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

In the Matter of	)	
Determination of Royalty Rates for Making and Distributing Phonorecords (Phonorecords III)	)	**Docket No. 16-CRB-0003-PR (2018–2022)**

GEORGE JOHNSON'S SECOND OPPOSITION MOTION TO NMPA, NSAI, WMG, AND UMG'S REPLY TO ADOPT SETTLEMENT AS STATUTORY RATES AND TERMS

Participant George D. Johnson ("GEO") respectfully submits to Your Honors the following Second Opposition Motion to the "Parties", (National Music Publishers Association ("NMPA"), Nashville Songwriters Association International ("NSAI")[1] Universal Music Group ("UMG") and Warner Music Group ("WMG")) Reply to Adopt Settlement as Statutory Rates and Terms received on July 1, 2016 in the above-captioned proceeding.

In accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2), the Parties' notified Your Honors in their June 15th, 2016 Motion to Adopt Settlement that they had "reached a partial settlement in the above-captioned proceeding (the "Proceeding") among a significant portion of the sound recording and music publishing industries relating to rates and terms under Section 115 of the Copyright Act for physical phonorecords, permanent digital downloads and ringtones presently addressed in 37 C.F.R. Part 385 Subpart A (the "Subpart A Configurations")."

[1] GEO has been on Music Row for 20 years and a longtime member of NSAI.

GEO would first argue that, what §114 record label wants to pay more than 9.1 cents to license hit songs from songwriters and publishers if they don't have to? That is more profit for the record label. In other words, what "significant portion of the sound recording industries" aka "major record labels" in the history of major record labels has ever wanted to pay any singer, songwriter or co-publisher their fair share of royalties? None.

Second, what major record label executive wants their publishing division to cost them more money, or risk his own cushy job, even if the company made more money with more sales?

Third, what foreign owned record label wants to pay American songwriters and co-publishers more money if they don't have to, increasing their profits overseas?

These are pragmatic and common sense questions I think we have to ask ourselves.

Lastly, a recent quote by a Spotify executive describing rival Apple, really reveals the root problem copyright owners face in this 9.1 cent hillbilly deal, but also the root problem with the entire music streaming industry, "They want to have their cake and eat everyone else's too".[2]

Add to the 69 years of 2 cents, all the other additional nonsensical federally created legal problems songwriters are forced to endure, including the Department of Justice's 75 year old consent decree and their new Google inspired 100% licensing scheme, further allowing ASCAP, BMI and Licensees to profit while destroying our exclusive right to our own art and property that is "guaranteed"[3] in the Constitution in Article 1, Section 8, Clause 8.

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[2] http://www.musicbusinessworldwide.com/spotify-and-apple-are-at-each-others-throats-with-the-music-biz-caught-in-the-middle/ July 3, 2016 quote by Spotify's Jonathan Prince about Apple, but it really applies to Spotify, all streamers, and the entire music industry since it began.

[3] .. to where even Warner Chappell CEO recently said the consent decrees are unconstitutional and GEO agrees.

Next, take the failed DMCA "safe harbors", a United Nations WIPO treaty implemented in 1998 that directly led to the rise of Napster's massive copyright infringement, and that still keeps streamers safe to take American copyright for free and steal all their value, once again.

Add to that how Spotify routinely doesn't keep even track of performances or songwriter royalties as evidenced in Lowery v Spotify.

Or, how the legendary band The Turtles are told by Pandora, SiriusXM, and Congress that they aren't entitled to profit for use of their own brilliant sound recording copyrights (but Pandora and SiriusXM are entitled to profit) or have control over their own art in their lifetimes.

Add how "controlled composition" clauses by record companies further squash songwriters' income by forcing §115 creators to take 75% of the income they would have earned.

These long train of abuses to American singers and songwriters by their own government that was instituted to protect these very rights and private property, never seems to end — were songwriters, not the enemy.

The one major question that still puzzles me is: Why is it when GEO argues that songwriters should be paid more that 9.1 cents, NSAI and NMPA who say they "protect songwriters" or even claim themselves as actual "copyright owners" complain furiously that songwriters's incomes should not be raised? That doesn't make sense. Same goes for UMP and WCP, two publishing companies that actually own copyrights - why don't they want to make more money per-song for their own staff songwriters?

