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June 29, 2022

VIA EMAIL

Mr. Jason Sloan
Mr. John Riley
U.S. Copyright Office
Library of Congress
101 Independence Ave., SE
Washington, DC 20559-6000

**Re: Summary of *Ex Parte* Meeting Between CMPA and Copyright Office Representatives
Regarding Request by Digital Services for an Indefinite Extension of Time to Adjust
Royalty Reporting Following Decision in the *Phonorecords III* Remand**

Dear Mr. Sloan and Mr. Riley:

This letter summarizes the June 27, 2022 meeting (“June 27 Meeting”) that occurred via Zoom videoconference between the Church Music Publishers Association (“CMPA”) and representatives of the U.S. Copyright Office (“Office”).

The representatives participating in the June 27 Meeting on behalf of the Copyright Office were Mr. Jason Sloan, Mr. John Riley, and Ms. Shireen Nasir. The representatives for the CMPA included Mr. Don Cason, President/CEO, Church Music Publishers Association Action Fund, and Mr. Rush Hicks, Jr., Legal Counsel for the CMPA.

The purpose of the June 27 Meeting was for the CMPA to express its concerns to the Copyright Office about the recent request by the Digital Licensee Coordinator (“DLC”) and its members for an indefinite extension of time for the digital music providers (“DMP”) to submit reports of adjustment following a decision in the *Phonorecords III* remand proceeding. This request from the DLC and DMP affects both the publisher members of the CMPA and the thousands of songwriters whom the publishers in our organization represent.

The CMPA is an organization of primarily U.S. publishers of Church and Christian music which has a strong spiritual dimension who come together to share mutual areas of concern regarding copyright information, education, administration, and protection, and to facilitate public and industry awareness in these areas. Our membership of roughly 50 companies, spread across 21 states, owns and administers song copyrights that include hymns, gospel songs, contemporary Christian, urban, praise & worship, liturgical, choral, southern gospel, hip-hop, children's, classical and songs embraced by every Christian denomination across America. Between the copyright holdings of our members, plus those held by general market music publishers who are members of the NMPA (National Music Publishers' Association), we collectively control over 95% of the Christian faith songs created and commercially published in the United States.

Speaking on behalf of the CMPA, I acknowledged at the outset that I am not a lawyer, but rather have been a music publisher of Christian music for nearly 45 years, with 28 of those years as an employee of Word Music. Also as a songwriter and/or choral music arranger/producer, I have had numerous songs and arrangements commercially recorded and published. In my current position I serve as the chief advocate on behalf of the CMPA, and indirectly for the songwriters whom the publishers in CMPA represent.

Regarding the matter at hand, the CMPA recognizes that:

1. In the DLC's letter regarding its May 27, 2022 meeting with the Copyright Office ("DLC's May 27 Meeting"), the DLC identified two "statutory licensing regimes" to which the *Phonorecords III* remand hearing pertains. The first one is the "pre-MMA song-by-song regime" ("First Licensing Regime"), which includes accountings for the 5-month period from August 2020 when the D.C. Circuit vacated and remanded the original *Phonorecords III* determination through December 31, 2020. The second is for streaming activity from January 1, 2021 to present ("Second Licensing Regime"), as administered by The Mechanical Licensing Collective ("MLC").
2. Under the current regulations, the DMPs already have a six-month period, after the final determination in the *Phonorecords III* remand is published in the Federal Register, to submit reports of adjustment to past annual usage reports for the Second Licensing Regime to The MLC. Reports of adjustment for the above-described 5-month period pertaining to the First Licensing Regime should be processed similarly by the DMPs in accordance with the procedures of reprocessing both the matched and unmatched songs for such period.
3. In the DLC's May 27 Meeting, the DLC and DMPs asked for this six-month period to be extended indefinitely "while the Office conducts a rulemaking to collect input from the entire industry on the challenges involved in adjusting reporting for those prior periods." Such an extension would delay the ultimate payment of, or adjustments regarding, royalties due and payable to publishers and songwriters. Further, the DLC and DMPs stated that this request is justified based on their assertion that they wish to avoid potential "uncertainty" and "harms" from a change in the rates on remand, as well as "inefficient allocation of resources."

4. Furthermore, the DLC has touted there being layers upon layers of alleged complexity to the accounting process once the remand determination is made and published in the Federal Register.

The CMPA believes that these requests from the DLC/DMPs is a stalling tactic to avoid paying for as long as possible what we hope to be a higher royalty rate once the *Phonorecords III* remand decision is published. They are attempting to mystify this whole accounting process with a track full of hurdles, either to delay further payments to the song creators and owners, or to avoid the real possibility of late fees.

Church music publishers, and our songwriters are all small-businesses.

