



August 8, 2022

Jason Sloan
U.S. Copyright Office
101 Independence Ave., S.E.
Washington, DC 20559

Dear Mr. Sloan:

This letter summarizes the August 4, 2022 meeting that occurred via zoom video conference between the Copyright Alliance and the U.S. Copyright Office discussing the *ex parte* letter sent to the U.S. Copyright Office by Amazon, Spotify, Apple, Google, and Pandora on June 1, 2022, in which these music streaming services explain their challenges of making adjusted royalty payments for prior periods that are owed to songwriters as a result of the *Phonorecords III* remand decision and seek immediate relief from making those payments under the current six-month regulatory timelines set by the Office.

The representatives participating in the August 4th meeting on behalf of the Copyright Office were Mr. Jason Sloan, Assistant General Counsel, and Ms. Shireen Nasir, Attorney-Advisor. Keith Kupferschmid, CEO of the Copyright Alliance, was the sole representative for the Copyright Alliance at the meeting. The objective of the meeting was for the Copyright Alliance to express its significant concerns with the requests made in the June 1 letter.

The meeting began with Kupferschmid explaining that the Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. He summarized the Copyright Alliance mission as being dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators and noted that the individual creators and organizations that the Copyright Alliance represents, which includes songwriters, composers, and music publishers, rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

Kupferschmid then explained that the Copyright Alliance has serious concerns about any request that would delay the important and necessary royalty payments that are owed to copyright owners as a result of the *Phonorecords III* remand decision. The streaming services that owe these royalties are some of the largest, most sophisticated global technology businesses in the world. There is no doubt that they have extensive monetary and other resources at their disposal and the ability to make the royalty payments owed to songwriters in a timely manner.

He then compared the status of the streaming service to the plight of songwriters, noting that most songwriters, as individual creators and small businesses, are struggling to make ends meet. Like many others, songwriters have been hit hard by the pandemic, which has made their financial struggles exponentially worse, wreaking havoc on many songwriters' careers. In support of this he mentioned that, before the pandemic, the number of full-time songwriters in one of our music cities, Nashville, [had already fallen by 80 percent](#). On top of this, because of the high rate of inflation, every day that goes by means the value of withheld royalties songwriters are owed by the music streaming services continue to drop. Further delay in retroactive accounting and compensation to songwriters from the *Phonorecords III* determination would further compound their hardships.

Kupferschmid then discussed how the services have known for a long time that they would have to pay songwriters. It is two years ago to the month when the DC Circuit vacated and remanded the original 15.1% rate set by the CRB. The services have known they would have to pay adjusted rates once the CRB issued its remand decision, but throughout this two-year period, it would seem that they have done little if anything to prepare for that day. The services also have had ample opportunity during this time to raise concerns with the six-month payment adjustment window, but they never raised concerns until now.

He then raised the issue of a late fee, and strongly opposed any waiver or delay of a late fee. The very purpose of the late fee is to make sure the streaming services do not delay or drag their feet. Excusing the services from paying the late fee now will only serve to undermine the very purpose of having the late fee in the law in the first place.

Lastly he said that the request made by these music streaming services would not only further delay songwriters from timely receiving royalties that they are owed, but would also prevent songwriters and others from publicly commenting on any interim rule that the Office may propose as a result of changes requested by the streaming services. This type of relief is extraordinary and in this case, clearly unwarranted. He urged the Copyright Office to weigh and carefully consider the harm to songwriters and copyright owners that would result from granting these companies the requested relief when determining whether good cause exists.

When Kupferschmid concluded, Sloan asked a couple of questions. He asked for the Copyright Alliance's views on the services' request for a two-month transition period. Kupferschmid deferred to his members on this issue but as a general matter he urged that the higher rate be paid to songwriters as soon as possible. He noted that it is likely that the request will be moot since there likely won't be a published final determination before the end of the year and, since the rate period ends at the end of the calendar year, there won't be any outstanding period for the two-month transition period to apply to. He also reiterated that the services are sophisticated companies with many resources and that they should not need an extended transition period or delay of any type.

Sloan then asked if the services miss the six-month deadline, what should happen. Kupferschmid responded that, while they would be in default at that point and technically the Mechanical Licensing Collective could move to default proceedings, such proceedings should generally

begin only after a period of non-responsiveness (similar to default judgment in the CCB). The services should have to pay the late fees, and even that is a break to the services because the late fee is only 1.5% of the unpaid amount per month, whereas interest rates are much higher now.

We appreciate your attention and thoughtful consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith Kupferschmid', with a long horizontal flourish extending to the right.

Keith Kupferschmid
CEO
Copyright Alliance
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Washington, D.C. 20004