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June 12, 2024

The Honorable Chair Lina M. Khan
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

The National Music Publishers' Association (“NMPA”)¹ writes to urge the FTC to address unlawful conduct by Spotify that is harming millions of consumers and the music marketplace. Over the last year, Spotify—the nation’s largest music streaming provider, which serves hundreds of millions of consumers—has engaged in a scheme to increase profits by deceiving consumers and cheating the music royalty system.

Spotify has deceived consumers by converting millions of its subscribers without their consent from music-only subscriptions into “bundled” audiobook-and-music subscriptions, publicly announcing increased prices for those subscriptions, failing to offer an option for subscribers to revert to a music-only subscription, and thwarting attempts to cancel through dark patterns and confusing website interfaces. This bait-and-switch subscription scheme is “saddling shoppers with recurring payments for products and services they did not intend to purchase or did not want to continue to purchase.”² Indeed, it has all the red flags of problematic negative-option practices that the FTC has consistently warned companies about: (1) Spotify has failed to give consumers all material information about its subscription plans up front; (2) Spotify has billed consumers without their informed consent; and (3) Spotify has made it hard for consumers to cancel.

Spotify’s conduct is having profoundly negative effects on other market participants as well. Those participants include music publishers and songwriters, whom Spotify is harming by

¹ Founded in 1917, the NMPA is the trade association representing all American music publishers and their songwriting partners. Its mission is to protect, promote, and advance the interests of music’s creators. The NMPA is the voice of both small and large music publishers and is the leading advocate for publishers and their songwriter partners in the nation’s capital and in every area where publishers do business.

² FED. TRADE COMM’N, ENFORCEMENT POLICY STATEMENT REGARDING NEGATIVE OPTION MARKETING (Nov. 4, 2021), https://www.ftc.gov/system/files/documents/public_statements/1598063/negative_option_policy_statement-10-22-2021-tobureau.pdf.

paying reduced royalties based on an assertion that its subscribers are now paying for content other than music. Spotify is also disadvantaging market competitors who are seeking to compete fairly.

If allowed to continue, Spotify's conduct will cost consumers millions of dollars, undermine the music royalty system, and harm competition. We ask the FTC to investigate and stop Spotify's misconduct.

I. Spotify's Scheme

Over forty million subscribers pay monthly fees for access to Spotify's subscription music services—Individual, Duo and Family (“Premium Plans”). Spotify in turn pays royalties to music publishers and songwriters for the musical works available on and used by subscribers through its service. Publishers' and songwriters' royalties are set by law, and Spotify (like all other digital music providers) pays more for music-only subscription offerings than it does for bundled-content subscription offerings. Beginning last year, Spotify began the process of introducing audiobooks onto its Premium Plans and automatically converting its Premium Plan subscribers to a purported “bundle” containing audio books. Spotify has now announced that it will begin charging those subscribers more for that “bundle” and paying less in music royalties.

In November 2023, Spotify launched the first step in its scheme by adding 15 hours of “free” audiobook content to music-only Premium Plan subscribers.³ Consumers were instantly and automatically enrolled in the new “bundle” with no option to opt-in or opt-out, or to continue the music-only subscription they had originally signed up for. As Spotify's November 8, 2023 press release announced, “There's no need for you to do anything: Starting today, you'll simply start seeing audiobooks marked as ‘Included in Premium’ that you can hit play on right away.”⁴ (See Ex. A.) Premium Plan subscribers continued—for the time—to pay \$10.99 per month for their service.

³ Notably, for Family and Duo plans, only the main subscriber has access to this additional content—meaning that other plan members gain no benefit from the nonconsensual conversion of the plan to a “bundled” subscription.

⁴ *200,000+ Audiobooks Are Now Available to Spotify Premium Listeners in the U.S.*, SPOTIFY (Nov. 8, 2023), https://pr-newsroom-wp.appspot.com/2023-11-08/audiobooks-us-spotify-premium-users/?_sm_au_=isVnLNV47F56ZDLPFcVTvKQkcK8MG.

