

**Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of)	
)	
Periodic Review of the Designations of)	Docket No. 2024-1
Mechanical Licensing Collective and)	
Digital Licensee Coordinator)	
)	

REPLY COMMENTS OF DIGITAL LICENSEE COORDINATOR, INC.

Digital Licensee Coordinator, Inc. (“DLC, Inc.”) hereby submits the following reply comments in connection with the above-referenced matter.

I. Introduction

DLC, Inc. has demonstrated that it successfully fulfills the criteria for redesignation as the statutory digital licensee coordinator, and no commenter has suggested otherwise. DLC, Inc. remains uniquely positioned to represent digital music providers (“DMPs”) and work alongside the statutory mechanical licensing collective to help effectuate the goals of the Music Modernization Act (“MMA”). DLC, Inc.’s comments during the public comment phase regarding the need for additional oversight of Mechanical Licensing Collective, Inc. (“MLC, Inc.”) were echoed by many other stakeholders across the industry. DLC, Inc.’s comments reflect its constructive approach to identifying issues and offering solutions, as well as its ongoing commitment to the success of the blanket license system. The sole critic of DLC, Inc. – the National Music Publishers’ Association (“NMPA”) – does not rebut any of these core points, and its critiques are instead an effort to distract from the important task at hand in this proceeding.

II. DLC, Inc. Clearly Satisfies the Statutory Criteria for Designation as the Digital Licensee Coordinator

As DLC, Inc. outlined in its redesignation proposal, the MMA sets forth three criteria that must be satisfied in order for an entity to be designated as the statutory digital licensee coordinator. Specifically, the digital licensee coordinator must be (1) a single non-profit entity, (2) that is endorsed by and enjoys substantial support from DMPs, and (3) possesses the administrative and technological capabilities necessary to carry out its statutory responsibilities.¹ With regard to the third statutory requirement, the digital licensee coordinator's statutory responsibilities and functions include: (a) establishing a governance structure, criteria for membership, and any dues to be paid by its members; (b) engaging in activities related to the administrative assessment, including participating in administrative assessment proceedings before the Copyright Royalty Judges and engaging in efforts to enforce DMPs' notice and payment obligations related to the assessment; (c) gathering and providing documentation for use in proceedings before the Copyright Royalty Judges to set the statutory mechanical license's rates and terms; (d) initiating and participating in proceedings before the Copyright Office with respect to the blanket license; (e) maintaining records of its activities; and (f) assisting in publicizing the mechanical licensing collective's existence and functions to copyright owners.²

DLC, Inc. continues to satisfy each of the statutory criteria set forth above, and, as noted, no commenter has argued otherwise. As previously discussed in its redesignation proposal, DLC, Inc.'s Certificate of Incorporation demonstrates that DLC, Inc. is a Delaware non-profit organized to represent DMPs in connection with the administration of the blanket license under

¹ 17 U.S.C. § 115(d)(5)(A)(i)-(iii).

² *Id.* at § 115(d)(5)(C)(i)(I)-(VII).

the MMA. Further, MLC, Inc. previously confirmed, based on reporting data from blanket licensees, that DLC, Inc.'s members represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding three calendar years. As such, DLC, Inc. has clearly demonstrated that it continues to be endorsed by, and enjoy substantial support from, DMPs, as required by the statute.³

There is also no doubt that DLC, Inc. possesses the administrative and technological capabilities necessary to carry out its statutory responsibilities. As set forth in more detail in DLC, Inc.'s redesignation proposal, since its initial designation in 2019, DLC, Inc. has consistently and effectively represented DMPs in connection with the implementation of the MMA through its active participation in Copyright Office and CRB proceedings, and has helped navigate various other issues facing DMPs and other stakeholders as well. DLC, Inc. has also sought compromise and collaboration wherever possible, including through multiple negotiated settlements of the administrative assessment and efforts to participate in MLC, Inc.'s Board and advisory committees.

As a result of these efforts, as well as its sound governance and extensive outreach efforts, DLC, Inc.'s membership has grown steadily over the past five years, and DLC, Inc. expects that trend will continue if it is redesignated by the Copyright Office. No DLC member or other DMP has expressed concern over DLC, Inc.'s leadership or efficacy in this role,⁴ and DLC, Inc. continues to ensure it is responsive to the needs of DMPs in engaging with all other stakeholders in the MMA's blanket license ecosystem.

³ See *id* at § 115(d)(5)(A)(ii).

⁴ While certain stakeholders expressed frustration with, or advocated for reforms to, the licensing system established by the MMA more generally, those comments did not suggest that DLC, Inc. has failed to satisfy the statutory designation criteria.