Addressing some the word games and frivolous arguments raised by NSAI and NMPA, the Parties write, "putting aside for the time being the merits of Mr. Johnson's opposition — including the issues of whether Mr. Johnson has set forth any reason why the Judges should

conclude that the Settlement does not provide a reasonable basis for setting statutory rates or terms, see 17 U.S.C. § 801(b)(7)(A)(ii), or whether Mr. Johnson would be affected by the adoption of the Settlement as the statutory rates and terms given that he has provided no evidence to date that any record label has ever sought to use any music composition written by him pursuant to Section 155 - Mr. Johnson's opposition is premature."

First, for NSAI, NMPA, UMG or WMG to imply that my copyrights should not be protected by Article I of the U.S. Constitution or the Copyright Act, shows how weak their legal position is. To suggest that if GEO's §115 copyrighted songs are not recorded by a record label in France or Moscow, my property is not worthy of protection under U.S. law, is non-sensical?

Second, to suggest that GEO's Opposition Motion is not a Opposition Motion at all and just some random "comment" proves "They want to have their cake and eat everyone else's too".

Third, to then toss aside all the "merits of Mr. Johnson's opposition" and claim I didn't "set forth any reason" in my Opposition Motion, after 10 pages of legal reasons is not credible.

GEO's Opposition Motion is not "premature" or just a "comment", GEO's Opposition Motion is just that, a valid and clearly worded Opposition Motion filed according to the law found in the Act, pursuant to Pursuant to 17 U.S.C. § 801(b)(7)(A), (i), (ii), and (B)[4] and 37 C.F.R. § 351.2(b)(2)[5] and as indicated and argued in GEO's previous Opposition to Motion to Adopt Settlement.

Fourth, to further try and attack GEO personally, instead of actually answering my reasonable legal arguments, by attempting to put aside the merits of GEO's opposition, proves

[4] http://www.copyright.gov/title17/92chap8.html

[5] https://www.law.cornell.edu/cfr/text/37/351.2#

the Parties have no legal argument and Your Honors have every legal authority and good reason to deny this hastily crafted "status quo" deal that continues to hurt all American songwriters.

When the Parties write that GEO "has provided no evidence to date that any record label ever sought to use any musical composition written by him" it's again, an attempt to insult this songwriter to justify NMPA and NSAI's crude attempts to "kick the can down the road" and "keep their heads down" for their own personal self interests, while protecting the foreign labels.

Most importantly, GEO writes his own songs, many by himself, self-publishes, and then releases his §114 sound recordings on his own independent American record label Geo Music Group. Here is evidence of those releases the past 5 years on Apple iTunes[6] and a direct deal between Geo Music and Apple.

Does GEO's copyright still deserve protection under U.S. law? GEO has also not Agreed to the terms of Apples Music's streaming service, as much as GEO would like to, since $.00 per-anything, per-stream, per-song, per-billable hour, is unacceptable and confiscatory.

Since streaming rates for both §114 and §115 music copyright have been so confiscatory at $.00 cents per song, for so long, GEO has chosen to "not participate in my own copyright infringement" while streaming services also now "substitute for" almost all download sales.

Again, as argued in GEO's Opposition Motion to Adopt Settlement, for the following legal reasons Your Honors should deny the Parties motion to adopt the 9.1 cent "settlement" as the statutory rates and terms for all American songwriters and publishers.

[6] https://itunes.apple.com/us/artist/george-johnson/id2983224

A. Pursuant to 17 U.S.C. § 802(f)(1)(A)(i)[7] Your Honors have "full independence" in the "rejection of royalty claims", "rate adjustment petitions", or "copyright royalty rates and terms".

B. 17 U.S.C. § 80l(b)(7)(A)(i) makes it clear that GEO and others are afforded the opportunity to not only comment but "*object to it's adoption* as a basis for statutory terms and rates."

