

## PHONORECORDS III PUBLIC VERSION

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
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)

### WRITTEN DIRECT STATEMENT AND TESTIMONY OF GEORGE D. JOHNSON (GEO) a Pro Se INDIVIDUAL AUTHOR

#### Volume 1

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(formerly BMI)*

Thursday, November 3, 2016

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**16-CRB-0003-PR (2018-2022)**

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**A. INTRODUCTORY MEMORANDUM TO THE  
WRITTEN DIRECT STATEMENT OF GEORGE D. JOHNSON (GEO)**

George D. Johnson (“GEO”), an individual §115 sound recording copyright creator, singer, author, and *pro se* non-attorney without pay, respectfully submits this Introductory Memorandum to GEO’s written direct statement (“WDS”) and testimony in accordance with 37 C.F.R. § 351.4. This memorandum describes the contents of GEO’s written direct statement and briefly summarizes the testimony of witnesses. GEO respectfully requests that Your Honors consider this entire Written Direct Statement as GEO’s Testimony. GEO has no RESTRICTED version, only this PUBLIC VERSION.

**CONTENTS OF GEO’S WRITTEN DIRECT STATEMENT**

Volume 1 contains (A) this Introductory Memorandum; (B) GEO’s proposed rates and terms; (C) an index of GEO’s witnesses; (D) a certificate of service; (E) an index of GEO’s exhibits; (F) a declaration regarding GEO’s testimony; (G) the written direct testimony of GEO’s expert witnesses and fact witnesses.

Volume 2 contains all of GEO’s exhibits with indexes;

Volume 3 contains all of GEO’s designated testimony from prior proceedings.

**B. BRIEF STATEMENT OF GEO’S PROPOSED RATES AND TERMS**

Similar to the rates and terms proposed by GEO in *Web IV* for §114 sound recordings and GEO’s current appeal of *Web IV* in the United States Court of Appeals D.C. Circuit (Case 16-1162), GEO intends to propose the following range of appropriate and reasonable royalty rates, values and terms for the making and distribution of phonorecords under the compulsory license provided by 17 U.S.C. § 115 for the period January 1, 2018 through December 31, 2022. GEO notes that all streams have a mechanical and performance side while the “minimum statutory rate” under the compulsory license still applies to all phonorecords, digital downloads and individual streams. GEO also notes that the CRJ’s have an obligation under the U.S. Constitution to first and foremost enforce the exclusive rights in Article I and Section 106 of the Copyright Act when determining rates and terms. The substitution of sales by streams, limited downloads, and the confiscatory nature of compulsory, statutory and federalized streaming under 37 C.F.R. § 385.1 through .26. has been devastating to American songwriters and publishers.

**PPR or POR or PER SUBSCRIBER for SUBPARTS A, B and C?**

In the Final Determination (March 4, 2016) for *Web IV*<sup>1</sup>, Your Honors ruled that all rates and terms would be based on a 100% per-play royalty rate model (“PPR”) and not a percentage of revenue (“POR”) model, similar to the current grandfathered SDARS POR model. Instead of only one option in determining rates and terms, *Web IV* participants were asked to consider two different models, one based on a PPR model and the other a POR model.

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<sup>1</sup> Determination of the United States Copyright Royalty Judges, March 4, 2016, published on May 2, 2016, 81 Fed. Reg. 26316, App. Docket No. 14-CRB-0001-WR (2016-2020) *Web IV, Determination of Royalty Rates and Terms for Ephemeral Recordings and Webcasting Digital Performance of Sound Recordings* (Web IV), 81 Fed. Reg. 26316 (May 2, 2016).

In reading motions from current CRB proceedings and other past rate proceedings, it appears to GEO as a layman, that in the *Web IV* Determination, Your Honors' outright rejection of a POR royalty rate model in favor of a PPR model, may indicate a PPR model is now considered *rate court precedent*.

Therefore, GEO offers four proposals, but first describes his proposal as the 3 Subparts.

- A. Subpart A—Physical Phonorecords Deliveries, Permanent Digital Downloads and Ringtones, 37 C.F.R. §§ 385.1–385.4: GEO intends to propose the following changes to Subpart A; 1.) a 107 year CPI inflation adjustment in below-market value from 2<sup>2</sup> and 9.1 cents, to a break-even “minimum statutory rate” of approximately \$.50 to 52 cents per song, based on actual and historical minimum federal Consumer Price Index<sup>3</sup> inflation data, and 2.) an additional reasonable increase in value to reflect real world 2016 market conditions if songwriters and publishers were allowed to say “No” in a hypothetical or actual marketplace, and 3.) a reasonable projected increase in value and inflation over the next 5 years till 2022. GEO also will adopt some type of Audit Right language similar to NMPA and NSAI's proposed Audit Right in their preliminary disclosures.
- B. Subpart B—Interactive Streaming and Limited Downloads, 37 C.F.R. §§ 385.10– 385.17: Just as any copyright has an inherent value, any stream, interactive or noninteractive, has an inherent value, regardless of the business model a service provider or licensee chooses. Most importantly, what gives any stream its inherent value are the two music copyrights forever attached to that reproduction/stream — the underlying song (PA) and sound recording (SR). Therefore, the statutory rate should be fair, simple, and transparent, unlike the incredibly complicated structure that currently exists. Accordingly, subject to further analysis by GEO and review of all materials produced in the Written Direct Statements and preliminary disclosures, like Apple, GEO proposes the simplification of Subparts B and C. GEO's proposal simplifies the most by *eliminating limited downloads* in categories 37 C.F.R. §§ 385.10 through 385.26 and instead implementing one royalty rate for a cloud locker combining interactive streams and permanent downloads (again limited downloads are eliminated) of musical works on a per-song, or album basis, as an “all-in” (inclusive of all necessary rights, e.g.,

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<sup>2</sup><http://www.copyright.gov/licensing/m200a.pdf> on the U.S. Copyright Office website and GEO's most compelling evidence.

