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**LATHAM & WATKINS** LLP

August 8, 2025

**VIA EMAIL**

Emily Chapuis  
Acting General Counsel and Associate Register of  
Copyrights  
U.S. Copyright Office  
101 Independence Avenue, SE  
Washington, District of Columbia 20559-6000

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File No. 064974-0002

Re: Summary of August 1, 2025 Ex Parte Meeting Between the Digital Licensee Coordinator and the U.S. Copyright Office (Docket No. 2024-1)

Dear Ms. Chapuis:

We write to summarize the August 1, 2025 ex parte meeting between representatives of the Digital Licensee Coordinator, Inc. (“DLC”) and the U.S. Copyright Office (“Office”) concerning Docket No. 2024-1, the Periodic Review of the Designation of the Mechanical Licensing Collective (“MLC”) and the DLC. This meeting focused on the DLC’s views regarding the need for enhanced oversight of the MLC, as well as topics for further regulatory development by the Office. The DLC also responded to questions from the Office regarding the MLC’s proposal for redesignation, and to confirm certain aspects of the DLC’s proposal for redesignation.

In attendance on behalf of the Office were Emily Chapuis, John Riley, Jalyce Mangum, Michael Druckman, and Elizabeth Porter. In attendance for the DLC were Graham Davies, Colin Rushing, and Lauren Danzy (DLC), Jen Rosen (Google, Board member of DLC), Nick Williamson (Apple, Board member of DLC), and Alli Stillman and Sy Damle (legal counsel from Latham & Watkins LLP).

The DLC emphasized the critical importance of the Office’s role in exercising its broad regulatory authority in connection with the redesignation process, not only to redesignate the MLC (for which the DLC reiterated its support), but to use the five-year milestone examination to meaningfully take stock of how the MLC is operating and fulfilling its mandate within the system for all stakeholders. Given that the structure of the MLC was an experiment in some ways, this first five-year review is an especially important inflection point for the Office to look at where it can use its rulemaking power to help the system improve. DLC highlighted governance, enforcement, and budget process as the main areas for such opportunity.

## **I. Governance and Oversight**

DLC emphasized the need for the Office to engage in a robust review of the MLC’s governance framework. The MLC board and its statutory committees must operate in a manner consistent with the unique public responsibilities conferred on the MLC by statute. We noted that MLC—unlike other private collecting rights societies—is entirely a creature of federal statute, and MLC board members are inferior officers of the United States. The MLC thus must act on behalf of the statutory system as a whole, not any particular stakeholder.

DLC representatives expressed concern that the MLC does not provide meaningful opportunities for input from digital service providers (“DSPs”), despite their funding role and statutory participation rights. In particular, the statutorily mandated Operations Advisory Committee (“OAC”) has not functioned as the statute intended. The OAC is the primary way that DSPs have influence on the management and operations decisions of the MLC. But the OAC has not operated independently or met without the MLC’s direction, and it has not been given meaningful opportunities to provide recommendations, in contravention of 17 U.S.C. § 115(d)(3)(D)(iv). In particular, the agenda for OAC meetings is set by the MLC, and the MLC treats those meetings merely as an opportunity for one-way delivery of information, rather than the collaborative exercise envisioned by the statute. Notably, the OAC has never met without the MLC, and has never been able to independently provide recommendations to the MLC Board or MLC Executive on its operations. This is particularly surprising because the DSPs have deep experience and expertise in administering royalties. The MLC should be treating the OAC as a forum to get input on how to build and efficiently run a best-in-class royalty administration system.

We recommended that the Office explore regulatory mechanisms to ensure that the MLC fulfills its statutory mandate. In particular, DLC believes that an independent governance review of the MLC is warranted to assess the effectiveness of board and committee oversight, similar to reviews done for other collective rights organizations in the United States and abroad. We also asked the Office to consider ways to ensure that the board and committees of the MLC have an actual role in management decision-making.

## **II. Enforcement Practices and Litigation Controls**

DLC raised concerns about the MLC’s decisions to initiate litigation without appropriate internal procedures or oversight. Recent examples illustrate several shortcomings: the MLC acting outside its statutory purview, failing to engage affected DSPs, and taking actions without conducting appropriate cost-benefit analyses. These actions may reflect a lack of board oversight—in particular, our understanding is that MLC initiated both of its litigations against DSPs without formal board approval. Given how unusual it would be for an entity like the MLC to take such significant actions without formal board approval, this raises questions about whether board members are being engaged and consulted inside or outside of board meetings.

