Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re	
Determination of Rates and Terms for Making and Distributing Phonorecords ("Phonorecords V Proceeding")	Docket No. 25-CRB-0013-PR (2028-2032) August 8, 2026

INDEPENDENT MUSIC CREATORS (SONGWRITERS GUILD OF AMERICA AND WORD COLLECTIONS) -- OBJECTION TO PROPOSED SUBPART B SETTLEMENT

Pursuant to 17 U.S.C. § 801(b)(7)(A)(i) and 37 C.F.R. § 351.2(b)(2), participants Songwriters Guild of America, Inc. ("SGA"),[1] and Word Collections, Inc. ("WC") [2] (collectively, the "Independent Music Creators"), respectfully object to the **Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations** (the "Proposed Settlement") filed on or about June 29, 2026 by the National Music Publishers' Association, Inc. ("NMPA"), Nashville Songwriters Association International ("NSAI"), and the Music Artists Coalition ("MAC") (collectively, the "Publisher Participants"), together with Sony Music Entertainment, UMG Recordings, Inc., Warner Music Group Corp., and the American Association of Independent Music ("A2IM") (the "Record Company Participants," and collectively with the Publisher Participants, the "Proposed Settling Parties").

The Independent Music Creators (representing thousands of American creators and copyright owners of musical compositions and their heirs), are participants in this Proceeding. Where a participant who

[1] **SGA** is the longest established and largest music creator advocacy and copyright administrative organization in the United States run solely by and for songwriters, composers, lyricists and their heirs. Its positions are reasoned and formulated independently and solely in the interests of music creators, without financial influence or other undue interference from parties whose interests vary from or conflict with those of songwriters and other authors of creative works. Established in 1931, SGA has for over 95 years successfully operated with a two-word mission statement: "Protect Songwriters," and continues to do so throughout the United States and the world. SGA's organizational membership stands at approximately 4500 dues paying members.

[2] **WC** is a global publishing administrator representing more than 116,000 musical compositions including some of the most popular musical works ever created. Among other services including creative guidance, WC licenses, administers, and collects mechanical reproduction royalties on behalf of its affiliated songwriters, composers, and music publishers, including mechanical royalties earned from the use by digital services of its clients' musical compositions licensed pursuant to the blanket compulsory mechanical license under 17 U.S.C. § 115.

would be bound by a proposed settlement agreement among or between two or more other participants objects to that proposal, the Judges may adopt a settlement as the basis for statutory rates and terms only upon concluding that it *"provide[s] a reasonable basis* for setting statutory terms or rates*."* 17 U.S.C. § 801(b)(7)(A)(ii) (emphasis added). At its core, the plain language of that provision places the burden of providing proof of "reasonability" squarely on the parties submitting the proposed settlement.[3] For the reasons set forth herein, the Proposed Settlement submitted by the aspiring Settling Parties clearly does *not* satisfy that standard, and we respectfully request that the Copyright Royalty Board ("CRB Judges") decline to adopt it forthwith.

I. GENERAL COMMENTS OF THE INDEPENDENT MUSIC CREATOR PARTICIPANTS

The Independent Music Creator participants in this Proceeding view the Proposed Settlement tendered to the CRB Judges --principally by the trade associations representing the major, vertically integrated conglomerates that dominate ownership over an aggregated seventy percent of both the world's copyrighted musical compositions and recordings[4] -- as demonstrably unreasonable. Far from representing a simple, roll-forward extension of cost-of-living adjustment ("COLA") safeguards and principles the Settling Parties' and their supporters claim it to be[5] (and which our organizations would have supported if properly framed), it instead in many respects appears to represent misdirection through complexity, seemingly fashioned to enshrine below-market mechanical royalty rates for songwriters,

---

[3] See, 17 U.S.C. § 801(b)(7)(A)(ii): "[T]he Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant…objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement *does not provide a reasonable basis* for setting statutory terms or rates." (emphasis added)

[4] See, e.g., https://www.musicbusinessworldwide.com/the-three-major-music-publishers-now-own-or-control-over-10-million-songs-between-them-kind-of/#:~:text=Sony's%20global%20music%20publishing%20operation,now%20controls%205.46%20million%20songs%3B&text=Universal%20Music%20Group's%20global%20publishing,controls%20"nearly%204%20million"%20songs%3B; and, https://www.ifpi.org/wp-content/uploads/2024/03/GMR2025_SOTI.pdf.

[5] See, http://business.cch.com/ipld/USCopyrightRoyaltyJudgesmotionresettlement2026-0629071026.pdf : "[The royalty rate] should not be amended except for continuing inflation adjustments to the rates for physical phonorecords and permanent downloads." See also, https://thetrichordist.com/2026/07/02/songwriters-are-being-asked-to-accept-something-weve-never-seen-before/

composers and lyricists as the basis for all future, US mechanical royalty calculations concerning physical phonorecords, downloads, ringtones and Subpart B bundles.

