

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)

WRITTEN DIRECT TESTIMONY OF JAMES LUCCHESE

(On behalf of Spotify USA Inc.)

Introduction

1. My name is James Lucchese. I am the Head of Creator at the Spotify group of companies (“Spotify”) and am an employee of Spotify USA Inc. I have served in this role since I joined the company in March 2015. I graduated with a JD in 2005 from Georgetown University Law Center in Washington, DC, and a BA in English from Boston College in 1994.
2. I joined Spotify through its acquisition of The Echo Nest, an industry-leading music intelligence company, where I served as CEO for eight years prior to the acquisition. Prior to The Echo Nest, I was an attorney with Greenberg Traurig, representing artists, music publishers, and new media companies in a range of music and digital media transactions.
3. My testimony will first provide an overview of Spotify’s artist-focused initiatives, internally known as Creator. I will then focus on two key areas: (1) how Spotify helps artists understand their fans and generate revenue beyond streaming royalties; (2) how

Spotify's music discovery products and global reach has made it materially easier for artists to find their audience.

Creator Overview: Built to Serve Artists and Songwriters

4. I joined Spotify two and a half years ago when Spotify acquired The Echo Nest. The Echo Nest was widely recognized as the leading “music intelligence platform”—a set of technologies that maintain a deeper understanding of music content and music fans in order to enable better music discovery and personalization. The Echo Nest served over 70 enterprise customers and over 30,000 smaller app developers, working with companies such as Twitter, EMI, VEVO, MTV, and Spotify, to understand music fan behavior, preferences, ultimately to enable better music discovery. When I joined Spotify, I worked on the integration of The Echo Nest's technology and employees into Spotify for approximately six months, before moving over to run Creator.
5. Spotify has [REDACTED]
[REDACTED] Spotify completed the Echo Nest integration about two years ago, after which I took over leadership of the Creator team at Spotify, augmenting Spotify's teams focused on artist services.
6. Our goal within Creator is to apply our technology and data capabilities solely to the benefit of artists. We believe we exist because of artists — the songwriters, producers, instrumentalists and performers responsible for the incredible music available on Spotify. Creator's mission is to help these artists in four ways: (1) to help them better understand

their audience; (2) to help them grow their fanbase; (3) to help them directly engage with fans; and [REDACTED] Creator has developed a number of services and products, many of which I will describe below, to accomplish this mission.

7. The Creator team has expanded rapidly, growing from myself and one other person two years ago to almost [REDACTED] employees who are focused on the artist as the stakeholder. [REDACTED]

Creator Helps Artists Understand Their Fans and Generate Revenue

8. One example of how the Creator team is dedicated to helping artists better understand their audience is Spotify Fan Insights, an analytics product launched in November 2015. SFI, as we call it, is recognized as the most in-depth fan analytics tool in the industry, providing artists with insights such as [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Data from SFI have helped artists route tours, pick their next single, connect different artists for music collaborations, and serve as the blueprint for global promotional campaigns.

9. SFI is part of a fully automated self-service website that can be accessed 24/7 anywhere in the world. Currently, over [REDACTED] monthly active users visit the site.

10. SFI was created to help artists tackle one of their biggest challenges—understanding their most passionate fans. Many artists generate 80% of their revenue from the top 20% of their fans, so in-depth understanding of these “superfans” can help artists target their highest-value fans to maximize promotional efforts and increase revenue. Though these fans are the most valuable, most platforms don’t give artists the ability to segment fans based on passion or depth of engagement. Facebook, for example, knows that a fan clicked “like,” but they don’t know whether that fan tuned out years ago or is still listening to your record every day.

11. To help artists gain this insight and ability to segment listeners and fans, SFI provides the following data (the list is not exhaustive):

[REDACTED]

12. This information provides real-time data that artists can act upon. . For example, insights around an artist’s fan base’s preferences for other artists has helped artists find music collaborators and opening acts. Geographical data have helped many artists plan tours, even down to optimizing their set lists for the song preferences of a local market. The [REDACTED] for example, used these data in collaboration with our team to route a [REDACTED] [REDACTED]

13. These real-time, detailed insights simply were not possible in the days of CD sales or even permanent digital download (“PDD”) sales, and certainly cannot be derived from terrestrial broadcast. On-demand streaming is different than CDs, PDDs, or broadcast— [REDACTED]

[REDACTED]

[REDACTED] We serve as the musical companion to a music fan throughout his or her day—from discovering a new artist while listening to a playlist on the way to work, to

sharing that new song with a friend through Spotify’s social features, and to listening to the artist’s album every day for the next week. [REDACTED]

[REDACTED] we can obtain an in-depth understanding that can help an artist grow, engage and monetize his or her fan base.

