United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 5, 2025 Decided August 18, 2026

No. 25-1039

MUSIC CHOICE,
PETITIONER

v.

COPYRIGHT ROYALTY BOARD AND LIBRARIAN OF CONGRESS,
RESPONDENTS

On Petition for Review of an
Order of the Copyright Royalty Board

Paul M. Fakler argued the cause for petitioner. With him on the briefs were *Sarah Landry* and *Eric A. White*.

Amanda Mundell, Attorney, U.S. Department of Justice, argued the cause for respondents. With her on the brief were *Brett A. Shumate*, Assistant Attorney General, and *Daniel Tenny*, Attorney.

Matthew S. Hellman argued the cause and filed the brief for amicus curiae SoundExchange, Inc. in support of respondents.

Before: MILLETT, PAN, and GARCIA, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* MILLETT.

MILLETT, *Circuit Judge*: Music Choice transmits copyrighted sound recordings to businesses for use as background music. The Copyright Royalty Board's licensing regulations require Music Choice to pay a percentage of its revenues from those transmissions to the non-profit entity SoundExchange, Inc., which then distributes the royalties to copyright holders. In 2019, SoundExchange sued Music Choice, alleging that Music Choice had underpaid its royalties by misapplying the relevant Royalty Board regulation.

Relying on the doctrine of primary jurisdiction, the district court referred Music Choice and SoundExchange to the Royalty Board to seek its interpretation of that regulation. The Royalty Board subsequently issued a "Ruling on Regulatory Interpretation" that agreed with SoundExchange. Instead of returning to district court, Music Choice petitioned this court for review of the Royalty Board's ruling.

By statute, this court can directly review a Royalty Board ruling only if it is a "determination" under 17 U.S.C. § 803(c) brought by a "participant in [a] proceeding" under 17 U.S.C. § 803(b)(2) who is "bound" by that determination. *Id.* § 803(d)(1). None of those conditions is satisfied here, so this court lacks jurisdiction, and Music Choice must return to district court if it wishes to contest the Royalty Board's decision. We accordingly dismiss Music Choice's petition for review.

I

A

Musicians, record labels, and their assignees own copyrights in the sound recordings created when they produce a song. 17 U.S.C. § 102(a)(7). As a technical matter, sound recordings are "the fixation" of "musical, spoken, or other sounds" in a medium, such as a CD or digital audio file. *Id.* § 101. The sound-recording copyright protects the audio recording of a specific performance of a song—say, in a studio session—as distinct from the musical composition itself. The sound-recording copyright includes the exclusive rights to "reproduce[,]" *id.* § 106(1), "distribute[,]" *id.* § 106(3), and "perform" the sound recording "publicly by means of a digital audio transmission[,]" *id.* § 106(6). *See id.* § 114(a).

Congress, though, has limited those exclusive rights through a statutory licensing scheme.

"[P]reexisting subscription service[s]" ("Subscription Services") may lawfully broadcast a copyrighted sound recording through "noninteractive audio-only subscription digital audio transmissions[.]" 17 U.S.C. § 114(j)(11). Readers might find such a subscription service as an optional package in their cable or satellite television bundle, with channels dedicated to broadcasting pre-selected songs of different genres. Operating a Subscription Service requires two licenses: (1) a license to perform sound recordings by sending them out through digital audio transmissions, *id.* § 114(d)(2), (f); and (2) a license to make and store "ephemeral recordings"—that is, the temporary copies of copyrighted sound recordings that are needed to make the transmission, *id.* § 112(e).

Some of those transmissions—known as "business establishment services" ("Business Services")—are treated differently. Business Services transmit music programming "to a business establishment for use in the ordinary course of its business[.]" 17 U.S.C. § 114(d)(1)(C)(iv). Commonly, Business Services broadcast background music for restaurants, grocery stores, and other brick-and-mortar retailers.

Congress carved Business Services transmissions out of artists' exclusive performance rights for sound recordings. So Business Services—unlike Subscription Services—need not acquire a transmission license. 17 U.S.C. § 114(d)(1)(C)(iv). But Business Services still must acquire an ephemeral-recording license. *Id.* § 112(e)(1).

