

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In the Matter of)	
)	Docket No. 16–CRB–0003–PR (2018–
)	2022)
DETERMINATION OF RATES AND)	
TERMS FOR MAKING AND)	
DISTRIBUTING PHONORECORDS)	
(PHONORECORDS III))	

**DECLARATION AND CERTIFICATION OF RICHARD M. ASSMUS REGARDING
RESTRICTED INFORMATION**

1. I am counsel for Spotify USA Inc. (“Spotify”) in Docket No. 16–CRB–0003–PR (2018–2022) respectfully submit this declaration and accompanying Redaction Log (Attachment A) to comply with the Protective Order, dated July 27, 2016, which directs the parties to redact proposed restricted material in the unrestricted versions of their written direct statements and to provide a log of the same redactions. I am authorized by Spotify to submit this declaration on its behalf.

2. I have reviewed Spotify’s written direct statement, witness statements, designated testimony, exhibits, and redaction log, all of which are being submitted in this proceeding on February 15, 2017. I also have reviewed the definitions and terms provided in the Joint Motion to Adopt Protective Order, submitted by Spotify on June 21, 2016. After consultation with my client, I have determined that portions of Spotify’s written direct statement, witness statements, and accompanying exhibits contain information that is “Protected Material” as defined by the proposed Protective Order and that should be treated as “confidential information” under 17 U.S.C. § 803(c)(5). Spotify’s Written Direct Statement Redaction Log (Attachment A) identifies the Protected Material and describes the basis for each redaction. The Protected Material is

shaded in the printed copies of the restricted versions of Spotify's filed materials, and is further described below.

3. The Protected Material that Spotify is submitting includes, among other things, confidential testimony and exhibits relating to or constituting commercial or financial information that the Spotify has reasonably determined in good faith would, if disclosed, either competitively disadvantage Spotify, provide a competitive advantage to another participant, competitor, or entity, or interfere with the ability of Spotify to obtain like information in the future.

4. The public disclosure of the Protected Material that Spotify is submitting would be likely to cause significant harm. The disclosure would provide an unfair competitive advantage to competitors and/or current or future negotiating counterparties of those whose information would be disclosed. Many but not all competitors and counterparties also are parties to this proceeding. Public disclosure of this information also would place Spotify, the entities whose interests it represents and their business partners, and other entities at a significant commercial disadvantage and would pose serious risk to their business interests and strategies.

5. As summarized below, the following witnesses' written direct statements and/or exhibits thereto contain commercial and/or financial information that is proprietary, not known to the public, and commercially sensitive. Spotify's specific redactions are described in more detail in Attachment A hereto.

a. Barry McCarthy's testimony contains competitively sensitive information that is not publicly known regarding Spotify's users and their habits, revenue, income, costs, margins, and business strategy. Mr. McCarthy's testimony also contains third-party research data that was obtained pursuant to contractual confidentiality provisions.

Disclosure of this information would provide Spotify's competitors with a competitive advantage. Disclosure of this information would also interfere with the ability of Spotify to obtain like information in the future.

b. Will Page's testimony contains competitively sensitive information that is not publicly known regarding Spotify's business strategy, users and their habits, and the industry and the competitive landscape. Mr. Page's testimony also contains third-party research data that was obtained pursuant to contractual confidentiality provisions. Disclosure of this information would competitively disadvantage Spotify and provide Spotify's competitors with a competitive advantage. Disclosure of this information would also interfere with the ability of Spotify to obtain like information in the future.

c. Paul Vogel's testimony contains competitively sensitive information that is not publicly known regarding Spotify's mechanical royalty rates and payments, revenues, gross profit, gross profit margin, and costs. Disclosure of this information would provide competitively disadvantage Spotify.

d. Leslie M. Marx's testimony contains competitively sensitive information that is not publicly known regarding Spotify's users and their habits, business strategy, royalty rates and payments, revenue, the music industry and the competitive landscape, third-party agreements and term sheets. Dr. Marx's testimony also contains third-party research data that was obtained pursuant to contractual confidentiality provisions. Dr. Marx also sponsors exhibits that contains third-party research data that was obtained pursuant to contractual confidentiality provisions. Disclosure of such research data provided under confidentiality obligations threatens to undermine the value of such

information and the prospect that third parties would agree to prepare or provide such information in the future.

e. Dr. Mark E. Zmijewski's testimony contains competitively sensitive information as identified by other Participants in this proceeding regarding publisher financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage other Participants.