We proposed that any decision to initiate litigation should, at a minimum, require consultation with affected parties and a formal board process. We also reiterated our openness to developing alternative dispute resolution procedures and invited the Office’s involvement in facilitating such mechanisms.

DLC also addressed the issue of MLC’s audits of digital music providers. Those audits are still in their early stages, and there is a clear opportunity for the Copyright Office to provide additional guidance and clarification that would benefit all stakeholders. In particular, the process for conducting audits would benefit from a more clearly defined framework, including the appropriate role—if any—for the MLC’s board in overseeing or authorizing such audits. At present, the board appears to play no role at all in these decisions. Given the nascent state of the audit process, this is an opportune time for the Office to issue a Notice of Inquiry (NOI) to solicit public input and develop regulations that would bring greater structure, transparency, and accountability to this area of MLC operations.

### **III. Budget Process and Extraordinary Expenditures**

The current assessment process does not include any mechanism for evaluating whether expenditures are appropriate. In particular, while the administrative assessment process, and annual budgets, are meant to set aggregate spending amounts for broad categories of activities, there are no mechanisms to consider and approve specific “extraordinary” expenses that may be covered by the broad budget categories but are not reasonable expenditures of funds. In particular, DLC expressed concerns about expenditures for major information technology projects, major litigations, and mass audits of DSPs, without adequate oversight or approval, much less a detailed strategy and plan that explains how the investments will show a return/deliver operational gains. We explained that neither the audits of the MLC (which focus on distribution of royalties rather than operating expenses) nor the administrative assessment proceeding (which MLC might argue is focused on forward-looking budgets rather than evaluating past expenditures), are adequate substitutes for a mechanism for approval of extraordinary expenditures.

Given current time lag between spending of funds and the information on this spending being made available to the services, combined with the fact that the budget-setting process through the BPAC and CRB are forward-focused, a gap has appeared in regulations for how DSP should appropriately challenge and seek redress of funds for decisions taken by the Executive that are considered to be flawed and wasteful.

As a general matter, DSPs should have a greater role in the MLC’s decision making, especially when it comes to investment of resources. While DLC and MLC have voluntarily agreed to establish a Budget and Planning Advisory Committee (“BPAC”), as with the OAC, in practice, the BPAC does not play a role in management decisions but, instead, receives information well after the fact. The OAC and the BPAC could and should play a role guiding the MLC’s decision making and planning. In fact, among the recommendations the DSPs have offered (but which has been ignored to date) is that the MLC develop a 3-5 year plan for system investments, and those efforts could readily be channeled through the OAC and BPAC.

We urged the Office to consider regulatory measures that would provide mechanisms for stakeholders to challenge unreasonable expenditures and clarify the MLC board’s role, and that of the MLC committees, in expenditure decisions.

#### IV. Next Steps and Regulatory Process

We welcomed the Office's consideration of a Notice of Inquiry (NOI) to gather public input on potential new regulations. We are actively developing proposed regulatory text and will provide our recommendations promptly. As discussed, the Office has authority to initiate such an NOI independently, and we look forward to engaging constructively in that process.

#### V. Responses to Copyright Office Questions

During the meeting, the Office raised several specific issues, and we addressed some live and have followed up on others below:

*MLC Conflict of Interest Policy.* While the MLC has a conflict of interest policy posted on its website, that policy does not address the specific concern raised by the DLC in its comments: the systematic exclusion of the DLC-appointed board member from participating in board deliberations and decision-making. Former DLC board representative Garrett Levin was excluded from multiple meetings without meaningful explanation or a clear articulation of the topics involved. We remain concerned that decisions may be made outside of the formal board process in a manner inconsistent with statutory governance.

*DLC Code of Conduct:* A copy of the DLC Code of Conduct is attached to this letter, as requested. We remain committed to full transparency and accountability in our operations and governance.

*DLC Board Listing:* The DLC recently submitted an update to the Copyright Office reflecting the departure of board member Alan Jennings. We confirm that the information sent to the Office in that update is accurate.

*DLC Website Content:* The list of DLC board members is not currently posted on the DLC website. We are considering whether to do so going forward, but there is no statutory obligation to publish that information online.

