

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In the Matter of

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

Docket No. 16–CRB–0003–PR (2018–2022)

TESTIMONY OF ROB WHEELER

1. My name is Rob Wheeler. I have been an Apple Inc. (“Apple”) employee for over eighteen years.

2. I currently am the iTunes Controller, a position I have held for over three years. As iTunes Controller, I am responsible for all of the accounting, forecasting and reporting for Apple’s iTunes division, which includes Apple Music. Before becoming the iTunes Controller, I worked in research and development for hardware products, where I was responsible for product costing on future products. Prior to that, I spent eight years in the Apple Care division, where I was responsible for the accounting for repairs on Apple’s products.

3. I submit this testimony in support of Apple’s direct case in the above-captioned proceeding.

I. SUMMARY OF TESTIMONY

4. Apple pays music publishers a royalty for the use of their musical compositions on Apple Music **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

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(Phonorecords III)

5. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)

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RESTRICTED Subject Apple’s proposed all-in rate for interactive streaming of

\$0.00091 per non-fraudulent stream of thirty seconds or more would be much simpler and easier to understand than the “greater of” rate or a “percentage of revenue” rate without a minimum. This simplification would be beneficial for both the services that have to calculate royalty payments and the publishers that receive them. The services would benefit as the calculation of royalty payments would be easier, and require less effort and resources, under Apple’s proposal. Similarly, under Apple’s proposal, publishers would benefit as they would be able to understand exactly how the total amount that they are being paid in royalties was calculated. The total royalty payment would be the result of a simple calculation that reflects only one variable, namely the number of times each song is streamed for 30 seconds or more, which would be multiplied by the fixed per-play rate.¹

6. In my testimony, in order to illustrate why “greater of” rate structures lack transparency and are difficult to implement, I first explain RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III) I then explain why Apple’s proposed per-play royalty rate is

¹ I understand that to calculate the mechanical royalty in particular, the copyright owners would have to take the total amount they have been paid for the use of their musical works and subtract the performance royalty payments they have received for that work. This, however, does not change the fact that it would be easy to understand and calculate the total royalty payment under Apple’s proposal.

simpler and more transparent than “greater of” rate structures and “percentage of revenue” structures without a minimum. Finally, I explain some of the costs associated with Apple Music.

II. APPLE’S CURRENT ROYALTY PAYMENTS FOR APPLE MUSIC

7. In my role as iTunes Controller, I am familiar with the royalty payments Apple makes to music publishers and songwriters for the use of their musical works in connection with Apple Music.

8. For the period from June 30, 2015, when Apple Music launched, through June 25, 2016, Apple paid music publishers and songwriters (a) **RESTRICTED** in performance fees and **D Subject** (b) **RESTRICTED** in mechanical licensing fees. A true and correct copy of a report identifying **D Subject** **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

is attached hereto as **APL-009**.

9. **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

10. Pursuant to Apple’s agreements with music publishers, **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

11. To calculate the royalties Apple owes under its agreements with the publishers,

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12. To calculate RESTRICTED — Subject to Protective Order in Docket No. 16-
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13. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR
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14. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR
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15. Moreover, RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-
PR (2018-2022) (Phonorecords III)

RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022)
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16. Further, RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)

they are problems that are intrinsic

to any royalty structure under which a service pays RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)
RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)

III. APPLE’S PROPOSED RATE STRUCTURE

17. I understand that Apple is proposing a per-play rate for the all-in royalty fee that interactive streaming services pay music publishers and songwriters for the use of their musical works.

18. A per-play rate would RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)

. Indeed, when an all-in per-play rate is used, the only calculation required to determine the total royalties owed to publishers and songwriters for the use of their musical compositions is to multiply the fixed rate by the total number of times a song has been streamed non-fraudulently for 30 seconds or more (*i.e.*, fixed rate x number of streams of the song = all-in royalty for the song). This is a simple calculation that would be easy to implement because a service would only need to use one piece of data to do this calculation, namely, the number of times each song is streamed non-fraudulently for 30 seconds or more, as the fixed payment per stream would always be known. Moreover,

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RESTRICTED — Subject to Protective Order in Docket No. 16 the transition to the proposed rate structure would not be difficult.

19. A per-play rate also would add transparency to rate calculations. Anyone viewing the total amount paid to publishers and songwriters for the use of their musical works easily could understand how the service arrived at that total.

20. For these reasons, Apple’s per-play rate would be a significant improvement on the “greater of” rate structure. Apple’s proposal also is better than a rate structure under which services pay only a pro-rated share of a percentage of their revenue with no minimum. While such a structure would eliminate the need to calculate a minimum fee, it still would require a multi-step calculation to determine the revenue pool and then allocate it on a pro-rated basis. A percentage of revenue royalty structure also lacks the transparency that Apple’s proposal provides.

IV. APPLE MUSIC REVENUE AND COST

21. As part of this proceeding, I prepared a **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

. A true and correct copy of this chart is attached hereto as

APL-007.

22. This chart includes several fields, which are defined below.

23. **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)**

24. **RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018 2022) (Phonorecords III)**

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30. RESTRICTED — Subject to Protective Order in Docket No. 16 CRB 0001 PR (2018 2022) (Phonorecords III)
31. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)
32. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB 0001 PR (2018 2022) (Phonorecords III)
33. RESTRICTED — Subject to Protective Order in Docket No. 16-CRB-0001-PR (2018-2022) (Phonorecords III)

34. RESTRICTED — Subject to Protective Order in Docket No. 16 CRB 0001 PR (2018 2022) (Phonorecords III)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 1, 2016



Rob Wheeler