

**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 November 3, 2016. 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 negotiations, users and their habits, artist relationships, the industry and the competitive landscape (including business strategy pertaining thereto), revenue, and costs (including royalty rates and payments). Mr. Page's testimony also contains third-party research data 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. Nicholas Harteau's testimony contains competitively sensitive information that is not publicly known regarding Spotify's current and future products and development costs as well as business strategy. Disclosure of this information would competitively disadvantage Spotify and provide Spotify's competitors with a competitive advantage.

e. James Lucchese's testimony contains competitively sensitive information that is not publicly known regarding Spotify's current and future products and development costs, users and their habits, and business strategy. Disclosure of this information would

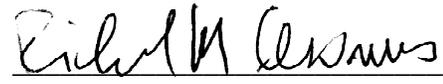
competitively disadvantage Spotify and provide Spotify's competitors with a competitive advantage.

f. 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.

6. The commercial and financial information from the written direct 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 3rd day of November 2016 in Chicago, Illinois, USA.

A handwritten signature in black ink, appearing to read "Richard M. Assmus", written over a horizontal line.

Richard M. Assmus

ATTACHMENT A

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

Document	Page/Paragraph/Exhibit	General Description
Introductory Memorandum to the Written Direct Statement of Spotify USA Inc.	p. 4 (4 redactions); p. 15-16; p. 17 (last two redactions).	Restricted information regarding service royalty rates. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.
	p.2 (2 redactions); p. 7 (2 redactions); p. 9 (three redactions); p. 11; p. 12 (3 redactions); p. 13 (3 redactions); p. 14 (first redaction).	Restricted information regarding current and projected 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.
	p. 5 (2 redactions); p. 8 (second redaction); p. 10 (4 redactions); p. 14 (second redaction); p. 16 (2 redactions); p. 17 (first redaction).	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.
	p. 6 n. 2; p. 8 (first redaction); p. 15 (2 redactions).	Restricted information regarding proprietary Spotify service (streaming/subscriber/product) data. 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. 14 (last redaction).	Restricted information regarding the music industry, competitive landscape, and consumer habits. Such information

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		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 competitive disadvantage Spotify.
Barry McCarthy	<p>p. 1 ¶ 3 (2 redactions), p. 2 ¶ 4, p. 2 ¶ 5, p. 2 ¶ 6, p. 3 ¶ 7, p. 3 ¶ 8, p. 3 ¶ 10, p. 3 ¶ 12 (2 redactions).</p> <p>p. 3 ¶ 12 (1 redaction).</p> <p>p. 4 ¶ 14.</p> <p>p. 5 heading, p. 5 ¶ 16, p. 5 ¶ 17, p. 5 ¶ 18, p. 5 ¶ 19, p. 6 heading, p. 6 ¶ 21, p. 6, ¶ 22, p. 7 ¶ 24, p. 7 ¶ 25, p. 7 ¶ 26, p. 7 n.5, p. 8 heading, p. 8 ¶ 27 (3 redactions), p. 8 ¶ 28, p. 9 ¶ 29, p. 9 heading, p. 9 ¶ 30 (2 redactions), p. 9 ¶ 31, p. 9 ¶ 32, p. 10 ¶ 33, p. 10 ¶ 34, p. 10 ¶ 35, p. 10 ¶ 36, p. 10 ¶ 37, p. 11 ¶ 38, p.</p>	<p>Restricted information regarding Spotify’s non-public financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding 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.</p> <p>Restricted information regarding current and future business strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding Spotify’s non-public financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p>

Document	Page/Paragraph/Exhibit	General Description
	<p>11, ¶ 39.</p> <p>p. 12 ¶ 40, p. 13 ¶ 41, p. 13 ¶ 43 (2 redactions), p. 13 ¶ 44, p. 13 n.13 (2 redactions), p. 14 ¶ 45, p. 14 heading, p. 14 ¶ 46, p. 14, ¶ 47, p. 14 ¶ 48, p. 15 ¶ 49, p. 15 ¶ 50 (2 redactions), p. 15 ¶ 51 (2 redactions), p. 15 ¶ 52, p. 16 ¶ 53 (3 redactions), p. 16 ¶ 54 (2 redactions).</p> <p>p. 17 heading (2 redactions), p. 17 ¶ 55, p. 17 ¶ 56, p. 17 ¶ 57, p. 17 ¶ 59, p. 17 heading, p. 17 ¶ 61 (2 redactions), p. 18 heading, p. 18 ¶ 64, p. 18 ¶ 65, p. 19 ¶ 66.</p> <p>p. 19 ¶ 67, p. 19 ¶ 68, p. 20 ¶ 69 (3 redactions), p. 20 ¶ 70, p. 20 ¶ 71, p. 20 ¶ 72, p. 20 n.16, p. 21 ¶ 73 (2 redactions), p. 22 ¶ 78 (4 redactions).</p>	<p>Restricted information regarding current and future business strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding Spotify's non-public financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Spotify's pricing strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p>
Will Page	<p>p.6 ¶ 16, p.6 ¶ 18, pp. 6-8 ¶ 19 figures.</p> <p>p. 10 ¶ 24.</p> <p>p. 10 ¶ 25, p. 10 ¶ 26, p. 11 ¶ 26 (1 redaction), p. 11 ¶ 27 (1 redaction), p. 11 ¶ 28 (2 redactions), pp. 15 ¶ 37 & figure, p. 23 ¶ 55, pp. 23-24 ¶ 56 &</p>	<p>Restricted information regarding Spotify artists. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify negotiations. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding third-party research data that was obtained pursuant to contractual confidentiality provisions. Disclosure of this information would competitively</p>