III. The NMPA's Meritless Criticisms of DLC, Inc. are Designed to Distract from Widespread Criticisms of MLC, Inc.

As DLC, Inc. noted in its joint reply comments,⁵ stakeholders across the music industry underscored the importance of neutrality, transparency, and efficiency in MLC, Inc.'s operations in their respective comments. Those stakeholders also echoed DLC, Inc.'s calls for greater oversight by the Copyright Office to ensure that MLC, Inc. consistently adheres to those principles, as required by the text, history and purpose of the MMA. By contrast, the NMPA, standing alone, has repeatedly insisted that such oversight of MLC, Inc. is not necessary, and criticized DLC, Inc.'s proposals to that effect. In its most recent comments in support of MLC, Inc.'s redesignation, the NMPA also raises purported concerns regarding DLC, Inc.'s governance and transparency, despite failing to raise any such concerns in its initial comments following DLC, Inc.'s redesignation submission.⁶ As discussed in further detail below, these belated criticisms of DLC, Inc. are entirely without merit, and are apparently designed to distract from the valid and widespread concerns that DLC, Inc. and other industry stakeholders have expressed regarding MLC, Inc.'s own operations and governance.

A. MLC, Inc. and DLC, Inc. Serve Entirely Different Statutory Functions

In its reply comments, the NMPA continues to criticize DLC, Inc.'s call for additional oversight mechanisms, and wrongly insists that MLC, Inc. was never intended to act as a neutral administrator of the blanket license.⁷

⁵ Digital Licensee Coordinator and Digital Media Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024), <https://www.regulations.gov/comment/COLC-2024-0002-0058>.

⁶ See National Music Publishers' Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 16, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

⁷ See *id* at 3.

To support its position, the NMPA relies on comments recently made by former Representative Doug Collins, who has published an op-ed noting that “the MLC is responsible for ensuring accurate payments to its songwriter and publisher members” and that it “not only has the authority but is mandated to enforce the rights of its members if it determines any streaming service is not reporting or paying properly.”⁸ To reiterate, DLC, Inc. (and DiMA) do not dispute that the statutory mechanical licensing collective has authority to make a determination that a streaming service is not reporting or paying royalties properly and engage in efforts to enforce the terms of the license.⁹ The mechanical licensing collective also must make determinations regarding market share as between and among its member music publishers,¹⁰ and also must withhold royalties from rightsowners in the event of conflicting ownership claims.¹¹ In *each instance*, the mechanical licensing collective must take direction from the statute, and not from a particular party pursuing its own commercial interests.

The NMPA also incorrectly argues that DLC, Inc.’s very existence as a coordinator of DMPs somehow demonstrates that MLC, Inc. is designed to be a parallel arm of the largest

⁸ Doug Collins, *On the Music Modernization Act’s 5th Anniversary, Streaming Services Are Trying to Redefine Its Intent (Guest Column)*, BILLBOARD (Jun. 12, 2024), <https://www.billboard.com/pro/streamers-redefine-music-modernization-act-guest-column/>; See also National Music Publishers’ Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 3, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

⁹ See Digital Licensee Coordinator and Digital Media Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 12, <https://www.regulations.gov/comment/COLC-2024-0002-0058>. (“Contrary to the NMPA’s comments, the Services actually agree that MLC, Inc. has a proper role in enforcing the terms of the blanket license and have not argued otherwise.”).

¹⁰ See 17 U.S.C. § 115(d)(3)(J)(i)(II).

¹¹ See *id.* at § 115(d)(3)(K)(ii).

music publishers in the industry.¹² But, as DLC, Inc. also explained in its prior comments, MLC, Inc. and DLC, Inc. serve entirely different statutory functions. MLC, Inc., for its part, is a quasi-governmental entity charged with administering and enforcing the terms and conditions of the blanket licensing system established by the MMA (and funded by the DMPs).¹³ As such, MLC, Inc. wields considerable power over the digital music market in the United States, and is appropriately subject to close regulation and specific governance requirements in order to ensure that it exercises that authority as intended. And, as previously mentioned, the Presidential signing statement pertaining to the MMA expressly designates the Board members of the mechanical licensing collective as inferior officers of the United States appointed by the Librarian of Congress.¹⁴ Again, those appointments, by their very nature, carry an attendant obligation to act in service of the MMA, the blanket licensing system and the public interest in general, rather than specific stakeholders. The blanket licensing system established by the MMA was created to address issues inherent in the prior licensing scheme that negatively impacted rightsholders and DMPs alike and was intended to benefit all stakeholders. As the administrator of that new system, there is no question that MLC, Inc. is supposed to operate in a neutral fashion to ensure that the system does in fact benefit all stakeholders.

¹² See National Music Publishers' Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 3, 7, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

¹³ See 17 U.S.C. § 115(d)(3)(C)(i)(I).