14. Data also allow Spotify to help artists engage their top fans—listeners who are most passionate about an artist—in “SuperFan” campaigns. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

15. We have done SuperFan campaigns for a wide range of artists and songwriters, from superstars to developing artists. Artists we’ve worked with include [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] On average, artists generate approximately [REDACTED]

16. These campaigns, along with other approaches to apply our audience understanding to drive ticket sales for artists, have connected thousands of artists with millions of fans, generating over [REDACTED]

[REDACTED]

Spotify Has Changed Music Promotion and Discovery to the Benefit of Artists

17. For about a decade, Spotify has sought to *democratize* music discovery, making it easier for any artist to find his or her audience, without the constraints of traditional gatekeepers—or even geography—that have defined music promotion and discovery in the music industry.
18. Before Spotify and streaming, the means to build a commercially-sustainable audience was defined by scarcity, and because of that scarcity, large-scale promotion was largely controlled by intermediary gatekeepers.
19. When I refer to scarcity, I’m talking about scarcity in two areas: first, in the very small number of artists broadcast radio is able to promote and second, in physical inventory in record stores. Terrestrial radio has between 12-16 primary radio formats (for example, “Pop”, “Rock”, “AAA”, etc.) that are essentially the same nationwide, and controlled by only a few companies. Between the overlap in songs and relatively non-diverse radio formats, there simply are not very many open “slots” for an artist to get on the radio. As a result, very few artists and songwriters were fortunate enough to have the supporting resources to promote their music to a very small group of radio programming decision makers. Also, those promotional opportunities are only available to certain mass-market genres, leaving radio out of reach for thousands of deserving artists.
20. These hurdles were not the only barriers for artists. Before streaming, “break on US radio, then we’ll promote you elsewhere” was a very common marketing strategy that defined the industry for years. For that tiny percentage of artists who were fortunate enough to get their songs on the radio, if a song didn’t immediately resonate with the

audience (based on fairly antiquated survey techniques), promotional support by the artist’s record label would typically end. So even if an artist were able to get radio play—a difficult thing given the limited slots—ongoing marketing support of her music would be determined by how a song resonated within a very non-diverse radio programming station. If an artist didn’t meet that exacting formula, global promotion typically would not happen. This approach left the vast majority of well-deserving artists and songwriters without the ability to reach a willing audience.

21. Spotify has broken down these barriers in two ways: First, by applying data-driven personalization [REDACTED] Spotify has built products that create a personalized “radio format” for every one of our 100+ million users, without any limitations in spectrum scarcity or mass-market formulas. The key is whether a song connects with that specific listener—if it does, Spotify will promote that song to that listener. This approach is free of the well-established ‘popularity bias’ inherent in terrestrial radio, offering a powerful promotional platform to lesser known artists. Second, by breaking down territorial approaches of promoting an artist and reaching an audience, Spotify makes it much easier for an artist to reach a global audience.

Spotify’s Recommendation Products Understands Listeners and Drives New-Artist Discovery and Revenue

22. With nearly [REDACTED] Spotify has the largest streaming consumer base in the world. By having a two-way conversation with its

users, Spotify can learn from its listeners to create playlists filled with artists users will love. Many of these users will become fans, opening up a massive audience for artists.

23. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. By focusing on personalized music recommendations and tailored editorial playlists that are queued to specific listening situations, such as by genre, activity, or mood, we can greatly expand the number of artists we promote at any given time. While a large radio station may have a few hundred songs in rotation, Spotify is recommending millions of songs to millions of fans at any given time.

25. To illustrate this effect, I will discuss two of our important discovery products, Discover Weekly and Fresh Finds, below.

Discover Weekly Is an Innovative Tool for Promoting Thousands of Artists to Millions of Fans

26. Discover Weekly is one of Spotify’s most popular music discovery products. Using machine learning techniques that build “taste profiles” on each Spotify user, then identify [REDACTED] that match a user’s taste, Discover Weekly brings each user two hours of custom music recommendations, tailored specifically to each and every user and delivered at the beginning of each week as a unique Spotify playlist. The technology combines an understanding of each user’s personal taste with analysis of artist similarity and user vectors. As a user’s taste evolves, so do the personalized playlists. Users can

also share the playlist with their friends, turning music discovery into social interconnectivity.

27. The personalization of Discovery Weekly playlists means that there are no limits on available slots or the number of artists we can promote. While a large radio station may have a few hundred artists in rotation, Discover Weekly has recommended over [REDACTED] [REDACTED] to millions of fans, pushing a new unique playlist of 30 songs to every Spotify user *every week*. In total, Spotify has introduced an artist to a fan for the first time approximately [REDACTED] times per month.

