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

In re Determination of Rates and Terms for Digital Performance in Sound Recordings and Making of Ephemeral Recordings (Web VI)	Docket No. 23-CRB-0012-WR (2026–2030)

WRITTEN REBUTTAL STATEMENT OF GEORGE JOHNSON AND WORD COLLECTIONS

Participants George Johnson, an individual dba Geo Music ("GEO" or "George"), *pro se,* and Word Collections, Inc., ("Word Collections"), respectfully submit this joint *Written Rebuttal Statement* in opposition to Appellees Sirius XM Radio LLC ("Sirius XM") and Pandora Media, LLC's ("Pandora") proposed rates and terms for non-interactive streaming transmissions of sound recordings in *Webcasting VI* pursuant to 17 U.S.C §§ 114(f), 112(e), and 37 C.F.R. §370.2.

REBUTTAL

George and Word Collections align with SoundExchange's per-play proposals for non-subscription at $.0034 cents and subscription at $.0037 cents. We agree these rates are much *more reasonable* than Sirius XM and Pandora's "static" rate proposals of $.0018 cents and $.0020 cents – a heavy slap in the face to recording artists upon whom Sirius XM and Pandora depend for the success of their music

streaming business considering these proposed rates call for a **35.5% and 25%** ***reduction*** in the current subscription and non-subscription commercial webcaster rates, respectively.

If SoundExchange's evidence proves that rates could go higher than what they propose, GEO and Word Collections respectfully submit that our *value increase* proposals of $.0041 to $.0045 cents and $.0045 to $.0049 cents[1] for 2026 to 2030 are even more *reasonable* and still well within the "zone of reasonableness".[2] [3]

Furthermore, Sirius XM and Pandora proposing the same rates for *Web IV* and *Web V* of $.0018 cents and $.0020[4] cents over a 10-year period which contain no value increases, nor any inflation COLA cost of living adjustments, is fundamentally unfair, unreasonable, and not consistent with the Judges' March 30,

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[1] https://app.crb.gov/document/download/43808 October 30, 2024, *Written Direct Statement of George Johnson and Word Collections (Corrected and Amended 1)*

[2] https://www.copyright.gov/fedreg/2005/70fr30901.html 37 CFR Chapter III [Docket No. RM 2005-1]. Procedural Regulations for the Copyright Royalty Board. Authority: 17 U.S.C. 803. § 353.1 When granted.

[3] In NMPA's rate proposal for mechanicals in *Phonorecords IV* their economic evidence revealed that their proposed rate could have been 25% higher than what they offered, but they refused to argue it. So, as a backup we proposed an alternative increased rate.

[4] https://app.crb.gov/document/download/43707 October 30, 2024, *Introductory Memorandum To The Written Direct Statement of SiriusXM Radio LLC and Pandora Media, LLC,* "Accordingly, Sirius XM/Pandora proposes that the statutory rates be set at $0.0018 per performance for advertising-supported services and at $0.0020 per performance for subscription services."

2022 Final Rule on how frozen rates can no longer be "static"[5] in *Phonorecords IV*, finding: "In the dynamic music industry, there is insufficient reason to conclude that a static musical works rate is reasonable".

Of course, these rates did not remain static due to the tireless efforts of SoundExchange in *Web IV* and *Web V*, including a value increase to $.0021 and a *Web V* COLA indexing taking the rate to $.0025 cents.

Therefore, for Sirius XM and Pandora to continue to propose another "static" rate in *Web VI* for the 3rd time in a row is exactly why their rate proposal is completely *unreasonable*, contrary to rate court precedent, and ruling of this board. This is especially true when monetary inflation reached a 40-year record at 9.1% percent in June of 2022, which cumulatively adds up over time and why some eggs are currently selling at over $10 dollars per dozen here in 2025.

George and Word Collections also fully align with SoundExchange's rebuttal arguments and *join in their opposition* of the proposals by the National Association of Broadcasters ("NAB") and National Religious Broadcasters Music License Committee ("NRBMLC") to lower rates in every way, including lowering of simulcast performance rates which should not be reduced whatsoever.