Those licenses all come at a cost: royalty payments. Congress assigned the task of regulating the rates and terms of royalty payments for Subscription Services and Business Services to the Copyright Royalty Judges. 17 U.S.C. §§ 112(e)(3), 114(f)(1), 801(b)(1).

The Copyright Royalty Judges are three full-time appointees of the Librarian of Congress who administer statutory copyright licensing schemes. 17 U.S.C. § 801(a), (b). The Judges and their staff serve within the Library of Congress. *Id.* § 801(e). They work in tandem with the Register of Copyrights, and they must consult with the Register on questions of copyright law. *Id.* § 802(f)(1)(B)–(C). Respondent the Copyright Royalty Board is "the institutional entity" that comprises the Copyright Royalty Judges collectively. 37 C.F.R. § 301.1.

B

This dispute centers on the Royalty Board's regulation setting the rates and terms of the ephemeral-recording license for Business Services, 37 C.F.R. part 384.[1] That regulation

[1] More precisely, the dispute concerns versions of Section 384 that governed from 2009 to 2018. The relevant provisions have since been amended and reorganized. *See* Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments, 83 Fed. Reg. 60,362, 60,363 (Nov. 26, 2018); Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for

dictates that, "[f]or the making of any number of Ephemeral Recordings in the operation of" a Business Service, a licensee "shall pay a royalty equal to" a percentage of "such Licensee's 'Gross Proceeds' derived from the use" of copyrighted sound recordings. 37 C.F.R § 384.3(a)(1).

The regulation then defines "Gross Proceeds" to mean:

> all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of sound recordings subject to protection under title 17, United States Code, during the [ephemeral-recording] license period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv) [the Business Services exemption from the performance right].

37 C.F.R. § 384.3(a)(2).

That is a mouthful. Bear with us.

The Librarian of Congress adopted that language on the Register of Copyright's recommendation when setting terms for the first Business Services ephemeral-recording license in 2002. *See* Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings, 67 Fed. Reg. 45,240, 45,268 (July 8, 2002). The

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Transmission to Business Establishments, 89 Fed. Reg. 267, 267 (Jan. 3, 2024). Because Section 384's substance has not meaningfully changed in the intervening years, we, like the parties, cite the currently operative version of the regulation. *See* Royalty Board Br. 10; Music Choice Reply Br. 10; SoundExchange Br. 6.

Librarian did so under a now-repealed statutory scheme that predated the Royalty Board's creation. *See* 17 U.S.C. § 802(f) (2000). Since then, the Business Services royalty rate has been determined through settlement agreements among the interested parties that have incorporated the original definition of gross proceeds with only minor, non-substantive changes.[2] Subject to exceptions not relevant here, the Royalty Board is required to "adopt as a basis for statutory terms and rates" of the ephemeral-recording license "an agreement concerning such matters reached among" interested parties. 17 U.S.C. § 801(b)(7)(A).

II

A

Petitioner Music Choice operates both Subscription Services and Business Services. Amicus SoundExchange, Inc. is a non-profit entity tasked by the Royalty Board with collecting royalty payments from licensees like Music Choice and distributing those royalties to copyright holders. 37 C.F.R. §§ 382.5(d)(1) (Subscription Services licenses), 384.4(b)(1) (Business Services licenses).

In 2019, SoundExchange sued Music Choice in the United States District Court for the District of Columbia, alleging that Music Choice had systematically underpaid royalties owed for

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[2] *See* Determination of Rates and Terms for Business Establishment Services, 73 Fed. Reg. 16,199, 16,199 (March 27, 2008); Determination of Rates and Terms for Business Establishment Services, 78 Fed. Reg. 66,276, 66,277 (Nov. 5, 2014); Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments, 83 Fed. Reg. at 60,363; Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments, 89 Fed. Reg. at 267.

its Business Services by underreporting its gross proceeds from the transmission of sound recordings.

Music Choice denied any underpayment. Leaning on the phrase "for the sole purpose" in the "gross proceeds" definition, 37 C.F.R. § 384.3(a)(2), Music Choice maintains that the gross proceeds on which it owes royalties include only those revenues derived from music transmissions provided *solely* to Business Services customers. In Music Choice's view, when it uses an ephemeral recording to transmit music as part of *both* a Business Services transmission *and* a Subscription Services transmission, any revenues attributable to the delivery of that recording to its Business Services customers do not count toward its gross proceeds.

