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UNINTENDED CONSEQUENCES:

HOW THE MUSIC MODERNIZATION ACT HARMS RIGHTSHOLDERS

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I. INTRODUCTION

In its first year alone, Spotify's novel royalty reporting system has deprived music rightsholders of receiving an estimated \$150 million in royalty earnings.¹ Spotify has done this by reporting its most popular "premium plan" as a bundled subscription.² Bundled subscription offerings are streaming plans that combine multiple services, such as music and audiobooks, for a single price; these subscriptions are emerging as a popular new trend in the streaming services market,³

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¹ *Mech. Licensing Collective v. Spotify USA Inc.*, 763 F. Supp. 3d 608, 612-13 (S.D.N.Y. 2025).

² *Id.* at 612. See Janine Perri, *Spotify's New Duo Plan Has the Highest Customer Retention Among U.S. Paid Subscriptions*, BLOOMBERG SECOND MEASURE (Dec. 16, 2021), <https://secondmeasure.com/datapoints/spotify-paid-subscription-plans-customer-retention/#:~:text=Spotify%27s%20Premium%20Individual%20plan%20is,plan%20is%20the%20clear%20frontrunner> [https://perma.cc/K37L-3BBP].

³ See 37 C.F.R. § 385.2.

especially in the music streaming industry.⁴ Spotify has used bundled subscription offerings to overstate the value of fifteen hours of audiobook listening relative to the value attributable to streaming music, resulting in a considerable reduction in royalties paid to music rightsholders.⁵ This practice illustrates an overarching flaw in the regulatory structure of copyright law, allowing for streaming services to apply their own interpretation of the statute in the place of statutory ambiguity.

Because of Spotify's change in royalty reporting, the Mechanical Licensing Collective ("MLC") filed a lawsuit, arguing that Spotify's practices violate the Copyright Act and the accompanying regulations.⁶ Although the court initially dismissed the lawsuit, it granted MLC's motion for an amended complaint.⁷ Now, MLC claims that Spotify has decreased the revenue from premium subscriptions attributable to music streaming from one hundred percent to thirty-seven percent by artificially increasing the value of the fifteen hours of audiobook listening to \$9.99 per month.⁸

It is more convenient for consumers to pay a single flat fee rather than manage several separate subscriptions across multiple platforms. However, the rise in popularity of bundled subscription offerings has uncovered new problems in copyright law. MLC has sued Spotify for abusing one of these potential issues, and the lawsuit has highlighted the ambiguity in the regulatory framework for reporting music royalties to rightsholders. To address this issue, copyright law should be amended to provide greater clarity on how bundled royalty offerings are calculated, ultimately protecting all rightsholders.

Part II describes bundled subscription offerings and how they are utilized in the streaming service industry. Part III explains the background and history of copyright law and the Music Modernization Act ("MMA"), including the statutory framework for mechanical royalties. Part IV assesses Spotify's

⁴ See John Koblin, *Come One, Come All! Buy Your TV Subscriptions Here!*, N. Y. TIMES (Aug. 20, 2025), <https://www.nytimes.com/2025/08/20/business/media/streaming-tv-subscription-bundle.html> [<https://perma.cc/F2JV-CBXF>].

⁵ *Mech. Licensing Collective v. Spotify USA Inc.*, 2025 U.S. Dist. LEXIS 188932, at *14–15 (S.D.N.Y. Sep. 25, 2025).

⁶ Complaint at 1, *Mech. Licensing Collective v. Spotify USA Inc.*, 763 F. Supp. 3d 608 (S.D.N.Y. 2025).

⁷ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *28–29.

⁸ *Id.* at *15.

bundled subscription reporting practices. Part V explains audiobook subscriptions and provides a comparison between Spotify's Audiobooks Access Plan and Amazon's Audible Plus subscriptions. Part VI analyzes MLC's lawsuit against Spotify, including the court's initial dismissal of the case, followed by the allowance of an amended complaint. Part VII argues that the current usage of the MMA departs from the statute's intended purpose. Finally, Part VIII proposes an amendment to the copyright law and the accompanying regulations to promote legal clarity. This amendment requires greater oversight from the Copyright Royalty Board, ultimately protecting music rightsholders by reducing dependence on streaming providers' subjective business judgments to determine their designated royalties.

II. BUNDLED SUBSCRIPTION OFFERINGS

A bundled subscription is "a combination of a Subscription Offering providing Eligible Interactive Streams and/or Eligible Limited Downloads and one or more other products or services having more than token value, purchased by End Users in a single transaction."⁹ Spotify is not the only platform that utilizes bundled subscription offerings. Bundled subscriptions are a growing trend in the streaming marketplace, with streaming providers such as Amazon,¹⁰ Apple,¹¹ YouTube,¹² and other services marketing bundled deals that allow users to gain access to multiple streaming services for a single monthly subscription price. There has been a significant growth in bundled subscription packages for streaming television shows and movies, and "the sudden popularity of signing up through a third party signals the emergence of a new kind of cable bundle, a development that

⁹ 37 C.F.R. § 385.2.

¹⁰ See *Join Prime and Elevate Your Amazon Experience*, AMAZON, <https://www.amazon.com/amazonprime> [<https://perma.cc/8DVS-7QDY>] (last visited Mar. 7, 2026).

¹¹ See *The Best of Apple. All in One*, APPLE, <https://www.apple.com/apple-one/> [<https://perma.cc/8ENV-TBEZ>] (last visited Mar. 7, 2026).

