

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

	)	
In the Matter of	)	
	)	
Designation of Mechanical Licensing	)	Docket No. 2018-11
Collective and Digital Licensee Coordinator	)	
	)	

**PROPOSAL OF DIGITAL LICENSEE COORDINATOR, INC.**

Digital Licensee Coordinator, Inc. (“DLC, Inc.”)<sup>1</sup> hereby submits its proposal (“Proposal”), in response to the Copyright Office’s Notice of Inquiry (“NOI”)<sup>2</sup> seeking initial proposals and information to identify the appropriate entities to be designated as the mechanical licensing collective and the digital licensee coordinator, pursuant to the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA” or “statute”).

**I. Background**

The NOI explains that the MMA furthers the efficiency and fairness of the section 115 mechanical license for the reproduction and distribution of musical works by establishing a new blanket licensing system governing such uses by digital music providers. The MMA directs the Copyright Office to designate an entity as the mechanical licensing collective (“MLC”), to

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<sup>1</sup> DLC, Inc.’s founding members are Spotify USA Inc., Apple Inc., Amazon Digital Services LLC, Google LLC, and Pandora Media, LLC.

<sup>2</sup> Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator, Pub. L. No. 115-264, 132 Stat. 3676 (2018); 83 Fed. Reg. 65747 (Dec. 21, 2018).

administer this new blanket-licensing system, and an entity as the digital licensee coordinator (“DLC”) to represent digital music providers.

The statute provides that the digital licensee coordinator must be a single, non-profit entity, that is endorsed by and enjoys substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in activities covered by the compulsory license under section 115, and is able to demonstrate that it has, or will have prior to the license availability date, the administrative capabilities to perform its required functions. 17 U.S.C. § 115(d)(5)(A).

The digital licensee coordinator’s required functions include: (i) establishing a governance structure, criteria for membership, and any dues to be paid by its members; (ii) engaging in efforts to enforce notice and payment obligations with respect to the administrative assessment to fund the operation of the MLC; (iii) initiating and participating in proceedings before the Copyright Royalty Judges to establish the administrative assessment; (iv) initiating and participating in proceedings before the Copyright Office with respect to activities under section 115(d); (v) gathering and providing documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under section 115; (vi) maintaining records of its activities; and (vii) assisting in publicizing the existence of the MLC and the ability of copyright owners to claim royalties for unmatched musical works (and shares of such works) through the collective. 17 U.S.C. § 115(d)(5)(C).

The Copyright Office requested that proposals for designation of the DLC include articles of incorporation and contact information for the entity; a list of proposed board members and their relevant background and affiliations; a business plan, including any statement of purpose or principles and proposed schedule for the first five years of operation; a description of

administrative capabilities to perform the required functions; information explaining the proposed governance structure, criteria for membership, and any anticipated dues; information explaining how the DLC will address confidentiality issues relating to participation on the MLC board; views as to whether a single vendor may simultaneously provide services fulfilling the statutory obligations of the DLC and the MLC; information as to how the DLC will pursue its outreach efforts to publicize the MLC; and an explanation as to how the DLC interprets and satisfies the market-endorsement criteria set forth in the statute. NOI at 65753. The NOI also calls for any other information that the proposed DLC believes is relevant to demonstrate it best meets the selection criteria. *Id.*

This Proposal addresses all of the items listed above, and details the ways in which DLC, Inc. is organized and equipped to effectively perform the statutory functions and authorities. Included in this Proposal are: the Certificate of Incorporation (as filed with the Delaware Secretary of State) (Exhibit A); DLC, Inc.'s By-Laws, as adopted by the Board of Directors, setting forth the governance structure, membership criteria, and procedure for assessing dues (Exhibit B); and the Business Plan for the first five years of operation, including a statement of purpose and principles, description of administrative capabilities, plan for conducting outreach regarding the MLC, and background on the initial board members (Exhibit C). These documents – together with the additional information set forth below – demonstrate that DLC, Inc. readily satisfies all of the statutory criteria.

Because of its unparalleled support from the industry, expertise in the operations of the license, and clear organization, structure and plan, designation of DLC, Inc. as the statutory DLC will significantly aid the MLC, Copyright Office, Copyright Royalty Board, digital licensees, and other stakeholders in the successful implementation of the blanket licensing system

established by the MMA. The statute contemplates that the DLC will be an important resource – to the MLC, copyright owners, and licensee services – in the efficient and effective operation of the blanket licensing system; accordingly, the Register of Copyrights is required to designate a DLC as long as the Register is “able to identify” a qualified entity. DLC, Inc. is not only qualified, but is designed and committed to help fulfill the promise of this new legislation for all stakeholders.

## **II. DLC, Inc. Is The Only Entity That Meets The Statutory Criteria Regarding Endorsement of the Licensee Market**

The Copyright Office has asked a proposed DLC to address how it interprets the criteria that it must be “endorsed by and enjoy substantial support from digital music providers and significant non-blanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.” NOI at 65753. The Office also asked the DLC to explain how it has verified, calculated, and documented such endorsement and substantial support, including how the licensee market was calculated. *Id.*

DLC, Inc. interprets the statutory criteria based on its plain language. The statute calls for a representation of the market based on “uses” of musical works. 17 U.S.C. § 115(d)(5)(A)(ii). By specifically referencing “use,” the statute makes clear that this metric is to be based on actual use of music pursuant to covered activities, measured over a period of time (the preceding three calendar years). If, for example, Congress had intended representation of the market to be defined by the support for a DLC proposal by a particular percentage of the total number of existing music services that engage in covered activities, the statute could have easily adopted that test. Similarly, if the market were to be defined by the sheer number of musical works made available by a proposed DLC’s supporters, that too could have been simply stated.

Instead, the statute identifies usage as the key metric, and for good reason: the industry participants that will be most affected by, and are thus the most interested in, the operation of the MLC and the blanket licensing system in general are those services that make the most use of the rights conferred by section 115 licenses.<sup>3</sup>

Under any usage-focused approach to calculating the licensee market with respect to section 115-covered activities – such as number of subscribers, number of streams, or amount of royalties paid – the current members of DLC, Inc. collectively represent the *overwhelming majority* of the market, and thus DLC, Inc. easily satisfies this criteria.

The data regarding these types of metrics with respect to any individual music service are extremely confidential and proprietary, and a single comprehensive and definitive source for industry-wide data does not currently exist (in other words, there is no authoritative source analogous to SoundExchange’s data regarding the market for non-interactive streaming of sound recordings). But DLC, Inc. has obtained aggregate information from the Harry Fox Agency (“HFA”) and Music Reports, Inc. (“Music Reports”) that provide a clear picture of the market. HFA and Music Reports are the industry-recognized leaders in administering licenses and processing royalties for section 115-covered activities. *See, e.g.*, U.S. Copyright Office, “Copyright and the Music Marketplace,” at 21 (February 2015), available at <https://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> (identifying HFA and Music Reports as the leading mechanical rights administrators). Together, they represent close to 100% of the section 115 licensee market. Based on confidential information provided by HFA and Music Reports, the members of DLC, Inc. represented by these two administrators combined had *over 84% of the aggregate streams, over 94% of the*

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<sup>3</sup> DLC, Inc. takes no position on what the “market for uses of musical works in covered activities” refers to in any other context, including the designation criteria for the mechanical licensing collective.

*aggregate subscribers*, and *over 88% of the aggregate royalties paid*, in each of the past three calendar years (2016, 2017, 2018).<sup>4</sup> DLC, Inc. is not aware of other license administration vendors, digital music providers, or significant non-blanket licensees whose usage of musical works in covered activities would materially alter the market overview developed from the data provided by HFA and Music Reports.