SoundExchange, in contrast, understands the gross proceeds definition to reach all revenues from Business Services transmissions derived from ephemeral recordings, regardless of whether those recordings also facilitated the provision of Subscription Services or other transmissions.

SoundExchange argued to the district court that 17 U.S.C. § 803(c)(4) provides a procedure for the Royalty Board to resolve the dispute over the best reading of the gross proceeds definition. That provision—titled "Continuing [J]urisdiction" —states that the Royalty Board "may issue an amendment to a written determination to correct any technical or clerical errors in the determination[.]" 17 U.S.C. § 803(c)(4). In 2015, the Register of Copyrights opined that the Royalty Board's "power to correct any technical errors in determinations encompasses the power to resolve ambiguity in the meaning of regulations adopted pursuant to those determinations." Scope of the Copyright Royalty Judges' Continuing Jurisdiction, 80 Fed. Reg. 25,333, 25,335 (May 4, 2015) ("*Continuing Jurisdiction*") (formatting modified). In the Register's view, that kind of regulatory interpretation "is 'technical' in the sense that it merely clarifies existing regulations to ensure they are applied in the manner intended[.]" *Id.*

On that basis, SoundExchange asked the district court to refer to the Royalty Board the question of the gross proceeds regulation's proper meaning, as a matter of "primary jurisdiction." *SoundExchange, Inc. v. Music Choice*, No. 19-cv-999, 2021 WL 5998382, at *3 (D.D.C. Dec. 20, 2021) (quotation marks omitted); *see id*. at *4–7. Primary jurisdiction applies when a claim in litigation "contain[s] some issue within the special competence of an administrative agency." *Reiter v. Cooper*, 507 U.S. 258, 268 (1993).

A primary-jurisdiction referral, in turn, "is sometimes loosely described as a process whereby a court refers an issue to an agency." *Reiter*, 507 U.S. at 268 n.3. That misstates the doctrine. Unless the agency's organic statute "contains [a] mechanism whereby a court can on its own authority demand or request a determination" from it, the court's ruling does not actually transfer the disputed issue to the agency. *Id.* Instead, the "procedure contemplated" is that the court authorizes the parties to "apply to the [agency] for a ruling" through whatever statutory procedures allow the agency to address the matter. *Id.* (quoting *Mitchell Coal & Coke Co. v. Pennsylvania R.R. Co.*, 230 U.S. 247, 267 (1913)). Commonly, the court will retain jurisdiction and stay affected aspects of the case "so as to give the parties reasonable opportunity" to obtain the administrative ruling before returning to the litigation. *See Reiter*, 507 U.S. at 268 n.3.

Music Choice objected to the referral on the ground that Section 803(c)(4) does not grant the Board authority to resolve ambiguities in its regulations. *See SoundExchange*, 2021 WL 5998382, at *5.

Relying on the Register's opinion, the district court agreed with SoundExchange that the Royalty "Board has continuing jurisdiction to offer interpretive guidance in this case." *See SoundExchange*, 2021 WL 5998382, at *7. The court accordingly stayed the pending litigation so the parties could seek the Royalty Board's input.

B

In February 2022, SoundExchange moved to reopen the three dockets through which the Royalty Board had promulgated the most recent versions of the Business Services royalty regulations. *See* Determination of Rates and Terms for Business Establishment Services, 73 Fed. Reg. 16,199 (March 27, 2008) ("*Business Services I*"); Determination of Rates and Terms for Business Establishment Services, 78 Fed. Reg. 66,276 (Nov. 5, 2014) ("*Business Services II*"); Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments, 83 Fed. Reg. 60,362 (Nov. 26, 2018). In support of that motion, SoundExchange again relied on Section 803(c)(4) and the Register's opinion about the Royalty Board's authority to offer interpretations of its regulations. *See* J.A. 109 (citing 17 U.S.C. § 803(c)(4); *Continuing Jurisdiction*, 80 Fed. Reg. at 25,335).