¹² See *All YouTube. No Interruptions. Stop Missing Out*, YOUTUBE, <https://www.youtube.com/premium> [<https://perma.cc/D3L9-9N5M>] (last visited Mar. 7, 2026).

media executives have predicted for many years.”¹³ The most common complaint in the streaming era of television is that multiple subscriptions require users “to hopscotch from one app to the next to get a sense of what to watch.”¹⁴ Many of these services include music in bundled subscriptions, making the provider subject to the MMA’s reporting requirements.¹⁵

To calculate music royalties within a bundled subscription offering, a provider must determine the value that is attributable to the music component.¹⁶ This is done by dividing the standalone value of the music component by the total standalone value of all components in the bundle.¹⁷ For example, if a music subscription’s standalone price costs \$10.00 and the non-music component’s standalone price is \$10.00, the total standalone value of the subscription is \$20.00.¹⁸ The music portion represents fifty percent of the total value ($\$10.00 \div \$20.00 = 0.5$, or fifty percent).¹⁹ Consequently, the provider reports fifty percent of the bundled subscription offering’s total revenue for royalty distribution to music rightsholders.²⁰

To determine the value attributable to a component, a provider must evaluate the “standalone published price for a component of the Bundle.”²¹ Suppose a single product is not offered at a standalone price. In that case, the provider must use the “average standalone published price . . . for the most closely comparable product or service in the U.S. or, if more than one comparable exists, the average of standalone prices for comparables.”²² If there is no reasonably comparable product,

¹³ Koblin, *supra* note 5, at 1.

¹⁴ Koblin, *supra* note 5, at 1.

¹⁵ E.g., *Join Prime and Elevate Your Amazon Experience*, *supra* note 11, at 3; *The Best of Apple. All in One*, *supra* note 12, at 3; *All YouTube. No Interruptions. Stop Missing Out*, *supra* note 13, at 3.

¹⁶ First Amended Complaint at 4, *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *13.

¹⁷ *Id.*

¹⁸ *Id.*; 37 C.F.R. § 385.2.

¹⁹ First Amended Complaint at 4, *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *13.

²⁰ *Id.*

²¹ 37 C.F.R. § 385.2.

²² *Id.*

the provider can use a “good faith, reasonable measure of the market value of the component.”²³

Understanding how bundled subscription offerings are regulated under the MMA requires a brief overview of copyright licensing, a definition of the MMA, and an explanation of how it changed the way streaming services report royalties to rightsholders.

III. THE COPYRIGHT ACT AND THE MUSIC MODERNIZATION ACT

The Copyright Act of 1976 provides the basic framework for copyright law and is codified under Title 17 of the United States Code.²⁴ A copyright is a form of intellectual property that “protects original works of authorship as soon as an author fixes the work in a tangible form of expression.”²⁵ A copyright owner of a musical work has the exclusive right to “reproduce the work in copies or phonorecords” and “distribute copies or phonorecords of the work to the public by sale or other transfer of ownership.”²⁶ However, the exclusive rights of copyright holders are subject to specific statutory and regulatory requirements. The exclusive right to reproduce and distribute musical works under compulsory licensing may be granted in situations involving audio-only sound recordings, also known as “phonorecords.”²⁷

²³ First Amended Complaint at 4, *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *13; 37 C.F.R. § 385.2 (subsection (5)(iii) under “Service Provider Revenue”).

²⁴ *Copyright Law of the United States (Title 17)*, COPYRIGHT.GOV, <https://www.copyright.gov/title17/> [https://perma.cc/VXK3-FRXY] (last visited Mar. 7, 2026). See 17 U.S.C. § 101-1511.

²⁵ *What is Copyright?*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/what-is-copyright/> [https://perma.cc/A667-EQS7] (last visited Mar. 7, 2026).

²⁶ *Id.*

²⁷ 17 U.S.C. § 115(a)(1)(A). See 17 U.S.C. § 101 (Phonorecords are “material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” Phonorecords include the physical manifestation of music, including cassette tapes, vinyl discs,

The MMA was passed in 2018 and amended the Copyright Act.²⁸ The MMA “updates the copyright law to make statutory licensing more fair for creators and more efficient for digital music providers.”²⁹ The legislative purpose of the MMA is to streamline copyright law by “creating a new compulsory blanket licensing system for mechanical works, updating the rate standards applicable to music licensing, [and] modifying the rate setting process in the Southern District of New York.”³⁰ The MMA also exists to ensure “that producers, mixers, and sound engineers can receive compensation for their creativity.”³¹

Before the MMA was passed, the Copyright Act required a song-by-song compulsory licensing structure.³² Compulsory mechanical licenses traditionally required the licensee to send notice to the copyright owner of each musical work, allowing for compulsory license use.³³ Then, the licensee must account for and pay monthly royalties directly to the copyright owner.³⁴

In passing the MMA, the legislature said that it “regularly heard from various parties in the music industry that the existing music licensing system does not functionally work to meet the needs of the digital music economy where commercial services strive to have available to their customers as much music as possible.”³⁵ Now, the MMA allows for a “blanket licensing system for digital music providers to make

and compact discs, but “Digital phonorecords are types of phonorecords.”).

²⁸ *The Creation of the Music Modernization Act*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/music-modernization/creation.html?loclr=eamma> [<https://perma.cc/KBZ2-ZRAW>] (last visited Mar. 7, 2026).

²⁹ *The Music Modernization Act*, U.S. COPYRIGHT OFF., <https://copyright.gov/music-modernization/> [<https://perma.cc/99MB-C9QB>] (last visited Mar. 7, 2026).

³⁰ H. Rept. 115–651, at 1 (2018).

³¹ *Id.* at 1–2.

³² *See Musical Works Modernization Act*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/music-modernization/115/> [<https://perma.cc/S8YX-U5HU>] (last visited Mar. 7, 2026).

³³ First Amended Complaint at 12, *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *14.