These high percentages reported by HFA and Music Reports are consistent with industry-leading consumer survey research provided by Music Watch Inc. As part of its regular survey of consumer music-listening behavior, Music Watch has measured the market for usage of section 115 licensed activity by surveying weekly listening hours. According to Music Watch data, the five members of DLC Inc. combined had over *95% of weekly paid on-demand listening hours* in the fourth quarter of each of 2016, 2017, and 2018.

Thus, it is clear that having the support and endorsement of all of the current members of DLC, Inc. – services that sometimes do not agree with respect to other issues, including issues related to the compulsory license under section 115 – satisfies the statutory criteria.

In addition to the support and endorsement of this leading group of services responsible for the majority of covered usage, DLC, Inc. is committed to soliciting other interested licensee services to participate in all aspects of the DLC and has built-in protections for smaller licensees with respect to corporate governance and dues (as discussed in more detail in this Proposal). DLC, Inc.'s members have also committed to engage in outreach to solicit input from all affected licensees, whether they become members of DLC, Inc. or not, with respect to issues that the DLC will address with the MLC, such as the administrative assessment. By creating an inclusive corporate structure and plan to actively include other licensees in relevant discussions and

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<sup>4</sup> To the extent these numbers fluctuated from year to year within this three-year period, the lowest percentage number is provided here.

negotiations concerning issues of MMA implementation, DLC, Inc. will bolster its support and endorsement above and beyond the “greatest percentage of the licensee market.”

### **III. DLC, Inc. Will Effectively Carry Out The Statutory Functions And Authorities**

With the support and participation of the leading licensees (discussed above), DLC, Inc. is organized as a non-profit corporation with the administrative capabilities to efficiently carry out its statutory functions and authorities. DLC, Inc. is incorporated in Delaware, has appointed the initial Board of Directors, and has adopted By-Laws establishing governance of the corporation. As reflected in the By-Laws, the corporate structure allows for participation on the governing board by smaller licensees. DLC, Inc. has also formally adopted the Business Plan, which sets forth a summary and anticipated schedule of actions to carry out the statutory functions and implement the MMA in its critical initial phase.

The initial board members of DLC, Inc. are identified in the attached Business Plan, along with details of their background, experience, and expertise. The Board of DLC, Inc. is comprised of subject-matter experts, who are extremely knowledgeable about the legal and practical issues implicated in the operation of the MLC. DLC, Inc. members played a lead role in the development of the MMA and its enactment, as the primary representatives of digital music services in negotiations with copyright owner and licensee stakeholders, and policy discussions with legislators. DLC, Inc. members have also participated in the regulatory process, in cooperation with the leading industry organization representing the copyright owners, to help the Copyright Royalty Board (“CRB”) develop appropriate procedural regulations to implement certain aspects of the MMA. *See, e.g.*, Comments of the National Music Publishers’ Association and Digital Media Association, Dkt. 18-CRB-0012-RM, Doc. 3542 (Dec. 10, 2018); Copyright Royalty Board Regulations Regarding Procedures for Determination and Allocation of

Assessment to Fund Mechanical Licensing Collective and Other Amendments Required by the Hatch-Goodlatte Music Modernization Act, 84 Fed. Reg. 9053, 9057 (Mar. 13, 2019) (observing that “the Judges found NMPA/DiMA’s response to the NOI to be helpful in formulating rules to satisfy the requirements of the MMA. As a result, the rules that the Judges now propose incorporate many elements of that proposal.”). The demonstrated industry leadership of DLC, Inc.’s initial members is precisely what the statutory requirements contemplate for designation of an entity as the DLC.

#### **IV. DLC Inc.’s Comments Regarding Confidentiality, Vendors, and Participation in and Timing of Comments on Other MMA Implementation Issues**

##### **A. Confidentiality Relating to Participation On The MLC Board**

The Copyright Office requested information regarding how the proposed DLC intends to address issues of confidentiality arising from the presence on the MLC board of a DLC representative. NOI at 65753; *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV) (providing that one non-voting member of the MLC’s board of directors shall be a representative of the digital licensee coordinator). First and most importantly, DLC, Inc. intends to work with the MLC to address this issue, because DLC, Inc. is strongly committed to ensuring that a representative on the board of the MLC will further the shared goal of effective administration of the blanket licensing system under section 115. Subject to input from and discussion with the MLC, DLC, Inc. anticipates designating a representative who is not a director, officer, or employee of the DLC itself, such as, for example, the CEO of the Digital Media Association (or comparable industry association) and establishing, through agreement, appropriate limitations on the information that may be shared between the two entities (MLC and DLC), as well as procedures for shielding information concerning individual licensee service members of the DLC from other licensee service members.



## B. Vendors' Services To The DLC And The MLC

The Copyright Office also asked that proposals for designation of the DLC provide views as to whether a single vendor may simultaneously provide services fulfilling the statutory obligations of the DLC and the MLC. NOI at 65753.

The DLC respectfully submits that there are not likely to be many statutory functions of the DLC that will require the use of third-party vendors. As noted above, the DLC's primary functions under the statute will be assisting the MLC in gathering information for the database of ownership information, enforcing the administrative assessment obligations of licensees, assisting and participating in proceedings before the CRB and the Copyright Office, and maintaining records and coordinating with the MLC (including through the sharing of information—some of which will be confidential). These functions will generally require information exchange and advocacy, all of which will be based on the industry expertise and leadership of DLC, Inc.'s members.

As discussed in the accompanying business plan, DLC, Inc. expects to use outside legal counsel, as appropriate, to assist in several of these functions. Such legal counsel could not simultaneously provide services to the MLC, due to conflict-of-interest and privilege restrictions. Similarly, DLC, Inc. anticipates engaging third-party experts, as needed, in connection with certain legal proceedings, such as any CRB proceedings to determine the administrative assessment, and potential legal proceedings to enforce obligations of significant non-blanket licensees. Experts retained for testifying and/or consulting purposes in connection with these statutory proceedings would be precluded from providing services simultaneously to the MLC, for the same conflict and privilege constraints that apply to legal counsel.

With respect to data service and rights administration vendors, such as Harry Fox Agency or Music Reports, Inc., DLC, Inc. does not anticipate needing such services to fulfill its statutory obligations – in contrast to DLC, Inc. members who may well require those services. To the extent that DLC, Inc. members may engage data and rights management vendors such as these in connection with the administration of their own licensing operations (such as their own direct voluntary licenses), DLC, Inc. does not believe there is any conflict that would prevent such vendors from providing services to the MLC simultaneously. Any potential confidentiality or administration issues could be addressed by specific agreements between the parties.

Finally, with respect to the DLC’s role in assisting the MLC in gathering ownership and other information, it seems likely that the MLC will engage a vendor to collect that information – or to construct a system for collecting that information. DLC, Inc. would be available to work with the MLC to ensure that the information system enables licensees to submit the relevant information.

To the extent the Copyright Office is posing the question of whether a third-party vendor could be engaged to independently perform statutory functions delegated to it by both the MLC and DLC, DLC, Inc. is not aware of any such functions of either designated entity that could be performed by a single entity simultaneously, but would consider such an arrangement if and when the need arose.