¹⁴ See Presidential Statement on Signing of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (Oct. 11, 2018), available at <https://www.govinfo.gov/content/pkg/DCPD-201800692/pdf/DCPD-201800692.pdf>; See also *Lucia v. Securities and Exchange Commission*, 585 U.S. 237 (2018) (explaining that “Officers of the United States” are those who exercise “significant authority pursuant to the laws of the United States”).

In contrast to MLC, Inc., DLC, Inc. was established with the specific intention that it represent and coordinate the activities of DMPs in connection with the blanket license system, including coordinating with MLC, Inc.—and it must, as a statutory requirement, be endorsed by, and enjoy substantial support from, the largest DMPs.¹⁵ But, significantly, unlike MLC, Inc., DLC, Inc. has no authority over Section 115 blanket licensing activity.

As a result, the MMA does not impose any governance requirements on DLC, Inc., and its Board members are not inferior officers of the United States who would be expected to operate in the public interest. In fact, under the statute, DLC, Inc. does not necessarily even need to exist.¹⁶ The digital licensee coordinator and mechanical licensing collective are not similarly situated in the statutory scheme, and do not balance each other out, such that the mechanical licensing collective may rightly act as an advocate of music publishers. In short, unlike the mechanical licensing collective, the digital licensee coordinator’s role is narrow; indeed, *hardly any stakeholders even mentioned* DLC, Inc. in their comments. What commenters from across the spectrum of industry participants *did* observe, however, is the propensity of MLC, Inc. to exceed the bounds of its intended role, the need for the collective to operate in an impartial manner, and the requirement of additional oversight.¹⁷ The NMPA does not acknowledge these many other voices expressing similar views to those it attacks from DLC, Inc. and DiMA.

¹⁵ See 17 U.S.C. § 115(d)(5)(A)(ii).

¹⁶ See *id* at § 115(d)(5)(B)(iii).

¹⁷ See e.g., Abby North, Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (May 29, 2024) at 7, <https://www.regulations.gov/comment/COLC-2024-0002-0041> (noting that MLC, Inc. should be an “impartial pass-through entity”); Word Collections, Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (May 29, 2024) at 8, <https://www.regulations.gov/comment/COLC-2024-0002-0047> (“To effectively administer the MMA blanket compulsory license ensuring that all accrued royalties be paid to the songwriters who earned them, the Collective must be independent and neutral.”).

B. *The NMPA’s Criticisms Regarding DLC, Inc.’s Organization and Transparency are Without Merit.*

In its reply comments supporting MLC, Inc.’s redesignation, the NMPA also raises—for *the very first time*—several baseless concerns regarding the organization and transparency of DLC, Inc., and asks the Copyright Office to provide greater oversight over DLC, Inc. in order to address those concerns. In particular, the NMPA claims that there is a “concerning overlap” between the operations of DLC, Inc. and DiMA, and otherwise alleges that DLC, Inc. does not act independently of the DMPs that serve on its Board.¹⁸ This claim is a clear attempt to deflect DLC, Inc.’s and DiMA’s own concerns about the overlap between the NMPA and MLC, Inc., and is otherwise without merit. The NMPA’s newfound concerns apparently stem from the obvious – and clearly disclosed – fact that the DLC, Inc. and DiMA Boards are each composed of representatives of DLC, Inc.’s largest DMP members.¹⁹ The DLC, Inc. Board structure reflects the requirement of the statute, which is that DLC, Inc. *must* be endorsed and supported by these very same DMPs.²⁰

Moreover, while MLC, Inc. is funded by the DMPs and is thus subject to the degree of scrutiny to be expected when a third party pays for the operations of an entity it does not control and when a public licensing system is at stake, DLC, Inc. is funded exclusively by its own members and performs functions entirely optional to the functioning of the MMA. DLC, Inc.’s funding structure is a source of pride for the organization and its member services. DLC, Inc.’s largest DMP members (who also support DiMA and its different operations and activities) invest

¹⁸ See National Music Publishers’ Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 13-14, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

¹⁹ *Id.* at 14.

²⁰ See 17 U.S.C. § 115(d)(5)(A)(ii).

their resources to allow smaller DMPs to become DLC, Inc. members at dramatically lower dues, which has in turn enabled DLC, Inc. to grow and diversify its membership and ensure that DMPs of all sizes are able to participate in both DLC, Inc.’s operations and the broader mechanical licensing ecosystem. It is *because* the largest DMPs provide the majority of the funding of DLC, Inc. that many other DMPs are able to participate, have their voices heard, and help shape DLC, Inc.’s approach to myriad issues concerning the blanket license system under the MMA. The larger DMPs elected to take on the additional costs of funding DLC, Inc. under the same guiding principle DLC, Inc. has cited throughout this proceeding: DLC, Inc. is committed to ensuring the success of the MMA for the benefit of all stakeholders – and the costs of obtaining and complying with the blanket license under section 115 are so high (higher in the post-MMA structure than ever before) that only the largest DMPs have the resources to completely fund DLC, Inc. and its efforts.