³⁴ *Id.*

³⁵ H. Rept. 115–651, at 5 (2018).

and distribute digital phonorecord deliveries.”³⁶ A compulsory blanket license “grants permission to use any music from an entire specific catalog in exchange for a fee.”³⁷

Title I of the MMA specifically applies to mechanical royalties, which are “payments to the writer of a song whenever that song is reproduced in some form.”³⁸ Mechanical royalties are paid to songwriters under composition royalties when physical music products are sold, such as CDs or vinyl records.³⁹ As music has evolved, mechanical royalties now extend to streaming services, such as Spotify, requiring that royalties be paid per stream.⁴⁰ Section 115 of Chapter 17 of the United States Code outlines the rates and procedures to obtain a compulsory license for the payment of mechanical royalties.⁴¹

The MMA established the MLC “to collect and distribute mechanical royalty payments under Title I of the MMA,”⁴² stating “[a] digital music provider may obtain a blanket license by submitting a notice of license to the

³⁶ *Musical Works Modernization Act*, *supra* note 33, at 6.

³⁷ *What is a Blanket Mechanical License?*, MLC, <https://help.themlc.com/en/support/what-is-a-blanket-mechanical-license#:~:text=A%20blanket%20mechanical%20license%20grants,%2C%20and/or%20limited%20downloads> [https://perma.cc/6989-CCR8] (last visited Mar. 7, 2026).

³⁸ *What are Mechanical Royalties?*, ROYALTY EXCH. (Feb. 2, 2021), <https://www.royaltyexchange.com/blog/mechanical-royalties> [https://perma.cc/BL3E-EH5H]. See H. Rept. 115-651; 17 U.S.C. § 115. It is important to note that songwriters also receive performance royalties when a song is performed publicly. These royalties are distributed by Performance Rights Organizations (“PROs”). However, performance royalties are distinct from mechanical royalties, which are the focus of this discussion. See *Mechanical Royalties vs. Performance Royalties: What’s the Difference?*, ROYALTY EXCH. (Jan. 31, 2019), <https://www.royaltyexchange.com/blog/mechanical-and-performance-royalties-whats-the-difference> [https://perma.cc/58GF-PJ4T].

³⁹ *Mechanical Royalties vs. Performance Royalties: What’s the Difference?*, *supra* note 38, at 6.

⁴⁰ *Mechanical Royalties vs. Performance Royalties: What’s the Difference?*, *supra* note 38, at 6.

⁴¹ See 17 U.S.C. § 115.

⁴² *The Music Modernization Act*, *supra* note 29, at 5. See 37 C.F.R. § 210.23(a); 17 U.S.C. § 115(d)(3)(B)–(C).

mechanical licensing collective that specifies the particular covered activities in which the digital music provider seeks to engage.”⁴³ MLC administers a blanket digital audio mechanical license to digital service providers (“DSPs”) “for interactive streaming, permanent downloads, and/or limited downloads.”⁴⁴ The MMA allows the MLC to “receive notices and reports from digital music providers, collect and distribute royalties, and identify musical works and their owners for payment.”⁴⁵ In 2021, the MLC established and has subsequently maintained “a publicly accessible database containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied.”⁴⁶

Rates for mechanical royalties are set and regulated by the Copyright Royalty Board (“CRB”).⁴⁷ Congress appointed the CRB to make “determinations and adjustments of reasonable terms and rates of royalty payments.”⁴⁸ The CRB is a panel of three judges “charged with the duty to set royalty rates and re-evaluate them every five years.”⁴⁹ The CRB considers arguments from various interested parties, including songwriters, publishing companies, music labels, and streaming services, to determine a proposed settlement for a statutory mechanical licensing rate.⁵⁰

⁴³ 17 U.S.C. § 115(d)(2)(A).

⁴⁴ *What is a Blanket Mechanical License*, *supra* note 38, at 6. See *What is a Digital Service Provider*, MLC, <https://help.themlc.com/en/support/what-is-a-digital-service-provider> [<https://perma.cc/6SJD-U9XS>] (last visited Mar. 7, 2026) (“A digital service provider (DSP) is an entity that uses a technology platform to deliver sound recordings to consumers as streams or downloads.” This definition includes services like Spotify or Apple Music).

⁴⁵ *The Music Modernization Act*, *supra* note 29, at 5.

⁴⁶ *The Music Modernization Act*, *supra* note 29, at 5.

⁴⁷ See *About Us*, U.S. COPYRIGHT ROYALTY BD., <https://www.crb.gov> [<https://perma.cc/M43M-4HW7>] (last visited Mar. 7, 2026).

⁴⁸ 17 U.S.C.S. § 801(b)(1).

⁴⁹ *What are Mechanical Royalties?*, *supra* note 38, at 6.

⁵⁰ See *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)*, 87 FED. REG. 76937 (Dec. 16, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27237.pdf> [<https://perma.cc/G2PY-5KWF>].

The most recent settlement decision before the CRB is “Phonorecords IV,” which creates an “increase in the royalty rate that music streaming services must pay to songwriters and publishers from 2023 to 2027, which the settlement set at 15.35% of streaming revenue.”⁵¹ Beginning in 2016, “Phonorecords III . . . saw years of conflict and pushback from the streaming services regarding an increase in the royalty rate from the 10.5% set in Phonorecords II to the recently upheld 15.1%.”⁵²

IV. SPOTIFY’S BUNDLED SUBSCRIPTION OFFERING

After the free trial period, a Spotify Premium subscription costs \$11.99 per month.⁵³ With the revenue received from Premium subscribers or ads, Spotify calculates the royalties entitled to a rightsholder based on what they call a “streamshare.”⁵⁴ A track’s streamshare is determined by accounting for the number of times a track was streamed within one month and dividing that amount by the total number of streams in the market.⁵⁵ For example, if a track received one of every 1,000 streams, it would be entitled to \$1.00 out of every \$1,000 in Spotify’s total revenue.⁵⁶ Revenue from Premium subscriptions is combined into a single pool and then distributed to the rightsholders through MLC based on the number of streams a track receives.⁵⁷

⁵¹ Zachary Goodwin, *Phonorecords IV: Better than Before, but Still Not Enough*, NYU L. J. OF INTELL. PROP. & ENT. L. (Oct. 31, 2022), <https://jipel.law.nyu.edu/phonorecords-iv-better-than-before-but-still-not-enough/> [https://perma.cc/E5VA-YQPL].