28. The result is a promotional effect that is not reliant on traditional gatekeepers or decision makers—instead, artists are promoted based on how their songs will resonate with each individual listener and large-scale machine learning technologies enable this as a massive, global scale—over 100 million personalized radio station, customized to each listener’s specific taste. This personalized approach is absolutely helping relatively unknown artists build a fan base. As of October 2016, there are more than [REDACTED] such artists who got [REDACTED] of their listeners in the past month from Discover Weekly.

29. For example, in January 2016, Discover Weekly drove [REDACTED] [REDACTED] As of this month, [REDACTED] [REDACTED] are coming from *their own* saved music. That means that after Discover Weekly introduced [REDACTED] to a large audience, many of those listeners became fans and saved his music to their own collection on Spotify and have continued to listen to [REDACTED] habitually. The group [REDACTED] of their weekly listeners from

Discover Weekly in January 2016. Since then, they experienced [REDACTED]
[REDACTED] of which are coming from their
own saved music. [REDACTED]
[REDACTED]

30. By growing artists' fan bases, Discover Weekly has created big breaks for many
emerging artists. [REDACTED]

[REDACTED] The song was
promoted on Discover Weekly as well as picked up by Spotify-curated playlists, and it
became so popular that he quit his day job to pursue his music career full-time. As of
September 2015, he had almost [REDACTED] with over [REDACTED]
streams.

***Fresh Finds Is Especially Focused on the Long-Tail of Artists Who Would Have
Simply Remained Unknown Under the Old Radio System***

31. As the success of Discover Weekly shows, by focusing on taste profiles and
personalizing the discovery experience, Spotify's music discovery products can have a
powerful promotional effect on songs that connect with listeners. And where Discover
Weekly works by connecting each listener with the unique artists he or she would love,
another discovery product, Fresh Finds, is especially focused on replicating this effect
with lesser-known artists. This means that artists who were traditionally underserved by
the old system of breaking out based on radio play can break out on Spotify simply by
making great music.

32. Spotify seeks to find these artists through its product Fresh Finds. By focusing solely on unknown artists—the long tail of singer-songwriters, producers, and other artists who were grossly underserved under the old paradigm—Spotify is seeking once again to democratize music promotion and discovery, breaking down the legacy “gatekeeper” system.
33. With a soft launch on July 22, 2015 and official launch on March 2, 2016, the product uses a process that applies technology to understanding Spotify’s music community and combines that with Spotify’s Shows & Editorial team: Algorithms identify “tastemakers” among Spotify users [REDACTED]—think of these tastemakers like your friend who is always the first to hear about a cool new band. The algorithms take a look at what other songs these tastemakers are listening to, identify the artists and songs that are generating the most buzz among these tastemakers and then hand those results to Spotify curators, who organize the songs into playlists that have a smooth flow from one song to the next. Six Fresh Finds playlists are released each week—one flagship playlist and five genre-based playlists. The playlists are updated each Wednesday and are available to all (i.e., they are not user-specific).
34. During the soft launch, artists on Fresh Finds increased their listener counts by an average of [REDACTED]. The top 10% of Fresh Finds artists increased their listener counts by an average of [REDACTED]. Current data show that artists gain [REDACTED] more listeners after their Fresh Finds debut.

35. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The

only factor considered is how a song connects with a listener.

36. The group [REDACTED] is a great example of Fresh Finds and the Spotify [REDACTED] [REDACTED] Fresh Finds was the first Spotify playlist to feature [REDACTED] At that time, the band had a [REDACTED] monthly listeners. Fresh Finds listeners heard and loved [REDACTED] and based off of this listener engagement, the band was added to several Spotify curated playlists, including [REDACTED]
[REDACTED]

With the additional listeners from Fresh Finds and Spotify-curated playlists, the Discover Weekly algorithms started promoting the band to even more listeners. The band now has [REDACTED] monthly listeners and had [REDACTED] monthly listeners at their peak. They reached #2 on Spotify's Global Viral Chart and #23 on Billboard's Spotify Velocity Chart, accumulating [REDACTED] streams and receiving multiple record label offers. Though their

success is primarily driven by the power of their music, the Spotify promotional ladder has created opportunities for them that were incomprehensible before Spotify.

