comments/1ao87z5/spotify_making_their_own_ai_music_under_fake/) Reddit. *Spotify making their own AI music under fake artists, and pushing them instead of real ones?*

<sup>25</sup> <https://www.linkedin.com/pulse/eminem-eight-mile-style-spotify-infringement-lawsuit-nmpa-jeff-price-vz1te> April 8, 2024 by Jeff Price of Word Collections, *The Eminem Eight Mile Style Spotify Infringement Lawsuit And The NMPA: Will They Support Music Publishers Or Digital Services?*

<sup>26</sup> <https://www.digitalmusicnews.com/2024/04/01/eight-mile-style-spotify-lawsuit-docket-unsealed/> April 1, 2024 by Dylan Smith for Digital Music News. *Federal Judge Unseals Eight Mile Style v. Spotify Docket — Date Set for Oral Argument on Summary Judgement Motions.*

## CONCLUSION

GEO respectfully requests that Your Honors grant his Motion for Relief from Spotify and order them to cease and desist from misusing the Subpart C *standalone portable subscription* and or *bundled subscription offering* to lower songwriter rates by bundling audiobook royalties with music streaming royalties in violation of 37 C.F.R. §385, 17 U.S.C. §115, and the 2022 Subpart C Final Rule in this proceeding.

Audiobook royalties were never meant to be bundled with music streaming royalties at the CRB, or in *Phonorecords*, and not the intent of the Settlement.

It's also another "end run"<sup>27</sup> around the compulsory license.

We pray Your Honors can remedy or reverse any harmful legal changes that were made to 37 C.F.R. §385, 17 U.S.C. §115, et al. in error, or on purpose.

Respectfully,

By:           /s/ George D. Johnson            
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*George D. Johnson (GEO), an individual  
songwriter and music publisher.*

Thursday, May 16, 2024

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<sup>27</sup> <https://app.crb.gov/document/download/26557>. April 28, 2022, CRB letter to Register, *Referral of Novel Material Question of Substantive Law*, Page 3, Footnote 11.

# Proof of Delivery

I hereby certify that on Thursday, May 16, 2024, I provided a true and correct copy of the GEO's Motion for Relief from Spotify to Comply with §385 Subpart C and Cease and Desist From Combining Audiobook Royalties with Music Streaming Royalties to Lower Streaming Rates to the following:

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

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

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

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

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at [joe.wetzel@lw.com](mailto:joe.wetzel@lw.com)

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

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at [benjamin.marks@weil.com](mailto:benjamin.marks@weil.com)

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

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

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

Google LLC, represented by Gary R Greenstein, served via E-Service at [ggreenstein@wsgr.com](mailto:ggreenstein@wsgr.com)

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

Signed: /s/ George D Johnson