The NMPA’s suggestion that DLC, Inc. does not adequately represent the interests of its diverse membership²¹ is also baseless and untrue. DMP members of all sizes are represented on DLC, Inc.’s various committees, and DLC, Inc. engages with its entire membership regularly. For example, in addition to its regular Board and committee meetings, DLC, Inc. also holds monthly meetings open to all of its members in order to ensure that members are kept apprised of DLC, Inc.’s activities, and have the opportunity to provide feedback.

Elsewhere in its reply comments, the NMPA argues that DLC, Inc. and DiMA “have essentially become one and the same,” due to some overlap between the two organizations’

²¹ See National Music Publishers’ Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 14-16, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

employees.²² However, it is both sensible and economical for DiMA and DLC, Inc. to share staff, given DiMA's (and its employees') longstanding familiarity with, and expertise navigating, the unique issues faced by DMPs in connection with statutory licensing of musical works. In addition, while the NMPA complains that DLC, Inc.'s current representative on MLC, Inc.'s Board is the CEO of DiMA, the NMPA is well aware that DiMA's CEO has served in that role since the inception of MLC, Inc., and has never raised concerns about it in the past. More importantly, that is entirely consistent with the statute because, in the absence of a designated digital license coordinator, DiMA itself would be the entity filling that Board position, as the nonprofit trade association representing "the greatest percentage of the licensee market for uses of musical works in covered activities."²³ The current situation is precisely what the MMA contemplates with respect to the lone, non-voting DLC, Inc. representative on the MLC, Inc. Board. As such, it is not clear what concern the NMPA is even attempting to express in raising this point.

Lastly, the NMPA's claim that DLC, Inc. is not transparent in its public filings²⁴ is also false. Despite the NMPA's vague assertion that DLC, Inc.'s Form 990s "raise more questions than answers,"²⁵ those Form 990s were filed consistent with and as required by tax laws, and accurately reflect DLC, Inc.'s budgeting and funding.²⁶ Unlike MLC, Inc., DLC, Inc. is not

²² *Id.* at 16.

²³ 17 U.S.C. § 115(d)(3)(D)(i)(IV).

²⁴ *See* National Music Publishers' Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 16-17, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

²⁵ *Id.* at 17.

²⁶ The NMPA's professed concern about DLC, Inc.'s legal expenses is an unfounded attempt to deflect from DMPs' (and others') valid concerns about MLC, Inc. The DMPs fund both MLC, Inc. and DLC, Inc. No DLC, Inc. member has expressed any concern about DLC, Inc.'s legal

subject to a statutory obligation to publish an annual report, nor have any of its members – the companies that actually pay for DLC, Inc. – raised any concerns. While the NMPA accuses DLC, Inc. and DiMA of raising “false flags” regarding MLC, Inc.’s transparency,²⁷ it ignores the many other commenters who raised similar concerns about the lack of transparency surrounding several aspects of MLC, Inc.’s operations, including its relationships with its vendors, its handling of accrued but unmatched royalties, its investment policies, and the activities of its advisory committees.²⁸ In contrast, the NMPA is the only commenter to express concerns regarding DLC, Inc.’s supposed lack of transparency during the course of this proceeding. The NMPA’s late-breaking concerns were conspicuously absent from its earlier submissions in this proceeding, and do not respond to any points previously made by any other stakeholders. Moreover, the NMPA’s comments do not even articulate how any of the alleged issues it raises regarding DLC, Inc. actually impact the functioning of the MMA blanket licensing system (for anyone). These belated, unfounded complaints are thus irrelevant as well as misguided.

IV. Conclusion

DLC, Inc. appreciates the opportunity to submit these final reply comments, welcomes further engagement with the Copyright Office regarding the topics discussed herein, and hopes to have the opportunity to build on its achievements over the past five years, and continue to

expenses. Nor is the fact that DLC, Inc. has outside legal representation a secret to either the Copyright Office or the public at large.

²⁷ See National Music Publishers’ Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 16, <https://www.regulations.gov/comment/COLC-2024-0002-0057>.

²⁸ See Digital Licensee Coordinator and Digital Media Association, Reply Comments on Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Jun. 28, 2024) at 9-10, <https://www.regulations.gov/comment/COLC-2024-0002-0058> (citing stakeholder comments).

coordinate the activities of DMPs in connection with the implementation of the MMA going forward.

Respectfully submitted,
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