Because SoundExchange's claims in district court related to royalties owed only under *Business Services I* and *II*, the Royalty Board reopened only those two dockets "for the limited purpose of addressing the meaning of 'Gross Proceeds' as defined in 37 C.F.R. 384.3(a)." J.A. 112. The Royalty Board then ordered SoundExchange and Music Choice to brief the issue. It did not solicit input from any other party to the settlement agreements or other potentially interested persons.

Nearly three years later, in January 2025, the Royalty Board published its "Ruling on Regulatory Interpretation" in the Federal Register. Ruling on Regulatory Interpretation for Business Establishment Services, 90 Fed. Reg. 1,884 (Jan. 10, 2025) ("*Royalty Board Ruling*"). Although the Royalty Board did not expressly invoke Section 803(c)(4) as the authority for its decision, it endorsed the district court's finding that it had "continuing jurisdiction[,]" *id.* at 1,885 n.3, by pointing to the Register of Copyrights' previous decision interpreting Section 803(c)(4), *id.* at 1,885 n.6 (citing *Continuing Jurisdiction*, 82 Fed. Reg. 25,333).

The Royalty Board then rejected Music Choice's reading of the gross proceeds definition, 37 C.F.R. § 384.3(a)(2). *See Royalty Board Ruling*, 90 Fed. Reg. at 1,889. Surveying the definition's regulatory history, the Royalty Board concluded that "for the sole purpose" was "intended" to modify only the "scope of *in-kind* payments"—that is, payments in goods or services—that would count toward a licensee's gross proceeds. *Id.* at 1,890 (emphasis added). That reading, the Royalty Board reasoned, made the most sense of Section 384.3(a)(2)'s otherwise "ambiguous" text. *Id.* at 1,889–1,890. While that conclusion was "sufficient" to reject Music Choice's position, the Royalty Board further explained why its understanding of the text vindicated the broader economic objectives of the Business Services licensing scheme. *Id.* at 1,890–1,893.

As a result, under the Royalty Board's reading of the gross proceeds definition, Music Choice must count all of its Business Services revenues toward its gross proceeds "*except* that in-kind payments" may be excluded when they are attributable to dual-purpose ephemeral recordings used for both Business Services and Subscription Services. *Royalty Board Ruling*, 90 Fed. Reg. at 1,893. Music Choice admits that it "does not collect fees in kind." Music Choice Opening Br. 37. So the Royalty Board's ruling—if accepted—would leave no apparent room for Music Choice's textual defense under the gross proceeds regulation to SoundExchange's claims in district court.

C

Music Choice petitioned this court for review and vacatur of the Royalty Board's ruling. *See* Music Choice Opening Br. 1. The Royalty Board contends that we lack jurisdiction over Music Choice's petition and must dismiss it. *See* Royalty Board Br. 3. Amicus SoundExchange argues that we should exercise jurisdiction, deny the petition, and affirm the Royalty Board. *See* SoundExchange Br. 6.

III

Music Choice invokes our exclusive jurisdiction under 17 U.S.C. § 803(d)(1). We have jurisdiction to determine our own jurisdiction. *United States v. Ruiz*, 536 U.S. 622, 628 (2002). We construe Section 803 *de novo*. *Independent Producers Group v. Library of Cong.*, 759 F.3d 100, 105 (D.C. Cir. 2014).

Section 803 broadly prescribes the terms of proceedings before the Royalty Board. *See* 17 U.S.C. § 803. Subsection (d)(1) provides for judicial review of those proceedings. *Id.* § 803(d)(1). But it "does not authorize judicial review of just any objection to any decision made by the" Royalty Board. *Independent Producers Group*, 759 F.3d at 105. Subsection (d)(1) sets three conditions on judicial review: Petitions for review may be taken only (A) from a "determination" of the Royalty Board "under subsection (c)"; (B) by a "participant in the proceeding under subsection (b)(2)"; (C) "who would be bound by the determination." 17 U.S.C. § 803(d)(1).

The Royalty Board's ruling on regulatory interpretation was not a determination under Section 803(c). Nor did it follow from Music Choice's participation in a proceeding under Section 803(b)(2). So it cannot bind Music Choice (or anyone else). We accordingly lack jurisdiction to review the Royalty Board's decision and dismiss Music Choice's petition for review.