#### C. Timing of Comments Regarding Other Needed MMA Regulations

Finally, the Copyright Office has indicated that it will, through future notices, solicit public comment regarding other regulations that the Office will promulgate relating to implementation of the MMA, such as the operation of the blanket mechanical license and operation of the MLC, including, *inter alia*, the form of the notice of license and notice of

nonblanket activity; usage reports and adjustments; information to be included in the musical works database; requirements for the usability, interoperability, and usage restrictions of that database; and the disclosure and use of confidential information. NOI at 65750. The Office observed that the statute explicitly contemplates that the MLC and DLC may participate in such notice and comment proceedings, and that the Office therefore would not expect to conclude any such proceedings without affording the MLC and DLC an opportunity to participate. *Id.* at n. 53. Nevertheless, the Office is contemplating “whether it may aid the process to solicit initial public comments on some of these issues in advance of the final designation,” and “welcomes comment on this question of timing.”

DLC, Inc. respectfully submits that it will likely aid the process for the Copyright Office to solicit initial public comment on these issues in advance of the final designations, as contemplated. While the statute does specifically authorize the DLC and MLC to participate in proceedings before the Copyright Office, the benefit of those entities’ participation is to assist the Copyright Office in devising regulations that take into account the views of the leading industry participants, who will be most directly impacted by the resulting regulations. Because the Office intends to allow these entities the opportunity to participate, there will be no harm, and substantial benefit, in starting the process in advance of designation of the MLC and DLC. Proposed MLC and DLC candidates, as well as other interested parties, would be able to provide views that likely will be useful to the Office in formulating proposed rules. (To the extent there are any competing proposals for designation of the MLC and DLC, all such entities could submit comments.) The time frame for implementation of the MMA is relatively short, and there are many regulations to be promulgated; the sooner the Office can collect needed input on these issues, the better, provided that the MLC and DLC, once designated, will have a subsequent

opportunity to comment on the Office's proposals, including the opportunity to address other comments that may be submitted.

**V. Conclusion**

Digital Licensee Coordinator, Inc. appreciates the opportunity to submit this Proposal for designation as the DLC, to coordinate the activities on behalf of licensees, and assist in the implementation of the blanket licensing system under the MMA.

Respectfully submitted,

/s/ Allison L. Stillman

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*Counsel for Digital Licensee Coordinator,  
Inc.*

Dated: March 21, 2019

# **EXHIBIT A**

# Delaware

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The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "DIGITAL LICENSEE COORDINATOR, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF MARCH, A.D. 2019, AT 1:13 O`CLOCK P.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.*



  
Jeffrey W. Bullock, Secretary of State

7335480 8100  
SR# 20192132329

Authentication: 202481131  
Date: 03-20-19

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF INCORPORATION OF DIGITAL LICENSEE COORDINATOR, INC.**

The undersigned, a natural person acting as incorporator of a corporation under the Delaware General Corporation Law (“DGCL”), adopts the following certificate of incorporation for such corporation:

**FIRST:** The name of the corporation, hereinafter referred to as the “Corporation” is “Digital Licensee Coordinator, Inc.”

**SECOND:** The street address and initial registered office in the state of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801, and the name of the registered agent at such address is The Corporation Trust Company.

**THIRD:** The period of duration of the Corporation is perpetual.

**FOURTH:** The Corporation shall be an exempt corporation. This Corporation is organized exclusively as a business league under section 501(c)(6) of the Internal Revenue Code of 1986, as amended as of the date hereof or the corresponding section of any future federal tax code (the “Code”). To the extent consistent with that limitation, the Corporation may engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

**FIFTH:** The Corporation is not organized for profit and shall not have any capital stock.

**SIXTH:** Any conditions of membership of this Corporation shall be stated in the By-Laws.

**SEVENTH:** No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article FOURTH hereof. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under section 501(c)(6) of the Code.

**EIGHTH:** Upon the dissolution of this Corporation, assets shall be distributed for one or more exempt purposes within the meaning of sections 501(c)(6) or 501(c)(3) of the Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of this Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, which are organized and operated exclusively for such purposes.

**NINETH:** To the fullest extent permitted by the Delaware General Corporation Law, as now in effect or as may hereafter be amended, no member, director, officer or agent of (i) the Corporation or (ii) a member of the Corporation shall be personally liable to the Corporation or to its members for monetary

damages for any breach of fiduciary duty as a member, director or officer; provided, however, that such relief from liability shall not be applied in any instance where such relief is inconsistent with any provision of the Code applicable to corporations described in section 501(c)(6) of the Code.

**TENTH:** The name and address of the initial incorporator is as follows:

Allison Stillman  
Mayer Brown LLP  
1221 Avenue of the Americas  
New York, New York 10020

IN WITNESS WHEREOF, this Certificate of Incorporation has been subscribed as of this 20th day of March 2019, by the undersigned who affirms that the statements made in this Certificate of Incorporation are true and correct.

  
\_\_\_\_\_  
Incorporator – Allison Stillman



# **EXHIBIT B**

**BY-LAWS**  
**OF**  
**DIGITAL LICENSEE COORDINATOR, INC.**  
**(a Delaware Non-Stock, Non-Profit Organization)**

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ARTICLE I.

Membership

Section 1. Eligibility and Election.

(a) Any Person who is a Digital Music Provider engaged in Covered Activity and is a licensee under the Blanket License or is a Significant Nonblanket Licensee, as those terms are defined in Section 115(e) of the United States Copyright Act (17 U.S.C. § 115(e)), shall be eligible to become a Member of Digital Licensee Coordinator, Inc. (“DLC Inc.”).

(b) DLC, Inc. shall have three classes of Members: Principal Members, Charter Members and General Members.

(c) Except as otherwise expressly provided in these By-Laws, no Member shall, in its capacity as a Member, hold different rights, preferences, privileges or obligations than any other Member by virtue of its class of membership.

(d) Any Person that desires to be a Member may apply for membership by submitting to DLC, Inc. a completed written application using the form for such application as specified by the Board of DLC, Inc. to be elected as a Member. Such application shall be submitted to the Executive Committee, or, if there is no Executive Committee, the Board for approval. Upon the submission of an application for membership, the Executive Committee or, if there is no Executive Committee, the Board, shall promptly take action to approve or deny the application for

membership and notify the applying Person of its decision. Upon approval of the application, the applicant shall become a General Member.

(e) A “Qualified General Member,” as that term is defined herein, may apply to become a Charter Member. Such application, demonstrating that the Member meets the criteria as a Qualified General Member and agrees to pay dues assessed against Charter Members, shall be submitted to the Executive Committee, or, if there is no Executive Committee, the Board for approval (such approval not to be unreasonably withheld).

(f) The following terms, as used in these By-Laws, shall have the following meanings:

(i) “Affiliated” means an individual who is an officer, director, manager, proprietor, partner or employee, trustee or beneficiary of a Member.

(ii) “Business Day” means any day other than a Saturday, a Sunday or a legal holiday on which commercial banking institutions in Delaware are authorized to close for business.

(iii) “Charter Member” means the Principal Members and any Qualified General Members that become Charter Members.

(iv) “Covered Activity” shall have the meaning set forth in 17 U.S.C. § 115(e)(7).

(v) “DGCL” means the Delaware General Corporation Law.

(vi) “Founding Members” means the following entities: Spotify USA Inc.; Pandora Media, LLC.; Amazon Digital Services LLC; Google LLC; and Apple Inc.

(vii) “General Member” means any Member that is not a Charter Member.

(viii) “Good Corporate Citizenship” means adhering to the mission, ethics, qualifications, and applicable standards of DLC, Inc., as approved from time to time by the Board.

(ix) “Member” means any Person which meets the eligibility requirements, applies for membership and is approved as a member pursuant to Article I, Section 1.

(x) “Person” means an individual, corporation, partnership (including a general partnership, limited partnership or limited liability partnership), limited liability company, association, trust or other entity or organization.