<sup>3</sup> [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) on federal government's own website according to their own calculations and not GEO's calculations or opinions. GEO's second most compelling piece of evidence in this rate proceeding.

performance, reproduction, and distribution rights, as applicable), *i.e.* ghosttunes.com. The per-song rate starts at a negotiable \$0.75 cents per §115 work in 2018 with a per-play rate of \$0.01 per interactive stream for all non-fraudulent interactive streams that are 30 seconds or longer, while fraudulent interactive streams and interactive streams less than 30 seconds have a royalty rate of zero. For the avoidance of doubt, the foregoing terms have the same meanings as provided in 37 C.F.R. § 385.11 or § 385.21, as applicable, however both categories of definitions would be re-written to (allow for new rates for §115 non-interactive streams and) re-define “mixed bundles”, etc. and all current definitions that include a limited or permanent download. Most importantly, and for the avoidance of doubt under 37 C.F.R. §§ 385.10, § 385.11, § 385.12, etc. **Limited Downloads would be eliminated in exchange for Paid Permanent Downloads.** Parts of Subparts B ad C should be eliminated and then simplified where only Paid “Cloud” Locker or Purchased Content Locker type services with Permanent Downloads exist.

- C. Subpart C–Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services, 37 C.F.R. §§ 385.20–385.26: Subject to further analysis and review of all materials produced during this rate proceeding, GEO intends to propose eliminating certain categories in 37 C.F.R. § 385.10 through .26 and instead implementing an “all-in” (inclusive of all necessary rights, e.g., performance, reproduction, and distribution rights, as applicable) one-time fee starting at a negotiable \$.75 cents per song for 2018 as described above for paid cloud locker services or purchased content locker services and a per-play royalty rate of \$0.01 per (non or) interactive stream for 2018. Additional Licensee “digital breakage”, stocks, ads, IPOs, direct pay, etc., must be addressed to include all U.S. songwriters and music publishers.

### **37 C.F.R. §385.3 SUBPART A - MECHANICAL RATES PROPOSAL 2018-2022**

#### **A. Proposed Royalty Rate for § 115 Mechanical “Minimum Statutory Rate” Phonorecords**

	Per-Copyright Rate
2018	\$0.75
2019	\$1.00
2020	\$1.50
2021	\$2.00
2022	\$2.50

**37 C.F.R. §385.10 SUBPART B - MECHANICAL RATES PROPOSAL 2018-2022****B. Proposed Royalty Rate for § 115 Mechanical “Minimum Statutory Rate” On Demand**

GEO proposes simplification and eliminating the categories 37 C.F.R. §§ 385.10 through § 385.26 in Subparts B and C, primarily eliminating the limited download while keeping the interactive stream. Subpart B should combine the Subpart C “Beatles” cloud locker proposal with a permanent download and interactive streaming solution *i.e.* [ghosttunes.com](http://ghosttunes.com).

**37 C.F.R. §385.20 SUBPART C - INFLATION BEATLE LOCKER PROPOSAL 2018-2022****C. Proposed Royalty Rate for § 115 Mechanical “Minimum Statutory Rate” Cloud Locker**

	Copyright Cloud Locker One Time Fee Per Copyright	Per-Performance Rate
<b>2018</b>	\$0.75	\$0.0100
<b>2019</b>	\$1.00	\$0.0200
<b>2020</b>	\$1.50	\$0.0300
<b>2021</b>	\$2.00	\$0.0400
<b>2022</b>	\$2.50	\$0.0500

This Proposal C for a Subpart C Cloud Locker or Streaming Account for permanent download and interactive streaming only *i.e.* [ghosttunes.com](http://ghosttunes.com) as a benchmark, is the only streaming/sales solution that most reflects the real world *value of a song* factoring in past, present and future inflation and yes, profit for the creators of streamers’ only product. Since the customer is back to paying for music on a per-product basis, like any other normal transaction, percentage of revenue is no longer an issue. Moreover if per-play rates are favored over a percentage of revenue model like in *Web IV*, GEO hopes the CRJ’s to do the same in this proceeding. Again, since the customer is now paying for the song or album on a per-copyright basis, this becomes a “pass through” amount for Licensees and under an additional proposal by

GEO, Licensees would even share in a percentage of revenue of each song at approximately 20%.

