

LATHAM & WATKINS LLP

November 17, 2020

VIA EMAIL

Regan Smith
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Re: Ex Parte Letter re: November 13, 2020 Copyright Office Virtual Meeting

Dear Ms. Smith,

This letter is submitted on behalf of Digital Licensee Coordinator, Inc. (“DLC”), following the *ex parte* meeting held by the Copyright Office on November 13.¹ The meeting focused on the Office’s proposal regarding the treatment of certain released claims to accrued royalties, for purposes of the Music Modernization Act’s limitation on liability.² DLC continues to study the SNPRM and will provide more detailed views in written comments to be filed later this month. In general, however, we support the new proposed rule’s approach to the accrued royalties issue, which is balanced and consistent with the goals of the MMA in both ensuring that copyright owners are paid for the use of their works and “prevent[ing] a return to the inefficient litigation that featured prominently in the prior licensing regime.”³ We briefly summarize the key points made during the meeting.

- DLC reiterated its core view that any regulatory solution here must be designed to ensure that non-releasing copyright owners receive their full share of accrued royalties, including through the MLC’s matching of works and its distribution of unmatched accrued royalties on a market-share basis. We agree with the Office that the regulation should not “shortchange payment of accrued royalties for musical work copyright owners who did not participate in such agreements.”⁴

¹ A list of DLC attendees is provided in an addendum.

² 85 Fed. Reg. 70544 (Nov. 5, 2020) (“SNPRM”).

³ Letter from Chairman Lindsey Graham, United States Senate, Committee on the Judiciary, to Register Perlmutter, Sept. 30, 2020, at 1.

⁴ SNPRM at 70546.

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- In response to a comment from a representative of the Songwriters Guild of America related to the statute of limitations, DLC noted that it is continuing to study the particular provision proposed by the Office.⁵
- DLC explained its understanding of the relevant provisions of the Music Modernization Act, walking through the analysis that has been provided in previous submissions to the Office.⁶
- DLC also provided a rough estimate of accrued royalties that are available to be transferred to the MLC, based on a limited survey of a subset of DLC members at a particular point in time, and with the crucial caveat that the precise amounts are in flux as digital music providers continue to engage in robust matching efforts. Specifically, DLC estimated that several hundred million dollars were available to be transferred to the MLC as accrued royalties, even after accounting for the derecognition of accruals based on preexisting agreements containing releases to claims for accrued royalties. DLC also explained that the accruals that were derecognized because copyright owners were paid and provided releases were a fraction of that amount—on the order of tens of millions of dollars.

Thank you for your time and continued attention to these issues.

Best regards,



Sarang V. Damle

⁵ See DLC Oct. 14, 2020 Letter at 4-5.

⁶ See Spotify Oct. 9, 2020 Letter; DLC Oct. 14, 2020 Letter.

DLC Attendees at 11/13 Copyright Office Ex Parte Meeting

Digital Licensee Coordinator, Inc.

Lauren Danzy
Kevin Goldberg
Garrett Levin (as DLC Board Member)

Latham & Watkins (counsel to DLC, Inc.)

Sarang Damle
Allison Stillman

Amazon

Jon Cohen
James Duffett-Smith

Apple

Elizabeth Miles
Nick Williamson

Google

Jen Rosen
Sarah Rosenbaum

iHeart Media

Tres Williams

MediaNet

Seth Goldstein

Napster

Matt Eccles

Pandora

David Ring
Alex Winck

Qobuz

Daniel Findikian
Dan Mackta

Soundcloud

Daniel Susla

Spotify

Lucy Bridgwood
Kevan Choset
Emery Simon