(xi) “Principal Members” means, from the time these By-Laws are adopted through the end of calendar year 2023, the Founding Members. Beginning January 1, 2024, “Principal Members” shall mean the Founding Members and any other Charter Member that, among all the Members, has one of the five highest stream counts (measuring streams of musical works pursuant to Covered Activities) during the preceding two (2) calendar years. The determination of which Charter Members qualify as “Principal Members” shall be made on January 1, 2024 and every two years thereafter. Beginning January 1, 2024, “Principal Members” shall not include any Founding Member that no longer operates a service using musical works pursuant to Covered Activities, or any Founding Member that voluntarily changes its status from Principal Member to Charter Member or Member, by providing written notice to the Chair of the Board.

(xii) “Qualified General Member” means any General Member who has consistently demonstrated Good Corporate Citizenship during a 2-year period, as determined by the Board in its sole discretion. Any Qualified General Member shall cease being a Qualified General Member in the event of a break in its membership (in which case the period restarts) or no longer demonstrates Good Corporate Citizenship, as determined by the Board in its sole discretion.

Section 2. Representation of Members.

(a) A Member that is a partnership, limited liability company, corporation, or other entity or organization shall only be entitled to act at any meeting of DLC, Inc. by one of its duly authorized officers, directors, general partners, managers or other comparable authorized Person.

(b) Any Person claiming the right to vote on behalf of any Member may be required, as a condition of voting, to furnish such evidence of his/her authorization as may be specified in reasonable rules adopted from time to time by the Board at least ten (10) Business Days before the meeting or adjourned meeting to which such rules shall apply.

Section 3. Voting.

(a) With respect to any matter to be voted on by Members, except as otherwise provided by applicable law, each Member shall each have one (1) vote.

(b) Reasonable rules and regulations for implementation of the foregoing provisions established by the Board from time to time shall be binding on all Members.

(c) The following extraordinary corporate transactions will require the vote of Members holding not less than 2/3rds of the voting power from each of the Charter Members and the General Members at a meeting at which a quorum is present: (i) any proposed amendment of DLC, Inc.'s Certificate of Incorporation, (ii) a change of DLC's corporate mission, (iii) the creation of new categories of membership, (iv) initiating litigation against a digital service provider or initiating a proceeding before the Copyright Royalty Board to determine the administrative assessment, as authorized by 15 U.S.C. § 115, or (v) the liquidation or dissolution of DLC, Inc. All other matters (if any) before the members shall require a majority vote of the Members.

Section 4. Dues and Special Assessments.

(a) Each year, the Chair of the Board shall propose the annual dues in the aggregate payable by all of the Charter Members as a percentage of that year's operating budget. The Board

shall accept the Chair of the Board's proposal, or modify it as the Board determines is necessary, and approve the annual dues in the aggregate payable by all of the Charter Members. The aggregate dues payable by the Charter Members shall not be less than 60% of that year's operating budget, and shall be paid by the Charter Members in equal shares.

(b) Each year, the Chair of the Board shall propose the annual dues in the aggregate payable by all of the General Members as a percentage of the current year's operating budget. The Board shall accept the Chair of the Board's proposal, or modify it as the Board determines is necessary, and approve the annual dues in the aggregate payable by all of the General Members. The aggregate dues payable by the General Members shall not be more than 40% of that year's operating budget, and shall be paid by the General Members in equal shares, or according to an alternative equitable allocation as may be determined by the General Members.

(c) DLC, Inc. shall send an invoice to each Member for its dues on or about May 1 of each year. The dues for each fiscal year of DLC, Inc. shall be payable annually in advance on or before June 1 of each year. The dues for the fiscal year of DLC, Inc. in which a Member is elected to Membership shall be payable within thirty (30) days after written notice of election is sent to such Member.

(d) The Board may, in its sole and absolute discretion, impose special assessments to the extent (i) amounts received by DLC, Inc. from dues paid for that fiscal year are insufficient to fund any particular activity undertaken on behalf of digital licensees to improve business conditions of the digital music industry and in furtherance of DLC, Inc.'s authorities and functions as described in 17 U.S.C. § 115(d)(5)(C) and (d)(6), and (ii) reasonably necessary to fund the costs of proceedings by DLC, Inc. with the United States Copyright Royalty Board and/or the United States Copyright Office, and/or any federal court action to enforce obligations of any Significant

Nonblanket Licensee; provided, that any such special assessments shall be allocated between the Charter Members and General Members in accordance with the allocation requirements for annual dues set forth in Article I, Section 4(a) and (b.)

Section 5.     Resignations; Change of Status.

Any Member in good standing may resign at any time from membership in DLC, Inc., or may change the status of its membership from Charter Member to General Member, by giving written notice to the Chair of the Board or to the Secretary of DLC, Inc.; provided, that no such Member or Charter Member shall receive a refund of any dues paid for the then current year. Such resignation or change of status shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation or change of status shall not be necessary to make it effective.

Section 6.     Nonpayment of Dues.

If any Member shall default in the payment of dues when due, said Member shall not be entitled to take part in any of the activities of DLC, Inc., to vote at any meeting of its Members and, in the case of Charter Members, to appoint a director to the Board, unless the Board determines otherwise and/or until such dues have been paid. During the period in which any Charter Member is in default in the payment of dues, any previously-appointed director of the Board Affiliated with such defaulting Charter Member shall not be entitled to vote. Furthermore, the Board may at its option expel such Member whose dues are more than thirty (30) days overdue from DLC, Inc.

Section 7.     Suspension or Expulsion for Cause.

Any complaint against any Member by reason of the alleged violation of any of the provisions of these By-Laws or any duly adopted rules or regulations of DLC, Inc. in any material respect shall be investigated by the Board at a meeting called for that purpose, and if said Member

shall have been found to have violated any provisions of these By-Laws or rules or regulations of DLC, Inc. in any material respect, the Board may suspend such Member from DLC, Inc. for a limited period of time, as determined by the Board to be fair and equitable in light of the nature of such violation, or in its discretion expel such Member from DLC, Inc.

## ARTICLE II.

### Meetings of Members

#### Section 1. Annual Meeting.

An annual meeting of the Members of DLC, Inc. shall be held at such place as may be fixed in the notice or waiver of notice thereof, at such hour and on such business day in June or such other month as may be determined by the Board and designated in the notice or waiver of notice thereof, for the purpose of the transaction of any business as may properly be brought before the meeting.

#### Section 2. Special Meetings.

A special meeting of the Members of DLC, Inc. may be called at any time by the Chair of the Board or by the Board.

#### Section 3. Notice of Meetings; Participation by Conference Telephone.

(a) Except as hereinafter in this Section provided, or as may be otherwise required by law, written notice of the time and place of holding each annual or special meeting of the Members of DLC, Inc. shall be delivered in accordance with the requirements of the DGCL not less than ten (10) nor more than sixty (60) days before such meeting, to each Member entitled to vote at such meeting. If mailed, it shall be deposited in the mail within the above mentioned period and directed to such Member at his/her address as it appears in the records of DLC, Inc., unless he/she shall have filed with the Secretary of DLC, Inc. a written request that notices to him/her be mailed to some other address, in which case it shall be directed to him/her at such other address. If



transmitted electronically, such notice is given when directed to the Member's electronic mail address as supplied by the Member to the Secretary of DLC, Inc. or as otherwise directed pursuant to the Member's authorization or instructions. Notice of any meeting shall state the number of votes the Member to whom such notice is sent is entitled to cast at such meeting and the aggregate number of votes entitled to be cast at such meeting by all Members. The notice of each special meeting shall state the time and place of such meeting and shall state briefly the purpose or purposes thereof, and no business other than that specified in such notice or germane thereto shall be transacted at the meeting except with the unanimous consent in writing of every Member entitled to vote at such meeting.