As GEO explained in his *Web IV* Amended Written Direct Statement, Proposal C or “**The Beatles**” Proposal is so named because in 1964 an 8 song album, like any other album in 1964, sold for \$4.98 or \$5 dollars an album. Using the CPI<sup>4</sup> to factor in real world inflation, \$4.98 is \$38.42 in 2016 and \$39.43 in 2018 dollars. Rounded up, \$40 dollars divided by 8 songs equals \$4.75 per-song, which is approximately **\$5 dollars per-song** or \$40 per-album in 2016-2018 value and dollars. “**The Beatles**” or “**Ghosttunes**” or “**Apple Music(iTunes)**” cloud locker proposal takes into account real inflation and actually gives consumers and music licensees a deal at \$.075 since 2018 should really start with \$2.50 (to be split between songwriters and publishers) not in 2022. In 2016, after 18 years of free streaming, this price may be hard for non-music creators to understand, but it really is reasonable, and long overdue. Simply, you buy the song or album on iTunes, then stream it all you want on Apple Music. Imagine where the sale and stream merge.

2 cents or 9.1 cents are not reasonable, “free market” or “effective competitive market” rates since 2 cents and 9.1 are compulsory, statutory rates price-fixed rates and centrally planned by the federal government since 1909. 2 cents and 9.1 cents have not been adjusted to compensate for real world inflation for 107 years. 2 cents and 9.1 cents are by definition “below market rates” here in 2016, calculated at federally approved inflation rates.

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<sup>4</sup> <https://www.minneapolisfed.org> [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)



**FOUR PROPOSALS - ROYALTY RATES AND TERMS**

Stated another way than the three Subparts, GEO offers four proposals based on a (1.) Per-SubscriberRate (2.) Percentage of Revenue (POR), (3.) Per-Play Rate (PPR), and (4.) a Paid Permanent Download rate.

**1. PER-SUBSCRIBER RATE (PSR)**

The per-Subscriber rates requested by GEO are the following amounts per-Subscriber, per-month:

2018 – \$1.96

2019 – \$2.10

2020 – \$2.26

2021 – \$2.42

2022 – \$2.58

**2. PERCENTAGE OF REVENUE RATE (POR)**

The percentage of revenue rate requested by GEO is a current marketplace range of 25% to 40% of “Gross Revenues.”

For purposes of this proposal, “Gross Revenues” should be defined in a manner based on the current definition with the clarifying adjustments.

Gross Revenues must also include, but not limited to, any “digital breakage” or direct payments, bonuses, stock option giveaways, current and future Initial Public Offerings (‘IPO’), all subscription dollars, all advertising sales as defined as above, and taking into account the amount of all stock distributions by key executives or stockholders, and trading the value of

copyrights from copyright owners to stockholders and investors by way of federal compulsory music licensing.

### 3. PER-PLAY ROYALTY RATE (PPR)

For all licensed transmissions, in addition to the mandatory permanent download or cloud locker sale of the §115 copyright, GEO requests the following per-Subscriber, per-month royalties:

2018 – \$0.01

2019 – \$0.02

2020 – \$0.03

2021 – \$0.04

2022 – \$0.05

### 4. PERMANENT DOWNLOAD

#### Proposed Royalty Rate for § 114 Permanent Digital Downloads, PLS or PCL

	Copyright Cloud Locker One Time Fee Per §115 Copyright	Per-Performance Rate
<b>2018</b>	\$1.00	40%
<b>2019</b>	\$1.50	35%
<b>2020</b>	\$2.00	30%
<b>2021</b>	\$2.50	25%
<b>2022</b>	\$2.50	25%

*Sell the songs* the customer just heard streaming services to pay songwriters/publishers.

All Services should have a BUY button for a few bucks a song, the customer can download their favorite song to their phone, digital device, computer or car hard drive.

The Licensees get a “percentage of revenue” for the sale of each song to a customer.

GEO proposes either a flat Permanent Download sale and/or a Ghosttunes type “cloud locker” Permanent Download in either a Paid Locker Service (“PLS”), Purchased Content Locker (“PCL”), or similar category that includes paid permanent downloads as currently defined in 37 C.F.R. § 385 Subparts B and C, most importantly, *profits from sales would be shared* between Copyright Owners and Licensees with a proposed 80/20% split of Gross Sales of Permanent Downloads.

With most cars having hard drives in them the past several years with space to store mp3 music files or WAV files, etc. it’s an untapped market and a logical line extension for Licensees, while also offering one powerful and simple solution to raise revenues for Licensees and copyright creators. If a subscriber wants the added value of owning the song, Licensees should let subscribers own the song as well as making significant additional revenue for themselves.

It’s already built in. The ephemeral or cached copy in each customer’s device is the key.

So, just like on Comcast cable, buying a movie for \$15.99, but an album or single, and then the customer can stream it all they want. This is part of GEO’s proposal, with already cached sound recordings. It would drive sales from impulse buys and for customer convenience, just like an iTunes download. It makes all Services more money, gives the customer portability, and gets us creators paid something to pay for our “cost of good sold” or “cost of copyright creation”.

So, while GEO's goals with the permanent download is to find additional models that pay copyright creators at a 2016 market rate, but ones that are not disruptive to Licensees' business models, in fact, are even *more profitable for Licensees*.

The most important fact about permanent downloads is the Services will have a *new source of revenue* from their *existing product* and *from existing subscription customers*.

GEO's creative proposal for permanent downloads keeps the new comforts and conveniences of non-interactive streaming and old school *sales* to benefit copyright owners.

If a customer hears a song they like on new streaming services from Google or Amazon, they can hit the BUY button and immediately download the song or instantly convert the cached ephemeral copy to a permanent download, with no additional data costs to download the song, and instant profit.