The actual effect of the Proposed Settlement as drafted --apparently not yet perceived by many of its commenting supporters-- would likely be to *diminish* rather than enhance reasonable fairness through application of a surreptitiously modified COLA process. Most comments submitted so far completely ignore the fact that the proposed deal seems intended to ensure that the "new" Phonorecord V base rate will NOT begin at the current rate of 13.1 cents or more, but would in reality be lowered back to a reset rate of 12 cents on January 1, 2028, under the terms of the statutory and administrative rules incorporated by reference into the Proposed Settlement (as explained herein below) .[6] Added to that unfortunate likelihood is the reality that the 12-cent rate itself omits application of government inflation statistics for the entire period of January 1, 2021 to December 31, 2022, a period marked by the worst US economic value erosion in the past four decades or more.

In evaluating the long-term effect of those two elements of the Proposed Settlement, it is vital to understand that applying a percentage COLA to a depressed baseline rate merely carries the existing deficit forward and compounds it over time, without providing any mechanism for correction. The resulting rate would remain permanently below its actual CPI-adjusted market value, nominally "adjusted" each year, but effectively frozen in perpetuity at a level below what a full inflation adjustment would produce. This ever-increasing, economic feedback loop of lost revenue will cause hundreds of millions of dollars in royalty losses to independent music creators and small music publishing entities in very short order, to the sole benefit of record labels (and by extension their affiliated music publishers).

Moreover, as in the Phonorecords IV proceeding, the Independent Music Creators suspect that the Proposed Settlement was arrived at through near-unilateral discussions principally among the trade group

[6] See, for example, https://app.crb.gov/document/download/79320

representatives of different divisions of the same companies, each with like goals opposite to the fairness principles favored by the community of America's music creators, for whose protection (along with creators in other artistic disciplines) the US Copyright Act was enacted pursuant to Article 1 Section 8 of the US Constitution.

For the reasons explained herein, the Proposed Settlement should therefore be rejected by the CRB Judges as representing the antithesis of a "reasonable" settlement fashioned at arm's length. Instead, more robust, cooperative negotiations among the parties should be encouraged by the CRB Judges to produce a consensus-based settlement that truly *is* reasonable in effect, just as Congress intended when it enacted Chapter 8 of the Copyright Act and granted an antitrust exemption for that exact purpose.[7]

Before proceeding to the specific and unreasonable tenets of the Proposed Settlement that render it deficient, correction of the record as presented by the Settling Parties concerning the process by which it was negotiated is also both relevant and warranted. We raise the following points solely to set the record straight owing to the misstatements of the Settling Parties discussed below, specifically that named independent music creators (including our organizations) "declined to join" in the Proposed Settlement. We cannot allow that false allegation to stand without correction and elucidation, as we believe it may intentionally insinuate a lack of cooperation and collegiality on our part, thereby undermining our reputation as to integrity and genuine concern over the core issues raised by the Proposed Settlement.

Prior to the Proposed Settlement's submission, the contacts that took place among the independent music creator participants SGA, WC, George Johnson and others on the one hand and the Publisher and Record Company Participants on the other, were extremely limited. In general, the independent music

[7] See, e.g., 17 U.S. Code § 118; See also, H.R. Rep. No. 108-408, at 30 (2004).

creators attempted to convey on numerous occasions to their corporate colleagues a willingness to engage in a detailed, collaborative approach for expeditiously negotiating an equitable Subpart B settlement. The requested collaborative process, however, did not materialize in a meaningful way.

The Independent Music Creators hereby repeat what we have previously made clear over and again for years (including numerous public statements and separate submissions in the Phonorecord IV proceedings and before): it is always our desire for reasoned discussions to take place when it comes to establishing mechanical royalty rates. Specifically, despite the unique, historic wrongs over the past century that kept statutory mechanical royalty rates frozen at two-cents for sixty-nine years between 1909 and 1978 --and artificially depressed such rates thereafter that should have been over *fifty cents* based on US Government inflation statistics by the end of 2020 (but which still somehow remained static at 9.1 cents)-- it has publicly and consistently been made clear over a period of several years that we agree in good faith that a simple, fair and reasonable COLA-based, proposed solution going forward that preserves value back to a reasonable date, is our goal.[8] We made clear our desire to engage in detailed discussions with the Settling Parties concerning the potential achievement of those reasonable objectives.

Despite foregoing such detailed discussion with us, the Settling Parties nevertheless asserted in their submission of the Proposed Settlement to the CRB, the following claim:

> The Parties have had settlement conversations regarding the so-called Subpart B rates and terms with the other copyright owner Participants in the Proceeding (Songwriters Guild of America, Word Collections, Inc., Eight Mile Music Companies, and George Johnson), ***who declined to join this settlement.*** (emphasis added)

Again, that disappointing statement is, plain and simple, intentionally misleading. Instead of advancing the opportunity for collegial collaboration for which we had hoped, not only did SGA, WC and

[8] See, https://www.musiccreatorsna.org/mcna-dec22-comments-on-phonorecords-iv/.

Mr. Johnson fail to receive comments in reply to their written requests for detailed dialog (receipt of which was acknowledged), they were not even extended the reciprocal courtesy of seeing the Proposed Settlement or being told of its contents prior to its filing. In other words, the Independent Music Creators did not "decline" to join the Proposed Settlement. Indeed, by mainly excluding the Independent Music Creators from the Settling Parties' negotiation process, the Settling Parties never gave the Independent Music Creators the opportunity to either join, or decline to join, the Proposed Settlement before the Settling Parties filed their proposal with the CRB Judges.