(b) Notice of any meeting of Members shall not be required to be given to any Member who shall attend such meeting in person or by proxy or who shall waive notice thereof in accordance with the requirements of the DGCL whether before or after such meeting is held. Notice of any adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken.

(c) One or more Persons may participate in a meeting of the Members by means of conference telephone or similar communications equipment. DLC, Inc. shall implement reasonable measures to provide such Persons a reasonable opportunity to participate in such a meeting and to vote, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

#### Section 4. Place of Meeting.

Every meeting of the Members of DLC, Inc. shall be held at such place as shall be specified or fixed in a notice thereof.

Section 5. Quorum.

At all meetings of the Members of DLC, Inc., except as otherwise required by law, that number of the Members who in the aggregate represent a majority of the total number of votes entitled to be cast at the meeting, shall constitute a quorum for the transaction of business. In the absence of a quorum, the meeting shall be adjourned from time to time until a quorum is obtained. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 6. Organization.

At every meeting of the Members of DLC, Inc., the Chair of the Board shall be present. The Secretary, or in his/her absence the Assistant Secretary, shall act as Secretary of the meeting. In case none of the officers above designated to act as Chair or Secretary of the meeting, respectively, shall be present, a Chair or a Secretary of the meeting, as the case may be, shall be chosen by a majority of the votes cast.

Section 7. Voting.

The vote of Members entitled to vote may be given by the Member entitled thereto in person or by proxy duly attended by an instrument in writing subscribed by such Member or by his/her attorney thereunto duly authorized and delivered to the Secretary of the meeting, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the Member executing it shall have specified therein the length of time it is to continue in force, which shall be for a period therein limited. At all meetings of the Members, a quorum being present, all matters, except as otherwise required by applicable law or the By-Laws, shall be decided by a majority of the number of votes cast.

Section 8. Action Without a Meeting.

Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing setting forth the actions so taken shall be signed by the Members having not less than the minimum number of votes otherwise required to authorize or take such action, filed with the Secretary of DLC, Inc. and, if not signed by all of the Members, notice of such action is promptly given to the Members that did not consent to such action. The consent may be written, signed and dated in any manner authorized by applicable law.

ARTICLE III.

Board of Directors

Section 1. General Powers, Duties and Number of Directors.

The entire charge and control of DLC, Inc. and its affairs, funds and property shall be vested in a Board of Directors equal to the number of Charter Members. The Board shall have charge, control and management of the affairs, property and funds of DLC, Inc. and shall have the power and authority to do and perform all acts and functions not inconsistent with these By-Laws, the Certificate of Incorporation and applicable law, in each case, as amended from time to time.

Section 2. Qualifications and Term of Office.

- (a) Each Director shall be Affiliated with a Charter Member of DLC, Inc.
- (b) Each Director shall serve for such term as is determined by his or her respective Affiliated Member. If any vacancy exists on the Board by reason of death, resignation, removal, or otherwise, the respective Affiliated Member shall elect or appoint a replacement Director for the unexpired term of his or her predecessor in office.

Section 3. Appointment or Election of Directors.

Each Charter Member shall be entitled to appoint one (1) Director to the Board, by providing written notice to the Chair of the Board.

Section 4. Resignations.

(a) Any Director of DLC, Inc. shall immediately cease to be a Director if such Director ceases to be Affiliated with the Member with which he/she was Affiliated at the time of his/her appointment as Director, or if the Member with which he/she was Affiliated at the time of his/her appointment as Director ceases to be a Charter Member.

(b) Any Director of DLC, Inc. may resign at any time by giving written notice to the Chair of the Board or to the Secretary of DLC, Inc. Such resignation shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Removal of Directors.

Any Director shall be removed if such Director has been absent (without an appropriate explanation) from four (4) consecutive regular meetings of the Board. A Director may also be removed by his or her Affiliated Member upon written notice to the Chair of the Board.

Section 6. Annual Meeting.

After each annual meeting of Members, the Board shall meet at the next designated, scheduled meeting of the Board for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting need not be given. Such meeting may be held at any other time which shall be specified in a notice given as hereinafter provided for special meetings of the Board, or in a consent and waiver of notice thereof signed by all of the Directors.

Section 7. Regular Meetings.

Regular meetings of the Board shall be held four (4) times each year. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next

succeeding Business Day. Notice of regular meetings of the Board need not be given except as otherwise required by applicable law or these By-Laws.

Section 8. Special Meetings.

Special meetings of the Board shall be held whenever called by the Chair of the Board or by any two (2) of the Directors in good standing. Notice of the time and place, which may be within or without the State of Delaware, and purpose of each such meeting shall be given to each Director in accordance with the requirements of the DGCL, but in any event at least two (2) Business Days before the day on which the meeting is scheduled to be held. No business except that of which notice shall have been given in the call therefor shall be transacted at any such special meeting.

Section 9. Waiver of Notice of Meeting.

Notice of any meeting of the Board need not be given to any Director if such notice shall be waived by him/her in writing whether before or after such meeting is held, or if he/she shall be present at the meeting, and any meeting of the Board shall be a legal meeting without any notice having been given or regardless of the giving of any notice or the adoption of any resolution in reference thereto if all the Directors shall be present thereat or shall have so waived notice thereof.

Section 10. Quorum.

A majority of the total number of Directors which DLC, Inc. would have then serving if there were no vacancies, shall constitute a quorum for the transaction of business at any meeting of the Board. In the absence of a quorum the majority of the Directors present at any meeting may adjourn such meeting from time to time until a quorum is present.

Section 11. Action by the Board.

(a) The act of a majority of Directors, including at least 3 Directors Affiliated with a Principal Member at a meeting at which a quorum is present shall be necessary and sufficient to

take any action by the Board, except as otherwise required by applicable law or these By-Laws. Members of the Board may participate in any meeting of the Board by means of conference telephone or other communications equipment by means of which all individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(b) Unless otherwise restricted by the Certificate of Incorporation or By-Laws of DLC, Inc., any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 12. Compensation.

No Director of DLC, Inc. shall receive, directly or indirectly, any salary, compensation or emolument from DLC, Inc. as a Director or in any other capacity unless authorized by the concurring vote of two-thirds ( $\frac{2}{3}$ ) of all the Directors, including all of the Directors appointed by the Principal Members.

ARTICLE IV.

Executive Committee and Other Committees

Section 1. Executive Committee.

In the event that the number of individuals serving on the Board exceeds nine (9), the Board shall form an Executive Committee which shall consist of the Chair of the Board, Treasurer Secretary, and two other Directors. Of those five (5) members of the Executive Committee, at least three (3) shall be Directors Affiliated with Principal Members. Except as otherwise provided

for in the DGCL or these By-Laws, the Board may authorize and empower the Executive Committee to have and to exercise any and all powers of the Board in the management of the business and affairs of DLC, Inc. The Chair of the Board or, in the absence of the Chair of the Board, one of the members of the Executive Committee designated by the Committee, shall preside at all meetings of the Executive Committee.

Section 2. Other Committees.

The Board may appoint, from among the members of the Board, other committees, with such number of members, and with such authority and power as appropriate for such committees, as determined by the Board.

Section 3. Powers and Action.