⁵² *Id.*

⁵³ *The Ultimate Home For*, SPOTIFY, <https://www.spotify.com/us/premium/> [https://perma.cc/R9TZ-H25A] (last visited Mar. 7, 2026).

⁵⁴ *Royalties*, SPOTIFY, <https://support.spotify.com/us/artists/article/royalties/> [https://perma.cc/G72W-J79Z] (last visited Mar. 7, 2026).

⁵⁵ *How is Streamshare Calculated?*, SPOTIFY (Mar. 2, 2023), <https://loudandclear.byspotify.com/faqs/how-is-streamshare-calculated/> [https://perma.cc/BGT8-QJUX].

⁵⁶ *Id.*

⁵⁷ See Associated Press, *How Spotify Ads and Subscription Fees Help Pay Artists*, FAST CO. (Sep. 1, 2024), <https://www.fastcompany.com/91182413/spotify-streamshare-ads->

In June 2022, Spotify acquired Findaway, which “works across the entire audiobook ecosystem with a platform and offerings that serve authors, publishers, and consumers.”⁵⁸ Spotify’s global head of audiobooks, Nir Zicherman, said, “We believe this presents a unique opportunity to introduce music and podcast listeners around the world to audiobooks and drastically expand that market.”⁵⁹ Through the acquisition, Spotify planned on “accelerating the growth of these tools, to scale and expand the audiobooks market overall.”⁶⁰

Spotify shifted to bundled reporting progressively. Beginning in 2023, Spotify offered Premium for \$10.99, which included music streaming, podcasts, and short-form video.⁶¹ Later that same year, it introduced fifteen hours of audiobook listening to its Premium subscribers at no additional cost.⁶² Although the addition of audiobook listening was substantial, it continued to report the same amount of music royalties to MLC.⁶³ Spotify then launched a completely new subscription plan for \$9.99, allowing subscribers to access 15 hours of audiobooks without any additional Premium features.⁶⁴ Along with the audiobook plan, Spotify began reporting Premium as a bundled subscription, but it only raised the subscription price to \$11.99.⁶⁵ Spotify reported far fewer royalties to be distributed to rightsholders because the standalone music component was now a smaller percentage.⁶⁶ This added another component

subscription-pay-artists-songwriters [https://perma.cc/ZJM2-Z8SZ].

⁵⁸ *Spotify Closes Acquisition of Findaway, A Global Leader in Audiobooks*, SPOTIFY (June 16, 2022), <https://newsroom.spotify.com/2022-06-16/spotify-closes-acquisition-of-findaway-a-global-leader-in-audiobooks/> [https://perma.cc/NW6M-GWWF].

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Mech. Licensing Collective v. Spotify USA Inc.*, 763 F. Supp. 3d 608, 612 (S.D.N.Y. 2025).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*; *Audiobooks in Premium: Get Lost in Great Stories*, SPOTIFY, <https://www.spotify.com/us/audiobooks/> [https://perma.cc/8H4L-5QQY] (last visited Mar. 7, 2026).

⁶⁵ *Mech. Licensing Collective*, 763 F. Supp. 3d at 612.

⁶⁶ *Id.* at 612–13.

with a small increase in price, resulting in an estimated \$150 million loss in royalties to music rightsholders.⁶⁷

Spotify's decision to switch its premium subscription to a bundled subscription offering has been highly criticized as a betrayal of the Phonorecords Settlements, as decided by the Copyright Board.⁶⁸ The Nashville Songwriters Association International President and CEO, David Israelite, explained that "[i]t appears Spotify has returned to attacking the very songwriters who make its business possible."⁶⁹ He further complains that "Spotify's attempt to radically reduce songwriter payments by reclassifying their music service as an audiobook bundle is a cynical, and potentially unlawful, move that ends our period of relative peace."⁷⁰ Spotify's bundling practices have even gained the attention of U.S. senators Marsha Blackburn of Tennessee and Ben Ray Lujan of New Mexico, submitting "a formal letter urging the FTC to examine Spotify's bundling services—specifically, its combination of music streaming and audiobook services under one plan."⁷¹

V. AUDIO BOOK SUBSCRIPTIONS

Although Spotify's shift to bundled reporting has been controversial and potentially harmful to music rightsholders, it can benefit subscribers by offering greater value without additional fees. Further, audiobooks are a quickly growing

⁶⁷ *Id.*

⁶⁸ See Murray Stassen, *NMPA Accuses Spotify of "Attacking Songwriters" as Streaming Service Changes How It Pays Out Mechanical Royalties in the US*, MUSIC BUS. WORLDWIDE (Apr. 18, 2024), <https://www.musicbusinessworldwide.com/nmpa-accuses-spotify-of-attacking-songwriters-as-it-changes-how-it-pays-mechanical-royalties-in-the-us/> [<https://perma.cc/A2JB-L7GH>]. See also *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)*, 87 FED. REG. 80448 (Dec. 30, 2022), <https://www.musicbusinessworldwide.com/files/2022/12/2022-28316.pdf> [<https://perma.cc/25X3-5NWR>] (codified in 37 C.F.R. Pt. 385).

⁶⁹ Stassen, *supra* note 68, at 10.

⁷⁰ Stassen, *supra* note 68, at 10.

