



**BEFORE THE
U.S. COPYRIGHT OFFICE**

**Fees for Late Royalty Payments under the
Music Modernization Act’s Blanket
Mechanical License**

Docket No. 2023–2

The Copyright Alliance appreciates the opportunity to submit the following reply comments in response to the [notice of inquiry](#) published by the U.S. Copyright Office in the Federal Register on February 23, 2023, regarding when fees for late royalty payments should be assessed in connection with reporting by digital music providers under the Music Modernization Act’s blanket license.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

The Music Modernization Act (MMA) revolutionized music copyright law in United States, in large part by helping to better ensure that songwriters and composers are paid the money they are owed and digital music providers (DMPs) are accountable for what they owe. The Copyright Alliance has a strong interest in making sure that decisions regarding implementation and statutory interpretation of the MMA do not inadvertently chip away at the progress made by this important legislation. We believe this to be an issue that, if incorrectly decided, could chip away at some of the balance restored by the MMA.

Please provide your views regarding whether a DMP is obligated to pay late fees when it makes an adjustment that reveals an underpayment of royalties.¹

A DMP is obligated by law to pay late fees when it makes an adjustment that reveals underpayment of royalties due by the statutorily defined due date. The plain language of 17 U.S.C. 115(d)(8)(B)(i) makes clear that royalty payments that are *past due*—i.e., not paid by the due date—are subject to a late fee which begins to accrue on the *due date*. Paragraph (4)(A)(i) stipulates that royalty payments become due on a monthly basis, 45 calendar days after the end of the monthly reporting period. This is also reflected in the legislative history.² Underpayment by a DMP means that some portion of the royalties due by the due date was not paid to the MLC and is, by definition, *past due* and therefore subject to the late fee.

Could concerns be addressed through other additional regulations surrounding estimates or adjustments that could assist the MLC in identifying any DMP noncompliance? Should the Office consider adopting a rule providing that if a DMP’s estimate results in an underpayment of more than a certain amount or percentage, the estimate is per se unreasonable and, thus, not in compliance with the Office’s regulations? Could the Office consider adopting regulations requiring DMPs to pay interest on adjustments to make copyright owners whole for any lost time value of money?

In addition to the plain language in the statute, there are important policy rationales for the late fee structure devised by Congress. The streaming services subject to these blanket licenses are some of the largest, most sophisticated global technology businesses in the world. They have extensive monetary and other resources at their disposal and the ability to properly assess royalties owed and to make the royalty payments on time. The late fee acts as a crucial incentive for DMPs to use the resources at their disposal to make accurate and timely payments, and to minimize any underpayment that might occur. Without the late fee, there would be an absolute financial incentive for a DMP to underpay and retain royalties due—money which does not belong to them—for as long as possible to use for its own benefit. Likewise, imposition of

¹ The views expressed in these comments are limited to the narrow issue raised in this NOI, which concerns the application of late fees to royalty adjustments made by DMPs when paying the MLC under the Section 115 blanket license.

² H.R. Rep. No. 115–651, at 27 (“Subparagraph A identifies the data that must be reported to the collective by a digital music provider along with its royalty payments due 45 calendar days after the end of a monthly reporting period.”)

interest in place of the late fee established by the Copyright Royalty Judges that amounts to less than the late fee would undermine the incentive structure intended by Congress and likewise continue to make underpayment an efficient business practice for DMPs.

There is no reason for the Office to come up with alternatives to the late fee structure that would make underpayment more advantageous to DMPs. On the other side of these royalties are songwriters and composers who in most cases are struggling to make ends meet and for whom royalty payments are their livelihood. They rely on timely and accurate payments to pay their rent, buy groceries, pay medical bills, and cover other day-to-day expenses. DMPs experience no delay in reaping the financial benefits of using the music created by songwriters and composers—and do so to the tune of billions of dollars each year. If there is anyone for whom we should be concerned regarding the financial impact of underpaid royalties, it's songwriters and composers.

We appreciate the opportunity to submit these reply comments and we are happy to discuss these matters more thoroughly or answer any questions.

Respectfully submitted,

Keith Kupferschmid
CEO
Copyright Alliance
1331 F Street, NW, Suite 950
Washington, D.C. 20004
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