Ex. A (Screenshot of Rollout of Audiobook Content in November 2023)

WHAT A PAGE-TURNER

200,000+ Audiobooks Are Now Available to Spotify Premium Listeners in the U.S.

NOVEMBER 8, 2023

↑ SHARE

Audiobook lovers across the U.S., rejoice! As of today, Spotify Premium users in the U.S. join those in the [U.K. and Australia](#) as we make over 200,000 [audiobooks](#) available as part of Spotify Premium subscriptions. How's that for a sequel?

To start, we're offering each Premium individual, as well as plan managers for Family and Duo accounts, 15 hours of listening per month. There's no need for you to do anything: Starting today, you'll simply start seeing audiobooks marked as "Included in Premium" that you can hit play on right away. Fifteen hours should get you around two average audiobooks per month, but if you do hit the limit, you can purchase a 10-hour top-up.

Once individual Premium Plan subscribers (as well as plan managers on Family and Duo accounts) were fully transitioned into the new "bundled" service, however, Spotify announced that it was increasing the prices of that service. *See* Ex. B.

Ex. B (Announcement of Price Increase of “Bundled” Subscription)

BUILDING THE BEST EXPERIENCE

Adjusting Spotify Premium Prices in the US

JUNE 3, 2024

↑ SHARE

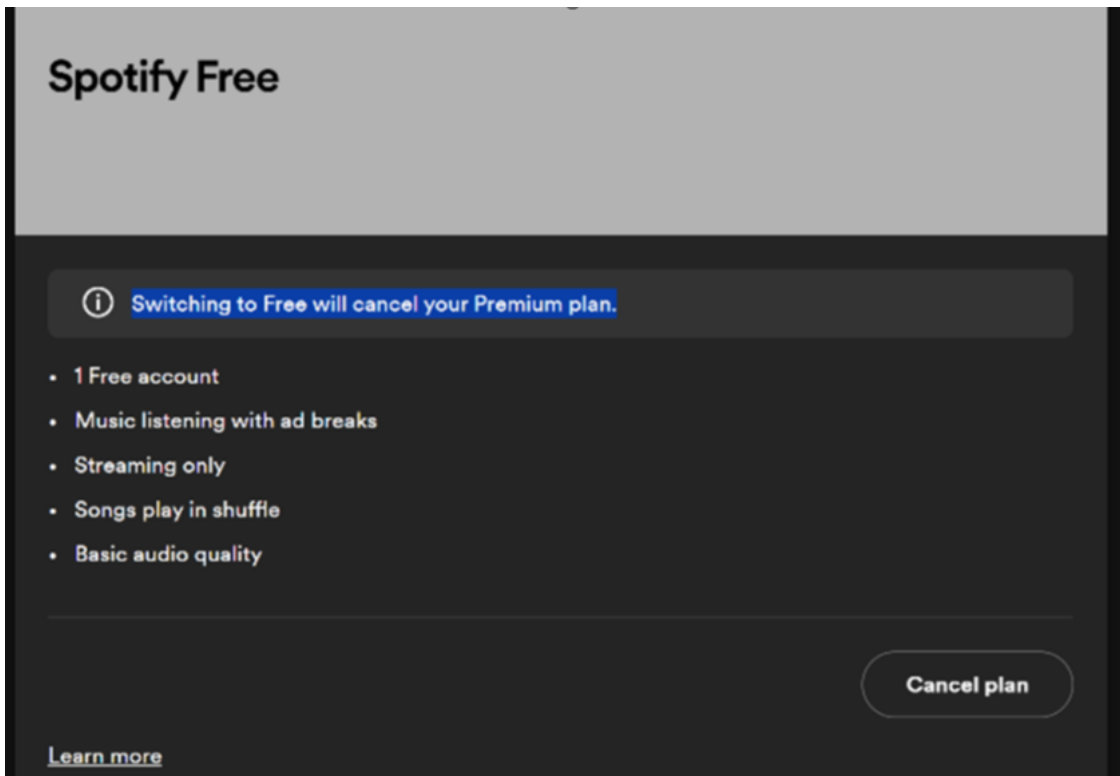
On Spotify, users discover and enjoy music, podcasts, and audiobooks. So that we can continue to invest in and innovate on our product features and bring users the best experience, we occasionally update our prices. Over the next month, subscribers in the U.S. will receive an email (pictured below) explaining what this update means for their subscription. For new subscribers in the U.S., the new prices are:

Individual	Duo	Family	Student
\$11.99	\$16.99	\$19.99	\$5.99

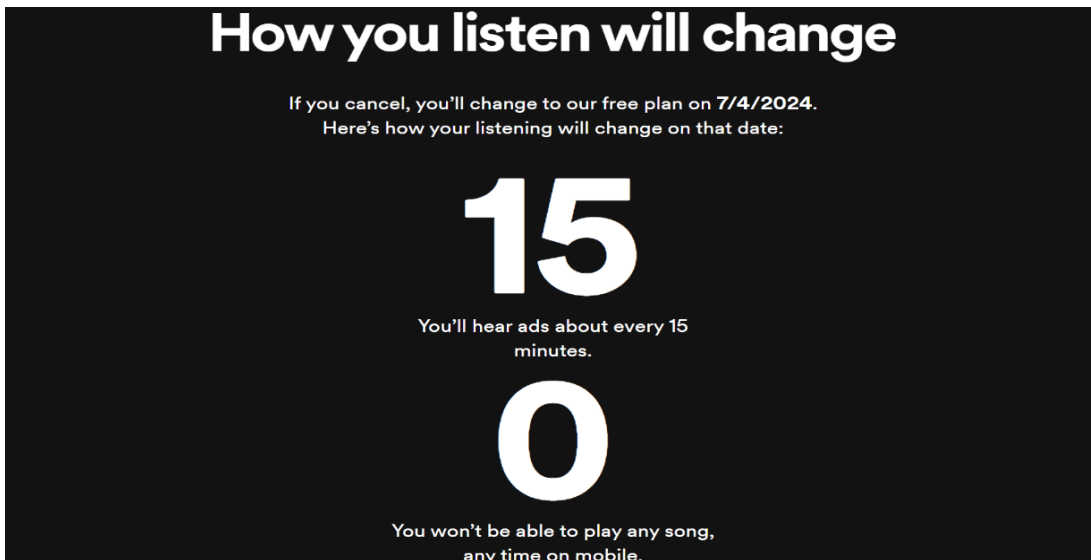
Because Spotify does not offer any ad-free music-only plans below its Premium Plans, music listeners who do not want to pay the increased cost but want to keep their accounts have only one option: Spotify’s ad-supported free plan.

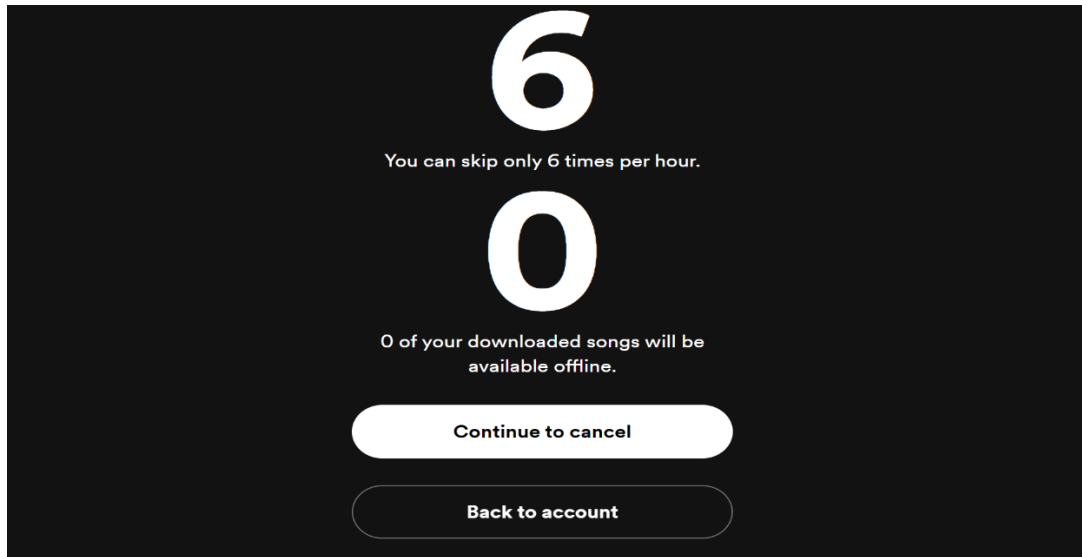
But Spotify’s website does not lay out a straightforward process for transitioning to a free plan. Starting at a user’s “Account” page and clicking “Manage your plan,” a user would need to click through *five* separate pages before the switch could be confirmed. Along the way, users are confronted with repeated and threatening reminders of the functionalities and control over their music that they will lose if they switch from Premium—a textbook example of a dark pattern. *See* Exs. C, D. These losses include the inability to avoid advertisements, create listening queues, select particular songs to play, or enjoy more than basic audio quality. And if the plan manager of a Duo or Family Plan switches from a Premium Plan to an ad-supported free plan, it affects all other users of the Duo or Family Plan.