A

This court has jurisdiction to review only a "determination" by the Royalty Board issued "under subsection (c)" of Section 803. 17 U.S.C. § 803(d)(1).

Section 803(c) authorizes the Royalty Board to make three kinds of decisions. It can render a "determination in a proceeding[.]" 17 U.S.C. § 803(c)(1). It can revise its "initial determination" on "rehearing" and issue a "final determination[.]" *Id.* § 803(c)(2). And it can "issue an amendment to a written determination to correct any technical or clerical errors[.]" *Id.* § 803(c)(4).[3]

No one argues that the Royalty Board's decision fell within subsections (c)(1) or (c)(2). Music Choice contends only that the Royalty Board's ruling here constituted a determination under subsection (c)(4) because it was an exercise of the Royalty Board's continuing jurisdiction to amend a prior determination by correcting technical or clerical errors.

[3] Section 803(c)(4) separately authorizes the Royalty Board "to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances[.]" 17 U.S.C. § 803(c)(4). But no one—not Music Choice, not the Royalty Board, and not the Register of Copyrights—has claimed the Royalty Board could or did exercise that authority here. So we do not address that distinct power.

Music Choice is wrong. The Royalty Board's regulatory interpretation is not a judicially reviewable determination under Section 803(c)(4) for three reasons.

First, Section 803(c)(4) authorizes the Royalty Board to "issue an amendment" to a prior determination. 17 U.S.C. § 803(c)(4). An amendment is a "formal revision or addition" to a text, especially by "an alteration in wording." *Amendment*, BLACK'S LAW DICTIONARY (8th ed. 2004). So, naturally read, Section 803(c)(4) means the Royalty Board "can revise [a] Determination[,]" *Johnson v. Copyright Royalty Board*, 969 F.3d 363, 390 (D.C. Cir. 2020), "by addition, deletion, or correction[,]" *Amendment*, BLACK'S LAW DICTIONARY (8th ed. 2004).

The Royalty Board's ruling here did nothing of the sort. It did not change the terms of the gross proceeds definition in any way. Nor did it purport to. Indeed, the entire premise of the Royalty Board's ruling is that amending the definition is unnecessary because the regulation already has a definitive meaning that the Royalty Board's interpretation merely clarified. *See Royalty Board Ruling*, 90 Fed. Reg. at 1,888 ("Based on the entirety of th[e] record, the [Royalty Board's] analysis and findings clarify this apparent ambiguity.").

Second, as relevant here, the Royalty Board may wield its Section 803(c)(4) authority only "to correct any technical or clerical errors" in a determination. 17 U.S.C. § 803(c)(4). The Board's ruling here is a square peg against that round hole.

To start, Music Choice's argument relies on the Register of Copyright's assertedly "binding" opinion that the Royalty Board's power to correct technical or clerical errors "encompasses the power to resolve ambiguity in the meaning" of the gross proceeds definition. Music Choice Reply Br. 5 (quoting *Continuing Jurisdiction*, 80 Fed. Reg. at 25,335).

This court, though, does not defer to the Register's interpretation of the text of Section 803(c)(4). We must independently decide the meaning of the statute. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). In this case, the Register's reading cannot be reconciled with the plain text of Section 803(c)(4).

The best and most straightforward understanding of a "technical or clerical error" is an insignificant misstep in draftsmanship or the reproduction of text.

Starting with "clerical error," that phrase is defined as an "error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." *Clerical Error*, BLACK'S LAW DICTIONARY (8th ed. 2004); *see also Clerical Error*, BLACK'S LAW DICTIONARY (10th ed. 2014) (amending to "esp., a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading").[4]

That meaning parallels what "clerical error" means in the analogous context of judicial corrections. *See* FED. R. CRIM. P. 36 ("[T]he court may at any time correct a clerical error * * * or correct an error in the record arising from oversight or omission."); FED. R. CIV. P. 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found[.]").