While being disheartened by this turn of events, we remain open and willing to participate in further voluntary Subpart B and Phonorecord V discussions. We are, however, quite sure that what has transpired so far is not the type of good faith communication and fair dealing that Congress had in mind in extending an antitrust exemption to enable private negotiations among parties participating in royalty rate-setting proceedings, especially those proceedings characterized by demonstrable conflicts of interest through vertical integration as already noted by the CRB in Phonorecords IV.[9]

We would hope that any future opportunities to improve this situation will be met by the Settling Parties with a willingness to engage in open-minded cooperation, even if such talks need to take place at the urging of the CRB Judges. That is the very spirit we believe Congress intended to engender through the CRB system, and we look forward to re-engaging in that process regarding Subpart B rates and terms and other Phonorecord V issues.

[9] See, Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 Fed. Reg. 18342 (Mar. 30, 2022) (Doc. No. 2022-06691). Therein, the CRB stated: "Conflicts are inherent if not inevitable in the composition of the negotiating parties. Vertical integration linking music publishers and record labels raises a warning flag...While corporate relationships alone do not suffice as probative evidence of wrongdoing, they do provide smoke; the Judges must therefore assure themselves that there is no fire. The potential for self-dealing present in the negotiation of this proposed settlement and the questionable effects of the private Memorandum of Understanding among the parties ("MOU")] are sufficient to question the reasonableness of the settlement at issue as a basis for setting statutory rates and terms.... [T]he Judges find that the proposed settlement does not provide a reasonable basis for setting statutory rates and terms. Furthermore, the Judges find a paucity of evidence regarding the terms, conditions, and effects of the MOU. Based on the record, the Judges also find they are unable to determine the value of consideration offered and accepted by each side in the MOU. These unknown factors, as highlighted in the record comments, provide the Judges with additional cause to conclude that the proposed settlement does not provide a reasonable basis for setting statutory rates and terms."

As to proceeding participants NSAI and MAC joining the Settling Parties in their submission, we are certain they have their own private reasons for acquiescing to the Proposed Settlement, about which the Independent Music Creators decline to speculate. We do wish to note for the record, however, that (1) MAC's constituency is primarily recording artists and musicians who are overwhelmingly the users rather than the creators of musical compositions,[10] and (2) NSAI has not, to our knowledge, broken with the music publishing industry on any policy matter of note for over a decade. [11]

Turning to our own, straight-forward and specific positions on Subpart B royalty rates, they focus principally on fair and simple application under Phonorecords V of *cumulative* COLA adjustments based upon annual US Governmental Consumer Price Index ("CPI") statistics, preserving full value as of the logical and necessary starting point of December 31, 2020 (the ending date of the most recent year in which we believe the CPI was used to determine actual lost value of the 9.1 cent Subpart B royalty rate for physical product and downloads prior to the initiation of Phonorecords IV). That is emphatically not, we believe, what the Proposed Settlement is intended to do, or would do.

Stated more succinctly, and as we have explained publicly all along, only that formula would both produce a reasonable starting point in 2028 for Phonorecords V Subpart B royalty rates *exactly equal in value to the 9.1-cent rate on its date of first introduction of January 1, 2006, and protect future value through COLA*. Any other result in Phonorecords V would represent a diminution in value to music creators, not fair dealing and value preservation. Our groups were and continue to be of

[10] See, https://www.musicartistscoalition.com/about for a self-explanation of MAC: "MAC is BY ARTISTS, FOR ARTISTS: Focused on protecting the rights, financial security, and creative freedoms of musicians, the organization has already made significant impact shaping public policy. In partnership with other powerful interest-aligned music industry organizations, we fight to address critical ISSUES, standing behind artists when their rights are threatened." (emphasis added)

[11] See, e.g., https://www.billboard.com/pro/mechanical-royalty-rate-ditched-new-crb-ruling/; https://wegetartists.com/bmg-puts-the-major-labels-riaa-and-nmpa-on-blast-over-mechanical-royalties-music-companies-have-a-duty-to-stand-up-for-artists-and-songwriters/ and https://www.digitalmusicnews.com/2022/10/07/phonorecords-iv-settlement-full-agreement/; https://thetrichordist.com/2021/05/24/copyright-royalty-board-responds-to-coalition-of-songwriter-groups-on-frozen-mechanicals/

the belief that such a result is the reasonable course necessary to satisfy the standard for adoption by the CRB Judges of a voluntary Subpart B settlement, and we were and remain willing to discuss it further at length with the Settling Parties.

The Issue of Omitted Inflationary Statistics from 2021 and 2022: As to the core question of whether the Settling Parties and their Proposed Settlement satisfy the threshold statutory burden of "reasonability," we repeat that the misleading construction underlying the proposal inevitably leads to the conclusion that it is simply not the COLA "roll forward" extension it has been portrayed to be by its supporters. As explained below, the Proposed Settlement, in fact, reveals itself to be wholly *unreasonable,* underlined by what we deem to be a false assertion by the Settling Parties that further statutory and/or rules amendments are not required to ensure fairness in the Proposed Settlement's future application.