⁷¹ Crystal Koe, *Spotify's Intent Seems Clear: US Senators Call for FTC Probe into Spotify's Subscription Bundles – Here's Why*, MUSICTECH (June 16, 2025), <https://musictech.com/news/music/spotify-ftc-probe-bundling/> [<https://perma.cc/2GCA-QFLW>].

industry, and authors have expressed hopes that “Spotify’s entrance into the market may help boost audiobook consumption as a portion of authors’ incomes.”⁷² There is also controversy surrounding the dominating audiobook platform, Audible, with the United States Authors Guild and the United Kingdom’s Society of Authors, along with 12,000 authors signing a letter demanding that “Audible change a policy that allowed subscribers to return or exchange an audiobook within 365 days, the cost of which would be deducted from the author’s royalties.”⁷³ Book authors hope that “Spotify’s entrance into the audiobook market would introduce healthy competition and prevent Audible from continuing to dominate,” where others express worries that “publishers made deals with Spotify even though authors have not been consulted on license or payment terms and agents were not consulted about giving Spotify permission to use their titles.”⁷⁴

Currently, Audible offers “Plus” and “Premium Plus” subscriptions.⁷⁵ Plus is priced at \$7.95 per month and includes unlimited listening to a limited catalogue of audiobook titles.⁷⁶ Premium Plus is priced at \$14.95 per month and, in addition to unlimited listening to the limited catalogue, subscribers receive one credit per month to buy and own any audiobook of their

⁷² Connor Murray, *Spotify’s Audiobook Rollout Sparks Fears of Unfair Payment For Authors – But Some Welcome Competition To Audible*, FORBES (Oct. 11, 2023, at 17:07 ET), <https://www.forbes.com/sites/conormurray/2023/10/11/spotify-s-audiobook-rollout-sparks-fears-of-unfair-payment-for-authors-but-some-welcome-competition-to-audible/> [<https://perma.cc/6UW3-Z8CW>].

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Choose the Plan That's Right for You*, AUDIBLE, https://www.audible.com/ep/plan-picker?ref_pageloadid=not_applicable&pf_rd_p=24cf5a7f-bf24-4c40-b4ee-daea61d8335f&pf_rd_r=3G1P7JRFPG0QAPH02G0M&plink=9k3nwN1XVQwygMDk&pageLoadId=BAqWSsXp3WgyfLw9&creativeId=c4df11b2-43fa-45f4-be87-72c7e41387ef [<https://perma.cc/F4L7-T36Q>] (last visited Mar. 7, 2026).

⁷⁶ *Id.* See *Learn about the Plus Catalog*, AUDIBLE, https://help.audible.com/s/article/learn-about-the-plus-catalog?language=en_US [<https://perma.cc/UXL6-CX8P>] (last visited Mar. 7, 2026).

choice.⁷⁷ Audible's catalog of unlimited listening is restricted and generally does not include current bestselling books.⁷⁸

In comparison, Spotify's "Audiobooks Access Plan" costs \$9.99 per month and includes fifteen hours of listening time.⁷⁹ If a subscriber runs out of their allotted fifteen hours, they can pay an additional \$12.99 to access to ten more hours.⁸⁰ Similar to Audible Plus, the Audiobooks Access Plan only includes titles from the "audiobooks subscriber catalog."⁸¹ However, Audible Plus "only covers a selection of audiobooks, compared to the 200,000 titles Spotify is opening up."⁸²

Audiobook listeners now have the option to subscribe to a limited catalogue with unlimited listening through Audible Plus, or purchase a more extensive catalogue with a fifteen-hour listening limit through the Audiobooks Access Plan on Spotify.

VI. LITIGATION OVER SPOTIFY'S BUNDLED REPORTING

In a recent case between MLC and Spotify, MLC argues that Spotify is vastly underreporting royalties that rightsholders are entitled to. MLC claims that this violates the Copyright Act, and the case highlights the ambiguities in the MMA and 37 Code of Federal Regulations Section 385.2. Therefore, an amendment to the law is necessary.

The dispute began when MLC filed a complaint against Spotify in the United States District Court for the Southern

⁷⁷ *Choose the Plan That's Right for You*, *supra* note 75, at 11.

⁷⁸ *Learn about the Plus Catalog*, *supra* note 76, at 11.

⁷⁹ *Audiobooks Access Plan*, SPOTIFY, <https://support.spotify.com/us/article/audiobooks-access-plan/> [<https://perma.cc/L7LY-KV36>] (last visited Mar. 7, 2026); *The Ultimate Home For*, *supra* note 52, at 8.

⁸⁰ *Audiobooks in Premium: Get Lost in Great Stories*, *supra* note 64, at 10; Jess Weatherbed, *Spotify's Free Audiobook Perk is Now Live for US Premium Subscribers*, THE VERGE (Nov. 8, 2023, at 08:00 ET), <https://www.theverge.com/2023/11/8/23951938/spotify-audiobook-listening-perk-us-premium-subscribers> [<https://perma.cc/G6CM-2MCU>].

⁸¹ *Audiobooks in Premium: Get Lost in Great Stories*, *supra* note 64, at 10.

⁸² Mia Sato, *Spotify's New Audiobook Tier Will Only Save You a Dollar over Premium*, THE VERGE (Mar. 1, 2024, at 11:28 ET), <https://www.theverge.com/2024/3/1/24087550/spotify-audiobook-access-tier-price-ads> [<https://perma.cc/Q4MP-LWUK>].