*2024 Bylaws:* The DLC confirms that the 2024 edition of its bylaws is the most current version and remains in effect.<sup>1</sup>

*DIMA/DLC Relationship:* While there is operational collaboration between DIMA and the DLC, they remain distinct legal entities. DLC is an independent, freestanding nonprofit organization with its own board, budget, and member dues. It does not conduct lobbying activities. It does, however, participate in Copyright Office rulemakings, as it is specifically authorized to do. See 17 U.S.C. § 115(d)(5)(c)(i)(IV). Resources from DIMA are seconded to the DLC, with reimbursement handled via recharge arrangements. Shared expenses, such as staffing and website

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<sup>1</sup> <https://digitallicenseecordinator.org/wp-content/uploads/2024/01/USCO-FR-Notice-Re-MLC-and-DLC-Redesignation-1-29-2024.pdf>

hosting, are generally allocated on a time basis, and are subject to approval by both the DIMA and DLC boards.

Save for a brief period when the new CEO of the Digital Media Association was assuming his post, the CEO of the Digital Media Association has served as a board member of DLC, and taken the MLC board services nominated observer position since the formation of the MLC and DLC in 2019. There is nothing improper about serving in both roles. DLC funds are not used for lobbying, and there is no improper overlap of roles. Nearly all DIMA members are also members of DLC, and the alignment in representation is intentional and beneficial for continuity. No members of the DLC or DIMA have raised concerns about the DIMA/DLC relationship.

*Financing and 990 Reporting:* Form 990s are prepared by independent accountants. No DLC members have raised concerns about those financial disclosures, and there is no evidence of misreporting.

*Licensee Support:* As noted during our proposal for redesignation, we received confirmation from the MLC that, based on its own usage data for the last three calendar years, DLC members represent the majority of the licensee market for uses of musical works in covered activities, as required by the statute. 17 U.S.C. § 115(d)(5)(A)(ii). You asked for public sources that confirm the MLC's finding. There are a number of public sources that confirm that the DLC members made up the vast majority of the licensee market in interactive streaming.<sup>2</sup>

The Office asked whether DLC also had support from significant nonblanket licensees ("SNBLs") as well as blanket licensees. As an initial matter, the statute simply requires that DLC enjoy the support "from digital music providers and significant nonblanket licensees *that together* represent the greatest percentage of the licensee market for uses of musical works in covered activities." *Id.* § 115(d)(5)(A)(ii) (emphasis added). There are currently only five relatively small services operating as SNBLs, the most well-known of which (Bandcamp LLC) is a DLC member.<sup>3</sup> DLC thus readily meets the statutory criteria.

*Enforcement of Payment Obligations:* The DLC has not resorted to litigation to enforce assessment payments. In every instance, we have resolved classification or compliance issues informally and cooperatively with licensees and the MLC.

*Administrative Costs Post-MMA:* We are preparing documentation that will compare the costs associated with rights administration prior to the MMA with those incurred under the current regime. At a high level, many services believe costs have increased without a commensurate improvement in efficiency or outcomes.

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<sup>2</sup> See, e.g., <https://www.digitalmusicnews.com/2024/07/05/music-streaming-market-share-us/>; <https://www.vinylmeplease.com/blogs/music-industry-news/u-s-music-streaming-reaches-milestone-of-100-million-paid-subscribers-a-new-era-for-the-industry>; <https://routenote.com/blog/just-3-music-services-dominate-90-of-the-u-s-market/>.

<sup>3</sup> Search interface for DSP notices at <https://www.themlc.com/dsp-notices>.

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*MLC Match Rates:* While the MLC reports high match rates along the lines of what the industry expected to see, it is difficult to verify the accuracy of these numbers. The MLC may count provisional or partial matches without clearly disclosing the methodology. In addition, simply making a match does not necessarily mean that the match is accurate—*i.e.*, that the usage is matched to the right song, or that the song is matched to the right copyright owners. Moreover, we are particularly interested in trend data, and expect that match rates should continue improving, rather than stagnating, based on years of investment in infrastructure and expected operational improvements and efficiencies.

Please let us know if you have any follow-up questions. We appreciate the Office's time and thoughtful engagement on these important topics.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sy Damle', with a stylized, cursive script.

Sy Damle  
of LATHAM & WATKINS LLP

Attachment: DLC Code of Conduct

**Digital Licensee Coordinator, Inc.**  
**Board of Directors & Committee Members**  
**Code of Conduct and Ethics**  
*Revised December 14, 2022*

This Code of Conduct and Ethics (“Code”) has been established by the Digital Licensee Coordinator, Inc. (the “Corporation”) Board of Directors to help the Corporation fulfill its mission and support the vision and goals of the Corporation. This Code is intended to establish principles and practices that will provide guidance and direction for conduct and decision-making by Directors and Committee Members of the Corporation. This Code sets forth the Corporation’s expectations for ethical conduct and business practices, promotes disclosure and review of potential conflicts of interest, encourages the reporting of improper conduct, and authorizes appropriate discipline of those who engage in improper conduct.