Ex. C (Screenshot from User Flow for Cancellation of Premium Plan)



Ex. D (Screenshots from User Flow for Cancellation of Premium Plan)





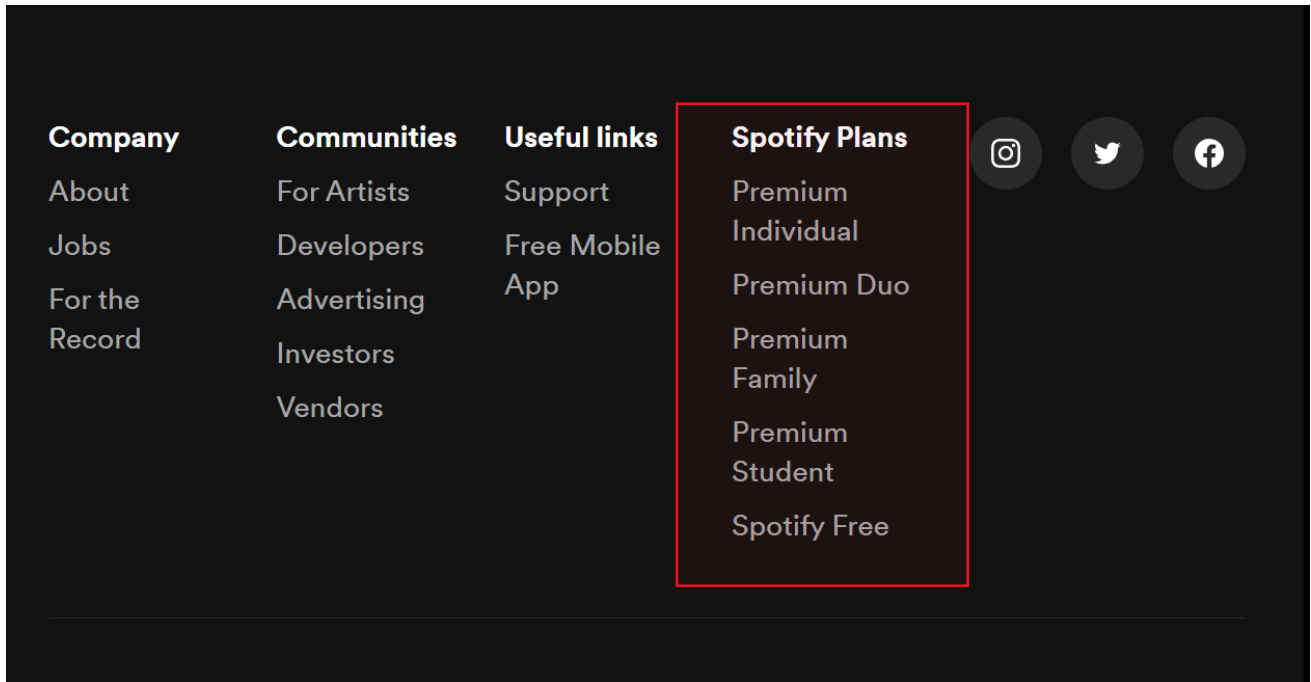
As a result, Premium Plan subscribers will be paying more than before for content they did not seek (audiobooks) with no option to opt out other than to leave their subscription and forfeit use and control of their music content—including the inability to avoid advertisements, create listening queues, select particular songs to play, or enjoy more than basic audio quality.