District of New York, alleging that its bundled royalty reporting violated Section 115 of the Copyright Act.⁸³ MLC contended that “Spotify unilaterally and unlawfully reduced Service Provider Revenue reported to the MLC for Premium by almost 50 percent.”⁸⁴ MLC accused Spotify of “improperly characterizing the service as a different type of Subscription Offering and underpaying royalties, even though there has been no change to the Premium plan and no corresponding reduction to the revenues that Spotify generates from its tens of millions of Premium subscribers.”⁸⁵ MLC’s main argument in the original complaint was that Spotify’s Premium subscription remains the same whether bundled or not, which is inconsistent with the regulations for bundled subscriptions under 37 Code of Federal Regulations Section 385.2;⁸⁶ specifically, the addition of 15 hours of audiobook access without a corresponding increase in total subscription price was inconsistent with the Copyright Act.⁸⁷ Spotify did not denote a separate product or service as part of its the bundled reporting requirements.⁸⁸

Spotify, in a Motion to Dismiss, argued that reporting Premium as a bundled subscription was justified, stating that 15 hours of Audiobook streaming counted as “[an]other product[] or service[]” and that it was worth more than “token value” as required to report a subscription as bundled by Section 385.2.⁸⁹ This was because audiobook access was an additional service, and the 15 hours permitted by Premium exceeded the “token” value described in the regulation.⁹⁰ Spotify argued that, under 37 Code of Federal Regulations Section 385.2, audiobook streaming was a separate product or service from music streaming because it plainly fell under Section 385.2.⁹¹ Additionally, Spotify said audiobooks were more than token value, which “means something of ‘minimal,’

⁸³ Complaint at 1, *Mech. Licensing Collective v. Spotify USA Inc.*, 763 F. Supp. 3d 608 (S.D.N.Y. 2025) (1:24-cv-03809).

⁸⁴ *Id.* at 2.

⁸⁵ *Id.*

⁸⁶ *Id.* at 3

⁸⁷ *Id.* at 3–4.

⁸⁸ *Id.* at 4.

⁸⁹ *Mech. Licensing Collective*, 763 F. Supp. 3d at 614.

⁹⁰ *Id.*

⁹¹ *Id.*

'perfunctory,' 'symbolic,' 'inconsequential,' or 'insubstantial' value."⁹²

The court sided with Spotify, dismissing the case with prejudice, explaining that Spotify's decision not to report Premium as a bundle immediately upon adding audiobook access to Premium "does not mean that Spotify's later decision to reclassify Premium as a Bundle is invalid."⁹³ The court held that because "MLC's allegations do not plausibly establish that Spotify violated § 115 by reporting Premium as a Bundled Subscription Offering, the Court agrees with Spotify that dismissal is appropriate."⁹⁴

Fourteen days after the Motion to Dismiss was entered, "MLC moved for reconsideration of the Dismissal Order or, in the alternative, vacatur of the Court's judgment to allow MLC to seek leave to amend the complaint."⁹⁵ MLC argued that the court did not consider how Spotify had "'failed to properly account for and pay royalties . . . in connection with [its] Audiobooks Access plan,' and, second, that Spotify 'improperly used the price of the Audiobooks Access plan as the standalone retail price of the non-music component of Premium when calculating the royalties due in connection with Premium.'"⁹⁶ Although the court rejected MLC's request for reconsideration, it "granted its alternative motion to vacate the judgment," allowing MLC to file an amended complaint.⁹⁷

MLC now argues that "even if Premium is a Bundle, Spotify is still unlawfully using Audiobooks Access to lower its royalty payments to songwriters and music publishers."⁹⁸ MLC alleged two new theories for how Spotify violates the Copyright Act through its bundled subscription reporting.⁹⁹ First, MLC says "Spotify has artificially inflated the price of Audiobooks Access to improperly use the plan as a proxy for the value of Premium's audiobook component, thereby reducing the royalties Spotify pays for Premium's music streaming component."¹⁰⁰ This relates to Section 385.2, which requires the

⁹² *Id.* at 617.

⁹³ *Id.* at 615.

⁹⁴ *Id.* at 617.

⁹⁵ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *3.

⁹⁶ *Id.* at *4.

⁹⁷ *Id.* at *3.

⁹⁸ *Id.*

⁹⁹ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *12

¹⁰⁰ *Id.* at *12-13

Provider to determine the standalone value of each component of a bundled subscription offering.¹⁰¹ MLC argues that when Spotify initially launched the Audiobook Access Plan, “it did so as a pretext to lower the royalties owed in connection with its Premium tier plans” because Spotify delayed reporting Premium as a bundled service until the addition of the \$9.99 Audiobook Access Plan.¹⁰² MLC claims that Spotify reports the standalone value of Audiobooks Access at \$9.99, suggesting “that Spotify values the better music streaming experience at only \$2 per month.”¹⁰³

MLC also explains that “no products in the U.S. market ‘closely’ resemble or are ‘reasonably comparable’ to Premium’s fifteen hours of audiobook listening per month,” because Audible Plus and Kobo Plus Listen offer unlimited audiobook access for less than \$8.00 per month.¹⁰⁴ Furthermore, the use of Spotify’s \$9.99 price for the audiobook component of Premium is not a “good faith, reasonable measure of the market value” because other audiobook streaming companies charge less than \$8.00 per month with subscriptions that include significantly more than fifteen hours of audiobook streaming.¹⁰⁵

MLC’s second argument is that “Spotify has not reported Audiobooks Access as required and has failed to pay the royalties due in connection with the unlimited music streaming that is part of the Audiobooks Access plan.”¹⁰⁶ Under 37 C.F.R. § 385.21(b), “royalties must be calculated separately with respect to each Offering.”¹⁰⁷ MLC says that “although Audiobooks Access includes unlimited music streaming under a compulsory license and is, therefore, an Offering, Spotify has never separately reported Audiobooks Access’ revenue, other figures, or royalties to MLC.”¹⁰⁸ MLC says that this “contravenes the plain language of the applicable regulations.”¹⁰⁹

¹⁰¹ *See id.*

¹⁰² *Id.* at *14–15

¹⁰³ *Id.* at *16

¹⁰⁴ *Id.* at *17

¹⁰⁵ *Id.* at *18. It is important to note that this argument ignores the fact that Spotify’s catalogue is more extensive than Audible Plus, despite the limited hours per month.