Directors and Committee Members have a responsibility to carry out their duties in an honest and businesslike manner and within the scope of their authority, as set forth in the General Corporation Law of Delaware, Section 501(c)(6) of the Internal Revenue Code, and in the Articles of Incorporation and Bylaws of the Digital Licensee Corporation. You are entrusted with and responsible for overseeing the assets and affairs of the Corporation in an honest, fair, diligent, and ethical manner. As Directors and Committee Members, you must act within the bounds of the authority conferred upon you and with the duty to make and enact informed decisions and policies in the best interests of the Corporation. The Board has adopted this Code of Conduct, and our Directors and Committee Members are expected to and, by virtue of signing below, agree to adhere to the standards of loyalty, good faith, and the avoidance of conflict of interest that follow.

**Applicability of the Code**

This Code is applicable to all Directors of the Digital Licensee Corporation, as well as members of committees established within the Corporation (hereinafter referred to as “Directors”). This Code is intended to supplement, but does not replace, provisions of the Bylaws of the Corporation, which govern the conduct of these individuals.

**Responsibilities**

Directors and Committee Members of the Digital Licensee Corporation are committed to observing and promoting the highest standards of ethical conduct in the performance of their responsibilities to and on behalf of the Corporation. Directors and Committee Members of the Corporation are required to:

- Comply with applicable laws and regulations governing the Corporation’s business;
- Abide by the Bylaws and policies of the Corporation;
- Act in the best interests of, and fulfill fiduciary obligations to, the Corporation;
- Act honestly, fairly, ethically, with integrity, in compliance with all written policies, and in a professional, courteous, and respectful manner;
- Act in good faith, responsibly, with due care, competence, and diligence, without

allowing independent judgment to be subordinated;

- Work together in the best interests of the Digital Licensee Corporation and not for personal, third-party, political, or financial gain;
- Participate in the Corporation's program activities;
- Endeavor to attend every meeting, make every effort to be present for the entire length of Board or Committee meetings, and notify the President, Board Chair of the Corporation, or applicable staff member of potential absence;
- Arrive at meetings prepared to discuss the issues and business on the agenda, and having read all background material relevant to the topics at hand; and
- Serve as positive representatives of the Digital Licensee Corporation by conducting themselves in an ethical, honest, and professional manner that enhances and maintains the reputation of the Corporation.

### **Prohibited Conduct**

Directors and Committee Members of the Digital Licensee Corporation shall not engage in conduct that would harm or embarrass the Corporation. The following are examples of conduct considered detrimental to the Corporation and are therefore prohibited:

- Conduct prohibited by applicable law or regulation or by the Bylaws or policies of the Corporation;
- The intentional failure to perform material duties and responsibilities, following written notice of the deficiency and a reasonable opportunity to correct it;
- Intruding on administrative issues that are the responsibility of management, except to monitor the results and ensure that procedures are consistent with board or committee policy;
- Failure to observe established lines of communication and directing requests for information or assistance to the Board Chair and/or other relevant Officer and/or Director, as appropriate;
- Deliberate disclosure of confidential information of the Corporation, except as permitted or authorized by this code;
- Use of confidential information acquired in the course of service as a Director or Committee Member for personal advantage;
- Intentional making of a materially false or misleading statement in the books and records of account of the Corporation;
- Theft, misappropriation, or willful destruction or waste of property belonging to the Corporation;
- Deliberately withholding of material information relevant to the business of the Corporation which, if not disclosed, would harm the organization, unless such withholding is required by law or contract;
- Discrimination against any person on the basis of race, religion, color, national origin, gender, sexual orientation, age, disability, veteran, or marital status; and
- Harassment (including sexual harassment or creating a hostile work environment).



## **Board and Committee Member Interaction with Media and the Public**

The Board and Committee Members recognize that members of the media, various constituency groups, and the public at large have significant interests in the Corporation's actions and governance and therefore the Board seeks to ensure appropriate communication, subject to concerns about confidentiality. The Board and Committee Members note that there is a designated individual who speaks for the Corporation, consistent with applicable policy. If comments from the Board to the public and/or Media on behalf of the Corporation are appropriate, they should be reviewed and discussed by the Board in advance, and, in most circumstances, come from the Chair of the Board.