In addition to the limitations set forth in Section 1 of this Article, no committee designated by the Board pursuant to this Article shall have the power to select its members or the power to fill vacancies in it or the Board nor to (i) approve, amend or terminate any operating budget nor (ii) commence, join in, or settle any claim, action, suit or proceeding with the Copyright Royalty Board, the Mechanical Licensing Collective, the Copyright Office, any Significant Nonblanket Licensee, or otherwise nor (iii) make any decisions relating directly and indirectly to public relations. A majority of any such committee shall constitute a quorum for the transaction of business, and any action taken by a majority of the members of such committee present at a meeting at which a quorum is present shall constitute the act of such committee. Members of any such committee may participate in any meeting thereof by means of conference telephone or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

ARTICLE V.

Officers

Section 1. Number.

The officers of DLC, Inc. shall be a Chair of the Board, Secretary and Treasurer and such other officers as the Board may determine (who may be designated by the Board by descriptive words or phrases to indicate areas of special competence or for purposes of identification).

Section 2. Election: Term of Office: Qualification.

The initial officers of DLC, Inc. shall be appointed by the Board at the time the By-Laws are adopted, or as soon thereafter as practicable. The Chair of the Board, Secretary and Treasurer shall be members of the Board of Directors. The Chair of the Board shall be Affiliated with a Principal Member. Other officers of DLC, Inc. are not required to be Directors of DLC, Inc., and, unless Affiliated with a Charter Member, shall not be members of the Executive Committee of DLC, Inc. Each officer shall hold his/her office until his/her successor shall have been duly chosen and shall qualify, or until his/her death, or until he/she shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal.

Any officer, agent or employee of DLC, Inc. may be removed either with or without cause by a majority of the Board.

Section 4. Resignations.

Any officer may resign at any time by giving written notice to the Board, or to the Chair of the Board or to the Secretary of DLC, Inc. Any such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.



Section 5. Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term in the manner described in these By-Laws for the regular election to such office or as otherwise permitted by applicable law.

Section 6. Powers and Duties of the Chair of the Board.

The Chair of the Board shall, if present, preside at all meetings of the Members of DLC, Inc., of the Board and, if applicable, of the Executive Committee. He/she may sign and execute in the name of DLC, Inc. deeds, mortgages, bonds, contracts and other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by the By-Laws to some other officer or agent of DLC, Inc., or shall be required by law otherwise to be signed or executed; and, in general, he/she shall be vested with all the powers necessary for the carrying on of the business and the promotion of the objects, purposes and welfare of DLC, Inc. and shall perform all duties incident to the office of Chair of the Board and such other duties as from time to time may be assigned to him/her by the Board.

Section 7. Powers and Duties of the Treasurer.

(a) The Treasurer shall have charge and custody of and be responsible for all funds and securities of DLC, Inc., and shall deposit all such funds in the name of, and to the credit of DLC, Inc., in such banks, trust companies or other depositaries as shall be designated by the Board. The Treasurer shall regularly enter or cause to be entered in books to be kept by him/her or under his/her direction, for this purpose a full and adequate account of all moneys received and paid by him/her for the account of DLC, Inc., and in accounting for the receipt and expenditure of funds will specify funds received and expended pursuant to special assessments as opposed to annual dues. The Treasurer shall exhibit his/her books of account and records to any of the Directors of DLC, Inc. at any time upon request at the office of DLC, Inc. where such books and records are

kept, and shall render a detailed statement of his/her accounts and records to the Board as often as it shall require the same; and, in general, shall perform all other duties incident to the office of Treasurer, and such other duties as from time to time may be assigned to him/her by the Board.

(b) The Treasurer shall prepare an annual operating budget, which shall be consistent with any operating plan or financial plan adopted or approved by the Board and then in effect. The Treasurer shall also prepare a litigation budget and/or extraordinary litigation budget when requested by the Board.

Section 8. Powers and Duties of the Secretary.

The Secretary shall attend all meetings of the Members of DLC, Inc. and the Board and of all committees, and shall keep correct minutes of the proceedings of such meetings, and shall make all such minutes available to any Member who wishes to review such minutes. The Secretary shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law. The Secretary shall keep a register of the post-office address of each Member and shall make proper changes in such register. The Secretary shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed and, in general, shall perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned to him/her by the Board.

The Secretary may designate a representative, who is either another Director of DLC, Inc. or is outside counsel to DLC, Inc., to perform any of the functions of the Secretary under the Secretary's direction and supervision.

Section 9. Assistant Secretaries and Assistant Treasurers.

Assistant Secretaries and Assistant Treasurers (if any) shall perform such duties as shall be assigned to them by the Secretary or by the Treasurer, respectively, or by the Board or the Chair of the Board.

Section 10. Executive Director.

(a) The Board may hire or otherwise contract for an Executive Director to oversee the daily operations of DLC, Inc. Subject to the supervision of the Board, the Executive Director shall perform all duties customary to that office and as prescribed by the Board and shall supervise and control affairs of DLC, Inc. in accordance with policies and directives approved by the Board. The Executive Director shall serve as an ex officio non-voting member of the Board and, if applicable, the Executive Committee. The Executive Director may engage (and terminate the engagement of) agents and, if any, employees who shall have such authority and perform such duties as may be prescribed by the Executive Director, subject to approval of the Board.

Section 11. Representative of Corporation to Serve on MLC Board.

DLC, Inc. shall appoint a representative to serve as a non-voting member of the board of directors of the mechanical licensing collective, consistent with its authority under 17 U.S.C. §115(d)(3)(D)(IV). Such representative may or may not be an officer, director, or employee of DLC, Inc.

Section 12. Salaries.

The salary, if any, of any officer of DLC, Inc. shall be fixed by the Board.

ARTICLE VI.

Reliance; Limitation on Liability; Indemnification

Section 1. Reliance.

In performing his or her duties, each Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (a) one or more officers or employees of DLC, Inc. whom the Director reasonably believes to be reliable and competent in the matters presented; (b) counsel, public accountants or other Persons as to matters which the

Director reasonably believes to be within the professional or expert competence of such Persons; and (c) a committee of the Board of DLC, Inc. upon which the Director does not serve, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

Section 2. Limitation on Liability.

Neither the Members nor any Director of DLC, Inc. shall be personally liable for monetary damages for any action taken, or any failure to take any action, provided however, that this provision shall not eliminate or limit the liability of any Member or any Director to the extent that such elimination or limitation of liability is expressly prohibited by applicable law, as in effect at the time of the alleged action or failure to take action by such Member or Director.

Section 3. Preservation of Rights.

Any repeal or modification of this Article VI shall not adversely affect any right or protection existing at the time of such repeal or modification to which any Member, Director or former Member or Director may be entitled under this Article VI. The rights conferred by this Article VI shall continue as to any Person who has ceased to be a Member or a Director of DLC, Inc. and shall inure to the benefit of the successors, heirs, executors, and administrators of such Person.

Section 4. Indemnification.

(a) DLC, Inc. shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he/she is or was a Director or officer of DLC, Inc., or is or was serving any corporation or any partnership, joint venture, trust or other enterprise, in any capacity at the request of DLC, Inc., to the fullest extent and in the manner set forth in and permitted by the DGCL, as from time

to time in effect. Such right of indemnification shall not be deemed exclusive of any other rights to which such Director or officer may be entitled apart from the foregoing provisions.

(b) DLC, Inc. shall pay expenses (including attorneys' fees) incurred by a Director or officer of DLC, Inc. referred to in Section 4(a) of this Article VI in defending or appearing as a witness in any civil or criminal action, suit or proceeding described in Section 4(a) of this Article VI in advance of the final disposition of such action, suit or proceeding. The expenses incurred by such Director or officer shall be paid by DLC, Inc. in advance of the final disposition of such action, suit or proceeding only upon receipt of an undertaking by or on behalf of such Director or officer to repay all amounts advanced if it shall ultimately be determined that the Director or officer is not entitled to be indemnified by DLC, Inc.