6. The commercial and financial information from the written rebuttal statement, designated testimony, and exhibits detailed above is proprietary, not known to the public, and commercially sensitive. Spotify respectfully submits that this information can and should be treated as "Protected Material" in order to prevent business and competitive harm that would result from the disclosure of such information. At the same time, "Protected Material" treatment will enable Spotify to provide the Copyright Royalty Board with the most complete record possible on which to base its determination in this proceeding.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Executed this 17th day of February 2017 in Chicago, Illinois, USA.


Richard M. Assmus

ATTACHMENT A

REDACTION LOG FOR THE WRITTEN REBUTTAL STATEMENT OF SPOTIFY USA INC.

Document	Page/Paragraph/Exhibit	General Description
<p>Introductory Memorandum to the Written Rebuttal Statement of Spotify USA Inc.</p>	<p>p. 1 ¶ 2; p. 2 ¶ 1 (2 redactions); p. 2 ¶ 2; p. 6 ¶ 1; p. 6 ¶ 2; p. 7 ¶ 1; p. 9 ¶ 1 (3 redactions); p. 9 ¶ 2 (5 redactions)</p> <p>p. 5 ¶ 4</p> <p>p. 5 ¶ 2 & n. 2 (4 redactions); pp. 10-11 ¶ 2 (5 redactions)</p>	<p>Restricted information regarding Spotify streaming/service data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify financial data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information as identified by other Participants in this proceeding regarding publisher financials. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage other Participants.</p>
<p>Barry McCarthy</p>	<p>p. 1 ¶ 2; p. 2 ¶ 3; p. 2 heading; p. 2 ¶ 5; p. 5 heading; p. 5 ¶¶ 12-13; p. 6 ¶ 16; p. 7 ¶ 20 (last two redactions); pp. 7-8 ¶ 21 (2 redactions); p. 8 ¶ 22 (3 redactions); p. 9 ¶ 23; p. 9 ¶ 25; p. 10 ¶ 26; p. 10 heading; p. 12 ¶ 33; p. 12 ¶ 34 (2 redactions); p. 12 heading; pp. 13-14 ¶ 37 (2</p>	<p>Restricted information regarding Spotify's current and future business strategy and product development. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or</p>

Document	Page/Paragraph/Exhibit	General Description
	<p>redactions); 14 n. 16 (2 redactions); pp. 16-17 ¶ 42 (2 redactions); p. 17 heading; p. 17 ¶ 43; pp. 18-19 ¶ 47; p. 19 ¶ 48 (2 redactions); p. 19 n. 18 (3 redactions); pp. 19-20 ¶ 49; p. 20 ¶ 50; p. 20 ¶ 50; p. 20 ¶ 51; p. 21 ¶ 55; p. 22 n. 19; p. 22 heading; p. 22 ¶ 57; pp. 22-23 ¶ 58 (2 redactions); p. 24 ¶ 61; p. 25 ¶ 65; p. 25 ¶ 67; p. 26 ¶ 68</p> <p>p. 3 n. 2; p. 3 ¶ 7 (2 redactions); p. 3 ¶ 8; pp. 4-5 ¶¶ 9-11; p. 5 ¶ 14; p. 6 ¶ 15; p. 6 ¶ 17 (2 redactions); p. 6 ¶ 18; p. 7 ¶ 19; p. 7 ¶ 20 (first redaction); pp. 10-11 ¶ 27; pp. 11-12 ¶¶ 28-31; p. 11 nn. 12 & 13; p. 12 ¶¶ 32-33; p. 12 n. 14; pp. 12-13 ¶ 35; p. 13 ¶ 36; p. 15 ¶ 39 (2 redactions); p. 16 ¶ 41; p. 17 ¶ 44; pp. 17-18 ¶ 45 (4 redactions); p. 25 ¶ 64; p. 25 ¶ 67; p. 26 ¶ 68; p. 26 ¶ 69 (2 redactions)</p> <p>p. 9 ¶ 24; pp. 14-15 ¶ 38</p>	<p>competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify financial data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding another Participant's current and future business strategy and product development. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage other Participants.</p>

