

VIA ELECTRONIC TRANSMISSION

June 16, 2022

Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Ave., S.E.
Washington, DC 20559

Dear Register Perlmutter:

We write concerning an issue of extreme importance to content creators. On June 1, 2022, the Digital Licensee Coordinator, Inc. (hereinafter “DLC”) submitted an *ex parte* communication to you on behalf of their member companies. Our understanding is that this letter references a May 27 meeting at which the DLC and its members raised supposed challenges in their ability to make adjusted royalty payments owed to songwriters as a result of a forthcoming determination in the *Phonorecords III* remand proceeding. We have serious concern about any requests that would delay important and necessary royalty payments to copyright owners and we are opposed to **any granting** by the Copyright Office of an extension.

Specifically, we understand that the DLC’s member companies requested the Office immediately adopt—without any public notice or comment—an interim rule that would pause indefinitely any obligation of the companies to make retroactive royalty payments due to copyright owners pursuant to a *Phonorecords III* remand decision. We understand the DLC additionally asked the Office to eliminate its current adjusted payment timelines and engage in an extended rulemaking to set new, longer timelines. This extraordinary request comes after a four-year period during which the *Phonorecords III* determination was appealed as DLC member companies sought to decrease the royalties they paid to songwriters. Throughout this time, DLC members were on notice that, should their efforts prove unsuccessful, they would be liable for back payments to songwriters.

The digital companies’ request would prevent songwriters from timely receiving royalties that they may be owed and on which they rely. It would do so without providing those very songwriters an opportunity to publicly comment on the proposed changes or raise their own concerns with the Copyright Office. This type of relief is extraordinary and unwarranted.

Digital music companies are some of the largest, most sophisticated global technology companies. Their concerns about operational challenges resulting from a potential *Phonorecords III* decision, a decision they appealed and have litigated for years, must be viewed in the context of the extensive resources they are able to gather to address those challenges. Their concerns must also be viewed in comparison to songwriters, who as small businesses or individual creators are the most vulnerable parties in the music ecosystem. Further delay of an increase in rates, if granted by the *Phonorecords III* decision, after a wait of four years would further compound the hardships suffered during the last two pandemic years.

Accordingly, we ask that you reject the DLCs request and ensure that, if back royalties are owed, they are timely paid to songwriters. We request that you provide a formal response to this letter, in writing, by no later than July 16, 2022.

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,



Thom Tillis
United States Senator



Mazie K. Hirono
United States Senator



Marsha Blackburn
United States Senator



Bill Hagerty
United States Senator



Sheldon Whitehouse
United States Senator



The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

The Honorable Thom Tillis
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mazie K. Hirono
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Marsha Blackburn
United States Senate
357 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Bill Hagerty
United States Senate
248 Russell Senate Office Building
Washington, D.C. 20002

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, D.C. 20510

June 24, 2022

Dear Senators:

Thank you for your letter of June 16, 2022, concerning the Digital Licensee Coordinator’s (“DLC”) *ex parte* communication with the Copyright Office (“Office”) seeking regulatory action with respect to certain reporting deadlines under the Music Modernization Act (“MMA”). As your letter notes, the DLC’s request was made in anticipation of the Copyright Royalty Judges’ (“CRJs”) forthcoming determination in the *Phonorecords III* remand proceeding, which is expected to set rates and terms for the Section 115 license for the period from January 1, 2018 through December 31, 2022. We appreciate your interest and concern, and I am writing to report the current status of our review of this request.

As you know, the MMA invested the Office with “broad regulatory authority”¹ to “conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the new blanket license].”² Additionally, Congress directed the Office to promulgate several regulations to govern the new blanket licensing regime, including reporting requirements for digital music providers (“DMPs”).³ To carry out Congress’s wishes, the Office engaged in a robust multiyear rulemaking process, involving several rounds of public comments.

¹ S. REP. NO. 115-339, at 5 (2018).

² 17 U.S.C. § 115(d)(12)(A).

³ *Id.* § 115(d)(4)(A).

With respect to the DMP reporting requirements at issue, the Office issued a notification of inquiry and notice of proposed rulemaking before adopting an interim rule in September 2020. The Office also engaged in *ex parte* communications with stakeholders pursuant to guidelines adopted to facilitate further discussion with interested parties on discrete issues in an open and transparent manner. In recognition of the significant legal changes brought by the MMA, the Office adopted the rule on DMP reporting on an interim basis to maintain flexibility to make necessary modifications in response to new evidence, unforeseen issues, or where something is otherwise not functioning as intended.

It is in this context that the DLC made its request. After meeting with the DLC, the Office has made itself available for other stakeholders to present their views. We have already held an *ex parte* meeting with the National Music Publishers' Association, and another meeting is currently scheduled with several organizations representing songwriter interests. If any other stakeholders wish to contact us through our *ex parte* process, we would be happy to speak with them as well.

Like all matters entrusted to the Office by Congress, we take our stewardship of the MMA and general oversight of the blanket licensing regime seriously. When we receive a request such as the one from the DLC, we carefully consider all views expressed and evaluate the issues objectively based on the record, including how any action may affect the relevant stakeholders and their competing equities. Please be assured that the Office will apply this high level of care and attention in evaluating the DLC's pending request. As this is an active and ongoing proceeding and the CRJs have not yet issued their determination in the *Phonorecords III* remand proceeding, it is premature for the Office to have reached any conclusions on the merits. For example, we do not know how drastically or minimally the CRJs may alter the rate structure or associated terms or definitions. The Office intends to engage further with stakeholders after the CRJs' initial determination is issued so that our decision-making can benefit from a more concrete record.

Please do not hesitate to contact me should you require any further information.

Sincerely,

A handwritten signature in black ink that reads "Shira Perlmutter". The signature is written in a cursive, flowing style.

Shira Perlmutter
Register of Copyrights and Director,
United States Copyright Office