(c) The foregoing provisions of this Article VI shall be deemed to be a contract between DLC, Inc. and each Director and officer who serves or served in such capacity at any time while this Article VI and the relevant provisions of the DGCL, if any, are in effect, and, except to the extent otherwise required by law, any repeal or modification thereof shall not affect any rights or obligations then existing or thereafter arising with respect to any state of facts then or theretofore existing or thereafter arising or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

(d) The Board in its discretion shall have power on behalf of DLC, Inc. to indemnify any Person, other than a Director or officer, made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he/she is or was an employee of DLC, Inc.

(e) The Board in its discretion shall have the power to purchase and maintain insurance in accordance with, and subject to, the provisions of DGCL.

ARTICLE VII.

Contracts, Checks, Drafts,  
Bank Accounts, Etc.

Section 1. Execution of Contracts.

The Board may authorize any officer or officers, agent or agents, in the name of and on behalf of DLC, Inc., to enter into any contract or execute and deliver any instrument, and such authority may be granted or confined to special instances, and unless so authorized by the Board or expressly authorized by these By-Laws, no officer or agent or employee shall have any power or authority to bind DLC, Inc. by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or in any amount.

Section 2. Checks, Drafts, Etc.

All checks, drafts and other orders for the payment of money out of the funds of DLC, Inc., and all notes or other evidences of indebtedness of DLC, Inc., shall be signed on behalf of DLC, Inc. in such manner as shall from time to time be determined by resolution of the Board.

Section 3. Deposits.

All funds of DLC, Inc. not otherwise employed shall be deposited from time to time to the credit of DLC, Inc. in such banks, trust companies or other depositaries as the Board may select or as may be selected by any officer or officers, agent or agents of DLC, Inc. to whom such power may from time to time be delegated by the Board, and for the purpose of such deposit. The Chair of the Board, the Treasurer, the Secretary, or any officer, agent or employee of DLC, Inc. to whom such power may be delegated by the Board, may endorse and deliver checks, drafts and other orders for the payment of money which are payable to the order of DLC, Inc.

ARTICLE VIII.

Uncertificated Membership

Unless otherwise approved by the Board, membership in DLC, Inc. shall be uncertificated.

ARTICLE IX.

Amendments

These By-Laws, or any of them, may be altered, amended or repealed, or new By-Laws may be adopted by the Board at any regular or special meeting of the Board by an affirmative vote of any majority of the Board that includes all Directors Affiliated with Principal Members.

# **EXHIBIT C**



**DIGITAL LICENSEE COORDINATOR, INC.**  
**5-YEAR BUSINESS PLAN AND**  
**DESCRIPTION OF ADMINISTRATIVE CAPABILITIES**

**I. Statement of Purpose and Principles**

Digital Licensee Coordinator, Inc. (“DLC, Inc.” or “the entity”) is a non-profit entity organized to represent digital music providers in connection with the administration of the mechanical license provided under Section 115 of the United States Copyright Act, 17 U.S.C. § 115(d)(5) (“Section 115”).

The Music Modernization Act (“MMA”), which became law in October 2018, amended Section 115 to overhaul the prior compulsory mechanical licensing system, and establishes a new blanket licensing procedure for digital music services to license and pay mechanical royalties for the use of musical compositions on their services. Among other things, the MMA calls for the establishment of a “digital licensee coordinator” to carry out key functions under the new blanket license, and for the Copyright Office to designate the entity to serve this role.

The digital licensee coordinator’s primary purpose will be to coordinate the activities of the digital music services relating to the mechanical license provided under Section 115, including through the specific authorities and functions identified in the statute.

These authorities and functions include: (i) establishing a governance structure, criteria for membership, and any dues to be paid by its members; (ii) engaging in efforts to enforce notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the mechanical licensing collective (“MLC”); (iii) initiating and participating in proceedings before the Copyright Royalty Judges to establish the administrative assessment under Section 115(d); (iv) initiating and participating in proceedings

before the Copyright Office with respect to activities under Section 115(d); (v) gathering and providing documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms for the license under Section 115; (vi) maintaining records of its activities; (vii) assisting in publicizing the existence of the MLC and the ability of copyright owners to claim royalties for unmatched musical works (and shares of works) through the MLC (including by encouraging digital music providers to publicize the MLC); and (viii) receiving monthly reports from the MLC regarding any Significant Non-blanket Licensees who are not in compliance with their statutory reporting and payment obligations, and enforcing those obligations against Significant Non-blanket Licensees through federal court action. 17 U.S.C. §§ 115(d)(5)(C), (d)(6). The statute also authorizes the digital licensee coordinator to engage in such other activities as may be necessary or appropriate to fulfill its responsibilities (the coordinator is prohibited from engaging in government lobbying activities). *Id.*

DLC, Inc. will draw upon the experience and expertise of its members and board to fairly represent digital licensee services, and effectively coordinate with the MLC, to help realize the goals of the MMA to provide licensing efficiency and transparency, and to ensure that the new blanket licensing system is, and remains, workable for digital music providers as well as copyright owners.

## **II. Initial Plan of Operation**

The summary below outlines the plan for DLC, Inc.'s operations during its initial five-year period, which will be a crucial phase for the successful implementation of the new blanket licensing procedure established by the MMA. As reflected in the following plan, DLC, Inc. is poised to begin immediately to carry out its statutory functions and authorities – drawing upon its members' deep experience in the industry, and their involvement in the development of the MMA

policy in particular. Indeed, DLC, Inc. has already begun some of these tasks, and is prepared to follow through with the other tasks based on the administrative capabilities, and on the general timeline, discussed below.

**A. Establish and Enforce Payment Obligations Under Administrative Assessment**

DLC, Inc. is equipped, and prepared, to establish and enforce payment obligations under the Administrative Assessment as needed. As the representative of a key stakeholder group in the blanket licensing system, DLC, Inc. is committed to ensuring the availability of the resources necessary for the effective operation of the license. But DLC, Inc. intends to minimize the need for contested proceedings or enforcement actions, by prioritizing negotiations and cooperation among licensees and the MLC, as discussed below.

1. Negotiation with the MLC to reach a voluntary agreement on the reasonable cost of the MLC operations and administrative assessment

The MMA contemplates that the digital licensee coordinator and the MLC will attempt to reach a voluntary agreement on the operating costs of the MLC, and the associated administrative assessment to be paid by the licensee services (both the initial administrative assessment, and any future assessments under Section 115). Under the timeline for implementation of the MMA, these negotiations can take place until 270 days from the MMA’s enactment, at which time the Copyright Royalty Board (“CRB”) must initiate a proceeding to determine the administrative assessment (§ 115(d)(7)(D)(iii)). Though neither the MLC nor the DLC have been designated by the Copyright Office, DLC, Inc. has already been in communications with potential MLC candidates in an effort to support the development of efficient MLC operations and foster a collaborative working relationship that will underpin the MLC and DLC’s payment obligation enforcement responsibilities. With this head-start, DLC, Inc. is positioned to maximize the time leading up to

the deadline for the initiation of the CRB proceeding, and will have the best opportunity to avoid a CRB proceeding to determine the assessment (or to minimize the scope of such a proceeding).

