

## VIA ELECTRONIC TRANSMISSION

June 16, 2022

Shira Perlmutter  
Register of Copyrights and Director  
U.S. Copyright Office  
101 Independence Ave., S.E.  
Washington, DC 20559

Dear Register Perlmutter:

We write concerning an issue of extreme importance to content creators. On June 1, 2022, the Digital Licensee Coordinator, Inc. (hereinafter “DLC”) submitted an *ex parte* communication to you on behalf of their member companies. Our understanding is that this letter references a May 27 meeting at which the DLC and its members raised supposed challenges in their ability to make adjusted royalty payments owed to songwriters as a result of a forthcoming determination in the *Phonorecords III* remand proceeding. We have serious concern about any requests that would delay important and necessary royalty payments to copyright owners and we are opposed to **any granting** by the Copyright Office of an extension.

Specifically, we understand that the DLC’s member companies requested the Office immediately adopt—without any public notice or comment—an interim rule that would pause indefinitely any obligation of the companies to make retroactive royalty payments due to copyright owners pursuant to a *Phonorecords III* remand decision. We understand the DLC additionally asked the Office to eliminate its current adjusted payment timelines and engage in an extended rulemaking to set new, longer timelines. This extraordinary request comes after a four-year period during which the *Phonorecords III* determination was appealed as DLC member companies sought to decrease the royalties they paid to songwriters. Throughout this time, DLC members were on notice that, should their efforts prove unsuccessful, they would be liable for back payments to songwriters.

The digital companies’ request would prevent songwriters from timely receiving royalties that they may be owed and on which they rely. It would do so without providing those very songwriters an opportunity to publicly comment on the proposed changes or raise their own concerns with the Copyright Office. This type of relief is extraordinary and unwarranted.

Digital music companies are some of the largest, most sophisticated global technology companies. Their concerns about operational challenges resulting from a potential *Phonorecords III* decision, a decision they appealed and have litigated for years, must be viewed in the context of the extensive resources they are able to gather to address those challenges. Their concerns must also be viewed in comparison to songwriters, who as small businesses or individual creators are the most vulnerable parties in the music ecosystem. Further delay of an increase in rates, if granted by the *Phonorecords III* decision, after a wait of four years would further compound the hardships suffered during the last two pandemic years.

Accordingly, we ask that you reject the DLCs request and ensure that, if back royalties are owed, they are timely paid to songwriters. We request that you provide a formal response to this letter, in writing, by no later than July 16, 2022.

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,



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Thom Tillis  
United States Senator



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Mazie K. Hirono  
United States Senator



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Marsha Blackburn  
United States Senator



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Bill Hagerty  
United States Senator



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Sheldon Whitehouse  
United States Senator