adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237, 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: December 22, 2021.

Respectfully submitted,

/s/ Kenneth A. Libby,

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[FR Doc. 2021–28539 Filed 1–4–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Amendment To Consent Decree Under the Clean Water Act

On December 29, 2021, the Department of Justice lodged a proposed First Amendment to Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States and the State of Ohio* v. *City of Middletown, Ohio,* Civil Action No. 18–cv–90.

The Complaint in the United States' lawsuit sought civil penalties and injunctive relief for alleged violations of the Clean Water Act (''CWA'') relating to the City of Middletown's sewer system in Middletown, Ohio. The Complaint alleged that: (1) Various discharges from Middletown's wastewater treatment plant violated the CWA by exceeding the effluent limitations in Middletown's permits; (2) Middletown's combined sewer overflow discharges violated the CWA by impairing downstream uses in the Great Miami River; (3) Middletown illegally discharged untreated sewage from its combined sewer overflow outfalls during dry weather; and (4) Middletown violated the CWA by failing to monitor and/or report the monitoring results for its outfalls as required.

A Consent Decree resolving the claims in the Complaint was entered by the Court on April 12, 2018. The Consent Decree requires that Middletown, among other things, implement a Long Term Control Plan to reduce the discharges of combined stormwater and sanitary sewage from the portion of Middletown's sewer system known as

the combined sewer system. The current LTCP, which was included with the Consent Decree as Appendix A, includes a number of combined sewer overflow control measures. During the detailed design phase of one of these measures following entry of the Consent Decree, Middletown discovered technical difficulties in carrying out the project as originally planned. The proposed First Amendment to Consent Decree substitutes an alternative project to convert a portion of Middletown's combined sewer system into a stormwater-only system.

The publication of this notice opens a period for public comment on the First Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Ohio* v. *City of Middletown, Ohio,* D.J. Ref. No. 90–5–1–1–08978. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the First Amendment to Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the First Amendment to Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–28574 Filed 1–4–22; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 21–CRB–0013–BER (2024–2028)]

Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine reasonable royalty rates and terms for the recording of ephemeral copies of sound recordings to facilitate digital audio transmissions of those sound recordings to business establishments pursuant to the limitation on exclusive rights specified by the Copyright Act. The royalty rates and terms the Judges determine in this proceeding will apply during the period beginning January 1, 2024, and ending December 31, 2028. The Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and pay the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2022.

ADDRESSES: The petition to participate form is available online in eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: The petition to participate process has been simplified. Interested parties file a petition to participate by completing and filing the petition to participate form in eCRB and paying the fee in eCRB. Do not upload a petition to participate document.

Docket: For access to the docket to read submitted documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov/* and search for docket number 21–CRB–0013–BER (2024–2028).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act provides that the Copyright Royalty Judges (Judges) commence a proceeding every fifth year [1] to determine royalty rates and terms for the recording of ephemeral copies of sound recordings pursuant to the statutory license in 17 U.S.C. 112(e)(1) to facilitate digital audio transmissions of those sound recordings to business establishments pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv). *See* 17 U.S.C. 804(b)(2). This notice commences the rate determination proceeding for the license period 2024–2028, inclusive. Section 803(b)(1)(A)(i)(II) directs the Judges to publish in the **Federal Register** a notice commencing this proceeding by no later than January 5, 2022.

Petitions To Participate

Parties with a significant interest in the outcome of the ''business establishments'' royalty rate proceeding must provide the information required by § 351.1(b) of the Judges' regulations by completing and filing the Petition to Participate form in eCRB. Parties must pay the $150 filing fee when filing each Petition to Participate form. 37 CFR 351.1(b). Parties must use the form in eCRB instead of uploading a document.

Only attorneys who are admitted to the bar in one or more states or the District of Columbia and are members in good standing will be allowed to represent parties before the Judges. Only an individual may represent herself or himself and appear without legal counsel. 37 CFR 303.2.

Dated: December 16, 2021.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2021–27669 Filed 1–4–22; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Subject 60-Day Notice for the "Program and Event Feedback Surveys for the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program" Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and

[1] The Judges commenced a proceeding to determine the 2019–2023 rates and terms in 2017. *See* 82 FR 143 (Jan. 3, 2017).