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July 7, 2022

Via Electronic Delivery

Suzanne Wilson, Esq.
General Counsel and Associate Register of Copyrights
U.S. Copyright Office, Library of Congress
101 Independence Ave., SE
Washington, DC 20559-6000

Re: Summary of Ex Parte Teleconference Regarding the Request by Digital Music Providers (DMPs) to Extend the Allotted Time Period for Adjustment of Royalty Reporting and Payments Following Publication of the Pending Copyright Royalty Board (CRB) Decision in the Phonorecords III Remand, and Related Timing of Payment Issues

Dear General Counsel Wilson:

The following represents a summary of the ex parte teleconference conducted by the United States Copyright Office (USCO) on July 5, 2022 with the Songwriters Guild of America, Inc. (SGA), the Society of Composers & Lyricists (SCL), and Music Creators North America, Inc. (MCNA). The meeting took place at the request of those three Independent Music Creator Organizations (“IMCOs”) and MCNA’s affiliated organizational members.¹ Attending for SGA were President Rick Carnes, SGA outside counsel Charles Sanders, and outside SGA/SCL legislative consultants Marla Grossman and Luke Lynch of the American Continental Group (ACG). Attending for SCL was President Ashley Irwin. Attending for MCNA was President Eddie Schwartz. The USCO delegation was comprised of its General Counsel Suzanne Wilson, John Riley, and Jason Sloan.

The IMCOs began by thanking the USCO for the opportunity to present their views in strong opposition to the requests by various DMPs to (i) indefinitely extend the six-month time period allotted for adjusting past royalty reporting and royalty payments following publication of the pending CRB decision in the Phonorecords III remand (unpublished as of the date of the ex parte meeting), and (ii) establish a two-month “transition period” for DMPs, after the CRB issues a final remand decision in Phonorecords III, before they will be required to begin reporting under the final rates for the remaining months of the Phonorecords III rate period.

¹ See, <https://www.musiccreatorsna.org/>

As to both requests, the IMCOs pointed out that the DMPs have literally had years to prepare for proper rendering of new and adjusted statements and royalties pursuant to the decision in Phonorecord III, a task which seemingly can now be accomplished by simply adding new blanket data to systems and programs that have or should have been developed and put in place by 2018 at the latest. For DMPs to now request further extensions of time makes a mockery of the Congressional intent evinced in the Music Modernization Act (“MMA”), which was enacted to avoid just this type of abusive and willfully inefficient behavior by the wealthy, global conglomerates that comprise the “Big Tech” sector against the music creator community.

Further, the IMCOs underlined the unique level of unfairness to songwriters and composers that would result from the granting of such time extensions. The past decade or more has been financially devastating for the music creator community, in no small part due to the failure of DMPs to properly license and pay fair market value for the use of musical compositions via streaming and other means of digital delivery. This period of extreme economic hardship has been overlapped by a global pandemic, the negative medical, fiscal and human ramifications of which have not been equaled in many decades.

After all that, and a delay of nearly five years waiting for institution of royalty rate rises under Phonorecords III while the multi-billion dollar DMPs prospered,² many music creators must now additionally wait potentially upwards of six months to a year after publication of the Phonorecords III decision for music publishers to pay forward adjusted royalties to them once such royalties are received from the MLC. The reason for this additional delay is that under the terms of nearly all writers’ publishing agreements, publishers have agreed only to distribute royalties at certain time intervals during the year (often twice and sometimes even just once annually).

As inflation rages on throughout this process and the value of withheld royalties drops by the day, to ask the creator community to accept further delays --due to what appears once again to be a decision by DMPs that they need not be concerned with the rights and livelihoods of those whose works form the bedrock on which their businesses rest-- is simply too much to ask.

When requested during the teleconference to comment on possible courses of action to be taken against those DMPs who miss the original deadlines they are seeking to extend, the IMCOs suggested consideration not only of the imposition of late fees (which in most cases are not shared with music creators under the terms of publishing agreements), but also of the potential for license revocations.³

² The IMCOs have not yet seen the CRB’s unpublished, final decision in Phonorecords III and withhold comment concerning its efficacy until full review is made possible.

³ The IMCOs continue to regard the extinguishing of certain litigation rights under the terms of the MMA in some circumstances to represent a violation of their members’ rights under the takings clause of the Fifth Amendment, and reserve their rights in that regard.

After a brief, separate discussion of the IMCO's continued monitoring of MLC efforts regarding proper identification of unmatched works, the music creator groups pledged to keep the USCO apprised of their future legislative activities regarding MMA and CRB-related issues. The meeting concluded with thanks and appreciation from the IMCOs to the USCO for devoting its time and energies to addressing these matters of great import to the US and global music creator community.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Sanders". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles J. Sanders
Outside Counsel, Songwriters Guild of America, Inc.

CJS:hm

cc: All IMCO Participants

John Riley

Jason Sloan