Licensees can *profit again* by selling their *one product* that is already in place — *songs*.

Loyal subscribing customers are also happy to have more music options and the ability to save their favorite song wherever they go. This brings *the customer* back into the “cost of goods sold or performed” (“COGS”) equation to pay for the creation of these sound recordings.

While GEO still proposes a Subpart C type Paid Locker Service (“PLS”) or Purchased Content Locker (“PCL”) aka “Cloud Locker” or “Streaming Account” option in this CRB rate hearing, and all others, this Permanent Digital Download (“PDD”) would also eliminate the need for unpaid limited downloads in 37 C.F.R. 385.11, 385.12, and turn them into a profit center.

Paid Permanent Downloads would be split 50/50 split between §114 copyright authors and owners, and §115 authors and owners, respectively.

## **TERMS**

GEO proposes some type of Audit Right similar to the one proposed by the Copyright Owners in *Phonorecords III* in their preliminary disclosures.

The Paid Permanent Download should be required for participants but GEO is open to continuing voluntary negotiations.

GEO will offer more terms, but the rates proposed above are also at the heart of my terms for this rate proceeding.

## **EPHEMERAL COPIES**

As for the making of any number of ephemeral phonorecords to facilitate such performances, GEO understands that this reproduction is often overlooked and taken for granted as a foregone conclusion, but reproductions must be re-examined. These ephemeral copies must be re-examined to determine their true and separate value, if any. The permanent digital download (PDD) fee could also be part of the ephemeral reproduction of the §115 underlying word (and §114 sound recording) on it's own, revising 37 C.F.R. 385 Subpart B and/or C.

An ephemeral phonorecord is simply an unpaid reproduction and why it was named an ephemeral copy in the first place.

In closing, in the most recent *Phonorecords III* rate proceeding counsel wrote that, “If it should be necessary to litigate over these rates in this proceeding, the record would show that it did in *Phonorecords I* — that even in circumstances in which the compulsory license provided by Section 115 is unavailable to copyright users, mechanical licensing for the product configurations for which rates are specified in 37 C.F.R. § 385.3 *occurs in the marketplace at royalty rates that are at or somewhat below the statutory rates, and never above the statutory*

rates<sup>5</sup>. See 74 Fed. Reg. at 4519-21. Given those circumstances, that statutory rates remain reasonable” (emphasis added) So, counsel even argues rates never change, but is still reasonable.

**C. SUMMARY OF THE WRITTEN TESTIMONY OF GEO’S WITNESSES**

Pursuant to Federal Rules of Evidence 701-02, GEO would like to offer himself as an Expert and Fact Witness qualifying himself as an expert in songwriting, sound recording, and copyright as a creator of §114 and §115 copyrights but also VA copyrights in animation. GEO’s written direct statement includes written direct testimony of the following expert - fact witnesses:

**Index of Witness Statements**

**Expert Witnesses**

Pursuant to Federal Rules of Evidence 701-02, GEO intends to offer himself as his own expert witness and fact witness to supply evidence of the business and economic basis of his rate proposal. GEO’s contact information is available throughout this WDS, please contact directly.

<b>Tab</b>	<b>Witness or Expert</b>	<b>Title</b>
1	George Johnson	Singer-Songwriter-Publisher, §115 and §114 Copyright Creators, Author, d/b/a George Johnson Music Publishing (formerly BMI) for 20 years in Nashville plus Geo Music Group

**Fact Witnesses**

<b>Tab</b>	<b>Witness or Expert</b>	<b>Title</b>
1	George Johnson	Singer-Songwriter-Publisher, §115 and §114 Copyright Creators, Author, d/b/a George Johnson Music Publishing (formerly BMI) for 20 years in Nashville plus Geo Music Group

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<sup>5</sup> *Phonorecords III* rate proceeding in *Comments and Objection of Sony Music Entertainment Concerning Proposed Settlement*, submitted on August 24, 2016 by Sony Music Entertainment (“SME”), also affected by the statutory rate in SDARS III, was quoted on Pages 2 and 3, regarding the 9.1 cent mechanical or 37 C.F.R. 385.3 Subpart A rate

### A. Expert Witnesses

George Johnson (“GEO”) is an individual singer, songwriter, self-publisher, investor and sound recording copyright creator d/b/a as George Johnson Music Publishing (“GJMP”) (formerly BMI) and Geo Music Group (“GMG”), an independent record label that specializes in the production of analog and digital sound recordings for terrestrial radio broadcast, internet radio, digital streaming services, retail sale, video synchronization for film, television, and advertising, and other music licensees. GEO is a creator, owner and possessor of music and animation copyrights. GEO has operated 7 years in Los Angeles and for the past 20 years on historic Music Row in Nashville Tennessee and creates, invests and owns copyrighted underlying works, music and lyrics, as well as master digital sound recordings with performances by legendary artists such as The Jordanares, The Memphis Horns and Nashville’s best session musicians through the American Federation of Musicians (“AFM”) and the American Federation of Television and Radio Artists (“AFTRA”). GEO is a 15 year Grammy member and has written songs with legendary songwriters Dewayne Blackwell, Max D. Barnes, and Larry Henley as well as other #1 hit songwriters in Nashville and Los Angeles. GEO looks to expand his business models, relying on the longstanding constitutional protections afforded to each and every individual American creator by the *exclusive right* found in the “copyright clause”, Article I, Section 8, Clause 8<sup>6</sup> of the United States Constitution and Section 106 of the Copyright Act.