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	<p>figure, p. 24 ¶ 57, pp. 30-31 ¶ 72 & figure.</p> <p>p. 11 ¶ 26 (3 redactions), p. 11 ¶ 28 (2 redactions), p. 12 ¶ 28.</p> <p>p. 11 ¶ 27 (1 redaction).</p> <p>p. 19 ¶ 46 (1 redaction), pp. 21-22 ¶ 50, p. 32 ¶ 75, p. 32 ¶ 76.</p> <p>p. 19 ¶ 46 (1 redaction), p. 20 ¶ 47, p. 21 ¶ 48, p. 21 ¶ 49, p. 22 ¶ 51, p. 22 ¶ 52, pp. 22-23 ¶ 53, p. 23 ¶ 54, p. 23 ¶ 55, p. 23 n. 46, p.23 n. 37, pp. 24-25 ¶ 58, p. 25 ¶ 59, p. 25 n. 49, p. 25 n. 50, p.25 n. 51, p. 25 n. 52, pp. 25-26 ¶ 60, p. 26 ¶ 61, p. 27 ¶ 62, p. 27 ¶ 63, pp. 40-41 ¶ 88.</p>	<p>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.</p> <p>Restricted information regarding costs. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding revenue. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding Spotify users. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding Spotify’s views related to the competition. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p>
Paul Vogel	p.2 heading, p. 2 n.1 and n.2, p.3 ¶ 10, p. 4 ¶ 11, p. 4 heading, p. 5 ¶ 13 (2 redactions), p. 6 ¶ 14 (2 redactions), p. 6 ¶ 15, p. 6 heading	Restricted information regarding Spotify’s non-public financial information. Such information is confidential, proprietary, and

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	<p>(2 redactions), p. 7 ¶ 17 (3 redactions), p. 8 ¶ 18, p. 8 ¶ 19, p. 8 ¶ 20, p. 8 heading, p. 8 ¶ 20, p. 9 ¶ 22, p. 9 ¶ 23, p. 9 ¶ 24 (3 redactions), p. 9 n. 4, p. 10 ¶ 25, p. 10 ¶ 26, p. 10 ¶ 27.</p> <p>p. 10 heading, p. 10 ¶ 28 (2 redactions), p. 11 ¶ 29 (3 redactions), page 11 ¶ 30 (2 redactions).</p> <p>p. 11 ¶ 31, p. 12 ¶ 32 (2 redactions), p. 12 ¶ 33 (2 redactions).</p> <p>p. 12 ¶ 34, p. 13 ¶ 35.</p>	<p>commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify's pricing strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding Spotify's non-public financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding current and future business strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p>
Nicholas Harteau	<p>p.1 ¶ 3.</p> <p>p. 3 ¶ 8 (2 redactions), p. 3 ¶ 9 (2 redactions), p. 4 ¶ 14, p. 4 ¶ 15 (1 redaction), p. 5 ¶ 16 (2 redactions), p. 5 ¶ 17, p. 5 ¶ 18.</p>	<p>Restricted information regarding Spotify's employee teams. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p> <p>Restricted information regarding current and projected costs. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p>

