Sarang V. Damle
Direct Dial: (202) 637-3332
sy.damle@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

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August 27, 2020

VIA EMAIL

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

Re: *Ex Parte* Letter re: August 25, 2020 Copyright Office Virtual Meeting

Dear Ms. Smith,

This letter is to follow up on the *ex parte* meeting held with Digital Licensee Coordinator, Inc. ("DLC") on August 25, 2020. Attending the meeting on behalf of DLC were Garrett Levin, DLC Board Member; Kevin Goldberg, VP, Legal, DLC; Alan Jennings and Jon Cohen of Amazon; Nick Williamson of Apple; Jen Rosen of Google; Tres Williams of iHeartMedia; Seth Goldstein and Jeff Wallace of MediaNet; Dan Mackta of Qobuz; Alex Winck of Pandora; Lisa Selden of Spotify; Daniel Susla of SoundCloud; and DLC's outside counsel Sy Damle and Peter Durning of Latham & Watkins, and Allison Stillman of Mayer Brown. Attending for the Copyright Office (the "Office") were Regan Smith, Anna Chauvet, John Riley, Jason Sloan, and Cassie Sciortino.

During the meeting we discussed the RIAA's *ex parte* letter of August 24, 2020, which addresses the dates that would be required to be kept as records under Section 210.27(m)(2)(i) of the Proposed Rule (in order to assist the Mechanical Licensing Collective ("MLC") with administering payments for works that have undergone terminations of transfers pursuant to Sections 203 and 304(c) of the Copyright Act).[1] The RIAA's letter expressed the view that of the four types of dates currently under consideration by the Office for this purpose, only one does not raise confidentiality concerns for its members. That is the "street date," or the date on which the sound recording is first released on the DMP's service by a sound recording copyright owner or other distributor.[2] The RIAA also would not view the date on which a work was "first streamed"

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[1] *See Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment*, 85 Fed. Reg. 22518, 22546 (Apr. 22, 2020); *see also* DLC's Comments of May 22, 2020 at 15-16.

[2] *See* RIAA's Aug. 24, 2020 Letter at 1.

as confidential, although the MLC has previously indicated that a "first streamed" date would not suffice for its purposes.[3]

In response to the RIAA's views, DLC emphasized that the primary need of its members is to preserve optionality in its Section 210.27(m)(2)(i) records requirements. A one-size-fits-all approach would create challenges for digital music providers ("DMPs"), whose record-keeping practices and protocols on this particular issue are not uniform. Accordingly, "street date" should therefore not be the *only* option under Section 210.27(m)(2)(i). DLC also noted that there should be no confidentiality concerns for the options of "ingestion date" or the catch-all option proposed by DLC (the "date that, in the assessment of the [DMP], provides a reasonable estimate of the date the sound recording was first distributed on its service within the United States"), because these dates are generated by the DMPs themselves, and therefore could not be considered proprietary to the record labels.[4] DLC also suggested that the RIAA's concerns could be addressed through confidentiality agreements, which may be relatively easier to implement in this instance given that the dates at issue are part of the Proposed Rule's record-keeping requirements rather than the monthly reports of use.

In addition to the issues raised by the RIAA's letter, we also discussed the Office's pending NPRM on the transition period transfer and reporting of royalties to the MLC, and the views DLC has previously shared on that NPRM in written comments and *ex parte* meetings. DLC and its members share a goal of building a process to transfer funds in the DMPs' unmatched royalty pools to the MLC, while also providing the MLC with the data it needs to ensure that payments are routed correctly (with prior payments appropriately taken into account). But the Office should recognize that this raises a number of unique challenges. The existing records and processes for handling unmatched royalties pre-date the Music Modernization Act ("MMA") and are not easily adapted to the MMA's requirements. Vendors that have managed those processes for DMPs pose additional challenges, both because of claims of confidentiality over necessary information, and because some DMPs have contracted with different vendors at different times (and currently are contracted with none).

One particular issue that DLC raised related to its concern that certain vendors will not release information about partially matched works to the MLC, because those vendors regard the information about partial ownership or control as highly confidential in nature. In response to that specific concern, the Office proposed a kind of "structured mediation" by which the regulations would establish an end-goal, timetable, and series of progress updates to the Office on the issue of partially matched works, while leaving the path and details of implementation up to the parties. DLC believes that approach may have promise, particularly if it clarifies and secures the application of the MMA's limitation on liability while the parties resolve the difficult details that lie ahead. DLC will consult with its members internally and with the MLC, and, if workable, will submit proposed regulatory language to the Office to adopt this approach.

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[3] *Id.* at 2.

[4] *See* DLC's Comments of May 22, 2020 at 16, A-30.

Lastly, we discussed the MLC's comments asserting a need for "a consistent format for cumulative statements of account in order to ensure that the MLC is provided with all information it needs to properly administer the transferred accrued royalties."[5] DLC explained that the records at issue are very old in many instances, and therefore reflect the formats of their time. DMPs should not be required to meet uniform formatting standards for those records (especially given that the MLC's "consistent format" has not yet been set). As one member explained, it would be impossible to produce historical records in the DDEX standard that the MLC has indicated it will use for these purposes.[6] And the alternative to a DDEX report—a so-called "flat file" spreadsheet—is smaller and more manageable than the reports of usage, with fewer rows and less information to process. Our understanding is that DMPs generally use flat file formats, which can be converted by the MLC into a uniform format with some simple computer programming. In addition, while there are many DMPs, there are not many different formats (even within flat files), as DMPs often use the same vendors or "back offices" to process this information. Accordingly, the MLC will not be significantly burdened by the DMPs' use of formats that are not 100% consistent.

We thank the Office for its time.

Best regards,

Sarang V. Damle

CC via email: Jason Sloan
jslo@copyright.gov

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[5] *See* MLC's Comments of August 17, 2020 on Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective NPRM, at 2.

[6] The vendors who maintain this information are also unlikely to be familiar with DDEX.