

**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)**

**ORDER 64 TO FILE SETTLEMENT AGREEMENTS
AND PROVIDE CERTIFICATION**

On September 26, 2022, the Judges ordered the Settling Parties¹ that filed a Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C & D Configurations in the captioned proceeding on August 31, 2022 (Motion) to certify that the Motion and the Proposed Regulations annexed to the Motion represent the full agreement of the Settling Parties, *i.e.*, that there are no other related agreements and no other clauses (Order 63). The Judges further ordered that if such other agreements or clauses exist, the Settling Parties shall file them. Order 63 required such actions to be completed no later than five days from September 26, 2022.

On September 26, 2022, the Settling Parties filed a “Joint Response to George Johnson’s Motion To Compel Production Of Settlement and CRB Order 63 (Joint Response)”. Portions of the Joint Response, which were submitted as restricted,² are responsive to Order 63. On October 6, 2022, the Settling Parties filed a “Joint Submission of Settling Participants Regarding Settlement Agreement” (Joint Submission) which removed the Restricted designation to the “Settlement Agreement” attached as Exhibit A to the Joint Submission. However, the Joint Response and the Joint Submission do not completely and adequately respond to Order 63.

On October 3, 2022, Google and NMPA filed a Joint Notice of Lodging (Joint Notice of Lodging), which indicated that those two parties found Order 63 unclear regarding what is meant by “related agreements.” Google and NMPA offered that they broadly construed Order 63’s reference to “related agreements” to include certain letter agreements executed between Google,

¹ The “Settling Parties” consist of the National Music Publishers’ Association and the Nashville Songwriters Association International (often referred to collectively as “Copyright Owners”), and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC and Spotify USA Inc. (often referred to collectively as “Service Participants”).

² The Settling Parties designated portions of the Joint Response, including the “Settlement Agreement” (Exhibit A to the Joint Response) as Restricted pursuant to Section III of the Amended Protective Order (eCRB Docket No. 25908 (November 4, 2021)) because they believe it falls under the provision of the Amended Protective Order concerning interference with the “ability of the Producer to obtain like information in the future.”

on the one hand, and certain music publishers and the NMPA, on the other hand, on or around the execution date of the settlement agreement. Google and NMPA indicated they will “lodge” such letter agreements concurrently with their Joint Notice of Lodging.³ Google and NMPA also indicated that they do not believe that the letter agreements are substantively related to the parties’ settlement agreement, and that the letter agreements simply concern Google’s allocation practices to avoid double payments arising from certain direct agreements.

The Judges note that Order 63 directed *all* Settling Parties to *certify* that there are no other related agreements or clauses beyond the Motion and Proposed Regulations annexed to the Motion, and that if any such other agreements or clauses exist, the Settling Parties shall “*file*” them within the aforementioned deadline.

The Judges recognize that Google and NMPA expressed uncertainty as to what sort of related agreements or clauses beyond the Motion and Proposed Regulations annexed to the Motion are sought by the Judges. The Judges therefore clarify the scope of their order in numbered paragraphs below. The Judges also note that they will not be moving forward with the procedures for adoption of statutory rates and terms set forth in 17 U.S.C. § 801(b)(7)(A) unless and until they understand that they have the full production and disclosure of the agreement of the Settling Parties that is proposed as a basis for such statutory rates and terms, and full compliance with Order 63 and this order.

The Judges therefore **ORDER** the Settling Parties to:

- (1) *file* (not “lodge”) any supplemental written agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to, the Settlement referenced in the Motion.⁴
- (2) file a detailed description of any supplemental oral agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to the Settlement referenced in the Motion, through a certification or certifications from individuals with direct knowledge of any such supplemental oral agreements.
- (3) file a certification or certifications from a person or persons with first-hand knowledge stating that there are no other agreements, written or oral, beyond the Settlement, the

³ On October 7, 2022, Google and NMPA submitted a “Joint Notice Of Public Lodging” which included public versions of letter agreements attached thereto as Exhibits A-F.

⁴ The letter agreements referenced in the Joint Notice of Lodging, have not been reviewed by the Judges, either through eCRB or *in camera*. The letter agreements shall be included in this ordered filing, if, it is believed that the letter agreements are indeed subject to this Order.

Settlement Agreement and the filed supplemental written or oral agreements responsive to this order.

- (4) explain in a supplemental brief why the remaining restricted portions of the Joint Response, apart from Exhibit A, from which the Restricted designation has been removed, would, if disclosed, interfere with the ability of the Producer to obtain like information in the future.
- (5) make all filings required by this order no later than **ten** days from the date of this order.

SO ORDERED.

Dated: October 17, 2022

David P. Shaw
Chief Copyright Royalty Judge