¹⁰⁶ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *19.

¹⁰⁷ *Id.* at *19.

¹⁰⁸ *Id.* at *19–20.

¹⁰⁹ *Id.* at *20.

Because of these two main arguments from MLC, the Court stated that under the liberal standard of Federal Rule of Civil Procedure 15, courts should “freely give leave” to amend a complaint “when justice so requires.”¹¹⁰ Through allowing MLC to file the amended complaint, the court stated that “MLC has plausibly alleged that Audiobooks Access is a Bundle because it combines compulsory licensed music streaming with a quantity of audiobook streaming that is of more than token value, which users pay for in a single monthly transaction, just like Premium.”¹¹¹ The Court also noted that “MLC has also plausibly alleged that there is no product or service in the United States that is ‘closely’ or ‘reasonably comparable’ to Premium’s 15 hours of audiobook listening per month.”¹¹² Finally, the court stated, “MLC has pleaded sufficient facts to raise a plausible claim that Audiobooks Access should be characterized as a Bundle because it includes both audiobook and music streaming in one package, for one fee that users pay for in a single transaction.”¹¹³

Spotify contends in its Answer that “\$9.99 is, if anything, a conservatively low price.”¹¹⁴ They point out the fact that “[o]f the audiobook subscriptions in the market that give access to the equivalent range of bestsellers available on Spotify, none can be purchased for less than \$9.99, and most cost much more.”¹¹⁵ Spotify notes that Audible Plus gives access to virtually no bestsellers, and that because MLC could not point to a subscription price for less than \$7.95 per month, “the least that the audiobook component of Spotify Premium could conceivably be valued at, consistent with the law, is \$7.95 per month.”¹¹⁶ Spotify says that even if the standalone value of audiobooks were lowered to that price, “the result would be an extremely small percentage increase in royalties paid to the music rightsholders.”¹¹⁷

¹¹⁰ *Id.* at *23.

¹¹¹ *Id.* at *28–29.

¹¹² *Id.* at *29.

¹¹³ *Id.* at *31.

¹¹⁴ Answer of Defendant Spotify U.S.A. Inc. To Plaintiff’s First Amended Complaint at 2, *Mech. Licensing Collective*, 1:24-cv-03809-AT-KHP (S.D.N.Y. Sep. 25, 2025).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

The court granted MLC's motion for leave to file an amended complaint.¹¹⁸ MLC filed its amended complaint on October 3, 2025, and Spotify responded with an answer on October 24, 2025.¹¹⁹ The case is still ongoing.

VII. ARGUMENT

When Spotify reclassified its Premium plan as a bundled subscription, it exposed significant gaps in the regulations that implement the MMA. Although MLC's first complaint misidentified Spotify's violation of the Copyright Act, the amended complaint reveals a credible argument that Spotify's bundled subscription reporting is an invalid interpretation of the regulations.

The crux of MLC's argument is that Spotify is reporting the standalone value of fifteen hours of audiobook listening as \$9.99 per month. Consequently, MLC claims that Spotify is valuing the music component of Premium at merely \$2.00 per month.¹²⁰ If this is the case, Spotify is only reporting sixteen percent of the total royalties received from Premium payments to the music rightsholders.¹²¹ According to Spotify's answer, "it reported \$10.99 as the standalone price for Premium Individual's music component and \$9.99 as the standalone price for Premium Individual's audiobooks component."¹²² If Spotify's answer is correct, then the royalties being reported to MLC are actually higher than what the amended complaint claims. However, if Spotify went from reporting one hundred percent of Premium subscription royalties to only reporting fifty-two percent, there would be a significant reduction in

¹¹⁸ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *34.

¹¹⁹ See First Amended Complaint, *Mech. Licensing Collective v. Spotify*, 1:24-cv-03809-AT-KHP (S.D.N.Y. Sep. 25, 2025). See Answer of Defendant Spotify U.S.A. Inc. To Plaintiff's First Amended Complaint, *Mech. Licensing Collective*, 1:24-cv-03809-AT-KHP (S.D.N.Y. Sep. 25, 2025).

¹²⁰ *Mech. Licensing Collective*, 2025 U.S. Dist. LEXIS 188932, at *16.

¹²¹ The combined standalone values of audiobooks (\$9.99) and music (\$2.00) is \$11.99. The music portion would represent 16 percent of the total value to be reported ($\$2.00 \div \$11.99 = 0.16$ or 16 percent).

¹²² Answer of Defendant Spotify U.S.A. Inc. To Plaintiff's First Amended Complaint, at 7, *Mech. Licensing Collective v. Spotify*, 1:24-cv-03809-AT-KHP (S.D.N.Y. Sep. 25, 2025).

royalties to music rightsholders.¹²³ Despite this reduction, Spotify only increased the price of Premium by \$1.00 per month.¹²⁴

Spotify's royalty reduction highlights the ambiguity in 37 Code of Federal Regulations Section 385.2, which allows for streaming service providers to create their own, potentially self-serving interpretations of key terms, including "token value," "good faith," and "reasonable measure of market value."¹²⁵ Spotify claimed that the standalone value of the audiobook portion of Premium was "conservatively low," but the answer lacked specific standards for how it arrived at the \$9.99 figure.¹²⁶

The legislative intent of the MMA, however, is to streamline copyright law by "creating a new compulsory blanket licensing system for mechanical works."¹²⁷ Representative Hakeem Jeffries stated that "The Music Modernization Act is carefully crafted legislation that will improve music licensing by increasing efficiency and providing greater transparency."¹²⁸ Irrespective of whether Spotify's reporting for Premium is sixteen percent or fifty-two percent for music rightsholders, its reporting practices evidences a lack of transparency, contrary to the legislature's intent in enacting the MMA.

