

MUSIC CREATORS

MCNA

NORTH AMERICA

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July 1, 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: Statement of Opposition by Independent Music Creators to the Request by Digital Music Providers to Extend Indefinitely the Permissible Period to Adjust Royalty Reporting and Payments Following the Pending Copyright Royalty Board (“CRB”) Decision in the Phonorecords III Remand

Dear General Counsel Wilson:

The following letter is respectfully submitted by the signatory organizations Songwriters Guild of America, Inc. (“SGA”),¹ Society of Composers & Lyricists (“SCL”),² and Music Creators North America (“MCNA”)³ (collectively referred to herein as the “Independent Music Creators”). These comments are also generally supported by the national music creator groups additionally listed at the end of and copied on this letter. Together, our organizations advocate for and represent the interests of hundreds of thousands of independent songwriters, composers and lyricists in the United States (US) and throughout the world.

Today, we respectfully request that the United States Copyright Office (“USCO”) not lend credence or support to what we consider to be an outrageous request by the Digital Music Providers (“DMPs”) to be given more time than is statutorily specified to fulfill their royalty reporting obligations following publication by the CRB of its rate decision in the Phonorecords III remand proceeding. The services have literally had years to prepare for final and proper rendering of adjusted statements and royalties to the Mechanical Royalty Collective (“MLC”), a task which seemingly can be accomplished with a few computer keystrokes once the new rates are announced. For DMPs to now request a further extension of time makes a mockery of the Music Modernization Act (“MMA”), which was put in place to avoid just this type of continuing abusive behavior by the multinational, multi-billion-dollar conglomerates that comprise the “Big Tech” sector against the music creator community.

¹ <https://www.songwritersguild.com/site/index.php>

² <https://thescl.com/>

³ <https://www.musiccreatorsna.org>

As the trade association for the US music publishing industry recently wrote to the USCO:

This [DMP] request is simply part and parcel of the DMPs' strategy throughout the Phonorecords III proceeding to do everything possible to delay paying higher rates for as long as possible. When the CRB decided to increase the royalty rates in its original Phonorecords III determination, the DMPs appealed immediately to the D.C. Circuit and obtained a vacatur and remand of the higher rates. Once the D.C. Circuit Court issued a decision remanding the proceeding back to the CRB, the DMPs started paying at the lower 2012 Phonorecords II rates during the pendency of the remand. Now, on the eve of a remand decision, and concerned that the CRB will reinstitute higher rates, the DMPs ask for an indefinite delay of their obligation to pay rightsholders additional royalties for past usage. The Copyright Office should not enable further delay of their obligation to pay royalties that are much needed by songwriters and music publishers.⁴

We look forward to discussing this matter in greater detail with the USCO when we meet in teleconference in the coming days. In the meanwhile, however, we would be remiss in failing to mention our general frustration over the brazen and habitual lack of concern that continues to be demonstrated by the DMPs for the economic welfare of the individual music creators whose works are the entire source of value for the DMP market sector. At this point, we are genuinely concerned that the removal under the provisions of the MMA of certain music creator rights to seek infringement damages has worsened rather than improved the responsiveness of the DMPs to our concerns, and we intend to approach Congress in the very near future with requests to remedy that situation (with specific reference to the "takings clause" under the Fifth Amendment).

Moreover, we are likewise highly concerned that the voices of music creators are not being heard forcefully enough on the music publisher-dominated Mechanical Licensing Collective ("MLC") board and before the CRB, facts that embolden the DMPs to harden their positions on issues ranging from grossly unfair streaming royalty rate proposals to the present attempt to circumvent mandates under the MMA that were legislatively achieved by the music publishing industry trading away of songwriter and composer rights.

Furthering our concerns is the tiny percentage of unmatched royalties that have been properly identified so far. It has been well over a year since the MLC received over \$425 million in unmatched black box royalties, and it has amassed tens of millions of dollars more since then. While MLC's executives have been communicative and forthcoming on other issues, as to the identification process regarding black box royalties, MLC's website states only as follows:

Now that we have completed the matching process for this first set of historical unmatched data, we can begin distributing historical royalties that we were able to match from this first set. We will start with uses for which DSPs did not previously pay any royalties, and we will begin by paying out those royalties for uses that took place during the Phonorecords 2 rate period (*i.e.*, January 1, 2013 to December 31, 2017). These

⁴ Ex parte letter to USCO dated June 13, 2022.

royalties will begin to be included in our monthly royalty distributions beginning in June 2022.⁵

Since it will handsomely benefit many of the music publishing companies represented on the MLC board to *not* identify unmatched royalties (as “permanently unmatched royalties” will be distributed principally to their companies on a market share basis under MMA provisions), it is up to the songwriter and composer board members to ride herd on the identification issue along with MLC executives. In practice, however, those music creator representatives – at least one of whom is not actually a music creator at all - have remained deafeningly silent, lending credence to our long-held concern that some board members may not be truly representing songwriters’ interests or may have other, conflicting or distracting interests at play.

The issue of ensuring that the MLC music creator board members are truly, actively representing the voices of the independent songwriters, creators and lyricists across the nation - and are not hand-picked or vetted by publishing industry interests to ensure alignment with the publishing industry – is an issue we plan to pursue in depth on Capitol Hill and with the USCO. As to those music creator MLC board members who are indeed actively and earnestly engaged in protecting the livelihoods of creators, of course, we thank and support them for their efforts.

In closing, we look forward to the input and opinions of the USCO on these and other issues, and thank the Office and the Library of Congress for their steadfast interest in hearing the points of views and concerns of the Independent Music Creator community.

Respectfully submitted,



Rick Carnes
President, Songwriters Guild of America
Officer, Music Creators North America



Ashley Irwin
President, Society of Composers & Lyricists
Co-Chair, Music Creators North America

CC:

Alliance for Women Film Composers (AWFC), <https://theawfc.com>
Alliance of Latin American Composers & Authors (AlcaMusica) <https://www.alcamusica.org>
Asia-Pacific Music Creators Alliance (APMA), <https://apmaciam.wixsite.com/home/news>
European Composers and Songwriters Alliance (ECSA), <https://composeralliance.org>
The Ivors Academy (IVORS), <https://ivorsacademy.com>
Music Answers (M.A.), <https://www.musicanswers.org>

⁵ There so far appears to be no available data on matching rate success anywhere that we can locate, and we will be contacting MLC in this regard with further inquiries. See, <https://www.themlc.com/historical-unmatched-royalties>

Pan-African Composers and Songwriters Alliance (PACSA), <http://www.pacsa.org>
Screen Composers Guild of Canada (SCGC), <https://screencomposers.ca>