The judicial power to correct such errors is narrow. *See United States v. Penson*, 526 F.3d 331, 335 (6th Cir. 2008) (An

[4] *See also Clerical Error*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabr. ed. 2002) ("an error made in copying or writing"); *Clerical Error*, BALLENTINE'S LEGAL DICTIONARY & THESAURUS (1995) ("A mistake in copying or writing; an error in form rather than in substance.").

error correctable under Rule 36 "must not be one of judgment or even of misidentification, but merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature.") (quotation marks omitted); 11 WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 2854 (3d ed. 2026) (Rule 60(a) "deals solely with the correction of errors that properly may be described as clerical[,]" while "[e]rrors of a more substantial nature are to be corrected by a motion under Rules 59(e) or 60(b).").

The term "technical error" is less susceptible to ready definition.[5] But where that phrase appears in the U.S. Code, it also commonly refers to similarly minute errors of transcription.[6] Indeed, Congress often pairs the terms "technical" and "clerical" together, as it did in Section

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[5] Legal dictionaries recognize an archaic usage of "technical error" to refer to what courts would now term "harmless error" in a record on review. *See Technical Error*, BLACK'S LAW DICTIONARY (8th ed. 2004) (referencing "*harmless error* under ERROR (2)"); *Technical Error*, BALLENTINE'S LEGAL DICTIONARY & THESAURUS (1995) ("Error that is not material; error committed by the court in the course of a trial, but which is without prejudice to the party who complains of it; harmless error.").

[6] *See, e.g.*, 19 U.S.C. §§ 3002(6) (defining "technical rectifications" as "minor technical or clerical changes" to "spelling, numbering, or punctuation;" "indentation;" "cross-references to headings or subheadings or notes;" and "other clerical or typographical errors"), 4033(o)(3)(B) (describing "modifications to correct any typographical, clerical, or other nonsubstantive technical error"); 28 U.S.C. § 2517 (1982 amendment note) (explaining that Congress "correct[ed] a technical error" when it "struck out a comma"); 42 U.S.C. §§ 247b (1985 amendment note) (same when Congress struck out a cross-reference), 426 (1978 amendment note) (same when Congress redesignated subheadings).

803(c)(4).[7] Because "a word is known by the company it keeps[,]" *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995), the phrase "technical or clerical errors" naturally refers to non-substantive scrivener's errors and related minutiae.

The Royalty Board's decision here—which purported to resolve a substantive ambiguity at the heart of Section 384.3(a)'s operation—cannot be reconciled with that plain meaning. There is nothing technical or clerical about a hotly contested ambiguity about the substantive reach of a regulatory definition with "tens of millions of dollars" on the line. Oral Arg. Tr. 52:16; *see Johnson*, 969 F.3d at 391 (rejecting the Royalty Board's invocation of Section 803(c)(4) to effect a "substantive swap" in the meaning of a defined term).

The Register, whose reasoning Music Choice adopts, thought otherwise. In the Register's view, resolving an ambiguity is a "correction," and "[s]uch a correction is 'technical' in the sense that it merely clarifies existing regulations to ensure they are applied in the manner intended by the" Royalty Board. *Continuing Jurisdiction*, 80 Fed. Reg. at 25,335. That is the sum of the Register's textual analysis. But it does not add up.

To begin, ambiguity in a regulatory term is not an "error" at all. It simply is the byproduct of applying rules to particular situations or of the ordinary elasticity of words. So resolving that ambiguity is, at most, a disambiguation or application of the ordinary meaning of text.

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[7] *See, e.g.*, 19 U.S.C. § 2503(b)(1)(A) ("minor technical or clerical changes which do not affect the substance or meaning of the texts"); 26 U.S.C. § 4064(c)(3) ("technical or clerical amendment"); 42 U.S.C. § 4905(c)(3)(B) ("technical or clerical corrections"); 47 U.S.C. § 334(c) ("nonsubstantive technical or clerical revisions").

Further, the Register's reading did not just interpret the statutory text; it rewrote it. The reading focused on whether clarifying ambiguity is a technical or clerical task. But the test under Section 803(c)(4) is not whether the *correction* itself is technical (or clerical). It turns on whether what is being corrected is a "technical or clerical *error*[.]" 17 U.S.C. § 803(c)(4) (emphasis added).

