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 (GEO) MOTION TO (PROPOSED) PROTECTIVE ORDER

George D. Johnson (GEO) respectfully submits to Your Honors the following Motion to the (PROPOSED) PROTECTIVE ORDER to be submitted by Participants and Counsel in the above-captioned proceeding (Phonorecords III). GEO has filed a similar Motion in SDARS III.

Counsel has recently negotiated and circulated drafts of the Proposed Protective Order in PRIII and GEO still had a few concerns with the Order as a *pro-se* participant. GEO is not opposed to signing the Protective Order and did so in *Web IV*. However, *Web IV* was my first rate proceeding and add to that being *pro-se,* it was quite a learning experience. In hindsight, these protective orders have created a few practical problems for GEO that I would like to address for possible relief. These problems affect not only GEO now, but all *pro-se* creators in the future.

The positive reasons in favor of protective orders are the protection of actual private and confidential information for all participants. They also allow for a much fuller record for Your

Honors to have as much relevant information admitted into the record as possible (and sometimes not admitted, for confidentiality).

Unfortunately, as a *pro-se* participant, it became clear to me after 2 years of sometimes heavily redacted documents containing evidence and crucial information, that this creates a growing "information gap" for GEO and other *pro-se* participants.

While I couldn't see the information, most documents seemed "over-redacted" to the point where entire pages are scratched out and others so choppy, for pages, it was not even worth guessing. This growing *information gap* directly leads to a clear *legal disadvantage* for GEO and those who cannot afford inside or outside counsel, affecting the royalty rate of American music copyright creators. This seems prejudicial and unfair from my perspective.

Respectfully, outside counsel are not music copyright creators, but have access to all of the evidence and crucial information in these proceedings, while copyright creators, and *pro-se* participants, such as GEO, do not have *access to the same information that directly affects our own income and property*. This also puts us at a competitive disadvantage in these proceedings.

This is a new and unique issue considering there have never really been *pro-se* copyright creators as full rate participants who have completed an entire proceeding. Copyright creators have just as much significant interest as do the Licensees, if not more, considering I have an exclusive right to my copyright and creation by law, first and foremost.

The other problem is this "applicable precedent" or "procedural precedent" that has been created primarily by the Licensees and their attorneys the past 10 to 40 years, since many of these proceedings had zero pro-copyright participants, only attorneys for the Licensees or "Copyright Advocates", not actual owners or music creators.

In other words we now have this "procedural precedent" for how these cases are run from *Web I*, *II*, *III* and now *IV*, *SDARS I* and *II*, all the §115 mechanical rate proceedings *PR I* and *II*, etc., but not a *law* on how each rate proceeding *must* proceed.

For example, even in 17 U.S.C. § 803(c)(5)[1], and as Congress noted when crafting this CRB legislation, Your Honors "*may* issue such orders as *may* be appropriate", it does not say Your Honors *must* issue orders.

> (5) Protective order. — The Copyright Royalty Judges *may* issue such orders as *may* be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded. (emphasis added)

So, while GEO agrees with Your Honors that these protective orders have many positive and necessary aspects to them, they also have a *clear negative affect on certain participants* and why I am bringing this matter to your attention.

While I appreciate the offer from participants to have outside counsel explain in general what certain documents say or mean, it still puts me at a disadvantage, especially as the case proceeds. Plus, most documents are redacted, so I would have to call 90% of the time, instead of simply reading them for myself.

Considering the reason for discovery is to level the playing field where each side knows the evidence the other side is submitting, even with this Protective Order, GEO has no idea what the evidence really is - which gets even more confusing as the case proceeds.

Also, as a laymen, but as a copyright creator too, it always seemed odd that in *Web IV,* even SoundExchange's CEO Michael Huppe and inside counsel Mr. Colin Rushing had to leave the room during the hearings, then come back, then leave, etc.

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[1] 17 U.S.C. § 803(c)(5) - http://www.copyright.gov/title17/92chap8.html

I've expressed these concerns in the weekly conference calls and I wanted to at least raise them with Your Honors in hopes you may have some possible remedy, if any. GEO has read the latest negotiated draft of the Order which is fine, but this does not solve the very real "information gap" problem. GEO is also fine with signing the "Non-Disclosure Certificate".

In this copyright creator's opinion, it seems Congress intended to give Licensees the advantage by letting them perform American music copyrights for reduced rates to build billion-dollar businesses and that is a *privilege.* We copyright owners *sacrifice all the value* of our hard earned original ideas, performances, talents and investments to these Licensees.

While legitimate confidentiality concerns for Licensees are important, the rights of copyright owners who participate are also just as important. Not being allowed to see all the evidence creates an even more un-level playing field. In theory, if Licensees are to use the statutory rate and compulsory license to take copyright owners' works for below-market rates, then everyone should be able to see all of the evidence.

Dated: Tuesday, June 14, 2016

Respectfully submitted,

By: */s/ George D. Johnson*

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CERTIFICATION OF SERVICE

I, George D. Johnson, ("GEO") an individual songwriter, music publisher and music copyright creator, hereby certify that a copy of the foregoing GEORGE JOHNSON'S (GEO) MOTION to (PROPOSED) PROTECTIVE ORDER has been served this 14th day of June, 2016 by electronic mail upon the following parties:

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