

June 30, 2022 (edit submitted July 7, 2022)

Suzanne Wilson
General Counsel and Associate Register of Copyrights
United States Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

Submitted Electronically

Dear Ms. Wilson:

The intent of this letter is to summarize the *ex parte* meeting that the Songwriters of North America (“SONA”) and the Nashville Songwriters Association International (“NSAI”) had with you and other members of your staff on June 28, 2022.¹ The purpose of our meeting was to discuss our concerns regarding the recent request by the Digital Licensing Coordinator (“DLC”) to the Copyright Office seeking regulatory action in anticipation of the Copyright Royalty Board’s (“CRB”) forthcoming determination in the *Phonorecords III* remand proceeding that would delay their obligation of making retroactive royalty payments to rightsholders. SONA and NSAI object to such a request being honored.

Our objective for this meeting was to stress the impact that such an accommodation would make on individual songwriters. The decision made in response to the DLC’s request will have far-reaching impact, upstream and down, and will undoubtedly have a direct negative impact on the songwriter.

Specifically, the main points our organizations would like for the Copyright Office to consider when making the ultimate determination for this request are as follows:

1. The DLC’s request that regulations be altered in such a manner as to deprive the parties and commentors from being heard is antithetical to the practice of the Copyright Royalty Board, and to the nature of these specific proceedings.
2. Since the passage of the *Orrin G. Hatch–Bob Goodlatte Music Modernization Act* in 2018, it has been established that the services are expected to provide one or more monthly usage reports to the Mechanical Licensing Collective when due, and failure to make those payments, are conditions leading to default, allowing the Mechanical Licensing Collective to terminate that digital music provider’s blanket mechanical license. When the services appealed the rates in the CRB3 ruling, they knew that when the final ruling was made, they would be responsible for recalculating and reprocessing royalties for multiple years. Likewise, the services have been aware that annual reports and the processes used each year to calculate and create usage reports are required to be

¹ Attendees are listed in Exhibit A.

certified. Given such notice, the DSPs should reasonably be expected to have been preparing for the day when the CRB would rule on the remand by adding necessary human and machine resources. Any cost members of the DLC assigned to filing the appeal should have anticipated costs associated with its outcome.

3. Songwriters deserve accurate, comprehensive accounting and distribution of our royalties – both for retroactive periods and prospectively. Songwriters should not have to wait any longer than they already have, to reap the benefits of the rate increase provided within the CRB3 process at this hour is simply offensive.

The original 15.1% rate set by the CRB was to go into effect in 2018, but an appeal by streaming services delayed that (an increase of 8.76 percent, per year -- from 2018-2022). The retroactive increase for American songwriters, is supposed to be paid within six months of the verdict being finalized, but the streaming giants have asked for that time to be extended, which NSAI strongly opposes. If DMPs miss the six-month deadline, NSAI stated in the meeting that it was their position that a DMP should be in default and subsequently lose the benefits of the blanket digital mechanical license. While no one wants to see a large streaming company default, they've known an arrearage calculation would be needed for four-and-a-half years. Why aren't they prepared?

Until the U.S. Copyright Office makes that determination, it is still unknown when songwriters will receive their arrearage payments. It is unbelievable that these tech companies who pay a myriad of rates across the globe and constantly assess and pay arrearages have not figured this out when they realized four-and-a-half years ago they would have to. Illustratively, the Mechanical Licensing Collective built their entire payment software architecture in less than two years, a much more massive undertaking.

4. More and more songwriters continue to leave the business. Some may have been able to hold on had the streaming companies not appealed. We do not want to see anyone else leave because arrearage payments cannot get to them in time. A few thousand dollars might make that kind of difference to a writer.

5. If the USCO is inclined, however, to honor the request of the DLC, consideration must be given as to what interest, or other fair value compensation must be applied to any extension of time the USCO would grant to the DSPs beyond what is currently mandated. Any extension or delay in payment should be calculated to include proper fair value adjustments thereto and include a premium. We strongly believe that adequate compensation, including late fees and settlement fees, are the only equitable way this request can be accommodated.

Per our conversation, we understand that the authority to determine late fees and/or settlement fees is under the purview of the CRB, not the Copyright Office. During that call, our organizations requested that the Copyright Office consider whether it has the authority to require interest to be paid for any time period allowed for an extension. Our organizations are eager to see the Office's

determination of that consideration, additionally we hope that the Copyright Office will consider requiring some form of remuneration in the event an extension is allowed.

On the call, the Office raised the issue of reporting periods, specifically our organizations' views on the DLC's proposal to allow for a two-month time period for prospective reporting and to allow for an indefinite period of time for retroactive reporting. Both organizations maintained that an extension was not acceptable. However, if absolutely necessary, for purposes of this discussion, we would contemplate how such a proposal would impact our members. As of the writing of the revision of this letter reporting our discussion, the Copyright Royalties Board has issued its ruling on CRB3, therefore substantially changing the circumstances of each of the stakeholders to this decision. Our organizations will continue to review this proposal in light of that ruling and consider how such a proposal would impact our members.

Thank you again for the opportunity to participate and provide the perspective of songwriters on this matter. Please reach out if you require any additional information.

Sincerely,

Michelle Lewis
Executive Director
Songwriters of North America

Bart Herbison
Executive Director
Nashville Songwriters Association International

Exhibit A

Copyright Office

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Songwriters of North America (“SONA”)

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