To begin with, the CRB Judges will no doubt recall that a nearly identical group to those organizations which now comprise the current Settling Parties came forward in May of 2021 with an initial proposed settlement in the Phonorecord IV Subpart B proceedings, asking that the 9.1-cent royalty rate for physical phonorecords and downloads remain unchanged for yet another five-year period. This, despite the fact that such royalty rate had already remained in effect for the three prior proceedings totaling over fifteen years.[12] Following the filing of objections by Mr. Johnson as a proceeding participant, and by SGA and numerous other interested but non-participating parties on behalf of independent music creators and individual music publishers, the CRB Judges wisely refused in March of

[12] See, Phono IV Initial Determination, 87 Fed. Reg. at 18347 (Mar. 30, 2022) (Doc. No. 2022-06691).

2022 to adopt yet another, unadjusted 9.1-cent royalty rate settlement in Phonorecords IV, put forward by parties whom they considered to be potentially, seriously conflicted.[13]

Those same Phonorecord IV Subpart B settling parties thereafter returned to the CRB Judges in May of 2022 with a revised settlement proposal. It applied CPI-based COLA statistics to the 9.1-cent rate based on inflationary periods that extended only up to and including the full year 2020. *We know this because simple application of published US Government CPI rates from the date upon which the 9.1 cent rate was first instituted (January 1, 2006) indicate that the relative value of 9.1 cents had reached nearly exactly 12 cents by December 31, 2020.*[14] The parties ignored the fact that by the time the revised Phonorecords IV settlement agreement rate was proposed to the CRB Judges in mid-2022, that relative value had risen to 13.1 cents, and by the date December 31, 2022 (the last effective date of the 9.1 cent rate) it had further grown to 13.6 cents (even though such final CPI statistics were not available until January 2023, *after* the Phonorecord IV rates went into effect).[15]

Thus, when the revised Phonorecords IV Subpart B settlement was submitted in mid-2022 proposing a new, 12-cent base rate (with accompanying per minute calculations) subject to future COLA adjustments, it was abundantly clear to the Phonorecord IV settling parties that in order to preserve the value of a royalty rate that would not go into effect until January 1, 2023,[16] additional, future inflationary adjustments for years 2021 and 2022 would still be required to retain the full benefit of the equitable base

---

[13] See, Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 Fed. Reg. 18342 (Mar. 30, 2022) (Doc. No. 2022-06691). Therein, the CRB stated: "Conflicts are inherent if not inevitable in the composition of the negotiating parties. Vertical integration linking music publishers and record labels raises a warning flag...." See also, note 9, supra.

[14] Based on the Consumer Price Index for All Urban Consumers (CPI-U) tracked by the US Bureau of Labor Statics, 9.1 cents on January 1, 2006 was worth approximately **11.95 cents** on December 31, 2020.

[15] See, submission at https://app.crb.gov/document/download/26942. It must be further noted that none of the above calculations take into account further discounting by 25% or more of Subpart B royalty rates for physical phonorecords (sometimes applied to downloads as well) by the continuing imposition of contractual "controlled composition" clauses by the record companies on songwriters, composers and lyricists.

[16] See, Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 Fed. Reg. 76937 (Dec. 16, 2022) (Doc. No. 2022-27237).

rate going forward into the future. *Not so incidentally, the years 2021 and 2022 happen to represent the most inflationary period of US economic fluctuation since 1981, and perhaps the period of greatest value erosion since the end of the Second World War*.[17]

As today's proposed Phonorecord V Settling Parties know beyond any doubt, such subsequent adjustment was left unaddressed due to timing considerations in the Phonorecords IV negotiations, and remains unaddressed in their Proposed Settlement in Phonorecords V today. We are certain this awareness is the case, because the parties remain virtually the same as they were in 2022, and cannot reasonably be unaware that rectification of this vitally important omission has never taken place.

Under such circumstances, it is wholly *unreasonable* for the Settling Parties to have continued to ignore this obvious problem, and not to have addressed its correction in formulating their new "voluntary settlement" that purports to be dedicated to preserving value through application of well-established COLA principles. Potentially hundreds of millions of dollars in music creator royalties for the future, five-year period of 2028-2032, are at stake in Phonorecords V over this past and continuing Subpart B "oversight," which would represent not only an unreasonable result, but a grossly unfair one, as well.