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[5] https://www.federalregister.gov/documents/2022/03/30/2022-06691/determination-of-royalty-rates-and-terms-for-making-and-distributing-phonorecords-phonorecords-iv March 30, 2022, CRB Subpart B Final Rule. "In the dynamic music industry, there is insufficient reason to conclude that a static musical works rate is reasonable," and, "Even if the sales figures were otherwise, however, sixteen years at a static rate is unreasonable under the current record, if for no other reason than the continuous erosion of the value of the dollar by persistent inflation that recently has increased significantly. In this regard, application of a consumer price index cost of living increase, beginning in 2006, would yield a statutory subpart B royalty rate for 2021 of approximately $0.12 per unit as compared with the $0.091 that prevails, which adjustment, as noted *supra,* represents a 31.9% increase"

Next, Sirius XM/Pandora writes in their Written Direct Statement that, "The Copyright Royalty Board (CRB) has stated that a *hypothetical free market* would not result in a revenue-based royalty structure. (emphasis) However, the CRB does consider hypothetical markets[6] when determining royalty rates and terms."

A hypothetical market or hypothetical free market is one that is free of any compulsory license or statutory rate.

Sirius XM and Pandora further write in their Written Direct Statement that:

> "As the Judges clarified in the *Web IV* proceeding and affirmed in the *Web V* proceeding, the rate-setting task at hand is to establish the price that would result from negotiations between a willing buyer and a willing seller under conditions of "workable" or (equivalently) "effective" competition. Those precedents make plain that the willing buyer in the hypothetical market is a noninteractive webcaster that streams music to users subject to the "sound recording performance complement" and other limits of the statutory license, and the willing seller is a single record company that offers a blanket license to publicly perform its complete repertoire of sound recordings and to make ephemeral copies to facilitate those performances."

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[6] https://www.crb.gov/web-iv/web-iv-determination-final.pdf Web IV Final Determination, Page 2, "The Act requires that the Judges "shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller." 17 U.S.C. § 114(f)(2)(B). The marketplace the Judges look to is a hypothetical marketplace, free of the influence of compulsory, statutory licenses. Web II, 72 Fed Reg. 24084, 24087 (May 1, 2007). The Judges "shall base their decision on economic, competitive[,] and programming information presented by the parties…." 17 U.S.C. §§ 114(f)(2)(B) and 112(e)(4) (emphasis added). Within these categories, the Judges' determination shall account for (1) whether the Internet service substitutes for or promotes the copyright owner's other streams of revenue from the sound recording, and (2) the relative roles and contributions of the copyright owner and the service, including creative, technological, and financial contributions, and risk assumption. Id. The Judges may consider rates and terms of comparable services and comparable circumstances under voluntary, negotiated license agreements. Id. The rates and terms established by the Judges "shall distinguish" among the types of services and "shall include" a minimum fee for each type of service. Id. (emphasis added)."

Ironically, if this were an actual free market there would be *no* government price controls and centrally planned royalty rates for *all* American singers and record labels. There would be no §114 federal compulsory license and statutory rate around $.031 cents in exchange for a Performer's sound recording copyrights.

In today's market and with soaring monetary inflation, 1 sound recording is worth at least $3 to $5 per song, if not $10 for a new Taylor Swift release or other hit artist single release, especially if it is windowed, and why a BUY button is key.

One Starbucks coffee drink costs at least $5 and you don't get to drink it twice, yet a Swiftie can listen to that 1 song hundreds, if not thousands, of times *with no extra cost*.

The point here is that the *value* of every hard-earned sound recording and ephemeral copy is being *transferred to the streaming companies*, in this case Sirius XM and Pandora, which is self-evident and a major issue. It's why the substitution of sales issue and the BUY button are so important in allowing creators to partially recover their true value in what would be an actual or hypothetical free market.

In other words, all indie singers and indie labels are *subsidizing streamers* and why they earn billions of dollars, not the artists, owners, and copyright creators.

Unfortunately, because individual or independent sound recording creators, owners, and licensors can't afford a CRB attorney over 2 years, much less expert

economists to study the issue, testify, then enter that evidence, it's literally impossible for us to prove this in any CRB proceeding with no money.[7]

The value of *all* songs being performed on Sirius XM and Pandora is being transferred away from all of the millions of independent §114 copyright creators who don't have direct percentage of revenue deals with these streamers, no real due process, or ability to negotiate with Sirius XM or Pandora in an actual free market.