C. § 801(b)(7)(A)(ii) is clearly written entirely for the purpose of allowing Your Honors to decline this Settlement for bound participants who do object: "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."

D. 37 C.F.R. § 351.2(b)(2) also confirms the law on how an Objection to the Settlement should be filed under "Settlement", not a useless "comment" as the Parties so brazenly try to frame GEO's Opposition Motion: "(2) *Royalty rate proceedings*…If an objection to the adoption of an agreement is filed, 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 the Copyright Royalty Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates."

E. This NMPA, UMG and WMG settlement "agreement" does not provide a reasonable basis for setting statutory terms or rates for participants that are not parties to the agreement, or this rate proceeding and "voluntary negotiated license agreements" should not result in statutory terms and rates for every American songwriters, with no CPI increases, for another 6 years

F. The American "minimum statutory rate", has only increased from 2 to 9.1 cents after 107 years, acting as the the "maximum" statutory rates for all American songwriters and music publishers.

G. The "current" below-market 9.1 cent rate has not been increased for 10 years since 2006, another substantive reason why keeping the rate price-fixed for another 6 years[8] until 2022 makes this "Settlement" so troubling.

H. GEO respectfully submits that The Parties' "Settlement" *should not be used as a basis to set the statutory rate* for the compulsory license under Subpart A for *all* American §115 music creators, since it violates copyright owners' *exclusive rights* and would continue to be a substantive competitive disadvantage for *every American independent songwriter and music*

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[7] http://www.copyright.gov/title17/92chap8.html

[8] http://www.free-online-calculator-use.com/cpi-calculator.html#calculator

publisher, as well as, every co-writer and co-publisher with copyrights inside the Universal Music Publishing ("UMP") and Warner-Chappell Publishing ("WCP") catalogs. Ironically, this also includes every individual songwriter employed by UMP and WCP, who are unaware of this proposed settlement or might be too afraid to speak up for fear of being unemployed.

I. By continually price-fixing other people's property at the below-market 9.1 cents for another 6 years, when 52 cents is the more accurate baseline royalty according to the federal government's own national monetary inflation statistics, NMPA is knowingly transferring that value of approximately 42.9 cents per-song from U.S. songwriters/publishers to foreign run record labels. GEO2853 or Exhibit A charts the mechanical rate using the BLS[9] and Fed[10] [11] inflation calculators from 1913[12] to 2014, where *2 cents to approximately 52 cents per-song today.*

J. UMP/UMG and WCP/WMG are headquartered in France and Russia, and are naturally only looking out for *their own self-interests*.

K. There has *never been a free market* in American songwriting and music publishing.

L. When calculating future inflation for the next 6 years till 2022, at a government approved average a *minus 15 percent reduction* in all American songwriters and music publishers Subpart A § 385.3 income the next 6 years.

M. With the advent of "windowing" with singer Adele and other aritsts, the 9.1 cent mechanical becomes very important once again. Add to that the recent Pandora announcement which says "offline listening" is in the streaming company's future. While Pandora can currently give away a sale with a "limited download" starting in 385.10, this announcement implies a sale on Pandora and another reason why this Subpart A deal should be denied.

N. GEO's RIAA Exhibits offer real evidence dating back 40 years to 100 years which values these sound recordings and underlying works at around $4 to $5 dollars per-song historically.

O. Even if the CRB adopted 52 cents today, based on 2 cents in 1909, creators would only *break-even* in value, and it would take approximately 42.9 cents added on to 9.1 cents, just to simply equalize the damage done by centrally planning and price-fixing the mechanical at such below-market rates for so long. So, $1 to $2 really is more "reasonable".

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[9] http://data.bls.gov/cgi-bin/cpicalc.pl

[10] https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information

[11] The Federal Reserve and Bureau of Labor Standards' inflation calculators only date back to 1913. https://www.minneapolisfed.org

[12] BLS and Fed inflation calculators only go back to 1913, not 1909 when the Copyright Act was passed.