Connected to this consumer-deceiving conduct, Spotify simultaneously has advanced a ploy to pay less in royalties for the music content that its subscribers actually want and originally joined Spotify to access. To advance this ploy, Spotify had to establish a basis for claiming that the audiobook content in its Premium Plan had real value to subscribers and then use that claimed value as a justification for reducing music royalty payments. To manufacture value for the “free” audiobook content that it foisted on consumers without their consent, Spotify launched an audiobook-only subscription called the Audiobooks Access Plan in March 2024. Priced at \$9.99 a month but advertised nowhere and offering only 15 hours a month of audiobook access, the plan is a sham. But it is not designed to entice consumers. Rather, it exists solely to allow Spotify to claim that audiobook content is a significantly and independently valuable aspect of its “bundled” Premium Plan, as the Audiobook Access Plan costs only \$1 less than the Premium Plan with the exact same audiobook content and music.

The sham nature of the Audiobooks Access Plan is obvious from the fact that it is impossible to find on Spotify’s website and is not listed as part of Spotify’s subscriptions.⁵ See Ex. E.

⁵ <https://open.spotify.com/> (last visited June 4, 2024); <https://www.spotify.com/us/audiobooks/> (last visited June 5, 2024).

Exhibit E (List of Spotify Plans Does Not Include Audiobooks Access Plan)



Indeed, if a user clicks on the “Available plans” button on Spotify’s website, it navigates to a page that does not even list the Audiobook-only subscription.

The plan’s sham nature is also apparent from the fact that it is priced far above comparable products offered by competitors, such as AudiblePlus, which offers unlimited audiobook listening for just \$7.95 per month.

Moreover, as proof of the connection between the plan’s offering and the unique system for determining royalties in the United States, the Audiobooks Access Plan exists only in the U.S. and is not currently offered in foreign countries, because outside of the U.S. Spotify does not have the same ability to use the “bundled” offerings to lower royalties.

Spotify now pays significantly less in royalties to music publishers and songwriters under the assertion that its Premium Plan subscribers are all paying for a bundled-content subscription and that audiobooks comprise a valuable aspect of that subscription. In fact, Spotify will pay approximately \$150 million less in music royalties during the first year that the new “bundled” Premium Plans are in effect than what it previously paid in royalties for music-only Premium Plan subscriptions.

These actions collectively harm consumers by depriving them of choice, raising their costs, and ultimately leading to lower quality and less availability of music—which is the opposite of what consumers expect in paying Spotify for a Premium Plan. They also are an outlier within the industry. Other companies have distinct and clearly advertised music-only and bundled-content services, for which consumers knowingly may sign up.

II. Consumer Complaints Against Spotify

Consumers have complained about Spotify's unfair and deceptive practices in public forums:⁶

- “They need to make options to leave audio books out of the plan if we choose. I have audible. I don't need it on Spotify. They have the same books [unimpressed emoji].”
- “Why can't they just have the cheapest option be music and have tiers that add all the other stuff ...”
- “The wild thing is they could raise the price to \$11.99/month in order to pay their artists more and I'd be like “Is that it? Add another dollar to my sub!” But that's not what they're doing. They're paying them less. They're blowing money on (...) audiobooks (...) they're raising prices while making the service actively worse & more cluttered.”
- “For me if the price hikes were accompanied by even a tiny increase in royalty payouts I would be fully on board with it. Unfortunately so far this hasn't been the case.”
- “Raising prices to try and squeeze more profits while they continue to dismiss the work of artists and underpay the people who are literally the basis of their entire platform.”

