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July 13, 2021

Dr. Carla Hayden, Librarian of Congress
Shira Perlmutter, Register of Copyrights
The Library of Congress
101 Independence Ave SE
Washington, DC 20540

Dear Dr. Hayden and Ms. Perlmutter,

As a Representative covering music communities from San Antonio to Austin, the "Live Music Capitol of the World," some of my songwriter constituents[1] are concerned about some procedural and substantive issues arising in the ongoing "Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (*Phonorecords IV*)" currently pending before the Copyright Royalty Board (CRB). I write to seek some clarity for them and for me. The statutory rates set by the CRB are binding on all songs ever written or that may ever be written by anyone in the world who exploits songs in copyright in the United States. While referred to as a "minimum" I am told that statutory rates in practice are a maximum and are, of course, compulsory. Naturally, I am concerned that we not misstep.

While I know the CRB has not rendered a decision in *Phonorecords IV*, I am trying to understand the process by which the CRB: (1) evaluates settlement agreements proffered by certain parties to a proceeding prior to publishing those settlements for public comment, (2) determines the application of the new "willing buyer/willing seller" standard for rate setting when buyer and seller are related parties, and (3) the degree of transparency that the CRB may require of participants in the proceeding particularly terms of private settlements that the parties voluntarily disclose related to the rates they have negotiated.

In particular, I draw your attention to the *Motion To Adopt Settlement Of Statutory Royalty Rates And Terms For Subpart B Configurations*, Docket No. 21-CRB-0001-PR (2023–2027) filed by the National Music Publishers Association (NMPA), Nashville Songwriters Association International, Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp.[2] This settlement has provoked concern because of its disclosed terms regarding an additional five-year freeze for "mechanical" royalty rates on phonorecords in the physical and permanent download configurations, and undisclosed terms if adopted by the CRB in its determination.

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[1] *ATX Musicians Joins Opposition to Frozen Mechanicals*, The Trichordist, https://thetrichordist.com/2021/05/28/atx-musicians-joins-opposition-to-frozen-mechanicals/
[2] Available at https://app.crb.gov/document/download/25288

The settling parties apparently refer to both a settlement agreement relating to certain mechanical royalty rates and another agreement that refers to undisclosed "negotiated licensing processes and late fee waivers." Those settling parties ask the CRB to adopt their settlement on an "industry-wide basis," and I am trying to better understand what this request means. I do not wish to interfere in the CRB's adjudication of the matters before it, but I hope you can help me understand certain procedural matters relating to the CRB itself.

I would appreciate your answering the following questions at your earliest convenience due to the ongoing nature of both *Phonorecords IV* and other rate setting proceedings before the CRB and thank you in advance for your courtesy.

(1) There appear to be two settlements referenced in the Motion, being the rate setting settlement summarized in draft regulations attached and this other "memorandum of understanding" ("MOU") between Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp. (i.e., the same parties to the private rate settlement except the NSAI).

Question: May the CRB disclose (or compel the settlement participants to disclose) the unredacted actual settlement agreements referenced in the Motion, including the MOU?

(2) In the Music Modernization Act,[3] Congress directed CRB Judges to set the statutory mechanical royalty rate by utilizing a "willing buyer/willing seller" rate standard designed to model the rates that would be reflected in a free market. In the case of the "industry-wide" settlements proposed by the Motion, it appears that there may be joint ownership of some of the members of the NMPA and the record companies proposing the settlement on rates.

Question: Are the Subpart B rates subject to the "willing buyer/willing seller" rate standard?

Question: If so, what is the rule when the "willing buyer" and "willing seller" are under the same corporate umbrella?

(3) It seems that the participants in the proceeding, and certainly the participants in the settlement, are dominated by major publishers and record companies seeking to impose their private settlement on all other songwriters. If other songwriter groups are not participating in the proceeding but object to the settlement (such as songwriters from more diverse communities) I am concerned that those songwriters may have no recourse.

Question: May the CRB limit the scope of a private party settlement to the parties, but determine a higher rate applies to others?

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[3] 17 U.S.C. § 115(c)(2)(A).

The Motion and the "frozen mechanicals" issue has prompted considerable public debate in the United States and Europe as reported in The Trichordist artist blog,[4] Billboard,[5] Complete Music Update[6], and the Creative Industries Newsletter.[7] Three NSAI songwriters have published a defense[8] of their participation in the Motion. The Trichordist notes that the CRB produces considerable frustration and passion on all sides because the process is "inequitable, unwieldy and prohibitively expensive."[9]

On page 4 of the Motion, the parties advise the CRB that this settlement represents the "consensus of buyers and sellers representing the vast majority of the market for "mechanical" rights for [physical, permanent downloads]…" Setting aside the issue of the settlement participants representing "buyers" and "sellers" under the same corporate umbrellas, it seems appropriate that every songwriter who will be affected by the outcome of this proceeding, from San Antonio and Austin, Memphis, to Detroit and beyond, should have the opportunity to read and comment meaningfully on the actual settlement agreement posed for adoption, and the related MOU referenced.

I look forward to your response and to continuing to work with you on these matters of such critical importance to our culture and to songwriters everywhere. Please also let me know if you have any other insights to this which may be helpful for my constituents.

Sincerely,

Lloyd Doggett

[4] https://thetrichordist.com/category/frozen-mechanicals/
[5] https://www.billboard.com/articles/business/9577976/songwriters-crb-royalty-rate-comments-letters/
[6] https://completemusicupdate.com/article/songwriter-groups-urge-us-copyright-royalty-board-to-open-submissions-on-proposed-new-mechanical-royalty-rate-on-discs-and-downloads/
[7] http://legrandnetwork.blogspot.com/2021/06/songwriters-organisations-object-to.html
[8] https://musicrow.com/2021/06/nsai-songwriters-respond-to-criticism-of-decision-not-to-challenge-physical-royalty-rates/
[9] https://thetrichordist.com/2021/06/03/three-nashville-songwriters-respond-on-frozen-mechanicals/