VIII. SOLUTION

Regardless of whether streaming services are acting in bad faith when creating bundled subscription offerings, the dispute over Spotify's reporting practices reveals that the regulatory framework grants streaming services too much interpretive flexibility. Courts should not be left to determine the better argument for what "token value" or "good faith,

¹²³ In 2023, the combined standalone values of audiobooks (\$9.99) and music (\$10.99) was \$20.98. The music portion would represent 52 percent of the total value to be reported ($\$10.99 \div \$20.98 = 0.52$ or 52 percent).

¹²⁴ See *Mech. Licensing Collective*, 763 F. Supp. 3d at 612.

¹²⁵ 37 C.F.R. § 385.2.

¹²⁶ See Answer of Defendant Spotify Usa Inc. To Plaintiff's First Amended Complaint, at 2, *Mech. Licensing Collective*, 1:24-cv-03809-AT-KHP (S.D.N.Y. Sep. 25, 2025).

¹²⁷ H. Rept. 115-651, at 1 (2018).

¹²⁸ *The Creation of the Music Modernization Act*, *supra* note 28, at 5.

reasonable measure of market value” mean in practice.¹²⁹ The current framework allows streaming services to interpret the terms subjectively, potentially resulting in fewer payments to rightsholders.

To resolve this problem, the CRB should amend 37 Code of Federal Regulations Section 385.2 to include clear definitions and create measurable criteria for standalone values, especially if there is no comparable service to the one that a given streaming service provides. For example, Section 385.2 requires that the added service be worth more than “token value.”¹³⁰ Instead of leaving courts to decide what “token value” means, the regulation should state that “token value” is any added service that has a standalone value of less than twenty percent of the sum of the total standalone values of each subscription offering. For example, if the standalone value is less than twenty percent, the service provider does not qualify for bundled subscription reporting. This creates a quantitative measure in the regulation that courts can apply with certainty while also protecting rightsholders.

The change would also prevent streaming services from undervaluing additional components added to a subscription offering. Under the current framework, a service could add a new feature, assign it a standalone value of ten percent, and make the argument that the new component is worth token value to qualify for the benefits of bundled subscriptions. Under this amendment, the twenty percent threshold would eliminate that ambiguity. Unless the provider could justify that the standalone value of the offering is more than twenty percent, the offering would not qualify for bundled reporting. This reform reduces the ability for a streaming service to strategically categorize reporting for its own benefit.

This proposal does not eliminate the challenges raised by Spotify’s defense to MLC’s complaint. Spotify contends that the music component is worth fifty-two percent, putting audiobooks’ standalone value at forty-eight percent. However, it transitioned to bundled reporting without increasing the price of Premium. To address this issue, the CRB should be authorized to set rate structures for bundled subscription offerings similar to how it establishes royalty rates for compulsory licenses under the Copyright Act.

¹²⁹ See *Mech. Licensing Collective*, 763 F. Supp. 3d at 617.

¹³⁰ 37 C.F.R. § 385.2

Under the current version of 17 United States Code Section 801(b)(1), the CRB is authorized to make “determinations and adjustments of reasonable terms and rates of royalty payments” for compulsory license structures.¹³¹ When determining royalty rates, the CRB is required to “establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.”¹³² Prior to the passage of the MMA, the CRB was required to follow a four-factor test in order to determine royalty rates on a case-by-case basis:

- (A) To maximize the availability of creative works to the public.
- (B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.
- (C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.
- (D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.¹³³

Although this factor test predates the implementation of the MMA and blanket compulsory licensing structures, 17 United States Code Section 801(b) should be amended to authorize the CRB to determine rates for blanket licensing utilizing the above factors. A factor-based framework would help the CRB ensure that bundled subscriptions are fair to rightsholders while minimizing a disruptive impact on the industry. For example, if the CRB applied this structure to Spotify’s implementation of bundled subscription offerings that include audiobooks, the CRB would determine that

¹³¹ 17 U.S.C. § 801(b)(1).

¹³² 17 U.S.C. § 114(f)(1)(B).

¹³³ 17 U.S.C. § 801(b)(2)(D) (amended 2018).

reducing the music component from one hundred percent of royalties under the original Premium to fifty-two percent under the current model has a significant impact on the music industry and on the royalties payable to rightsholders.

IX. CONCLUSION

MLC v. Spotify exposes a critical gap in how the MMA and the implemented regulations govern bundled subscription offerings. MLC raises valid concerns about the fairness of Spotify's reporting. However, Spotify's defense notes the ambiguity in 37 Code of Federal Regulations Section 385.2, permitting the court to determine how to define key terms. Spotify's conduct shows that the current regulatory framework permits streaming services too much interpretive flexibility, regardless of whether Spotify's business practices were in good faith. The MMA's legislative intent makes clear that the blanket compulsory license structure was intended to increase efficiency and transparency in royalty reporting. Although MLC alleges a substantial reduction in royalty rates for music rightsholders, Spotify's position emphasizes that the fault may lie less in Spotify's compliance and more in the lack of definitional clarity in the regulations and in CRB oversight.

Therefore, the CRB should amend 37 Code of Federal Regulations Section 385.2 to establish a measurable criterion to determine standalone value rather than relying on the vague language of "token value." Assigning a percentage value to the definition creates a formulaic application and prevents ambiguity. Additionally, the CRB should implement a multifactorial determination to ensure fairness to rightsholders, focusing on minimizing a disruptive impact to the industry through an amendment to 17 United States Code Section 801.

As bundled subscriptions increase in popularity, the legislature must provide additional clarity within the statute to protect rightsholders' royalties or appoint a neutral third party to review and set the rates for bundled subscriptions. Without increased oversight, rightsholders are subject to a provider's reasonable interpretation of standalone value for a bundled subscription, which merely relies on the subjective discretion of streaming service providers. Through amending the MMA, rightsholders and the overarching music industry will be better protected from exploitation.