Document	Page/Paragraph/Exhibit	General Description
Will Page	<p>p. 4 ¶ 8 & n.3 (2 redactions); p.8 ¶ 17 & n.17 (2 redactions); p. 8 ¶ 18 (2 redactions); p. 10 ¶ 21 (2 redactions); p. 13 ¶ 28 (3 redactions); p. 15 ¶ 31 & nn. 30 & 31 (4 redactions); p. 15 ¶ 32 & n. 31 (2 redactions); p. 17 n. 33; p. 18 ¶ 41 & n. 36 (2 redactions); p. 19 (figure); p. 20 ¶ 42; p. 21 ¶ 43; p. 21 ¶ 44; p. 21 ¶ 45 (& accompanying figure); p. 22 ¶ 46 (2 redactions); p. 23 ¶ 48 (second redaction) & accompanying figure; p. 25 ¶ 50 (2 redactions & accompanying figure)</p> <p>p. 19 ¶ 40; p. 21 ¶ 47; p. 21 ¶ 48 (first redaction); p. 24-25 ¶ 49 (four redactions); p. 31 n.53; p. 31 ¶ 63</p> <p>p. 26 ¶ 51; p. 26 ¶ 52; p. 27 ¶ 53 & n. 40 (2 redactions)</p> <p>p. 32 n. 54 (2 redactions)</p>	<p>Third-party research data that was obtained pursuant to contractual confidentiality provisions and/or proprietary research commissioned by Spotify. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would interfere with the ability of Spotify to obtain like information in the future and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding current and future business strategy and product development. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding proprietary Spotify service/streaming data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding proprietary Spotify research data. Such information is confidential, proprietary,</p>

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		and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.
Paul Vogel	<p>p. 9 ¶ 20; p. 9 ¶ 21; p. 9 ¶ 22 (3 redactions); p. 9 ¶ 23; p. 10 ¶ 25; pp. 10-11 ¶ 27; p. 12 ¶ 29 (2 redactions); p. 13 ¶ 35; pp. 13-14 ¶ 36; p. 14 ¶ 37; p. 17 ¶ 40; p. 17 ¶ 41 (3 redactions); p. 18 ¶ 43; p. 18 ¶ 44; p. 18 heading; p. 20 ¶ 51 (3 redactions); pp. 20-21 ¶ 52; p. 20 nn. 25 & 26</p> <p>p. 1 n. 1; p. 2 ¶ 3; p. 2 nn. 2 & 5; p. 5 ¶ 11 (2 redactions); p. 6 heading; p. 6 ¶ 8; p. 6 n. 8; p. 7 ¶ 15 accompanying table; p. 7 ¶ 16 and accompanying table; p. 7 nn. 9-11; p. 7 ¶ 18; p. 8 ¶ 19; p. 8 nn. 12 and 13; p. 10 ¶ 24 (2 redactions); p. 10 n. 15 (5 redactions); p. 10 ¶ 26; p. 11 ¶ 28; p. 11 n. 16; pp. 14-16 ¶ 38 and accompanying table; p. 15 n. 18; p. 16 ¶ 39 (2 redactions); p. 16 nn. 19-21; p. 17 ¶ 42; p. 18 ¶ 45; p. 18 ¶ 46; p. 19 ¶ 47; p. 19 ¶ 48 accompanying table; p. 19 ¶ 49 and accompanying table; p. 19 nn. 22-24; pp. 19-20 ¶ 50; p. 21 heading; pp. 21-22 ¶ 53 and accompanying tables; p. 21 nn. 27-29; pp. 22-23 ¶ 54; p. 22 nn. 30-32; p. 23 ¶ 55</p>	<p>Restricted information regarding Spotify's current and future business strategy and product development. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify financial data and accounting methods. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p>
Leslie M. Marx	p. i (first redaction); p. ii; p. 2 ¶ 5 (first 3 redactions; last redaction) & n. 3; p. 2 ¶ 6; p. 4 ¶ 10; p. 4 ¶ 11 & n. 7; p. 5 ¶ 15; p. 5 ¶ 16 & n. 10 (8 redactions), accompanying figure and notes; p. 6 ¶ 17 (4	Restricted information regarding proprietary Spotify service/streaming or financial data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a