Your Honors, American songwriters finally deserve to be paid at 2016 rates after 107 long years, and ones that are adjusted for real inflation, much less actual increases in rate of pay for our music copyrights. What right does UMG and WMG have, *two foreign corporations*, to set the federal statutory rate for American songwriters, music publishers, and to decide the U.S. rates for their own benefit?

This extremely below-market rate of 9.1 cent rate, continues *to transfer this value* of each and every Section 115 music copyright to the Licensees with the help of the U.S. Copyright Office and we pray Your Honors will consider our substantive arguments concerning the copyright creators' individual welfare, profits and the "cost of copyright creation"[13], which certainly applies equally to both Section 114 and Section 115 music copyrights.

III. CONCLUSION

As a lifetime songwriter and after 107 years of federal price-fixing the mechanical rate and at 2 cents for 69 years, GEO once again files this Second Opposition Motion to the Parties' Motion to Adopt Settlement at the 9.1 cents as statutory rates and terms and respectfully submits Your Honors DENY the Parties' motion in full so that these substantive issues can be litigated properly with reasonable rates and terms in this rate proceeding.

[13] as GEO submitted to Judge Strickler in *Web IV*

Dated: Wednesday, July 6, 2016

Respectfully submitted,

By: */s/ George D. Johnson*

George D. Johnson, *pro se*
an individual songwriter and publisher
d.b.a. George Johnson Music Publishing
23 Music Square East, Suite 204
Nashville, TN 37203
E-mail: **george@georgejohnson.com**
Telephone: (615) 242-9999

George D. Johnson (GEO), a pro se individual songwriter and music publisher d/b/a George Johnson Music Publishing (GJMP) (formerly BMI)

CERTIFICATION OF SERVICE

I, George D. Johnson, ("GEO") a *pro se* individual songwriter, music publisher and music copyright creator, hereby certify that a copy of the foregoing GEORGE JOHNSON'S (GEO) OPPOSITION TO PARTIES MOTION TO ADOPT SETTLEMENT has been served this 6th day of June, 2016 by electronic mail or U.S. mail upon the following parties:

Robert Rosenbloum
Amazon Digital Services
Greenberg Traurig, LLP
3333 Piedmont Road, NE, Suite 2500
Atlanta, GA 30305
rosendbloumb@gtlaw.com
Telephone: (678) 553-2250
Facsimile: (678) 553-2212

Counsel for Amazon Digital Services, Inc.,

Amazon Digital Services
410 Terry Avenue
North Seattle, WA 98109
amazon-crb@amazon.com
Telephone: (206)-266-1000
Facsimile: (206)-266-7100

Amazon Digital Services, Inc.

Lee Knife
Digital Media Association (DiMA)
1050 17th Street, N.W.
Washington, DC 20036
lknife@digmedia.org
Telephone: (202) 639-9508
Facsimile: (202) 639-9504

Digital Media Association (DiMA)
Elizabeth Miles, Esq.

Apple, Inc.
1 Infinite Loop
MS 169-41SM
Cupertino, CA 95014
elizabeth.miles@apple.com
Telephone: (408)-996-1010
Facsimile: (408)-783-2798

Apple, Inc.

David Powell
P.O. Box 010950
Miami, FL 33101
davidpowell008@yahoo.com
Telephone: (305)-539-1755

David Powell, an individual

Kenneth L. Steinthal
Joseph R. Wetzel
Google, Inc.
King & Spalding LLP
101 Second Street, Suite 2300
San Francisco, CA 94105
ksteinthal@kslaw.com
jwetzel@kslaw.com
Telephone: (415) 318-1200
Facsimile: (415) 318-1300

Counsel for Google, Inc.

David Israelite, Erich Carey
Danielle Aguirre
National Music Publishers Association (NMPA)
975 F Street, N.W., Suite 375
Washington, DC 20004
disraelite@nmpa.org
ecarey@nmpa.org
daguirre@nmpa.org
Telephone: (202) 393-6671
Facsimile: (202) 393-6673

National Music Publishers Association (NMPA).