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<sup>6</sup> [http://avalon.law.yale.edu/18th\\_century/fed43.asp](http://avalon.law.yale.edu/18th_century/fed43.asp) "The utility of this power (copyright) will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress." — James Madison, Federalist 43

Mr. Johnson's anticipated testimony will explain why GEO's proposed rates and rate structures are the most appropriate and reasonable from a copyright creator and music industry perspective, and therefore the public good. He likely will provide information regarding how GEO's rate proposal (1) maximizes the availability of creative works to the public, (2) provides copyright owners a fair return on their works and provides copyright users a fair income under existing economic conditions, (3) reflects the relative roles of copyright owners and users, like all other reasonable business models and (4) would minimize any disruptive impact on the industry, especially in the case of a BUY button and permanent download.

GEO will also explain the negative effects that *legal* compulsory licensing at confiscatory statutory rates has on music creators, while only benefitting Licensees and a few others. How forced federal licensing violates the constitutional exclusive right and property protections of all American copyright authors and owners and why it's vital to have an *actual* hypothetical marketplace that reflects the current marketplace in these proceedings, when setting rates and terms. The digital era has literally decimated the majority of American music copyright creators' business models and profits the past 20 years, while Licensees's businesses have boomed the past 20 years. Yet, despite copyright law being the supreme law of the land and a U.S. copyright business model that has lasted over two hundred years, Licensees still protest that their relatively new business model is the *only* business model that matters, or is effected.

## **B. Fact Witnesses**

George Johnson's anticipated testimony will provide background and information about how GEO individually, and colleagues on Music Row and throughout America, have been adversely affected by federal central economic planning and price-fixing of U.S. music royalty



rates for sound recordings and the confiscatory nature of setting compulsory rates with no regard for the exclusive right and property right of the copyright creator or owner, who also has no say in the negotiation or use of their music. *United States Copyright Law, responsible public policy and the longstanding business models* of §115 music publishers, songwriters, recording artists, investors and §114 creators have *taken a backseat* to the *financial success of a handful of major licensees* who claim their “business model” is more important than 220 years of American copyright law protections or the music creators that create them - and their financial prosperity.

GEO will discuss why it is vitally important to factor in the *true value of music copyrights* and CPI inflation for grandfathered Phonorecords rates for music licensees in this proceeding who are calling for the current statutory licensing system to remain in place, as is, without any rate changes, except to lower the rate in some cases from \$.00 to less than \$.00.

GEO will also likely testify regarding the benefits to the industry of a streamlined and transparent rate structure for interactive streaming coupled with permanent downloads *i.e* a BUY button, like Ghosttunes or Apple iTunes, and the fairness of GEO’s rate proposal - in dollars.

“Simple can be harder than complex, *but it’s worth it in the end because once you get there, you can move mountains.*”<sup>7</sup> — Apple founder Steve Jobs

“*We agree 100 percent with artists that they should have the right to decide where their content is available — whether it’s free or when it’s free, when it should be paid or how much it should cost.*” — Eddy Cue, an Apple senior vice president<sup>8</sup>

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<sup>7</sup> <http://www.billboard.com/articles/business/7439042/apple-simplified-statutory-licensing-proposal-copyright-royalty-board>  
Apple Proposes Simplified Statutory Licensing Scheme to D.C. 7/15/2016 by Robert Levine

<sup>8</sup> [http://www.nytimes.com/2016/07/16/business/media/apple-in-seeming-jab-at-spotify-proposes-simpler-songwriting-royalties.html?ref=collection%2Ftimestopic%2FApple%20Inc.&action=click&contentCollection=business&region=stream&module=stream\\_unit&version=latest&contentPlacement=1&pgtype=collection](http://www.nytimes.com/2016/07/16/business/media/apple-in-seeming-jab-at-spotify-proposes-simpler-songwriting-royalties.html?ref=collection%2Ftimestopic%2FApple%20Inc.&action=click&contentCollection=business&region=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection) Apple, in Seeming Jab at Spotify, Proposes Simpler Songwriting Royalties by Ben Sisaro July 15, 2016

GEO agrees 100 percent with these two Apple quotes that simplicity is worth it, can move mountains, and that *the artists have the right to decide how much their content should cost*. The evidence, along with common sense, will prove that GEO's rates and terms are the most reasonable in 2016 and must be adopted since the streamers' economic model leaves out one crucial element - *the customer*. The bundled, copyright cloud locker or 'streaming account' (and permanent download) forces payment for all music copyrights up-front, one-time, by a customer — like all other products in the real world using sound free-market economics to pay for the "cost of copyright creation" as presented to Judge Strickler in *Web IV*. This is the primary question in this rate proceeding: is it reasonable for a customer to pay for the cost of goods sold, in this case the songwriter/publisher according to his business model and real word economics?