Document	Page/Paragraph/Exhibit	General Description
	<p>redactions); p. 7 ¶ 18 (3 redactions & accompanying figure); p. 7 ¶ 19 (2 redactions), accompanying figure; p. 8 ¶ 20 (4 redactions); p. 8 ¶ 21 (8 redactions); p. 8 ¶ 22 (4 redactions); p. 11 (title); p. 11 ¶ 29 (2 redactions); p. 11 ¶ 30 & nn. 17, 18 (6 redactions); p. 12 ¶ 31 & n. 19 (5 redactions) & accompanying figure; p. 12 ¶ 32 (2 redactions); p. 12 ¶ 33 & n. 23 (5 redactions) & accompanying figure; p. 14 ¶ 34; p. 15 ¶ 36 & n. 25 (2 redactions); p. 15 ¶ 37 (2 redactions) & accompanying figure; p. 16 ¶ 38 & accompanying figure; p. 19 ¶ 42; p. 20 ¶ 43 (7 redactions) & accompanying figure; p. 20 ¶ 44 (2 redactions & accompanying figure); p. 21 ¶ 45; p. 22 ¶ 46 (2 redactions) & accompanying figure; p. 24 ¶ 47; p. 27 ¶ 58; p. 28 ¶ 64 (2 redactions); p. 29 ¶ 66 (2 redactions); p. 29 ¶ 67; p. 34 ¶ 84; p. 35 ¶ 92; p. 40 ¶ 109; p. 43 ¶ 114; p. 43 ¶ 115 & n. 109 (2 redactions); p. 43 ¶ 116; p. 43 ¶ 117; p. 45 ¶ 121 & n. 114 (3 redactions); p. 47 ¶ 125 & n. 116 (2 redactions); p. 47 ¶ 126 & nn. 117 & 118 (5 redactions); p. 47 ¶ 127 & n. 119 (7 redactions); p. 47 ¶ 128; p. 148 (title); p. 148 & n.120 ¶ 129 (5 redactions) & accompanying figure; p. 49 ¶ 130 (2 redactions); p. 63 ¶ 177; p. 63 n. 58; pp. 64-65 ¶ 179 (1 redaction), accompanying figure (2 redactions), figure sources (1 redactions); p. 65 ¶ 180; p. 67 ¶ 184 (8 redactions); p. 72 ¶ 197; p. 75 ¶ 202 and accompanying table and notes (2 redactions); pp. 85-86 ¶ 236 (3 redactions); p. 85 n. 234;</p>	<p>competitive advantage to another Participant or entity and/or competitively disadvantage Spotify.</p>

Document	Page/Paragraph/Exhibit	General Description
	<p>p. 86 ¶ 238; p. 86 n. 241; p. 89 ¶ 248</p> <p>p. i (second redaction); p. 2 ¶ 5 (fourth redaction); p. 9 ¶ 23 (figure); p. 9 ¶ 24 (2 redactions); p. 10 figure 5; p. 10 n. 13 (4 redactions); p. 17 (title); p. 17 ¶ 39 (9 redactions) & accompanying figure; p. 18 ¶ 40 (7 redactions) & accompanying figure; p. 19 ¶ 41 (4 redactions) ; p. 24 ¶ 50; p. 40 ¶ 108; p. 42 ¶ 112; p. 45 (figure); p. 45 ¶ 120 (4 redactions); p. 46 ¶ 122; p. 46 ¶ 123 & accompanying figure; p. 46 ¶ 124 (2 redactions); p. 52 ¶ 136 (3 redactions); p. 53 ¶ 145; p. 54 ¶ 147; p. 55 ¶ 151; p. 56 ¶ 152 (2 redactions); p. 56 ¶ 153 (7 redactions); p. 57 ¶ 156 (4 redactions); p. 58 ¶ 158 (2 redactions); p. 58 ¶ 159 (2 redactions) and accompanying figure; p. 61 ¶ 168 (4 redactions); p. 61 ¶ 169 (6 redactions); p. 63 ¶ 176; p. 63 ¶ 178 (4 redactions); pp. 64-65 ¶ 179 (1 redaction), accompanying figure (2 redactions), figure sources (1 redaction, figure notes (2 redactions); pp. 76-77 ¶ 206 (2 redactions); p. 77 ¶ 208 and accompanying figure; p. 78 ¶ 209 and accompanying figure; p. 79 n. 198; p. 87 ¶ 239; p. 90 ¶ 252 (2 redactions); p. 91 ¶ 253</p> <p>p. iv (ten redactions)</p>	<p>Other Participant restricted information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage other Participants.</p> <p>Restricted exhibits.</p>

