Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
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)

MOTION TO ADOPT SETTLEMENT

The undersigned parties (collectively, the "Parties") hereby notify the Copyright Royalty Judges that they have 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"). The Parties have agreed upon the rates and terms for Subpart A Configurations made and distributed by or under the authority of UMG Recordings, Inc. and its successors and affiliates that engage in the production and distribution of recorded music (including Capitol Christian Music Group, Inc. and Capitol Records, LLC, collectively "UMG") and Warner Music Inc. and its successors and affiliates that engage in the production and distribution of recorded music ("WMG") in their capacity as licensees of "mechanical" rights for musical works. The Parties respectfully request that the Judges publish the rates and terms described herein (the "Settlement") in the *Federal Register* for notice and comment in accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2) and adopt the Settlement as the statutory rates and terms for all Subpart A Configurations – at a minimum for

Subpart A Configurations made and distributed by or on behalf of UMG and WMG, and in the Judges' discretion for other licensees as well.

UMG and WMG also hereby withdraw from the Proceeding except as to prosecution of the Settlement, or if the Settlement is not adopted, any other matters respecting the adoption of royalty rates and terms for Subpart A Configurations made and distributed by them or under their authority.

I. The Parties

All of the Parties filed petitions to participate in this Proceeding.

UMG and WMG own two of the largest recorded music businesses in the United States. Each year they create, manufacture and/or distribute a large volume of sound recordings pursuant to mechanical licenses and make substantial royalty payments tied to Section 115 of the Copyright Act. Collectively, products they produce or distribute represent a majority of the U.S. sound recording market.

The National Music Publishers' Association, Inc. ("NMPA") and Church Music Publishers Association ("CMPA") are trade associations representing the U.S. music publishing and songwriting industry. Musical works owned or controlled by NMPA or CMPA members account for the vast majority of the market for musical work licensing in the U.S.

The Nashville Songwriters Association International ("NSAI") and Songwriters of North America ("SONA") are trade organizations serving songwriters of all genres of music, including songwriters who directly publish and license their own music.

The Harry Fox Agency LLC is an industry service organization that serves as a licensing and collection agent on behalf of its publisher-principals with respect to the reproduction and distribution of copyrighted musical compositions.

Concurrent with the Settlement, UMG, WMG and NMPA have separately entered into a memorandum of understanding providing for the continuation of certain licensing processes and late fee waivers.

II. Nature of the Settlement

The Parties have agreed that the royalty rates and terms presently set forth in 37 C.F.R. Part 385 Subpart A should be continued for the rate period at issue in the Proceeding, with one minor conforming update.[1] 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.

If the Judges ultimately determine that such rates and terms should apply to Subpart A Configurations made and distributed by all licensees, the Judges could retain current Subpart A with only the conforming update set forth in footnote 1.

If the Judges ultimately determine that such rates and terms should apply only to Subpart A Configurations made and distributed by or under the authority of UMG and WMG, the Judges could provide a new subpart of Part 385 that contains the text of current Subpart A, with the conforming update, but with a substitute definition of "Licensee" as follows:

> *Licensee* is Capitol Christian Music Group, Inc., Capitol Records, LLC, UMG Recordings, Inc., Warner Music Inc., any of their respective successors, and any entity controlling, controlled by, or under common control with any such entity, when it has obtained a compulsory license under 17 U.S.C. 115, and the implementing regulations, to make and distribute phonorecords of a nondramatic musical work, including by means of a digital phonorecord delivery.

Such an approach would be analogous to the settlement between SoundExchange, National Public Radio, Inc. and the Corporation for Public Broadcasting that the Judges adopted in the

[1] In current 37 C.F.R. § 385.4, the cross reference to § 201.19(e)(7)(i) should be updated to refer to § 210.16(g)(1). *See* 79 Fed. Reg. 56,190 (Sept. 18, 2014).

Webcasting IV proceeding, which applies only to a closed group of licensees. *See* 80 Fed. Reg. 59,588 (Oct. 2, 2015).

III. Adoption of the Settlement by the Copyright Royalty Judges

Pursuant to 17 U.S.C. § 80l(b)(7)(A), the Copyright Royalty Judges have the authority "[t]o adopt as a basis for statutory terms and rates . . . an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding." Such an agreement may serve as the basis of proposed regulations if other interested parties who "would be bound by the terms, rates or other determination" set by the agreement are afforded "an opportunity to comment on the agreement," *id.* § 801(b)(7)(A)(i), and provided that, in the event a participant in the proceeding who would be bound by the settlement raises an objection, the Judges conclude that the rates and terms set forth in the settlement agreement "provide a reasonable basis for setting statutory terms or rates." *Id.* § 801(b)(7)(A)(ii).

Encouraging settlements was a key goal of Congress when it adopted the current ratesetting procedures. H. Rep. No. 108-408, at 30 (Jan. 30, 2004) ("the Committee intends that the bill as reported will facilitate and encourage settlement agreements for determining royalty rates"). Accordingly, the Parties are pleased to have reached the Settlement, and respectfully request that the Judges publish the Settlement for comment, and promptly adopt the Settlement in its entirety as the statutory rates and terms for Subpart A Configurations – at a minimum for Subpart A Configurations made and distributed by or on behalf of UMG and WMG, and in the Judges' discretion for other licensees as well.

Dated: June 15, 2016

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I, Albert Peterson, do hereby certify that a copy of the foregoing **motion** has been served on the 15th day of June, 2016 –

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