While the CRB may be considered due process, it's still an administrative agency essentially making law, setting below market rates, and without a true free market negotiation that would actually lead to increased rates outside a CRB administrative proceeding.

If it's true that the CRB is supposed to set rates in a "hypothetical market" or "hypothetical free market" free from any statutory rate or a compulsory license, then who better than independent artists, indie labels, and representatives to ask for what *they would really want* or demand if they were in an actual free market.

With all due respect to SoundExchange, it is not a copyright owner or individual copyright creator like George, and so the CRB should also weigh what George and other licensors like Word Collections propose as a willing seller.

The point here is in his previous four CRB proceedings, George has stated at hearing and in the record that when the rate structures, evidence, and regulations are all weighed between copyright creators vs. streamers, it's always 0% percent for

[7] Compounding the problem is the non-disclosure of all relevant documents and information from GEO and Word Collections as self-represented participants.

what hundreds of thousands of copyright creators want, and 100% percent what streamers and licensors want.

It may be 50/50% percent for what the 3 major record labels want due to their marketshare dominance, claiming they represent all "copyright owners"[8], but this is not the case for *all of the hundreds of thousands* of American independent singers, independent label owners, and sound recording creators/investors.

Economically the CRB is the complete opposite of a free market, yet here we are simulating one under a §114 compulsory license.

George and Word Collections still complain that despite being participants, we both are not really a "party" to the proceeding, or in any position to negotiate due to the Protective Order precluding receipt of all substantive material information relevant to the issues at hand. The Protective Order prejudices individual or independent, self-represented operators like ourselves, not allowing us the important and relevant information to make an informed decision or negotiation, even being considered a nuisance to the major parties.

Additionally, since George and Word Collections can't afford experienced outside counsel, and George is pro-se, we continue to respectfully request some relief from the Protective Order which completely prejudices us both in this proceeding.

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[8] Exactly as National Music Publishers Association ("NMPA') and Nashville Songwriter Association International ("NSAI") do in *Phonorecord* §115 proceedings, except these lobbyists do not collect royalties like SoundExchange does. However, NMPA and NSAI did create the 2018 Music Licensing Collective ("MLC") on behalf of the 3 major foreign record labels.

There is no reason to participate in CRB proceedings if participants are always discriminated against since they don't happen to have the largest marketshare in the industry or the money to hire outside counsel skilled in CRB proceedings and copyright law.

Independent sound recording copyright creators and owners still have exclusive rights under Art 1, Sec. 8, Cl. 8., §106, and §114 which is now riddled with limitations and exceptions under this compulsory license and rate setting process.

Again, GEO and Word Collections would like to *join* with SoundExchange *in support* of their evidence, experts, and legal argument regarding their entire case for increased non-interactive streaming rates and continuing the non-interactive streaming cost of living adjustment ("COLA") increases in *Web V*[9].

We are also deeply concerned about the longstanding issue argued by SoundExchange in past *Webcasting* proceedings regarding the *substitution of sales* due to a forced *access model* which is "cannibalizing" profits for *all* American singers and independent record labels. This is *fundamentally unfair* to all creators.

The *substitution of sales* is still an important issue since the access model is still destroying our "other streams of revenue from the sound recording", which are sales. "Within these categories, the Judges' determination shall account for (1) whether the Internet service substitutes for or promotes the copyright owner's other streams of revenue from the sound recording."

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[9] https://www.federalregister.gov/documents/2023/11/30/2023-26221/cost-of-living-adjustment-to-royalty-rates-for-webcaster-statutory-license November 30, 2023, Final Rule; cost of living adjustment, [Docket No. 19-CRB-0005-WR (2021-2025) COLA (2024)]

Therefore, we offer the voluntary BUY button Regulation Submission.

§114 REGULATION SUBMISSIONS AND REDLINE (*See* Exhibit A)

§114 "BUY button":

(a) This section prescribes procedures for the creation of a new §114 voluntary "BUY button" and a new §114 permanent download royalty payment to sound recording Copyright Owners and Performers to be collected by SoundExchange from Licensees exactly as a non-interactive stream plays would receive payment for distribution of royalties, but as a sale.