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Dr. Mark E. Zmijewski	<p>pp. ii-iii TOC headings; p. 4 ¶ 8; p. 5 heading; p. 5 n. 7; pp. 5-6 ¶ 10; p. 6 ¶ 11; p. 7 ¶ 13; p. 7 n. 10; pp. 7-10 ¶ 14; p. 8 nn. 12-15; p. 9 nn. 16-19; p. 10 ¶ 15; p. 10 n. 20; p. 11 heading; p. 11 n. 24; pp. 11-12 ¶ 17; p. 12 nn. 25-29; p. 13 heading; p. 13 ¶ 19; pp. 18-19 n. 41; p. 19 ¶ 32; p. 19 heading; p. 20 heading; p. 20 ¶ 35; p. 20 nn. 44-46; p. 21 ¶¶ 36-38; p. 22 ¶ 39; p. 23 ¶ 40; p. 24 ¶ 41; p. 25 ¶ 42; p. 26 heading; p. 27 ¶ 45; p. 27 n. 57; p. 28 ¶¶ 46-48; pp. 29-30 ¶¶ 49-52; p. 30 n. 65; pp. 30-31 ¶ 53; p. 31 ¶ 54; p. 31 n. 67; p. 32 ¶ 55; p. 32 n. 69; p. 33 ¶ 56; p. 34 ¶ 57; pp. 36-37 ¶ 60; p. 36 n. 76; p. 37 heading; p. 37 n. 77; pp. 37-43 ¶¶ 62-71; p. 38 nn. 81 & 82; p. 42 nnn. 88 & 89; p. 44 n. 91; pp. 44-45 ¶ 73; p. 45 heading; p. 45 n. 92; p. 46 ¶ 75; p. 46 nn. 97 & 98; p. 47 ¶¶ 76-77; p. 47 n. 103; pp. 48-51 ¶¶ 78-83; p. 51 n. 105; p. 52 n. 106; p. 53 ¶ 86; p. 53 nn. 108 & 109; p. 54 heading; p. 55 nn. 113 & 114; pp. 55-59 ¶¶ 89-95; p. 56 n. 115; p. 57 n. 117; p. 59 nn. 118 & 119; pp. 61-62 ¶ 99; p. 62 heading; p. 62 nn. 125 & 126; pp. 62-63 ¶ 101; p. 63 nn. 128 & 130; pp. 63-68 ¶¶ 102-108; p. 66 nn. 133 & 134; p. 67 n. 135; p. 68 heading; p. 68 n. 136; p. 68 ¶ 109; pp. 68-69 ¶ 110; p. 69-72 ¶¶ 111-116; p. 70 n. 141; p. 72 n. 142; p. 73 n. 143; pp. 73-74 ¶ 118; p. 74 ¶ 119; p. 74 n. 144; p. 75 heading; p. 75 ¶ 120 (2 redactions); p. 75 ¶ 121; p. 75 n. 148; p. 76 ¶ 122; p. 76 nn. 149 (2 redactions) & 150; pp. 76-77 ¶ 123; p. 77 ¶ 124; p. 77 nn. 151-154; p. 78 ¶¶ 125-127; p.</p>	<p>Restricted information regarding other Participants' financial data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage other Participants.</p>

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	<p>78 nn. 155-157; p. 79 ¶ 128; p. 79 heading; p. 79 ¶ 129 (2 redactions); p. 80 ¶¶ 130-131; p. 80 heading; pp. 80-81 ¶¶ 132-133; p. 81 nn. 167 & 168; p. 82 ¶¶ 134-135; p. 82 heading; p. 82 n. 169; pp. 82-83 ¶ 136; pp. 83-84 ¶ 138; p. 84 ¶ 139; p. 84 heading; p. 84 n. 175; p. 85 ¶ 142; p. 85 n. 178; p. 86 ¶ 144; p. 87 ¶ 146 (2 redactions); p. 87 ¶ 147</p>	