37. Another band that broke out through Fresh Finds is Los Angeles-based [REDACTED] group. [REDACTED] was the first track delivered to Spotify in the fall of 2015. At the time [REDACTED] was featured on Fresh Finds, the band had about [REDACTED] monthly listeners. Following success in Fresh Finds, a similar “promotional ladder” effect ensued. Today, [REDACTED] has reached over [REDACTED] monthly listeners. [REDACTED] performed at the 2016 [REDACTED] along with a number of other artists who surfaced through Fresh Finds, including [REDACTED]

38. Discover Weekly and Fresh Finds are but just two of our popular music discovery products, and the stories I’ve shared above are just a few of the many, many success stories of artists who have found mass audiences on Spotify—success stories that likely may never have happened under the old paradigm of radio as tastemaker. But Spotify has done more than just create innovative technological tools for artist discovery. As I describe below, Spotify’s global reach means that today’s artists can connect with music fans on a truly international—not just regional—scale.

Spotify Opens a Global Audience to Artists

39. As previously noted, the legacy, radio-first music marketing strategy focused first on promotion to U.S. radio, then, if an artist “broke” in the U.S., campaigns would then expand globally . The drawback to this strategy is pretty clear: Suitability for terrestrial

radio play in the U.S. is a very poor predictor of whether a song will connect with fans in Mexico City, or Brisbane, Australia, or Barcelona, Spain.

40. Under the old paradigm, many American artists were unable to reach their international audiences. As a global service active in 60 territories around the world, Artists have immediate access to a global audience. So on Spotify, a Nashville-based singer songwriter can reach fans in Mexico, Australia or Spain just as easily as reaching a fan in Nashville or New York. Combining this global scale with Spotify’s personalization capability means we can help artists find their fan base, no matter where they live. This results in larger, more global fan bases for artists, resulting in more listening and ultimately, more revenue.
41. Take, for example, Major Lazer’s “Lean On.” The song was released globally in March 2015, and by May, Lean On had about 2.5 million streams. The song initially gained traction outside the U.S., which in turn resulted in fan-to-fan sharing, which in turn resulted in the song appearing in Spotify social charts and ultimately to other Spotify-curated playlists. Lean On eventually reached the top of Spotify’s *global* chart, from the week ending May 31 to the week ending July 30. By the end it had *38 million* streams—more than 15 times as many as two weeks earlier. Had Lean On been solely dependent on the old “break it in US radio, then go global,” [REDACTED]
[REDACTED]
42. Or take the small electronic music duo [REDACTED] Upon release of their single [REDACTED] the editorial team at Spotify noticed positive trending data and added it to the “New

Music Friday” and “Weekly Buzz” playlists. After two weeks, it was competing with [REDACTED] for top performing track and added to “Today’s Top Hits.” The band landed a record deal with [REDACTED] and confirmed a 50 date North American Fall Tour. They have over [REDACTED] streams to date, with New York City (Manhattan), Singapore, Los Angeles, London, and Oslo as the top five cities where residents have streamed their songs.

Conclusion

43. Spotify deeply believes we exist because of artists. For that reason, we have worked to empower artists to better build a fan base, grow that fan base and ultimately earn more from that fan base.
44. By helping artists understand and engage their superfans, Spotify is helping artists generate more revenue across a diverse range of revenue streams.
45. By democratizing music discovery, Spotify is helping tens of thousands of artists that previously had no means to reach large-scale audiences.
46. By breaking down geographic boundaries, Spotify is helping artists reach a global audience, finding their fans anywhere in the world.
47. Though we are proud of what we’ve accomplished thus far, we have just started to unlock the power of streaming to maximize each artist’s reach to relevant fans around the world and to help artists build larger, sustainable incomes by better understanding and engaging that global fan base. In all cases, what benefits the artist also benefits the fan, increasing

the availability and discovery of music, no matter what niche or musical style and enables a deeper connection between artist and fan.

48. As the leading streaming provider in the world, Spotify envisions a future where every artist reaches every relevant fan around the world and every fan is connected to a larger, more vibrant global community of songwriters, performers and producers than ever before. We have invested substantially to realize that vision and will continue to do so.

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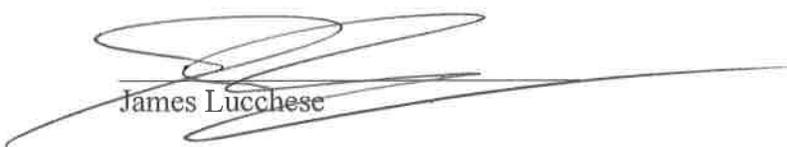
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DECLARATION OF JAMES LUCCHESI

I, James Lucchese, declare under penalty of perjury that the statements contained in my Written Direct Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief. Executed this ³¹ day of October 2016 in New York, New York.


James Lucchese