As a result of that textual reordering, the Register's interpretation reads Section 803(c)(4)'s limiting language right out of the statute. If the only barometer for the technical or clerical character of its action were the Royalty Board's present sense of its past intent, Section 803(c)(4) would impose no enforceable limit at all.

Third, the form of the Royalty Board's regulatory-interpretation ruling falls outside Section 803(c)(4)'s ambit. A Section 803(c)(4) "amendment shall be set forth in a written addendum to the determination" that it amends. 17 U.S.C. § 803(c)(4).

That did not happen here. The Royalty Board's ruling is not called an addendum. *See generally Royalty Board Ruling*, 90 Fed. Reg. 1,884. It has not been appended to the Royalty Board's *Business Services I* or *Business Services II* publications. *See generally* 73 Fed. Reg. 16,199; 78 Fed. Reg. 66,276. Nor does it appear in the Code of Federal Regulations alongside the text it interprets. *See generally* 37 C.F.R. part 384.

*   *   *

In short, nothing in Section 803(c)(4) authorizes the Royalty Board to issue *post hoc* interpretive rulings on the substantive meaning of its determinations. So the Royalty Board's ruling here was not a judicially reviewable "determination" issued "under subsection (c)" of Section 803. 17 U.S.C. § 803(d)(1).

B

Next, recall that this court's jurisdiction to review a decision of the Royalty Board under Section 803(d)(1) is further limited to petitions filed by a "participant in the proceeding under subsection (b)(2) who fully participated in the proceeding[.]" 17 U.S.C. § 803(d)(1). Music Choice does not qualify.

Section 803(b)(2) provides that "a person may participate in a proceeding * * * only if" they first file "a petition to participate in accordance" with Section 803(b)(1). 17 U.S.C. § 803(b)(2), (b)(2)(A). Section 803(b)(1), in turn, requires that petitions to participate "be filed no later than 30 days after publication" in the Federal Register by the Royalty Board of a "notice of commencement of a proceeding[.]" *Id.* § 803(b)(1)(A)(ii); *see also id.* § 803(b)(1)(A)(i).

The "proceeding[s]" to which Section 803(b)(2) refers are the voluntary negotiation period, discovery procedures, evidentiary hearings, and adversarial presentations described elsewhere in Section 803(b). *See* 17 U.S.C. § 803(b)(3), (b)(5), (b)(6)(C)(i)–(xi).

Here, the Royalty Board never published notice that it was commencing a proceeding in service of its ruling on regulatory interpretation in the Federal Register. Nor did Music Choice file a petition to participate. Instead, the Royalty Board simply granted SoundExchange's motion to reopen the *Business Services I* and *II* dockets.

To be sure, the *Business Services I* and *II* proceedings began years ago with notices of commencement and petitions to participate from Music Choice and many others. *See* 73 Fed. Reg. at 16,199; 78 Fed. Reg. at 66,277. But Music Choice is not seeking our review of those proceedings. *See* Music Choice Opening Br. i–ii (listing only the Royalty Board's ruling on regulatory interpretation as the "ruling under review").

Instead, Music Choice contends that we have jurisdiction to review the Royalty Board's interpretive ruling as a distinct and independent determination under Section 803(c)(4). Yet it has nowhere explained how its participation in *that* proceeding complied with the strictures of Section 803(b)(2). Nor could it. Nothing in Section 803's text contemplates proceedings for interpretive rulings of years-old settlement agreements.

Music Choice argues that Section 803(d)(1)'s limit on who can petition for review must reach back through Section 803(c)(4) to the underlying ratemaking proceeding lest parties be deprived of judicial review of a Royalty Board regulatory interpretation affecting their bottom lines.

But that is a result in search of a textual rationale. The Register's misreading of Section 803(c)(4) as allowing substantive decisions under the guise of correcting technical errors is the grand marshal in Music Choice's parade of horribles—not Section 803(d)(1)'s limit on who can petition for review. If, as the text demands, Section 803(c)(4) confines the Royalty Board to correcting only minor, non-substantive, and non-controversial technical or clerical errors in a prior determination, Congress's limitation on judicial review of such housekeeping matters makes sense.[8]

[8] This case does not require us to opine on the availability of judicial review of an actual amendment to a prior determination under Section 803(c)(4). We leave that distinct question for another day. It suffices to hold here that the bespoke procedure the Royalty

Because Music Choice is not an "aggrieved participant in [a] proceeding under subsection (b)(2)" that produced the Royalty Board's ruling on regulatory interpretation at issue, we lack jurisdiction over this petition. 17 U.S.C. § 803(d)(1).

