

**VIA ELECTRONIC TRANSMISSION**

May 9, 2023

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

Dear Register Perlmutter,

We write to you today in response to the Copyright Office’s February 23, 2023 Notification of Inquiry (NOI) seeking public comments regarding the obligation of digital music providers (DMPs) to pay late fees in cases where they do not make accurate, complete, and timely royalty payments under the blanket license created by the Music Modernization Act (MMA).

As Members of Congress and sponsors of the MMA, we believe that the statutory language is clear and that it reflects the intent of Congress. Late fees must be assessed on any royalty payments – including payments made in connection with a royalty adjustment – that are made after the initial date on which royalty payments are due to the Mechanical Licensing Collective (MLC), and such fees are to accrue from such initial due date until the date of payment to the MLC.

Copyright owners and DMPs share responsibilities and benefits under the MMA. The MLC, who represents copyright owners, matches sound recordings to the underlying musical works and administers payment to songwriters, while DMPs are responsible for accurately and timely paying these royalties. DMPs benefit from the blanket license for all musical works, while songwriters benefit from greater certainty that they will be appropriately compensated under Section 115 in a timely manner.

Congress intentionally built in late fees to ensure timely payment of royalties and this is an important protection for songwriters. The MMA is clear and unambiguous on the matter of late fees, which shall “accrue from the due date for payment until payment is received by the mechanical licensing collective.”<sup>1</sup> The “due date for payment is statutorily set as “the date that is 45 calendar days ... after the end of the monthly reporting period.”<sup>2</sup>

We acknowledge that DMPs have argued to the Copyright Office that there are occasions where they are unable to calculate Section 115 royalties accurately or completely within 45 days after the end of the reporting period. In response to these concerns, the Copyright Office in September 2020 issued regulations that allow DMPs in certain circumstances to estimate royalty calculation inputs when making monthly royalty payments, and to subsequently adjust those calculations at a later date. This rulemaking was authorized by the MMA’s grant of authority to adopt regulations

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<sup>1</sup> 17 U.S.C. § 115(d)(8)(B)(i)

<sup>2</sup> *Id.* § 115(d)(4)(A)(i)

“regarding adjustments to reports of usage by digital music providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods.”<sup>3</sup>

In the NOI, however, it appears that the Copyright Office is asking whether its September 2020 rulemaking essentially allows DMPs to adjust previous royalty underpayments after the initial due date without a late fee accruing. Such an interpretation would violate the statutory text and should not be adopted. Congress intended late fees to accrue from the date that a DMP’s payment is initially due, regardless of the DMP’s subsequent adjustment or correction. The late fee was intended to incentivize DMPs to avoid late payments so that songwriters may receive all of the royalties that are owed to them when they are due.

Importantly, modifying the Congressionally-determined timing of late fees would have real consequences to songwriters and their financial well-being. If late fees did not apply from the initial payment due date, DMPs would have no incentive to accurately estimate royalties and could intentionally underestimate royalties, holding onto these funds for up to eighteen months or more.<sup>4</sup> In fact, the regulations appear to provide an indefinite period for a DMP to make an adjustment to an estimate (during which the DMP can hold money that belongs to songwriters).<sup>5</sup> The 2020 rulemaking on estimated payments should guide DMPs as to how they can make late payments without jeopardizing their access to the statutory blanket license, not as to how they can evade their obligation to pay late fees when full payment is not made by the due date.

We urge the Copyright Office to follow the clear letter of the law, which requires that late fees apply to any underpayment of monthly royalties from the initial statutory due date until such payment is received in full by the MLC.

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<sup>3</sup> 17 U.S.C. § 115(d)(4)(A)(iv)(II)

<sup>4</sup> 37 CFR § 210.27(g)(3), (4); 210.27(k)

<sup>5</sup> *Id.* § 210.27(k)(6)

# United States Senate

WASHINGTON, DC 20510

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



Chris Coons  
United States Senator



Marsha Blackburn  
United States Senator



Bill Hagerty  
United States Senator



Mazie Hirono  
United States Senator