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	<p>p. 3 ¶ 10, pp. 3-4 ¶ 11 (2 redactions), p. 4 ¶ 12 (2 redactions), p. 4 ¶ 13 (3 redactions), pp. 4-5 ¶ 15 (1 redaction), p. 5 ¶ 16 (3 redactions), p. 5 ¶ 19, p. 6 ¶ 20, p. 6 ¶ 21 (2 redactions), p. 6 ¶ 23.</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.</p>
James Lucchese	<p>p. 2 ¶ 5, p. 3 ¶ 7 (2 redactions), p. 3 ¶ 8, pp. 4-5 ¶ 11 (8 redactions), p. 5 ¶ 12 (2 redactions), p. 6 ¶ 13 (2 redactions), p. 6 ¶ 13, p. 6 ¶ 14, pp. 6-7 ¶ 15 (2 redactions), p. 7 ¶ 16, p. 9 ¶ 23, p. 10 ¶ 26, p. 10 ¶ 27 (2 redactions), p. 11 ¶ 28 (2 redactions), p. 11 ¶ 29 (6 redactions), pp. 11-12 ¶ 30 (3 redactions), p. 13 ¶ 33, p. 13 ¶ 34 (3 redactions), pp. 13-14 ¶ 35, p. 14 ¶ 36 (9 redactions), pp. 14-15 ¶ 37 (9 redactions).</p> <p>p. 3 ¶ 6, p. 8 ¶ 21, p. 16 ¶ 41, pp. 16-17 ¶ 42 (5 redactions).</p> <p>p. 4 ¶ 9, p. 9 ¶ 22.</p>	<p>Restricted information regarding current business strategy, product development, and employee teams. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify and provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding business strategy. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p> <p>Restricted information regarding Spotify users. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would provide a competitive advantage to another Participant or entity.</p>
Leslie M. Marx	<p>p.4 ¶ 13 (2 redactions); p. 25 ¶ 62 and accompanying figure; p. 25 n. 87; p. 26 ¶ 67; p. 27 ¶ 67 (figure); p. 28 ¶ 71 and accompanying figure; p. 30 ¶ 76 and accompanying figure; p. 30 ¶ 77</p>	<p>Restricted information regarding service royalty rates and non-public financial information. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would</p>

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	<p>and accompanying figure; p. 31 n. 97; p. 32 ¶ 77 (figure; p. 32 ¶ 78; p. 32 ¶ 79; p. 32 n. 98; p. 33 ¶ 79 (figure); p. 33 ¶ 80; p. 33 n. 100; p. 34 ¶ 83 and accompanying figure; p. 34 ¶ 84; p. 34 n. 101; p. 35 ¶ 84 (two figures); p. 36 ¶ 85 and accompanying figure; p. 36 ¶ 86; p. 36 n. 102; p. 49 ¶ 134, p. 49; p. 53 n. 150, p. 54 ¶ 153 (figure), p. 54 ¶ 155 (2 redactions), p. 55 ¶ 157 (3 redactions), p. 55 ¶ 159 (3 redactions), p. 55 ¶ 160 and figure, p. 55 ¶ 161, p. 56 ¶ 163 (3 redactions), p. 57 ¶ 165 (3 redactions), p. 57 ¶ 166 and figure (9 redactions), p. 57 ¶ 167 (2 redactions); p. B-2 ¶ 181, p. B-6 ¶ 199 (figure), p. B-8 ¶ 202 (figure), p. C-2 (2 redactions), p. C-3.</p> <p>p. 22 ¶ 55; p. 22 ¶ 55 n. 77; p. 23 (figure).</p> <p>p. 19 (figure); p. 19 ¶ 49; p. 19 nn. 62 & 63; p. 20 (figure); p. 21 ¶ 51; p. 21 nn. 68 & 69; p. 29 n. 96.</p> <p>p. 11 ¶ 29; p. 11 ¶ 29 n. 27; p. 11 ¶ 30; p. 12 ¶ 31; p. 12 n. 29; p. 14 ¶ 36 (two redactions); p. 14 n. 34; p. 14 ¶ 37 and accompanying figure;</p>	<p>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.</p> <p>Restricted information regarding proprietary Spotify service/streaming data. 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 the music industry, competitive landscape, and consumer habits. Such information is confidential, proprietary, and</p>

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	<p>p. 16 ¶ 39; p. 16 ¶ 40; p. 16 ¶ 41 (two redactions); p. 16 nn. 40-45; p. 17 ¶ 43; p. 17 ¶ 44; p. 17 ¶ 45; p. 17 nn. 47 – 54; p. 39 n. 112.</p> <p>p. 41 ¶ 103, p. 41 n. 117, p. 42 n. 120, p. 43 ¶ 111, p. 43 ¶ 112 (figure), p. 43 nn. 122-126, p. 44 ¶ 113 (5 redactions), p. 44 ¶ 114 (8 redactions), p. 44 ¶ 115 (9 redactions), p. 44 nn. 127-128, p. 48 ¶ 129.</p>	<p>commercially sensitive. The disclosure of such information would interfere with the ability of Spotify to obtain like information in the future and/or competitive disadvantage Spotify.</p> <p>Restricted information regarding service royalty rates, non-public financial information, and proprietary Spotify service/streaming data. Such information is confidential, proprietary, and commercially sensitive. The disclosure of such information would competitively disadvantage Spotify.</p>