**"The industry can't be *pacified by lip service* about efforts to create paid subscription services."<sup>9</sup> — Irving Azoff**

As lean back and lean forward business models converge due to the inherent value gap that was created "legally" in 37 C.F.R. §§ 385 Subparts B and C, it's easy to see that legendary manager *Irving Azoff's evaluation of on-demand streaming rates as "lip service" is 100% correct and GEO argues that he would know more than any person in this proceeding.*

Pursuant to 37 C.F.R. § 351(b)(3) GEO reserves the right to modify and amend his witness lists and proposed rates and terms at any time during the proceeding, up to, and including, the filing of the proposed findings of fact and conclusions of law. GEO thanks Your Honors for your thoughtful consideration on behalf of myself and all U.S. songwriters and music publishers.

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<sup>9</sup> <http://www.billboard.com/articles/business/7356794/youtube-criticism-labels-artists-managers-payouts> 5/5/2016 by Robert Levine 'It's a System That Is Rigged Against the Artists': The War Against YouTube

Respectfully submitted,

By: /s/ George D. Johnson

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*George D. Johnson (GEO), an individual  
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November 3, 2016

**D. CERTIFICATION OF SERVICE**

I, George D. Johnson, (“GEO”) an individual songwriter, music publisher and music copyright creator, hereby certifies that a copy of the foregoing GEORGE JOHNSON'S (GEO) WRITTEN DIRECT STATEMENT FOR PRSIII has been served this 3rd day of November, 2016 by electronic mail upon the following parties:

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Thursday, November 3, 2016

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**E. Index of Geo's Exhibits for Phonorecords III**

All exhibits are public and sponsored by George Johnson.

<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 001	GEO2700	Chart 1 -Copyright Bundle In Streaming Acct.jpg
GEO Ex. 002		Constitutional Foundations of Intellectual Property.pdf
GEO Ex. 003	SX Ex. 003	RIAA 2015 Shipment and Revenue.pdf
GEO Ex. 004	GEO2703	-Copyright and the Music Marketplace February 2015 Copyright Office. There is no policy justification..
GEO Ex. 005	GEO2885	RIAA 2015 Inflation-02.jpg - Historical Past 100 Years
GEO Ex. 006	GEO2886	RIAA 2015 Inflation-03.jpg - Singles - Historical Value
GEO Ex. 007	GEO2887	RIAA 2015 Inflation-04.jpg - Albums - Marketplace Value
GEO Ex. 008	GEO2754	GIF 1 - 40-years-music-industry.gif
GEO Ex. 009	SX Ex. __	SoundExchange Expert 04_Lys WDT (Public) Excerpt
GEO Ex. 010		SiriusXM Summary of US Music Royalty Fees by Package 2015-2016.png
GEO Ex. 011		SiriusXM US Music Royalty Fee Effective January 5, 2015.png
GEO Ex. 012		SiriusXM US Music Royalty Fee FAQ 2015.png
GEO Ex. 013	GEO2747	Sirius XM Radio Inc. vs. SoundExchange complaint.pdf
GEO Ex. 014		Why Intellectual Property Matters
GEO Ex. 015		The Real Death of Music article
GEO Ex. 016		B&W Chart from article
GEO Ex. 017		Music Industry Chart 1 from article
GEO Ex. 018		Music Industry Chart 2 from article
GEO Ex. 019		Music Industry Chart 3 from article
GEO Ex. 020		2012 RIAA Shipment and Revenue
GEO Ex. 021	GEO2851	Chart 2-NEW_MusicRoyalty_CopyrightControl.jpg
GEO Ex. 022	GEO2852	Chart 3-1MSongPerformancesSplit.jpg



<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 023	GEO2853	Chart 4-InflationChart.jpg
GEO Ex. 024	GEO2854	Chart 5-Price-Fixing.jpg
GEO Ex. 025	GEO2855	Chart 6-A_to_B_Direct_License_1.jpg
GEO Ex. 026	GEO2856	Chart 7-A_to_B_to_C_Direct_License_2.jpg
GEO Ex. 027	GEO2857	Chart 8-A_to_B_to_C_Direct_License_2b.jpg
GEO Ex. 028	GEO2858	Chart 9-A_to_B_to_C_Direct_License_2car.jpg
GEO Ex. 029	GEO2859	Chart 10-A_to_B_to_C_to_D-CCL.jpg
GEO Ex. 030	GEO2860	Chart 11-3 major labels= RIAA = SoundExchange.jpg
GEO Ex. 031	GEO2861	Chart 12-WorldMap.jpg
GEO Ex. 032	GEO2862	Chart 13-LRB_Act.jpg
GEO Ex. 033	GEO2863	Chart 14-LRB_Act_ATLA_Lobbyists.jpg
GEO Ex. 034	GEO2864	Chart 15-BMI.jpg
GEO Ex. 035	GEO2865	Chart 16-ASCAP.jpg
GEO Ex. 036	GEO2866	Chart 17-TheMusicIndustry-A.jpg
GEO Ex. 037	GEO2867	Chart 18-TheMusicIndustry-B.jpg
GEO Ex. 038	GEO2868	Chart 19-TheMusicIndustry-C.jpg
GEO Ex. 039		Is Copyright Property by Adam Mossoff SSRN-id491466.pdf
GEO Ex. 040		Here's how much copyright contributes to the US economy
GEO Ex. 041		Apple iBooks coming in October at \$7.99 to \$14.99 with no book streaming.
GEO Ex. 042		Adele '25' Songwriters & Producers' \$13 Million Earnings So Far   Billboard
GEO Ex. 043		Chart - BB-top-adele-bb5-2016-billboard-1250.jpg
GEO Ex. 044	SX Ex. 044	U.S. Sales Database 2015.pdf
GEO Ex. 045		Librarian Appoints Copyright Judges (March 2006) - Library of Congress Information Bulletin
GEO Ex. 046		2014 billboard_twitter_chart_flashboxi.jpg - real time-2 years

