

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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June 2, 2021

Mr. Daniel Ek
Founder, Chief Executive Officer, and
Chairman of the Board of Directors
Spotify Technology S.A.
42-44 avenue de la Gare
LU-1610 Luxembourg

Dear Mr. Ek,

We write regarding the new “Discovery Mode” feature that Spotify has begun pilot testing on its Radio and Autoplay features.¹ Although public details are limited, Discovery Mode appears to allow artists and record labels to identify particular songs that they would like to prioritize in Spotify’s algorithmic recommendations in exchange for agreeing to be paid a lower, “promotional” royalty rate for those prioritized streams. This may set in motion a “race to the bottom” in which artists and labels feel compelled to accept lower royalties as a necessary way to break through an extremely crowded and competitive music environment. Depending on how the program is implemented, there is a further concern that accepting lower rates for this boost in Spotify’s algorithm may not even guarantee more airplay if virtually all commercial artists are also doing the same.

At a time when the global pandemic has devastated incomes for musicians and other performers, without a clear path back to pre-pandemic levels,² any plan that could ultimately lead to further cut pay for working artists and ultimately potentially less consumer choice raises significant policy issues. This is particularly true under Spotify’s current model, where artists’ returns are already low, with Spotify reporting to pay artists less than a cent per song streamed (estimated in the \$.003 to \$.005 range)³ and Spotify has challenged an administrative ruling

¹ *Amplifying Artist Input in Your Personalized Recommendations*, SPOTIFY (Nov. 2, 2020), <https://newsroom.spotify.com/2020-11-02/amplifying-artist-input-in-your-personalized-recommendations/>.

² See James V. Marrone et al., *The Pandemic Is a Disaster for Artists*, THE RAND BLOG (Aug. 4, 2020), <https://www.rand.org/blog/2020/07/the-pandemic-is-a-disaster-for-artists.html>.

³ Katie Canales, *Apple Music Said It Will Pay Artists a Penny Per Stream — Double What Spotify Pays*, BUS. INSIDER (Apr. 16, 2021), <https://www.businessinsider.com/spotify-pays-artists-half-apple-penny-per-stream-2021-4>.

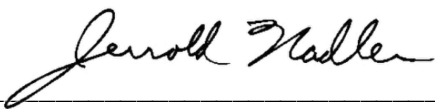
setting a higher royalty rate for songwriters.⁴ Core copyright industries like music play an integral role in the U.S. economy, and the vitality of the industry is undermined when artists' hard work is undervalued. Such a race to the bottom threatens to weaken the core goal of copyright and intellectual property—incentivizing creativity by offering a fair return on one's work.

To better understand the design and proposed implementation of the Discovery Mode tool and the impact that it will have on artists, we ask that you provide additional information in response to the following questions:

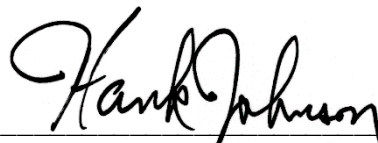
1. Does Spotify intend to make this pilot program a permanent one, and if so, when does it anticipate that it will begin?
2. What types of safeguards will be in place to ensure that a large volume of boosts under the Discovery Mode program do not end up cancelling each other out or otherwise resulting in a race to the bottom where the only practical way to get recommended is to accept a reduced royalty?
3. In general, how will Spotify calculate the reduced, "promotional" royalty rate that an artist or record label will need to accept to use the Discovery Mode program? Is this calculation the same for all artists and labels?
4. How will artists and record labels be able to measure the impact of the program on their streams, including which streams are served directly from participating in the Discovery Mode program?
5. What, if any, means of redress will be offered to artists to recover lost royalties in the event that they determine participation in the program has not yielded increased streams?

Thank you for your attention to this matter, and we look forward to your response by no later than June 16, 2021. Should you have any questions in the meantime, please feel free to contact a member of our staff.

Sincerely,



Jerrold Nadler
Chairman
Committee on the Judiciary



Henry C. "Hank" Johnson, Jr.
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet
Committee on the Judiciary

⁴ Dani Kass, *Google, Spotify Urge DC Circ. To Undo Royalty Board's Rates*, LAW360 (Aug. 15, 2019), <https://www.law360.com/articles/1189219/google-spotify-urge-dc-circ-to-undo-royalty-board-s-rates>.