

December 29, 2017

VIA ECF

Honorable Alison J. Nathan
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Ferrick, et al. v. Spotify USA Inc., et al.*,
No. 1:16-cv-08412 (AJN)

Dear Judge Nathan:

Spotify USA Inc. and Class Counsel jointly submit this letter in response to the Court's December 15, 2017 Order (Dkt. No. 361) requesting that the parties "address whether the appointment of a Special Master is appropriate" to resolve disputes relating to the administration of the proposed settlement.

As discussed below, the parties believe the likelihood of a dispute requiring the Court's involvement is small and that the appointment of a Special Master at this time is therefore unnecessary. The overwhelming majority of issues are likely to be resolved without the need for this Court's intervention—either through negotiated resolution, or through the use of mediation, or through stand-alone lawsuits commenced in other courts. To preclude the possibility that this Court might be burdened unjustifiably, however, it would be appropriate to include in the settlement approval order a requirement that parties seeking resolution of a dispute by this Court petition the Court for appointment of a special master.

Spotify and Class Counsel have categorized the types of disputes that could arise out of the Settlement Agreement:

First, disputes could arise regarding the ownership of musical compositions—either among Class Members or between Class Members and other parties. These disputes could surface as a result of conflicting claims with respect to distribution of the Settlement Fund or conflicting claims regarding future royalty payments. Settlement Agreement §§ 3.4(b), (c), 4.4(a) (Dkt. No. 176-3). The Settlement Agreement provides that the Settlement Administrator (here, Garden City Group) will seek to resolve such disputes; if it cannot, the Settlement Administrator will issue a notice of an unresolved dispute, which precludes payment of the disputed funds until the dispute is resolved. *Id.*

Resolution of a disputed ownership issue would affect all of the copyright rights associated with the work and not just the allocation of funds under the Settlement Agreement. For that reason, the Settlement Agreement (a) requires Class Members involved in Ownership Disputes to

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resolve them “voluntarily amongst themselves or by commencing an appropriate action in a court or other tribunal with jurisdiction over the parties” and (b) states that “[n]either the Settlement Administrator nor Spotify shall be deemed to be a necessary party to such an action.” Settlement Agreement §§ 3.4(c), 4.4(a)(iii)-(iv). Spotify and Class Counsel anticipate that many ownership disputes, if they arise at all, are likely to be resolved without litigation.

Moreover, the lawsuits that might be filed would not necessarily be litigated before this Court, for several reasons. First, the Court may not have personal jurisdiction over many defendants who are parties to an ownership dispute. Second, even if a lawsuit were filed in the Southern District of New York, it would not necessarily proceed before this Court because those disputes need not necessarily be “related cases” within the meaning of Local Rule 13(a)(1), given the lack of substantial factual overlap with this action and the dissimilarity of the parties. And for the avoidance of doubt, both Spotify and Class Counsel agree that any order granting final approval could specify that such disputes must be resolved by separate litigation and therefore are not related to this action.

Of course, it is possible that parties to such a dispute will neither resolve the dispute through negotiation nor commence a separate action to resolve the dispute. It therefore may be advisable to include a “fall-back” procedure in the order approving settlement. Spotify and Class Counsel suggest the following procedure:

- If, after sixty days from the issuance by the Settlement Administrator of a Notice of Unresolved Ownership Dispute (*see* Settlement Agreement §§ 3.4(c), 4.4(a)), the dispute has not been resolved by agreement and is not the subject of a separate lawsuit among the parties, then a party to the dispute may seek resolution by this Court.
- The Court will refer such disputes to a Magistrate Judge or, if a Magistrate Judge is not available or is otherwise inappropriate, the Court will appoint a Special Master to resolve the dispute. The Magistrate Judge or Special Master will hear argument, receive any relevant evidence, and make a recommendation to the Court.
- Referring these disputes to a Magistrate Judge is preferable, because it would avoid imposing an additional expense on class members. To the extent a Special Master is appointed, the costs of the Special Master should be shared by the parties to the dispute.

To implement this suggestion, the parties recommend that the Court consider including in the final order approving the settlement provisions along the following lines:

The separate proceedings referenced in the Settlement Agreement for resolving disputes regarding Settlement Fund payments and payments of future royalties (Settlement Agreement §§ 3.4(c), 4.4(a)(iii)-(iv)), are not proceedings related to this action within the meaning of Local Rule 13(a)(1).

In addition to the separate proceedings referenced in the Settlement Agreement for resolving disputes regarding Settlement Fund payments and payments of future

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royalties (Settlement Agreement §§ 3.4(c), 4.4(a)(iii)-(iv)), the following procedure shall be available:

(a) If, after sixty days from the issuance by the Settlement Administrator of a Notice of Unresolved Ownership Dispute (*see* Settlement Agreement §§ 3.4(c), 4.4(a)), the dispute has not been resolved by agreement and is not the subject of a separate lawsuit among the parties, then a party to the dispute may seek resolution by this Court.

(b) The Court will refer such disputes to a Magistrate Judge or, if a Magistrate Judge is not available or is otherwise inappropriate, the Court will appoint a Special Master to resolve the disputes. The Magistrate Judge or Special Master will hear argument, receive any relevant evidence, and make a recommendation to the Court. To the extent a Special Master is appointed, the costs of the Special Master should be shared by the parties to the dispute.

(c) Neither Spotify nor the Settlement Administrator shall be necessary parties to such proceedings.

Second, the Settlement Agreement identifies a small number of potential disputes between Spotify and Class Plaintiffs that could call for the Court's ultimate review, but the parties do not believe that such disputes are likely to arise, and that any that do will almost certainly be resolved through mediation. These potential disputes involve:

- the selection of a mediator (*id.* § 1.25);
- the look and functionality of the Settlement Website or Settlement Notice Webpage (*id.* §§ 3.2(a), 12.2);
- the form and content of the notice sent to Class Members by the Settlement Claim Facilitator (*id.* § 3.3(b)(v));
- the look and content of the Royalty Claim Form (*id.* § 4.3(b));
- the procedures for audits by Class Members (*id.* § 5.3); and
- confidentiality issues (*id.* § 19.5).

The parties have been able to resolve numerous issues leading up to the settlement—and in implementing the initial phases of the Settlement Agreement—through negotiation and mediation, and strongly believe that will continue to hold true for resolution of the issues listed above. But to the extent that any such dispute is not resolved via mediation, Spotify and Class Counsel commit that, if such a dispute arises, the parties will move the Court at the time for the appointment of a Special Master. This process could be implemented through inclusion in the order approving the settlement of the following provision:

The Settlement Agreement provides that the Court will resolve certain disputes between the Class and Spotify. *See* Settlement Agreement §§ 1.25, 3.2(a), 3.3(b)(v), 4.3(b), 5.3, 12.2, 19.5. If the Class and Spotify are unable to resolve any such issues through negotiation and mediation, they shall petition the Court for

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appointment of a Special Master to hear argument, receive any relevant evidence, and make a recommendation to the Court. The costs of the Special Master shall be equally shared by the parties.

We would of course be happy to provide any additional details that the Court would find useful or answer any other questions.

We thank the Court for its time and consideration.

Respectfully submitted,

/s/ Andrew J. Pincus

Andrew J. Pincus

Counsel for Spotify

/s/ Kalpana Srinivasan

Kalpana Srinivasan

Counsel for Class Plaintiffs