<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 047		Book Review — The Constitutional Foundations of Intellectual Property/ A Natural Rights Perspective
GEO Ex. 048	GEO2900	Hanna-Barbara cartoon, Shake and Flick, Cartoon Network 1995-In Record
GEO Ex. 049	GEO2748	Unleashing Capitalism Chapter 7 co-author George Johnson-In Record
GEO Ex. 050		“Taking” Away Music Copyrights
GEO Ex. 051	GEO2705	“Copyright law serves public ends by providing individuals with an incentive to pursue private one.” - Majority opinion in <i>Eldred</i> to Justice Breyer dissent.
GEO Ex. 052	GEO2701	NAB testimony 2014 to Congress “(Copyright) not for creator’s interest”
GEO Ex. 053	GEO2702	The Peasant's Dilemma by Jaron Lanier. Songs subsidize Streamers
GEO Ex. 054	GEO2769	Recording Budget Best George Johnson Album 1-In Record
GEO Ex. 055	GEO2771	Recording Budget Best George Johnson Album 2-In Record
GEO Ex. 056	GEO2740	George Johnson featuring The Jordanares and The Memphis Horns album-In Record
GEO Ex. 057	GEO2741	George Johnson - Still Pissed At Yoko album-In Record
GEO Ex. 058	Batch 3	Album Expenses for Judge Strickler in Web IV - “Cost of Copyright Creation” (some Social Security Numbers and home addresses are REDACTED - TO BIG TO PRINT-In Record
GEO Ex. 059	Batch 3 GEO2898A	AFM Receipt for Session February 16, 2010 QUAD Session 1 Album 1
GEO Ex. 060	Batch 3 GEO2898B	AFM American Federation of Music Union Contract for Studio Players and Limited Master Session February 16, 2010 Album 1 QUAD Studios
GEO Ex. 061	Batch 3 GEO2898C	AFM American Federation of Music Union Contract for Studio Players and Limited Master Session Blackbird Studios April 6, 2012 Album 2 Yoko
GEO Ex. 062	Batch 3 GEO2902	AFTRA Raymar 1 THE JORDANAIREs - AFTRA CONTRACT BACKGROUND VOCALS REDACTED

<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 063	Batch 3 GEO2903	Raymar 2 THE JORDANAIRE AFTRA CONTRACT BACKGROUND VOCALS SESSION 2 REDACTED
GEO Ex. 064	Batch 3 GEO2915	AFTRA MUSIC EXPENSE \$722.73 YOKO ALBUM SINGERS JUNE 19, 2012
GEO Ex. 65		usa_v_bmi_opinion_2016_09_16.pdf
GEO Ex. 66		Do the Grammys really represent the American music creator anymore?   TheHill - April 15, 2016
GEO Ex. 67		Aistars-Hartline-Schultz-Copyright-Principles-and-Priorities
GEO Ex. 68		Creatocracy/ How the Constitution Invented Hollywood.pdf
GEO Ex. 69		Captured_systemic_bias_at_the_us_copyright_office Cover 2.
GEO Ex. 70	GEO2956	Still Pissed At Yoko - Video - Yoko-DMDS LO-RES.mov
GEO Ex. 71		He Don't Know Jack About Jill.wav
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GEO Ex. 100	GEO2811	§115 formerly - syrkin-copyright-royalty-board-e-alert1.pdf
GEO Ex. 101	Google	Pallante-Resignation-Letter-1.pdf
GEO Ex. 102	Google	Google-funded group mad that US Copyright Office hasn't abolished copyright yet • The Register.pdf
GEO Ex. 103	Google	AnnReport2010PK.pdf
GEO Ex. 104	Google	pk-google-shills.png
GEO Ex. 105	Google	Google and Public Knowledge Coup, Register of Copyrights Fired, Dark Days Ahead   The Trichordist.pdf
GEO Ex. 106	GEO2730	1909 sheet music 50 cents and 2 cent royalty.pdf
GEO Ex. 107		ASCAP resignation.pdf
GEO Ex. 108	GEO2725	Scope of Digital Rights Withdrawal   Music Licensing   BMI.com.pdf
GEO Ex. 109	GEO2707	(replaced with source) Music Streaming is "just dressed-up piracy" says Rosanne Cash - 'Download' and 'stream' are different animals. If....pdf
GEO Ex. 110	GEO2901	(QUOTE ONLY) Roger Waters Slams Silicon Valley "Rogues and Thieves" Rolling Stone.pdf