III. Spotify's Scheme Violates the Law and Should Be Stopped

Spotify's unfair and deceptive practices are in clear violation of laws enforced by the FTC.

A. Spotify's Scheme Violates ROSCA

Spotify's automatic conversion of subscribers from a music-only plan to a more expensive “bundled” plan without their consent violates the Restore Online Shoppers' Confidence Act (“ROSCA”) because Spotify failed to: (1) clearly and conspicuously disclose all material terms of the transaction; (2) obtain a consumer's express informed consent before charging a consumer's account; and (3) provide an easy way to cancel. 15 U.S.C. § 8403.

First, when implementing its new bundled subscription plans, Spotify failed to “provide text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information.” Although Spotify made a public announcement on its website

⁶ u/ArklUcIIIe, *Spotify Hikes Prices of Premium Plans Again as Streaming Inflation Continues*, REDDIT (June 4, 2024), https://www.reddit.com/r/spotify/comments/1d72opc/spotify_hikes_prices_of_premium_plans_a_gain_as/.

that introduced the basics of its new audiobook add-on, that is a far cry from the statute’s requirement that Spotify disclose “all material terms of the transaction” to its users. Because audiobook access was initially added to Premium Plans at no extra charge, users may not have understood that this change to a bundled offering would be unfavorable to them and ultimately cost them more. Now, however, Spotify has planned to increase the price of its Premium Plans while failing to provide a music-only subscription plan that its users had agreed to pay for in the first place.

Second, Spotify did not obtain its users’ consent before charging their accounts. When Spotify announced that Premium Plan subscribers in the U.S. would have audiobook access incorporated into their existing music plans, the decision was foisted on existing users without their input or an opportunity to opt out of this add-on.⁷ As previously explained, Spotify’s addition of audiobook access was a pretext for auto-enrolling Premium Plan users into a more expensive subscription plan that contains a token feature that they never wanted and did not select. Because Spotify has failed to give its users any meaningful music-only alternative, users who want to listen to ad-free music have only two options: pay for the “bundle” or leave the Premium Plan and forfeit control of their music content. This scheme implicates issues of disclosure and user consent under ROSCA that warrant scrutiny.

Third, Spotify is employing dark patterns making it more difficult for consumers to cancel their Premium Plan subscriptions. The FTC has explained that “tricking consumers into signing up for subscription programs or trapping them when they try to cancel is against the law” and the responsibility for preventing harm rests with firms, not consumers.⁸ Here, consumers are saddled with inconvenience and stress in navigating Spotify’s cancellation flow. Spotify users cannot easily cancel their soon more-expensive subscription through the platform’s homepage. Instead, users must traverse a series of pages that force them to repeatedly affirm their intent to cancel. Further, at multiple points in this cancellation process, users are hit with advertising material that reminds them of the services that they will lose if they switch to a free plan—*see* Ex. D above. This is precisely the sort of “high friction experience” that the FTC has deemed to be “a dark pattern, an unfair practice under the FTC Act, and a ROSCA violation arising from the failure to provide a simple mechanism to cancel.”⁹

⁷ *200,000+ Audiobooks Are Now Available to Spotify Premium Listeners in the U.S.*, SPOTIFY (Nov. 8, 2023), https://pr-newsroom-wp.appspot.com/2023-11-08/audiobooks-us-spotify-premium-users/?_sm_au_=isVnLNV47F56ZDLPFcVTvKQkcK8MG.

⁸ FED. TRADE COMM’N, *FTC TO RAMP UP ENFORCEMENT AGAINST ILLEGAL DARK PATTERNS THAT TRICK OR TRAP CONSUMERS INTO SUBSCRIPTIONS* (Oct. 28, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions>. *See also* Samuel Levine, *To Empower, Not to Weaken: Rethinking Consumer Protection in the Digital Age* (Sept. 27, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/S.LevineBEUCspeech9272022FINAL.pdf.