(b) Licensees shall place the voluntary BUY Button next to every song, album, and playlist on the Licensee's streaming service to offer and facilitate a purchase in the form of a new permanent digital download and payment via customer credit card/payment on file with Sirius XM and Pandora. The §112 ephemeral copy would act as the download or the ability to play the song on demand.

(c) Licensees shall pay the royalties due under this part to the Collective in accordance with §380.2, less 20% percent per dollar of such royalties due which Licensee shall retain as distributor for each dollar.

(d) The Collective shall distribute 40% percent of the royalties due per dollar under this part in equal shares to §114 sound recording Copyright Owners and Performers in accordance with §380.4.

(e) The Collective shall distribute the remaining 40% percent of the royalties due per dollar and due under this part to The Musical Licensing Collective ("MLC") for distribution by the MLC in equal shares to Songwriters and Publishers together with a new second set of mechanical royalties at 20% each due under 17 USC §115.

(f) Additionally, SoundExchange's collections of §114 BUY button royalties would mirror their current American Federation of Musicians ("AFM") and Screen Actors Guild / American Federation of Television and Radio Artists ("SAG/AFTRA") combined split of 5% percent that would also be subtracted from the Performer's 20% percent share, but from the traditional 45/50 split with the 5% percent on top of the 45% percent to make it 50% percent — 2.5% percent for AFM session players and 2.5% percent SAG/AFTRA singers.

CONCLUSION

George Johnson and Word Collections respectfully submit their *Written Rebuttal Statement* and align and join with the terms and issues set out in SoundExchange's rebuttal statement.

However, George Johnson and Word Collections respectfully requests Your Honors adopt our slightly increased reasonable rates and terms of a $.0041 to $.0045 cents for non-subscription plays and $.0045 to $.0049 cents for subscription plays for the years 2026 to 2030.

This also includes renewing the *Web V* COLA inflation indexing increases and the terms of a voluntary BUY button starting at a reasonable rate of $2.95 to $2.99 dollars per work.

Respectfully submitted,

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Friday, January 17, 2025

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, I provided a true and correct copy of George Johnson and Word Collections, Inc.'s Written Rebuttal Statement via the eCRB system to each of the parties of record as follows:

SoundExchange
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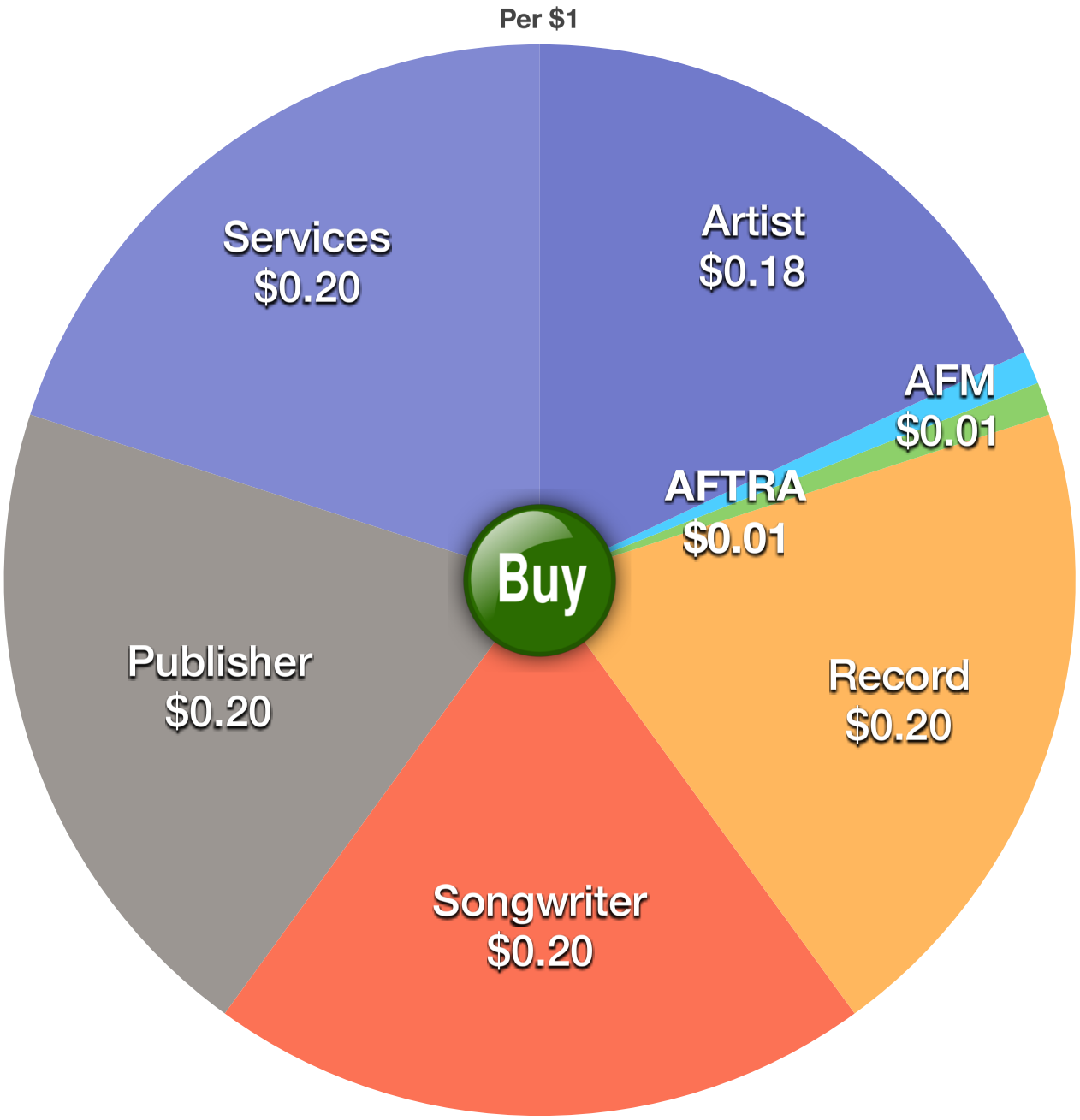
Friday, January 17, 2025