---

[17] As the Phonorecords IV-related submission to Congress co-authored by the Songwriters Guild of America and Music Creators North America (MCNA) dated December 30, 2022 pointed out in detail: "In our subsequent, July 1, 2022 comments to the CRB Judges on the revised settlement proposal, the independent music creator community pointed out the blatantly unfair and misleading provisions still present, despite "COLA-based" revisions. Those points included that: (i) although the revised proposal was touted by the major labels and publishers as representing a *32%* increase in the Subpart B mechanical royalty base rate with future COLA adjustments, by the end of 2021 the 9.1 cent royalty rate had in actuality already lost well over *40%* of its initial 2006 value; (ii) in early 2021, the 2006 value of 9.1 cents was already *at least* 12 cents (the increase proposed in the revised settlement), but by the time of introduction by the major labels and publishers of their proposed revisions in May 2022, the relative 2006 value of 9.1 cents had further risen almost another 10% to *13.11* cents. To further elucidate what has transpired, the negotiators knowingly proposed a new, 12 cent flat base rate that would eliminate application of inflationary increases as measured by the U.S. Consumer Price Index ("CPI") that occurred in [at minimum] the last three quarters of calendar year 2021 through to the end of 2022 --a stretch of nearly two years that has represented the worst inflationary period in the U.S. over the past four decades. *The value of 9.1 cents in 2006 is now equal at the end of 2022 to over 13.67 cents…[and] none of the above calculations take into account further discounting of Subpart B royalty rates by the continuing imposition of contractual "controlled composition" clauses…."* (emphasis added). Space limitations prevent a more robust discussion of this significant, latter point concerning controlled composition clauses, presumably raised by other commenters.

As noted above, however, such failure is just the beginning of the problems of un-reasonability that regrettably characterize the Proposed Settlement as introduced.

The Downward Adjustment of Subpart B Royalties by Sleight of Hand: As other commentators and members of the press have already pointed out,[18] the Proposed Settlement also seems to represent an attempt by its proponents to further mislead songwriters, composers, lyricists and the public by making ambiguous, shorthand reference within it to existing statutory and regulatory rules *without fully and factually explaining in plain language what those rules actually provide.* And those same settlement provisions --rendered virtually impenetrable through cross-referencing that most interested members of the public cannot possibly decipher-- seem clearly *not* to provide the level of value retention the CRB Judges have mandated in the past in order to satisfy the requisite level of reasonability in the context of contested settlements.[19]

The obfuscatory complexity of the Proposed Settlement regarding Phonorecord V Subpart B royalty rates starts with the following "explanation" offered by the Settling Parties*:*

> Specifically, the Parties have agreed that the Subpart B Configuration Rates and Terms presently set forth in 37 C.F.R. Part 385 Subpart B, along with related provisions in Subpart A, should not be amended except for continuing inflation adjustments to the rates for physical phonorecords and permanent downloads, and thus should continue as set forth in 37 C.F.R. § 385.10 and § 385.11(a)(2), (b), and (c) (with § 385.11(a)(1) continuing to reflect the current year's rate *calculated in accordance with § 385.11(a)(2))*.[20] (emphasis added)

---

[18] See, e.g., the recent article by attorney and respected music industry analyst Christian Castle at https://musictechpolicy.com/2026/07/13/like-shadows-on-a-cave-wall-crb-publishes-proposed-phonorecords-v-settlement-for-comment-comments-due-august-10/# .

[19] See, e.g., See, Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 Fed. Reg. 18342 (Mar. 30, 2022) (Doc. No. 2022-06691).

[20] For reference, § 385.11 (a)(2) reads as follows: Royalty rates**.**

> (a) *Physical phonorecords and Permanent Downloads*—(1) *2026 rate.* For the year 2026 for every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 13.1 cents or 2.52 cents per minute of playing time or fraction thereof, whichever amount is larger.
>
> (2) ***Annual rate adjustment.*** The Copyright Royalty Judges shall adjust the royalty rates in paragraph (a)(1) of this section each year to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) published by the Secretary of Labor before December 1 of the preceding year. The calculation

The Proposed Settlement language referencing § 385.11(a)(2), unfortunately, is not in any clear way a continuation of royalty value preservation mandated by annual CRB Judges-endorsed COLA corrections, as that provision specifically ties the new base rate to the prior, 12-cent level.[21] Thus, upon closer inspection of the specific statutory rules referenced, the Proposed Settlement appears to instead be a device intended to actually *dilute* the current and future Subpart B mechanical royalty rates by (1) continuing to omit the application of the entire, inflationary time-period between the beginning of 2021 through the end of 2022 as discussed above, and equally if not even more consternating, (2) seeking to absurdly devalue the current royalty rate of 13.1 cents (which will rise higher due to inflationary adjustment through the end of the Phonorecotds IV pendency period) <u>*back down to the Phonorecord IV base rate of 12.0 cents specified in the referenced provisions of the Proposed Settlement when it takes effect on Januaru 1, 2028.*</u> Such results would violate reasonability principles beyond any measure or doubt.

Again, as to point one, no explanation whatsoever (let alone a reasonable one) has ever been given by the aspiring Settling Parties for ignoring the critical time-period of economic erosion represented by the years 2021 and 2022. The Proposed Settlement authored by the Settling Parties, it bears repeating, does not in any way account for the fact that the 12-cent base rate determined in the Phonorecord IV settlement was calculated on CPI Statistics applicable *only through the end of 2020*. In fashioning the new Subpart B royalty rate set forth in its Proposed Settlement, for the Settling Parties to have ignored that fact --and that the correct base rate on January 1, 2023 should mathematically have been 13.6 cents and not 12 cents --we believe constitutes un-reasonability of the Proposed Settlement on its face. To borrow the CRB's

---

of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November, 2022 (the Base Rate) and shall be made according to the following formulas: for the per-work rate, (1 + (Cy−Base Rate)/Base Rate) × 12¢, rounded to the nearest tenth of a cent; for the per-minute rate, (1 + (Cy−Base Rate)/Base Rate) × 2.31¢, rounded to the nearest hundredth of a cent; where Cy is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The Judges shall publish notice of the adjusted fees in the Federal Register at least 25 days before January 1. The adjusted fees shall be effective on January 1.