C

Finally, Music Choice cannot hurdle yet another bar to our review. For while Music Choice assuredly is "aggrieved" by the Royalty Board's ruling on regulatory interpretation, it is in no way "bound by" that ruling. 17 U.S.C. § 803(d)(1).

Section 803 strictly limits the Royalty Board's power to bind anyone. It can do so by "adopt[ing] as a basis for statutory terms and rates" a settlement "agreement" reached among participants in a ratemaking proceeding. 17 U.S.C. § 801(b)(7)(A); *see id.* § 803(b)(3). Or, if settlement negotiations fail, it can do so by issuing a written "determination in a proceeding" after a hearing and the creation of a record. *Id.* § 803(c)(1); *see id.* § 803(b)(6).

The Royalty Board's ruling here did neither, so it cannot bind Music Choice. A contrary understanding would make no sense. The Royalty Board's ruling, after all, interpreted the text of the gross proceeds definition. That text applies to all industry participants governed by *Business Services I* and *II* from 2009 to 2018—not just Music Choice and SoundExchange. But none of those other participants took part in the Royalty Board proceedings now before us. So either only one party—Music Choice—is now bound by a reading of gross proceeds that does not apply to anyone else. Or all the other licensees are bound to a long-after-the-fact interpretation

Board employed in this case—one not contemplated at all by Section 803's text—did not render Music Choice a participant in a proceeding under Section 803(b)(2).

of their settlement agreements in *Business Services I* and *II* that was announced in a proceeding that they were not invited to participate in and had no opportunity to influence. Neither option can be right.

That *Business Services I* and *II* both resulted from settlement agreements only underscores the point. *See* 73 Fed. Reg. at 16,199; 78 Fed. Reg. at 66,277. Congress designed the Royalty Board to encourage settlement agreements and minimize the need for governmental intervention. *See* Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,901 (May 31, 2005) ("Copyright Royalty Judges will be appointed by the Librarian of Congress to encourage settlements and, when necessary, resolve statutory license disputes."). Allowing the Royalty Board to pull the rug out from under some or all participants' understanding of their settlement agreements years after their adoption with no opportunity for judicial review would discourage, not promote, settlements.

At best, the Royalty Board's ruling could be characterized as a form of guidance or interpretive rule. *See* Oral Arg. Tr. 78:1–4 (counsel for the Royalty Board suggesting that comparison). But even on that view, Music Choice would not be bound. As "a legal matter," an agency's guidance to third parties "is meaningless." *National Mining Ass'n v. McCarthy*, 758 F.3d 243, 252 (D.C. Cir. 2014). And interpretive rules "do not have the force and effect of law." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 103 (2015). Fundamentally, no "binding of anyone occurs merely by the agency's say-so." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019) (plurality opinion).

Music Choice is, of course, obligated to follow the rates and terms for the Business Services ephemeral-recording license set forth in *Business Services I*, *Business Services II*, and subsequent proceedings. But the Royalty Board's ruling on regulatory interpretation was not a binding determination made as part of those proceedings. If Music Choice, or anyone else bound to the terms of *Business Services I* or *II* or their progeny, disputes their meaning, the natural place to turn is the trial court, as SoundExchange recognized at the outset.

* * *

Because the Royalty Board's ruling on regulatory interpretation was not a determination under Section 803(c)(4), and because Music Choice was not a participant in proceedings under Section 803(b)(2) who would be bound by that ruling, we lack jurisdiction over this petition. Music Choice and SoundExchange are free to return to their still-pending litigation in the district court to resolve what obligations 37 C.F.R. § 384.3(a)(2) imposes on the calculation of gross proceeds. We leave to that court the task of assessing what weight, if any, to assign to the Royalty Board's non-binding regulatory interpretation. *See Kisor*, 139 S. Ct. at 2414–2418 (majority opinion).

IV

For the foregoing reasons, we dismiss the petition for review.

So ordered.