<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 111	BMI	BMI v Pandora Subpoena March 20 2014.pdf
GEO Ex. 112		Ralph Oman   U.S. Copyright Office.pdf
GEO Ex. 113		RIAA newest number March, 24, 2016 New York Times "In Shift to Streaming, Music Busines Has Lost Billions".png
GEO Ex. 114		prod_512C_2_1.jpg
GEO Ex. 115		Sony Records Attacks American Songwriters   Nashville Songwriters Association International.pdf
GEO Ex. 116		From Bart 2016-10-28.pdf
GEO Ex. 117		Facts & Stats — IFPI — Representing the recording industry worldwide.pdf
GEO Ex. 118		Of Two Minds - The Burrito Index/ Consumer Prices Have Soared 160% Since 2001.pdf
GEO Ex. 119		Frozen Mechanicals/ A Brief History   The Trichordist.pdf
GEO Ex. 120	GEO2843	RIAA Mobile News Detail.pdf
GEO Ex. 121	GEO2706	20140801_VIV_PR_Closing_of_the_interest_sale_in_Beats.pdf
GEO Ex. 122		Economist Thomos Sowell Quote.png
GEO Ex. 123	Apple	Apple Music Accounts for Just 2% of Music Streaming In the US...pdf
GEO Ex. 124	Apple	2016-09-27 Bruce Springteen on iBooks.png
GEO Ex. 125	Apple	TopFeature_1480_800_2x_fe.jpeg
GEO Ex. 126	Apple	Coming in October on iBooks.png
GEO Ex. 127	Apple	2016-10-23 iBooks email REPLACE The 100 TopSelling Books this Month.pdf
GEO Ex. 128	Apple	Kenny Chesney on Apple Music and iTunes 2016-11-02.png
GEO Ex. 129	Apple	2016-10-23 Screen Shot Game of Thrones Apple iBooks Selling Books.png
GEO Ex. 130	Apple	2016-10-23 Screen Shot Game of Thrones Apple iBooks Selling Books Enhanced Edition and TopFeature_1480_800_2x_fe.jpeg

<b>Exhibit No.</b>	<b>Web IV or</b>	<b>Description</b>
GEO Ex. 131	Apple	Screen Shot Game of Thrones Apple iBooks Selling Books.png
GEO Ex. 132	Apple	Apple iBooks Brian Wilson \$13.99 but no book streaming but album streaming free.png
GEO Ex. 133	Apple	Lady Gaga on Apple Music and iTunes 2016-10-21.png
GEO Ex. 134	Apple	What Apple Music, Spotify, YouTube, Google Play, and Microsoft Groove Are Paying Artists....pdf
GEO Ex. 135	Apple	americas_music_v15 from 15 to 18.pdf
GEO Ex. 136	Apple	Breaking/ Apple Drops Music Downloads In iTunes Korea App.pdf
GEO Ex. 137	Sony	Sony/ATV revenues fall 12% as its copyright count blasts past 4.2m - Music Business Worldwide.pdf
GEO Ex. 138	Sony	Sony's \$750m buyout of Sony/ATV has been cleared in Europe - Music Business Worldwide.pdf
GEO Ex. 139		A Copyright Coup in Washington - WSJ.pdf
GEO Ex. 140	Google	Leaked Email/ Google Chairman Wants To Be Clinton's Advisor   The Daily Caller.pdf
GEO Ex. 141	Google	Google and Amazon Leverage Copyright Loophole to Use Songs Without Paying Songwriters   Huffington Post.pdf
GEO Ex. 142		Big Tech's Latest Artist Relations Debacle/ Mass Filings of NOIs to Avoid Paying Statutory Royalties (Part 1) – Music Tech Solutions.pdf
GEO Ex. 143		Amazon and Pandora Gear Up to Challenge the Streaming Landscape   Billboard.pdf
GEO Ex. 144	Spotify	It's Really This Easy to Illegally Stream Spotify In Russia....pdf
GEO Ex. 145	Spotify	spotify_payout_salary2.jpg
GEO Ex. 146	Spotify	Spotify is making its own records... and putting them on playlists - Music Business Worldwide.pdf
GEO Ex. 147	Pandora	Pandora working on new offline service   Page Six.pdf
GEO Ex. 148	Amazon	Garth Brooks Reveals Amazon Streaming Deal Details/ Exclusive   Billboard.pdf

Exhibit No.	Web IV or	Description
GEO Ex. 149		MusicRow – Nashville's Music Industry Publication – News, Songs From Music City » NMPA, NSAI Submit Streaming Rates Proposal to Copyright Royalty Board » Print.pdf
GEO Ex. 150	NMPA	NMPA.pdf
GEO Ex. 151		Most UK Consumers Believe Music Streaming is Too Expensive.pdf
GEO Ex. 152		A Tiny Percentage of Artist Income Comes from Copyright, Study Finds... - Digital Music News.pdf
GEO Ex. 153		Prince Music Vault Being Shopped for \$35 Million/ Source   Billboard.pdf
GEO Ex. 154		SoundExchange vs. webcasters/ latest copyright rebuttal is filed – RAIN News.pdf
GEO Ex. 155	UMPG	UMPG Head Jody Gerson Addresses Breakage, Consent Decrees In Internal Memo   Billboard.pdf
GEO Ex. 156	Google	What Is YouTube Red Paying Artists? Here's the First Leaked Statement....pdf

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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)

**DECLARATION OF GEORGE D. JOHNSON (GEO)  
REGARDING WRITTEN DIRECT STATEMENT AND TESTIMONY**

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 550.4(e)(1), I declare under penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Respectfully submitted,

By: /s/ George D. Johnson

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Dated: Thursday, November 3, 2016