

MUSIC CREATORS

MCNA

NORTH AMERICA

5120 Virginia Way, Suite C22
Brentwood, TN 37027
(615) 742 9945

October 4, 2022

Chief Copyright Royalty Judge David Shaw
Copyright Royalty Judge David R. Strickler
Copyright Royalty Judge Steve Ruwe
US Copyright Royalty Board
101 Independence Ave SE / P.O. Box 70977
Washington, DC 20024-0977

Re: DOCKET NO. 21-CRB-0001-PR-(2023-2027) Making and Distributing Phonorecords (Phonorecords IV)

To Your Honors:

On behalf of the hundreds of thousands of songwriters, composers and lyricists represented by the various organizations listed below,¹ we would like to express our extreme dismay over the joint response dated September 26, 2022 filed by the National Music Publishers Association (NMPA), the Nashville Songwriters Association International (NSAI), and various digital music distributors² in opposition to participant George Johnson's recent motion to compel disclosure of those groups' unpublished, privately negotiated, proposed streaming rate deal announced on August 31, 2022.³

We are deeply concerned by these recent efforts to shield secret dealings by parties whose interests are potentially in conflict with those of music creators, and firmly believe that filing a proposal urging the CRB to engage in an action that would be in flagrant violation of the mandatory disclosure, transparency and comment provisions set forth in Section 801(b)(7)(A) of the US Copyright Act represents a pursuit of highly questionable motivation that should not be permitted to influence CRB policy. Our concerns in this regard are immeasurably heightened by the filing last evening of a Joint Notice of Lodging by NMPA and Google containing admissions that potentially "related agreements" were executed among Google and certain of the music

¹ This letter is intended to further update information presented to the Copyright Royalty Board (CRB) in Comments dated November 22, 2021, submitted by the Songwriters Guild of America, Inc., the Society of Composers & Lyricists, Music Creators North America, and the individual music creators Rick Carnes and Ashley Irwin (endorsed by the Alliance for Women Film Composers (AWFC), the Alliance of Latin American Composers & Authors (AlcaMusica), the Asia-Pacific Music Creators Alliance (APMA), the European Composers and Songwriters Alliance (ECSA), The Ivors Academy (IVORS), Music Answers (M.A.), the Pan-African Composers and Songwriters Alliance (PACSA), the Screen Composers Guild of Canada (SCGC), and the Songwriters Association of Canada (SAC)).

² See, <https://app.crb.gov/document/download/27257>

³ See, <https://www.nmpa.org/publishers-streamers-reach-deal-for-highest-streaming-royalty-rate-ever-heres-how-it-works-billboard/>

publisher endorsers of the proposed streaming settlement “on or around the execution date of the settlement agreement” which they regard as superfluous and “substantively unrelated” to the proposed agreement for which CRB approval and adoption is being sought.⁴

Section 801(b)(7)(A) of the Copyright Act clearly states in pertinent part that “[t]he functions of the Copyright Royalty Judges shall be as follows:

(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement...and (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” (emphasis added)

In order to satisfy the Congressional mandate that affected parties be given opportunity to comment upon private agreements negotiated by participants to the proceedings prior to their adoption or rejection by the CRB, we respectfully urge the CRB to timely publish an un-redacted copy of the agreement under consideration *in its entirety*, including any and all related or potentially related agreements the existence of some of which are already acknowledged by NMPA and Google, so that the independent music creator community and all interested and affected parties are afforded the requisite time and complete information necessary to adequately review and evaluate the proposal in whole. That opportunity is a *sine qua non* to formulating complete and cogent comments for CRB consideration, as mandated by statute.

For those music creator groups that cannot afford the vast sums in legal fees and other expenses necessary to participate in CRB proceedings on a non-*pro se* basis, our only opportunity to provide meaningful input rests on the implementation and strict enforcement of 801(b)(7)(A)(i). We implore the CRB to recognize that reality, and in light of clear statutory text and legislative intent, to reject the requests for secrecy submitted by the NMPA, the digital music distributors, and wholly inexplicably, NSAI.

⁴ See, <https://app.crb.gov/document/download/27275>

Thank you again for your consideration.

Respectfully submitted,



Rick Carnes
President, Songwriters Guild of America
Officer, Music Creators North America



Ashley Irwin
President, Society of Composers & Lyricists
Co-Chair, Music Creators North America

cc: Charles J. Sanders, Esq.
Mr. Eddie Schwartz, President, MCNA/International Council of Music Creators (CIAM)
Ms. Carla Hayden, US Librarian of Congress
The Members of the US Senate and House Judiciary Committees
The Members of the US Senate and House Appropriations Committees