1. Our publishing members range from 2-30 employees.
2. We have suffered greatly from the business difficulties brought on by both COVID-19 and our country's growing inflation.
3. Until the past few months, most churches had discontinued even having live services.
4. In March 2020, churches started streaming their worship services, which have yielded very little royalties to us from YouTube and the like because of the paltry rates paid on 'user-generated content'.
5. Church tithing has seriously dropped off, and music purchases were one of the first expenses to be discontinued.
6. Choirs have either shut down, or are slowly being reintegrated into worship services but at greatly reduced numbers.
7. Print music companies have seen their revenues decline 85% on average, to a level that is 10-15% of what it was prior to COVID.
8. Several commercial publishers have filed bankruptcy or simply closed their doors.
9. The Southern Baptist and the United Methodist denominations (roughly 45,000 and 35,000 churches, respectively) have ceased creating new music resources for their churches, simply because they either cannot fund the creation of such or support a creative staff to create an ongoing line of products to meet their churches' needs.

Yet, on the recording side, streaming activity for Christian music is on the rise. The RIAA reported in their 2021 Annual Report that approximately 85% of the revenues earned by all U.S. recording companies is coming from Streaming sources.

So, the delay in receiving the full *Phonorecords III* royalty rates from the rise of streaming activity of Christian music, combined with all of these other challenges above pertaining to churches and our lost opportunities to provide resources to them, further exacerbates the difficulties that our publishers and writers are experiencing.

As stated above, the CMPA views the DLC's request as a stalling tactic to avoid paying creators the full amount they are due. DMPs have had close to two full years to prepare for the remand decision, and for them to now raise new logistical problems as to why they would be

unable to provide timely accountings and payments, when we are possibly on the cusp of a final determination in this remand hearing, is hard to believe. These streaming companies are some of the largest companies in the world, and are heavily resourced with people and money to take care of these issues. We believe it would be unreasonable to allow them to continue delaying paying proper royalties.

At the risk of oversimplifying what the DMPs will have to do to render proper accountings after the remand hearing is finalized, the CMPA believes that the process can be handled in a relatively straightforward manner. Here's how:

1. The monthly song and transaction data by the streaming services has already been collected, for both statutory licensing regimes. The song and transaction data for the First Licensing Regime – the one for the period prior to December 2020 – should already be fully known by the DMPs and their royalty processing vendors. The reconciliation of this 5-month period over the span of six months would seem to be a reasonable task.
2. The song and transaction data for the Second Licensing Regime has already been collected, and is fully known by The MLC, because the DMPs have been reporting usage and paying royalties (under the *Phonorecords II* rates) for this period to The MLC.
3. The DMPs and The MLC, taken together, know which songs have been streamed, the number of streams of each song per accounting period, and the subscription service program through which each stream occurred. At such time as the royalty rate(s) for the remand decision for *Phonorecords III* are effectuated, the variance from what was paid by the DMPs can be overlaid onto the song and transaction data that has already been collected by the DMPs and The MLC.
4. It is common music business practice for a company's future royalty expense due from a given service or sales transaction to be booked or escrowed in the same accounting period in which the revenue for such activity is received. So, unless the escrowed royalty expense is spent elsewhere by the DMP before it is paid out, those monies should be reasonably available.

During the June 27 Meeting, a representative of the Office asked the CMPA about the DLC's request for a two-month transition period after the CRB issues a final remand decision in *Phonorecords III* before the DMPs would be required to begin reporting under the final rates for the remaining months of the *Phonorecords III* rate period. In theory, the CMPA does not object to this request, provided that the DMPs continue to timely account for these two months, and then provide a full accounting and reconciliation of any variance from the rate set forth in the final remand decision within the six-month adjustment period after the final decision is published in the Federal Register.

Also during the June 27 Meeting, the Office asked the CMPA's view on whether the possibility of a DMP missing the six-month adjustment reporting deadline could be grounds for default and termination of that DMP's blanket license. In general, the CMPA believes that such a failure by a DMP should subject the DMP to payment of late fees. However, any failure to pay

caused by a lack of diligence, or any other breach or default otherwise caused by the DMP which is not properly cured, may be reasonable grounds for the termination of the blanket license.

In closing, the DMPs have had close to two years now to prepare for the day in which a final remand decision in *Phonorecords III* will be made. The CMPA respectfully urges the Copyright Office to refuse the DLC/DMPs' request to indefinitely place on hold the six-month adjustment reporting requirement following the final determination in the *Phonorecords III* remand, believing it to be unreasonable and unfair not only to the publishers and songwriters of the CMPA, but to all publishers and songwriters.

The CMPA values the Copyright Office's mission to promote creativity and free expression. We appreciate your consideration of our position in this matter, and the time and attention you are giving to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Cason". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Don Cason
President/CEO
Church Music Publishers Association Action Fund