⁹ FED. TRADE COMM’N, *BRINGING DARK PATTERNS TO LIGHT* (Sept. 2022), www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

B. Spotify's Scheme Violates Section 5

Spotify also has deceived consumers by falsely representing that the “bundled” Premium Plan adds substantial value to consumers and that the Audiobooks Access Plan is valued at close to the Premium Plan. This material misrepresentation that the “bundled” content adds substantial value is likely to mislead reasonable consumers. By bundling audiobook and music services together, Spotify allowed consumers to believe that they were receiving additional audiobook access free of charge. Now, with these expectations set, Spotify has pulled the rug out from under its consumers with a price increase. It also has deprived Premium Plan users of any option to access a music-only subscription plan, leaving consumers who want to listen to ad-free music without paying for audiobooks without any options.

Further, by charging consumers without consent, Spotify has engaged in unfair practices. Spotify’s “bundling” harms consumers by duping them into paying more for a service that they do not want. Thanks to Spotify’s use of dark patterns and deceptive billing practices, Spotify users cannot easily avoid these harms. And there certainly is no “countervailing benefit to . . . competition” given that Spotify’s scheme also harms songwriters and Spotify’s competitors.

C. Spotify's Scheme Is an Unfair Method of Competition

As the Commission explained in its November 2022 Policy Statement, “Section 5 reaches beyond the Sherman and Clayton Acts to encompass various types of unfair conduct that tend to negatively affect competitive conditions.”¹⁰ These “standalone” violations include conduct that is “coercive, exploitative, collusive, abusive, deceptive, predatory, or involve the use of economic power of a similar nature” and “tend[s] to negatively affect competitive conditions. This may include, for example, conduct that tends to foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers.”¹¹ Spotify’s conduct is an unfair method of competition under this test.

Spotify’s creation of a sham \$9.99 Audiobooks Access Plan is intended to allow Spotify to reduce royalty payments to songwriters by falsely characterizing its music-subscription service as a bundle. This will harm consumers, songwriters, and Spotify’s competitors.

Consumers will suffer from reduced royalties because Spotify has tremendous “economic power,” accounting for nearly one-third of the music-streaming market.¹² When songwriters are inadequately paid for nearly one-third of their work, basic economic theory suggests that they are less likely to create new content and form new businesses. Spotify’s illegal underpayment to

¹⁰ FED. TRADE COMM’N, POLICY STATEMENT REGARDING THE SCOPE OF UNFAIR METHODS OF COMPETITION UNDER SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

¹¹ *Id.*

¹² Anne Steele, *Spotify Dominates Audio Streaming, but Where Are the Profits*, WALL ST. J. (Jan. 18, 2024), <https://www.wsj.com/business/media/spotify-streaming-music-podcasts-audiobooks-3e88180d>.

songwriters thus will “negatively affect competitive conditions” in the streaming market. That “imposes significant negative externalities on . . . consumers, businesses, and competition as a whole.”¹³ Underpayment also “reduce[s] innovation” and “new business formation,”¹⁴ which harms consumers, who will face a loss of “quality and consumer choice” in streaming options.¹⁵

Spotify’s scheme also harms its competitors. By gaming the royalty system with its bait-and-switch subscription scheme, Spotify has gained an unfair competitive advantage because it can now offer the same content as its competitors at a fraction of the cost.

IV. Conclusion

We ask the FTC to review Spotify’s practices to protect millions of consumers and the integrity of the music marketplace. Absent action by the FTC, consumers will pay more for content they don’t want while the content they do want becomes harder to access and Spotify maintains an unfair competitive advantage.

Thank you for your attention to this important matter. Please contact us with any questions.

Respectfully submitted,



Danielle M. Aguirre
Executive Vice President & General Counsel

¹³ 89 Fed. Reg. 38428.

¹⁴ *Id.* at 38394.

¹⁵ *Id.* at 38398–99.