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June 29, 2023

Suzanne Wilson
General Counsel and
Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. SE
Washington, D.C. 20559-6000
svwilson@copyright.gov

Sent via email

Re: *Phonorecords III* Adjustment Follow-up

Dear Ms. Wilson,

This letter is submitted on behalf of the Digital Licensee Coordinator, Inc. (“DLC”), after an *ex parte* meeting that was held on June 28.¹ The meeting was an update to the *ex parte* meeting held between the Copyright Office and the DLC on May 27, 2022, regarding “issues relating to the timing of retroactive adjustments and ongoing reporting”² in light of the Copyright Royalty Board’s *Phonorecords III* remand proceeding.

As we discussed during the May 27, 2022 meeting, the existing regulations contemplate that adjustments to (i) past annual reports of usage under the blanket license and (ii) pre-blanket license unmatched usage that was previously reported to the MLC must occur within six months of the publication of the final determination of rates and terms.³

The DLC and its members remain dedicated to ensuring that royalties continue to flow to copyright owners with minimal disruption, even in spite of changes to the rates for prior time periods. As the DLC noted in its June 1, 2022 *ex parte* letter summarizing the May 27, 2022 meeting, reconciliation of past due amounts includes complex logistical processes that are dependent on both in-house preparation as well as third-party processing and collaboration, typically with one of the two primary outside vendors, HFA or MRI. The DLC also previously

¹ Attending the meeting on behalf of DLC were Garrett Levin, Kirsten Donaldson, and Lauren Danzy. Attending the meeting on behalf of the U.S. Copyright Office were Jason Sloan and Jalyce Mangum.

² *DLC Ex Parte Letter re: May 27, 2022 Copyright Office Meeting*, June 1, 2022, available at <https://www.copyright.gov/rulemaking/mma-implementation/ex-parte/digital-licensee-coordinator-12.pdf>.

³ Pre-blanket-license matched usage is not subject to any specific deadline or even clearly addressed in the regulations.

noted an added layer of complexity with HFA being the primary vendor for the MLC, noting the industry's shared interest in HFA prioritizing its processing of ongoing monthly distributions for the MLC under the blanket licensing regime.

Over the past several months, both prior to and in the wake of the *Phonorecords III* remand decision, DLC members have had extensive internal and external conversations about how best to assess and work through these complex logistical hurdles. DLC members have dedicated significant resources to scope the range of engineering and operational work needed in light of the decision, and have diligently developed plans to ensure both the continued flow of royalties going forward, as well as reconciliation of past due amounts in as swift a manner as possible.

As a result of these efforts, the DLC is pleased to convey to the Office that based on DLC members' current understanding of the *Phonorecords III* reporting requirements, and reserving all remaining rights under the regulations to make adjustments for other reasons,⁴ DLC members conclude that the timelines contemplated by the existing regulations are sufficient to recalculate the amounts due under such regulations.⁵ The DLC therefore withdraws its request for a rulemaking and an extension of time for adjustments following the final determination in the *Phonorecords III* remand proceeding.⁶ If DLC members identify any future need for additional subsequent timing adjustments, the DLC will follow up with a separate request.

Please let us know if you have any questions or if you would like to discuss this further. Thank you again for your time and continued attention to these important issues.

Best regards,



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⁴ See 37 C.F.R. § 210.27(k).

⁵ This excludes pre-blanket-license matched usage which is not subject to any specific deadline or clearly addressed in the regulations.

⁶ The DLC also firmly believes, and the Mechanical Licensing Collective also recently concurred, that late fees may not be assessed for adjustments made as a result of the *Phonorecords III* determination. See *Comments of the MLC on the Notification of Inquiry on Fees for Late Royalty Payments under the Music Modernization Act*, <https://www.regulations.gov/comment/COLC-2023-0002-0007>.