## **Confidentiality**

In the course of conducting the business of the Digital Licensee Corporation, Directors and Committee Members often learn confidential or proprietary information of the Corporation, including, without limitation, non-public information regarding the operations, policies, procedures, programs, contracts, finance, and investments of the Corporation, as well as unpublished or pre-released versions of Corporation or third-party documents and information.

Directors and Committee Members must maintain the confidentiality of all such confidential and proprietary information and may not disclose such information to any third parties, other than employees within their Member Companies who have a need to know such information for the purpose of assisting the Corporation, except when disclosure is specifically authorized by the President and the Board Chair or when disclosure is legally required. Disclosure also must not be made to other employees of the Corporation except those who have a need to know the information in discharging her or his duties as an employee of the Corporation. Directors and Committee Members are also prohibited from using any confidential or proprietary information for personal gain or the benefit of any third parties.

## **Conflicts of Interest**

Conflicts of interest arise when decisions or judgments in the course of fulfilling one's responsibility to the Digital Licensee Corporation may be influenced by personal interests that are contrary to, or inconsistent with, the best interests of the Corporation.

The Corporation has a written Conflict of Interest Policy that is reviewed and approved each year by the Board of Directors. Each Member Company of the Corporation is required to adhere to that Conflict of Interest Policy. However, for purposes of clarity and understanding, Directors and Committee Members are reminded that, at a minimum, when a possible conflict of interest is identified by a Director or Committee Member:

- The interested Director or Committee Member must disclose the possible conflict of interest and all material facts to the Board Chair and/or other relevant Officer and/or Director, who will determine whether a conflict of interest exists.
- If a conflict of interest exists, the interested Director or Committee Member must abstain from taking any action or participating in any decision on behalf of the

Corporation with respect to the conflict situation.

- Any transaction or arrangement involving a conflict of interest involving a Director or Committee Member must be approved by a majority vote of the disinterested members of the Board of Directors.

By signing this Code of Conduct, I affirm that I have

- Received a copy of the Conflict of Interest Policy;
- Read and understand the Conflict of Interest Policy;
- Agree to comply with the Conflict of Interest Policy; and
- Understand the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **Gifts and Favors**

Directors and Committee Members of the Digital Licensee Corporation must understand that business-related gifts (including services, discounts, entertainment, travel, meals, promotional materials, or samples) create situations that are inherently compromising.

Directors and Committee Members must not accept gifts of more than token value from an actual or potential client, customer, contractor, supplier, grant recipient, or business; from professional persons with whom you do or to whom you may refer business; or from anyone acting on their behalf.

Meals and other business entertainments are subject to the same standard: they must be modest, infrequent, and, as far as possible, on a reciprocal basis.

## **Reporting of Violations and Enforcement**

Directors and Committee Members have the responsibility to promptly report any violation or potential violation of this Code of which they become aware. Directors and Committee Members must report any violation or potential violation to the Board Chair and/or other relevant Officer and/or Director or staff. Violations or potential violations may be reported anonymously by submitting the report in writing to the appropriate individuals. The Digital Licensee Corporation will not permit any retaliation against a Director or Committee Member who, in good faith, reports a matter that she or he believes to be a violation of this Code.

The Board Chair and his or her designee(s) will investigate all alleged violations of this Code. In the event that the Board Chair and his or her designee(s) determines that a violation has occurred, they shall be authorized to take any action deemed appropriate. Any Director or

Committee Member who is found to have violated this Code may be subject to discipline, up to and including removal from the Board of Directors or relevant committee post. In the extremely unlikely event that a waiver of this Code for a Director or Committee Member would be in the best interest of the Corporation, it must be approved by a majority of the other members of the Board then in office.

### **Enforceability**

This Code is enforceable solely by and for the benefit of the Digital Licensee Corporation.

### **Annual Certification**

All Directors and Committee Members shall sign a statement certifying that they have read and agree to comply with this code on an annual basis by January 1 of each year.

**Digital Licensee Corporation  
Code of Conduct and Ethics  
Annual Certification**

I, \_\_\_\_\_ certify that I have read the Code of Conduct and Ethics applying to Directors and Committee Members of the Digital Licensee Corporation and agree to abide by its provisions.

\_\_\_\_\_  
Director/Committee Member Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
DLC Member Company

\_\_\_\_\_  
Email address