Barton Herbison
Jennifer Turnbow
Nashville Songwriters Association International (NSAI)
1710 Roy cuff Place
Nashville, TN 37203
bart@nashvillesongwriters.com
Telephone: (615) 256-3352
Facsimile: (615) 256-0034

Nashville Songwriters Association International (NSAI)

Michelle Lewis, Kay Hanley
Shelly Peiken
Songwriters Of North America (SONA)
4803 Laurel Canyon Blvd., Suite 1144
Valley Village, CA 91607
michelle@wearesona.com

Songwriters of North America (SONA)

Steve Bene
Pandora Media, Inc.
2101 Webster St., Suite 1650
Oakland, CA 94612
sbene@pandora.com
Telephone: (510) 451-4100
Facsimile: (510) 451-4286

Pandora Media, Inc.

R. Bruce Rich, Todd Larson
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
r.bruce.rich@weil.com
todd.larson@weil.com
benjamin.marks@weil.com
sabrina.perelman@weil.com
christopher.luise@weil.com
Telephone: (212) 310-8170
Facsimile: (212) 310-8007

Counsel for Pandora Media, Inc.

Gary R. Greenstein
WILSON SONSINI GOODRICH & ROSATI
1700 K St., NW, 5th Floor
Washington, DC 20006
ggreenstein@wsgr.com
Telephone: (202) 973-8849
Facsimile: (202) 973-8899

Counsel for Pandora Media, Inc.

Steven R. Englund
Michael B. DeSanctis
Jenner & Block LLP
1099 New York Ave., N.W., 9th Floor
Washington, D.C. 20001
senglund@jenner.com
mdesanctis@jenner.com
Telephone: (202) 639-6000

Sony Music Entertainment (SME)
Sony Corp headquartered in Tokyo, Japan

Paul Fakler, Eric Roman
Xiyin Tang
Jennifer White
Aren't Fox LLP
1675 Broadway
New York, NY 10019
paul.fakler@arentfox.com
eric.roman@arentfox.com
xiyin.tang@arentfox.com
jennifer.white@arentfox.com
Telephone: (212) 484-3900
Facsimile: (212) 484-3990

Counsel for Spotify USA, Inc.

Martin Cunniff, Jackson Toof
Ross Panko
Aren't Fox LLP
1717 K Street, N.W.
Washington, DC 20006-5344
martin.cunniff@arentfox.com
jackson.toof@arentfox.com
ross.panko@arentfox.com
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Counsel for Spotify USA, Inc.

Annika Goldman
Spotify USA, Inc.
45 W. 18th St.: 7th Floor
New York, NY 10011
annika@spotify.com
Telephone: (646) 820-7763

Counsel for Spotify USA, Inc.
Spotify headquartered in Sweden and Luxembourg

Donald Zakjrin
Frank P. Scibilia
Lisa M. Buckley
Benjamin Semel
Pryor Cashman LLP
7 Times Square
New York, NY 10036-6569
BSemel@PRYORCASHMAN.com
DZakarin@PRYORCASHMAN.com
JJanowitz@PRYORCASHMAN.com
LBuckley@PRYORCASHMAN.com
FScibilia@PRYORCASHMAN.com
DChestukhin@PRYORCASHMAN.com
Telephone: (212) 326-0131
Facsimile: (212) 798-6351

National Music Publishers Association (NMPA), Harry Fox Agency LLA (HFA), Nashville Songwriters Association International (NSAI), Church Music Publishers Association (CMPA), Songwriters of North America (SONA)

Scott H. Bauman
21301 Burbank Blvd.
Woodland Hills, California 91367
(818) 286-8095
scott.bauman@umusic.com

Counsel for Universal Music Group

Brad E. Cohen
1633 Broadway
New York, New York 10019
(212) 275-4952
brad.cohen@wmg.com

Counsel for Warner Music Group

By: */s/ George D. Johnson*

George D. Johnson, *pro se*
an individual songwriter and publisher
d.b.a. George Johnson Music Publishing
23 Music Square East, Suite 204
Nashville, TN 37203
E-mail: **george@georgejohnson.com**
Telephone: (615) 242-9999

George D. Johnson (GEO), a pro se individual songwriter and music publisher d/b/a George Johnson Music Publishing (GJMP) (formerly BMI)