[21] Ibid.

own metaphor from Phonorecord IV in regard to discerning conflicts of interest in proposed settlements, where there is smoke, "the Judges must therefore assure themselves that there is no fire."[22]

As to the equally if not even more crucial second part of this Phonorecord V attempted Proposed Settlement artifice, industry commentator and music rights attorney Christian Castle agrees in his widely respected *Music Technology Policy Blog* that the incorporation of CFR § 385.11(a)(2) into the Proposed Settlement covering the Phonorecords V period (2028-2032) appears to intentionally create an unfair and economically abhorrent result. Namely, the Proposed Settlement seems intent on returning the starting royalty rate under Phonorecord V in 2028 back to the original 2020-value rate utilized in the Phonorecords IV settlement in 2023 of 12 cents.[23]

To repeat for the sake of clarity regarding this intentionally complex issue, by referencing CFR § 385.11(a)(2), the Settling Parties appear to intend actually to *reduce and reset* the current base royalty rate of 13.1 cents (already eroded below market value by the failure to apply COLA safeguards for years 2021-2022) back down to the 12-cent rate specified in that section from years ago. Given the egregious and unprecedented nature of such a result, the Independent Music Creators hesitate to rule out the possibility that this is an error in drafting rather than an intended royalty devaluation dressed in COLA clothing. If that is in fact the case, the Proposed Settlement should immediately be withdrawn by the Settling Parties, providing an opportunity to refashion a voluntary settlement that can be supported by all interested parties. To leave in place such a glaring error, or even to assert that it is at worst an ambiguity to be cured by further explanation outside of the Proposed Settlement, would again be completely unreasonable. Past experiences teach that any statutory ambiguity is likely to punish the party least financially able to defend its rights against a resulting injustice. In the music industry, that lesser

---

[22] See Note 9, supra.
[23] See, https://musictechpolicy.com/2026/07/13/like-shadows-on-a-cave-wall-crb-publishes-proposed-phonorecords-v-settlement-for-comment-comments-due-august-10/# .

capitalized party is nearly always the music creator community, especially when vertical integration and conflicts of interest are implicated.

When one takes the crucial factors outlined above into account, the starting base rate for a reasonable, responsible and non-conflicted Phonorecord V Subpart B settlement proposal would and should mathematically be calibrated to approximately 15.6 cents,[24] not the current rate of 13.1 cents (even if further adjusted by COLA according to CPI measurements through the end of 2027), and certainly not under any circumstances the 12-cent rate first instituted in 2023.

Preserving value against inflation through COLA mechanisms is about math, not opacity. And the lack of necessary clarity, transparency and fairness evident in the Proposed Settlement should be deemed fatal to its adoption.[25] As we stated above, "it is vital to understand that applying a percentage COLA to a depressed baseline rate merely carries the existing deficit forward and compounds it over time, without providing any mechanism for correction. The resulting rate would remain permanently below its actual CPI-adjusted market value, nominally 'adjusted' each year, but effectively frozen in perpetuity at a level below what a full inflation adjustment would produce. This ever-increasing, economic feedback loop of lost revenue will cause hundreds of millions of dollars in royalty losses to

---

[24] Based on current economic projections tracked by the U.S. Bureau of Labor Statistics, 13.6 cents on January 1, 2023 (the correct valuation of the equivalent on that date of 9.1 cents on January 1, 2006), will be worth approximately 15.6 cents on December 31, 2027, when adjusted for inflation.

[25] As Christian Castle has noted at https://thetrichordist.com/2026/06/17/dont-freeze-mechanicals-again/ "[T]here is a risk that some stakeholders may argue that the 12¢ reference rate established in Phonorecords IV should remain the permanent benchmark and that future proceedings should effectively restart from that 12¢ figure even though *they know* that the real rate is actually the inflation adjusted rate. This is the kind of thing lawyers come up with and is completely divorced from reality.

"If the CPI-adjusted rate reaches approximately 13.6¢ by 2027, as current inflation projections suggest, such a 12¢ approach would amount to an immediate reduction in songwriter and publisher compensation. Rough justice, that 12¢ rate would actually be worth around 11¢ today, so asking for a 12¢ reference rate is like saying would you take 11 which would be roughly a 20% *reduction*. That would make little sense economically, legally, or as a matter of regulatory policy.

"The key point is that the annual CPI adjustments adopted in Phonorecords IV are not temporary bonuses. They are part of the rate structure. The Judges did not establish a 12¢ rate and then provide a series of discretionary supplements. Rather, they established a rate that increases annually according to a defined formula. The resulting rate is the actual statutory royalty rate in effect at the time. If the rate reaches 13.6¢ in 2027, then 13.6¢ is the reference rate for PR V. (emphasis added)

"Resetting the benchmark to 12¢ would create a downward ratchet unlike anything that participants in a functioning market would expect not to mention in the post-1978 history of the Copyright Act. Songwriters and publishers would receive annual increases throughout the rate period only to see those increases erased at the start of the next one. Such a result would be arbitrary and would undermine confidence in the stability of the statutory license.

independent music creators and small music publishing entities in very short order, to the sole benefit of record labels (and by extension their affiliated music publishers)."