BUY Button 80/20% royalty split with all Copyright Owners and Services per $1 - PROPOSAL 3

Exhibit A



Division of $1 Dollar for BUY button

ROYALTY OWNER	CENTS PER DOLLAR
Artist	$0.18
AFM	$0.01
AFTRA	$0.01
Record	$0.20
Songwriter	$0.20
Publisher	$0.20
Services	$0.20

Pie chart shows each royalty category per song as a percentage of $1 generic dollar based on traditional §114 and §115 models of ASCAP, BMI and Soundexchange

GEO Ex. 1191H

Proof of Delivery

I hereby certify that on Friday, January 17, 2025, I provided a true and correct copy of the Written Rebuttal Statement of George Johnson & Word Collections to the following:

American Association of Independent Music, represented by Atara Miller, served via E-Service at amiller@milbank.com

American Federation of Musicians of the United States and Canada, represented by Atara Miller, served via E-Service at amiller@milbank.com

College Broadcasters, Inc., represented by Seth D. Greenstein, served via E-Service at sgreenstein@constantinecannon.com

Educational Media Foundation, represented by Keenan P Adamchak, served via E-Service at kadamchak@wbklaw.com

National Religious Broadcasters Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

Screen Actors Guild-American Federation of Television and Radio Artists, represented by Atara Miller, served via E-Service at amiller@milbank.com

Secretly Group, represented by Atara Miller, served via E-Service at amiller@milbank.com

Sirius XM Radio LLC/Pandora Media LLC, represented by Todd Larson, served via E-Service at todd.larson@weil.com

Sony Music Entertainment, represented by Atara Miller, served via E-Service at amiller@milbank.com

SoundExchange Joint Petitioners, represented by Scott Edelman, served via E-Service at sedelman@milbank.com

SoundExchange, Inc., represented by Steven R. Englund, served via E-Service at

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The National Association of Broadcasters, represented by Joseph R. Wetzel, served via E-Service at joe.wetzel@lw.com

UMG Recordings, Inc., represented by Atara Miller, served via E-Service at amiller@milbank.com

Warner Music Group Corp., represented by Atara Miller, served via E-Service at amiller@milbank.com

Word Collections, Inc., represented by Eric B Goldberg, served via E-Service at eric@wordcollections.com

Signed: /s/ George D Johnson