

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

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR MAKING AND DISTRIBUTING  
PHONORECORDS (Phonorecords III)**

Docket No. 16-CRB-0003-PR  
(2018-2022)

**SONY MUSIC ENTERTAINMENT’S OPPOSITION TO THE COPYRIGHT OWNERS’  
MOTION FOR LEAVE TO RESPOND TO SONY MUSIC ENTERTAINMENT’S  
COMMENTS AND OBJECTION CONCERNING THE PROPOSED SETTLEMENT**

Sony Music Entertainment (“SME”) opposes the Motion of the National Music Publishers’ Association and Nashville Songwriters International Association (“NMPA/NSAI”) for Leave to Respond to SME’s Comments and Objection concerning the proposed settlement in this proceeding (the “Motion”). NMPA/NSAI’s proffered Response (Exhibit A to the Motion) is not timely, and its only purpose is to encourage the Judges to apply to SME and other record companies besides Universal Music Group (“UMG”) and Warner Music Group (“WMG”) a late fee term that will not actually bind UMG and WMG, because they have a separate side agreement that provides additional protection to them.

First, the Motion effectively seeks permission to file untimely comments on the settlement, with no proffered justification. When publishing the settlement in the *Federal Register*, the Judges were clear that comments were “due no later than August 24, 2016.” 81 Fed. Reg. 48,371 (July 25, 2016). There was no provision for reply comments. SME and the American Association of Independent Music filed timely comments. NMPA/NSAI apparently chose not to, and should not be rewarded for ignoring the comment procedure by getting the last word on the settlement.

Second, NMPA/NSAI's Response is cumulative of other comments concerning the settlement and of NMPA/NSAI's briefing concerning their Motion to Dismiss, In Part, the Petition to Participate of SME, except for Part II, the Response's argument concerning the late fee provision in 37 C.F.R. § 385.4. By that argument, NMPA/NSAI seek to foreclose litigation of the late fee issue in this proceeding by virtue of their settlement with UMG and WMG, even though the Response admits that UMG and WMG have obtained relief from the provision by a private agreement. Response at 5. NMPA/NSAI's argument highlights the point SME made in its timely comments concerning the settlement – that the late fee issue is hotly disputed.

NMPA/NSAI complain that SME has not presented sufficient evidence or reasons for changes to the late fee provision. Response at 3. In doing so, NMPA/NSAI seem to misunderstand the Judges' procedures. We are at the very beginning of litigation. Written direct statements are not yet due. Thus, it is entirely appropriate that SME has not yet presented its case concerning the late fee provision. However, there should be no mistake that SME intends to litigate the issue vigorously in this proceeding.<sup>1</sup>

To be sure, settlements play an important role in the statutory license ratesetting process, by permitting the efficient disposition of issues that are not significantly contested, and Section 801(b)(7)(A) creates a presumption that settlements among participants will be adopted even if

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<sup>1</sup> The Response points out that counsel for SME in this proceeding also regularly represents UMG and WMG, and advised them concerning their settlement – a fact entirely irrelevant to whether the settlement should be extended to SME over its objection. Moreover, the Response wrongly suggests that counsel for SME are making arguments for UMG and WMG in this proceeding. Response at 2. Jenner & Block has not appeared for UMG or WMG in this proceeding. The Response is also wrong to the extent it intimates that there is any inconsistency of positions here. UMG and WMG have never taken the position that their settlement should be applied to SME over its objection. *See* Motion to Adopt Settlement at 3 (“At a minimum these rates and terms should apply to Subpart A Configurations made and distributed by or on behalf of UMG and WMG. In the Judges' discretion, these rates and terms could apply to other licensees as well.”).

some non-parties may object. However, that presumption is based on an assumption that the settlement actually binds the parties thereto. See H.R. Rep. 108-408, at 24 (2004) (referring to objections by “*other* participants . . . who would be bound by the proposed settlement” (emphasis added)). When the parties to a settlement are willing to live with the provisions they would apply to others, it makes sense to presume that such provisions may be reasonable. However, as to the late fee term of 37 C.F.R. § 385.4 – in contrast to the rates in 37 C.F.R. § 385.3 – UMG and WMG would not actually be bound by it. Thus, it is reasonable to adopt the settlement industry-wide as to its rates, which have been overwhelmingly accepted by parties that would be bound by them, but it would not be reasonable to adopt the settlement industry-wide as to the late fee provision, which NMPA/NSAI is trying to impose without the consent of any licensee participant that would be bound by it.

For these reasons, the Judges should deny the Motion, ignore the Response, and leave resolution of the late fee term for their determination.

Dated: September 7, 2016

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2016, I served a copy of SONY MUSIC ENTERTAINMENT'S OPPOSITION TO THE COPYRIGHT OWNERS' MOTION FOR LEAVE TO RESPOND TO SONY MUSIC ENTERTAINMENT'S COMMENTS AND OBJECTION CONCERNING THE PROPOSED SETTLEMENT, via email (except where noted below) to the participants and counsel listed below:

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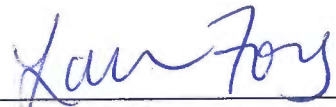
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