In sum, the Independent Music Copyright Creators want to be crystal clear about its position and intentions: We have always been and remain open to joining a voluntary settlement that simply incorporates the matters of factual and mathematical fairness outlined above. All other elements being equal except as set forth below, we shall continue to take that position and make that offer, always remaining receptive to cooperative and collegial discussions with our colleagues --in both the immediate future and the long term-- designed to expeditiously finalize a new, fair and equitable Subpart B voluntary settlement to minimize costs and the expenditure of time for all.

In that context, we ask our corporate counterparts to recognize the one thing many seem generally reluctant to embrace. The apparently small difference between the adoption of the projected, mathematically accurate starting rate of 15.6 cents in 2028 subject to future COLA adjustment that simply maintains value for creators and nothing more, rather than devaluing that rate through regulatory complexity, is in reality part of a larger, existential threat to creators, music publishers and even labels that must be avoided at all cost.

Specifically, if the Proposed Settlement is adopted and implemented by the CRB Judges in the Phonorecords V proceeding as presented, greater and ever-increasing numbers of American music creators will be forced to give up their careers due purely to avoidable and unfair economic constraints.[26] These are the creators upon whose backs the music publishing and recording industries rest, the loss of whose creative output will eventually result in catastrophic harm to the entire music industry, not to mention the collateral damage to American culture and to the overall American economy.[27]

---

[26] See, e.g., https://www.tennessean.com/story/entertainment/music/2015/01/04/nashville-musical-middle-class-collapses-new-dylans/21236245/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z1164xxe1164xxv000053&gca-ft=143&gca-ds=sophi

[27] See, e.g., https://musicrow.com/2024/11/riaa-2024-music-job-benefits-report-shows-contributions-to-economic-growth/

The Independent Music Creators ask their record company and music publisher colleagues and affiliates, the following question: Are proposals designed through their complexity to wring maximum short-term savings out of the pockets of those who comprise the community of music creators and small publishers, worth the risk of such financial and cultural degradation that will result from this poisonous philosophy? We think not, and we believe many interested parties agree.

Moving on to two other additional, significant omissions pertaining to the Proposed Settlement that render it wholly unreasonable, the first deals with frozen ringtone royalty rates, and the second with the failure to include a reservation of rights concerning the concept of "bundling."

Perpetually Frozen Ringtone Rates: First, as regards ringtone royalty rates, contrary to important precedents previously put in place by the CRB Judges in the Phonorecords IV Proceeding to preserve value in highly inflationary economic environments, the ringtone royalty rate is inexplicably once again left frozen in the Proposed Settlement. The proposal would perpetuate the 24-cent ringtone rate at a level that has remained static since 2009, with no cost-of-living adjustment of any kind. In the interim, inflation has devalued such rate by well over fifty percent, destroying half its actual worth since first implemented. If the Proposed Settlement is adopted, by the time the new term ends, that ringtone rate will have been frozen for nearly a quarter-century in total and will likely have lost three-quarters of its original value.

That is precisely the type of "static" rate the CRB Judges have already held in Phonorecords IV to be totally unreasonable and anathema to fairness for music creators. It would also represent an even longer freeze than the sixteen-year, 9.1-cent freeze the Judges specifically rejected in that same proceeding.
We mention these ringtone facts only to illustrate that there is no way that the Proposed Settlement can ever be considered "reasonable" under such circumstances and suggest that the purported agreement must therefore be rejected in its entirety by the CRB Judges. Moreover, we ask the CRB Judges to note that total ringtone mechanical royalties generate just a few million dollars per year for music creators and publishers. As such, amendment of the ringtone provisions alone will not cure by one iota the devastating effect that

the unreasonable deficiencies and unfairness that permeate the remainder of the Proposed Settlement would have on the abilities of songwriters, composers and lyricists to earn sustainable livings.

Thus, even as we support the CPI-based adjustment of the 24-cent rate from 2009 forward to no less than 39.1 cents for 2028 suggested in other comment submissions, the importance of such an adjustment is thoroughly dwarfed in comparison to addressing and rejecting the terms of the Proposed Settlement regarding royalty rates for physical phonorecords and downloads as proffered by the Settling Parties. While the ringtone problem is a reason for full rejection of the entire Proposed Settlement, its amendment in no way would cure the un-reasonability of the document's remainder.

As to the second omission, ambiguities concerning the concept of royalty reductions for "bundling" in Phonorecord IV have inflicted catastrophic harm on the entire music industry since its implementation in 2023. It was recently admitted at the NMPA Annual Meeting on June 10, 2026, that streaming service "bundling" practices in Phonorecords IV have already cost music creators and music publishers *at least* an extraordinary $480 million in lost revenue.[28] Expected future losses will easily push such shortfalls to well over a half-billion dollars, all due mainly to shortcomings in the negotiation process of the Phonorecord IV streaming settlement, and to the highly questionable ethical conduct of the streaming services.

The Independent Music Creators are among those many appalled by this situation. And while many members that comprise the Settling Parties may claim that "bundling" in the context of Subpart B royalty rates have little or no bearing at all on "bundling" as it applies to streaming, the Independent Music Creators remain convinced that under the circumstances it may be unreasonable not to specifically address that issue in writing as part of the Proposed Settlement. Discussions should take place, and efforts should be made to ensure that no unwarranted or prejudicial precedents are inadvertently set in the Proposed Settlement

[28] See, https://www.billboard.com/pro/nmpa-spotify-amazon-streaming-bundles-cost-500m-lost-value/

regarding Sub-Part B bundling rates, even in the context of definitional wording, that might result in harm to the rights of music creators and publishers regarding streaming rates and related, ongoing litigations.

A Final Word on the Claimed "Reasonability" of the Proposed Settlement: In submitting the Proposed Settlement, the Settling Parties have made note of their reliance on three basic premises to demonstrate its reasonability: (1) that the Settlement provides "ongoing, annual inflation-based adjustments throughout the term"; (2) that it "represents the consensus of stakeholders representing the vast majority of the market"; and (3) that it "would avoid costly and uncertain litigation."[29] As we have demonstrated herein, all three of those claims are faulty.

The first claim immediately fails on the basis that, as drafted, the Proposed Settlement would do nothing of the kind. It seeks both to eliminate application of inflation data from the volatile period of 2021 and 2022, and apparently to reset the royalty rate for physical phonorecords and downloads back down to Phonorecord IV implementation levels. That is not a reasonable formula for preserving value negotiated at arms-length.

The second claim ignores the fact that not only have tens of thousands of songwriters, composers and lyricists been left out of the "negotiation" process and remain fully uninformed about the proceeding due to the fact that they are economically unable to afford participation, but also that those who purportedly did weigh in as supporting commenters were likely confused as to what the actual effects of the "modified roll forward of COLA" being proposed would be. That is not a "consensus of stakeholders representing the vast majority of the market." Rather, it is arguably a consensus among the trade representatives of

[29] See, e.g., https://musictechpolicy.com/2026/07/13/like-shadows-on-a-cave-wall-crb-publishes-proposed-phonorecords-v-settlement-for-comment-comments-due-august-10/# .

[29] See, e.g., Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 87 Fed. Reg. 18342 (Mar. 30, 2022) (Doc. No. 2022-06691).

powerful and related companies to design a deal so complex that it seriously threatens to silently take away mechanical royalty value rather than preserving it.

And finally, the third claim that the Proposed Settlement "would avoid costly and uncertain litigation," appears to be based on the belief among the Settling Parties, as satirical as it might be, that the major publishers and record labels intend to sue themselves if their internal divisions cannot come to agreement on Subpart B royalty rates. We suspect that is unlikely, and that further negotiation on a more level playing field as encouraged by the CRB Judges would be a wiser and more productive course, leading to a more fair and reasonable voluntary result among colleagues.

II. RELIEF REQUESTED

For the foregoing reasons, the Independent Music Creators respectfully request that the CRB Judges:

1. Decline to adopt the Proposed Subpart B Settlement as a reasonable basis for setting statutory rates and terms binding on the Independent Music Creators, pursuant to 17 U.S.C. § 801(b)(7)(A)(ii) and related provisions.

2. Recommend that all interested Subpart B participants, including the Settling Parties, reconvene to negotiate at arms-length for the purpose of establishing consensus on new, reasonable recommendations as to rates and terms, including at a suggested minimum: (a) a mechanical rate for physical phonorecords and permanent downloads recalculated on a complete CPI-U basis from the 2006 baseline inclusive of 2021 and 2022 --approximately 15.6 cents for 2028-- with the continuing annual COLA, effective January 1, 2028; (b) a ringtone rate of approximately 39.1 cents effective January 1, 2028, with an annual CPI-U cost-of-living adjustment; and (c) clarification

of Sub-Part B "bundling" language as to avoid confusion over bundling in streaming contexts.

3. Grant such other and further relief as the CRB Judges deem just and proper.

Respectfully submitted on August 8, 2026,

/s/ Rick Carnes, President
Songwriters Guild of America, Inc. ("SGA")
105 Continental Place Suite 320
Brentwood, TN 37027

/s/ Jeff Price, President and CEO
WORD COLLECTIONS, INC. ("WC")
19 Lovell Road
Arlington, MA 02474

/s/ Charles J. Sanders
Charles J. Sanders, Attorney at Law PC
Outside Counsel for Songwriters Guild of America, Inc. ("SGA")
29 Kings Grant Way
Briarcliff Manor, NY 10510
Tel: (914) 588-7231 | cjs@csanderslaw.com (C.A. Bar No. 112202)

/s/ Eric B. Goldberg
Eric B. Goldberg, VP Business Affairs
WORD COLLECTIONS, INC.
Counsel for Word Collections ("WC")
19 Lovell Road
Arlington, MA 02474
Tel: (508) 918-0099 | eric@wordcollections.com (Mass. Bar No. 564398)