This exchange of information, and on-going negotiation, in an effort to assess the reasonable costs of the MLC and reach a voluntary agreement on the administrative assessment, will continue immediately following designation by the Copyright Office, and up until an agreement is reached (or until the CRB proceeding must be commenced). This negotiation will be accomplished through regular communications and in-person meetings with the MLC leadership (or its designated representatives), as well as continuous information exchange between the two entities – provided that the MLC agrees to proceed in this fashion as well – and will include, to the extent possible, input from licensees other than those that are founding members of DLC, Inc. (such input to be solicited in conjunction with early outreach to invite participation in the membership of the entity, discussed below). DLC, Inc. has engaged experts and consultants to assist in this effort as well, and it will continue to work with them to the extent appropriate and helpful.

2. Negotiation among digital licensees and significant non-blanket licensees for the equitable apportionment of the administrative assessment

In addition to determining the amount of the total administrative assessment based on the appropriate operating costs of the MLC, the MMA calls for the parties (or the CRB) to determine the equitable apportionment of the administrative assessment among the digital licensees (including significant non-blanket licensees). DLC, Inc. has also already begun the work of developing a proposal for a voluntary agreement among the digital licensees for the equitable apportionment of these costs, and expects to be able to establish a plan for that allocation before – or shortly after – the DLC is designated by the Copyright Office.

In addition to facilitating the continued discussions among the founding (and principal) members of DLC, Inc., the entity will, immediately upon designation (if not before), engage in outreach to other licensees, and consult with them on the issue of the equitable apportionment of the administrative assessment so that the resulting agreement reflects the broadest possible industry consensus. Such outreach efforts will include informal discussions through existing industry relationships, and, to the extent appropriate, formal meetings to review and invite comment on written draft proposals. This outreach will overlap with outreach to these licensees with respect to becoming members of DLC, Inc. – discussed further below.

As the entity best positioned to resolve this allocation determination voluntarily, DLC, Inc. can help streamline any potential CRB proceeding concerning the administrative assessment – as the allocation agreement among the licensee services can be applied to the total MLC costs, whatever that total is determined to be. This will have several benefits, including, but not limited to, minimizing potential conflict among the licensee members of DLC, Inc., minimizing confidentiality issues regarding the exchange of sensitive commercial information between and among industry competitors, conserving the resources of the CRB and all stakeholders, and allowing for the more expeditious implementation of the administration of the MLC.

3. Initiation and participation in CRB proceedings to establish the administrative assessment (including gathering and providing documentation)

In the event that voluntary negotiations with the MLC do not result in a complete agreement regarding the administrative assessment to fund the MLC's operating costs, the MMA provides that the CRB must initiate a proceeding to determine an amount that is calculated to defray the reasonable total costs of the collective (§ 115(d)(7)(D)). This determination will take into consideration anticipated future collective total costs and collections of the administrative assessment. *Id.* The Copyright Royalty Judges must initiate this proceeding by July 8, 2019, and

establish a schedule for party submissions and further proceedings, including a hearing. The determination of the initial administrative assessment must be published no later than one year following the commencement of the proceeding.

The procedures that will govern the CRB’s determination of the administrative assessment have not yet been established by the CRB, but the members of DLC, Inc. (through the Digital Media Association), have worked closely with the copyright owners to develop a detailed proposal for these procedures—and the CRB has proposed adopting them to a significant degree. *See* 84 Fed. Reg. 9053, 9057 (Mar. 13, 2019) (observing that “the Judges found NMPA/DiMA’s response to the NOI to be helpful in formulating rules to satisfy the requirements of the MMA. As a result, the rules that the Judges now propose incorporate many elements of that proposal.”).

Whatever procedures the CRB adopts to govern the proceedings to determine the administrative assessment, DLC, Inc. will be fully prepared to participate in the proceeding and assist the CRB in evaluating the proposed structure and operating costs of the MLC – based, in part, on the substantial work the DLC, Inc. members have already completed to analyze the relevant issues and assess the scope of “reasonable costs” associated with the MLC operations. Indeed, DLC, Inc. is uniquely positioned to support the CRB in its assessments of “reasonable costs,” based on its members’ experience with large-scale data management practices, including experience with vendors specializing in such data management.

To prepare for participation in this proceeding, DLC, Inc. will gather and provide available documentation from its members and other sources, and will submit expert reports and/or testimony. DLC, Inc. will undertake to prepare for such proceeding beginning no later than May 2019. Such preparations will include (but not necessarily be limited to): engaging counsel; identifying necessary discovery and preparing discovery requests; and engaging any third-party

experts. DLC, Inc. will follow a similar preparation process with respect to any proceeding to adjust the administrative assessment (pursuant to Section 115(d)(7)(B)(iv)).

4. Efforts to Enforce Notice and Payment Obligations Under Administrative Assessment

Once the administrative assessment is determined – whether through voluntary agreements or by the CRB – DLC, Inc. will enforce the notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the MLC (as required by statute, 17 U.S.C. § 115(d)(5)(C)(II)).

DLC, Inc. will perform this function by establishing a **Compliance Committee** with responsibility for receiving and following up on reports from the MLC of non-compliant non-blanket licensees. The Compliance Committee will also be responsible for coordinating with the MLC with respect to any legal action against any such parties under 17 U.S.C. § 115(d)(6)(C), to the extent such action becomes necessary. The Compliance Committee will be empowered to retain outside legal counsel to undertake any such actions, and will coordinate legal action with the MLC on a case-by-case basis.

DLC, Inc. is uniquely positioned to support the MLC in these efforts. In particular, the DLC will be led by industry stakeholders who have a strong incentive to ensure that all parties play by the rules – and who have preexisting relationships that can be leveraged to exert informal pressure to help avoid the need for formal enforcement. This self-policing will be complementary to actions by the MLC.

DLC, Inc. will establish the Compliance Committee within one month of the determination of the initial administrative assessment.

## **B. Assist in Efforts to Identify Copyright Owners of Unmatched Musical Works**

The MMA states that the DLC will aid the MLC's efforts in locating and identifying copyright owners of unmatched musical works (115(d)(5)(C)(i)(VII); 115(d)(5)(C)(iii)). DLC, Inc. plans to assist with such efforts in the near-term as follows:

(1) Within three months of the Copyright Office's designation of the MLC, DLC, Inc. will develop standardized text identifying and providing contact information for the MLC, and instructions for how a songwriter or other copyright owner of musical compositions can claim accrued royalties by providing the necessary information to the MLC. DLC, Inc. will provide this standardized text to the digital licensees, and request that they each post the text on their respective websites and as appropriate in their respective services.

(2) Within six months of being designated by the Copyright Office, DLC, Inc. will coordinate with the MLC to develop a protocol to guide its members' individual outreach to inform songwriters and publishers of the existence of the MLC and provide instructions for how to claim accrued royalties. DLC, Inc. will also seek to participate in songwriter and publisher industry events, including those organized by the MLC, to provide songwriters and publishers with information they need to learn about the MLC, provide ownership information, and collect any accrued royalties.

(3) Within six months of being designated by the Copyright Office, DLC, Inc. will discuss with, and consider any proposals provided by, the MLC regarding potential ways in which the DLC might assist the MLC in building out the database of copyright ownership information.

## **C. Participate in MLC Governance**

Pursuant to statutory authority, DLC, Inc. will appoint a representative (who may or may not be an officer of DLC, Inc.) to the MLC board of directors, in a non-voting capacity, pursuant



to Section 115(d)(3)(D)(I)(iv). DLC, Inc. will appoint this representative to the MLC board within thirty days of the initial designation of the MLC. This representation of the DLC on the MLC board will be highly valuable to the DLC's and MLC's joint efforts to cooperate in the effective implementation of the blanket license system.

To address confidentiality issues, this DLC, Inc. representative will, to the extent requested by the MLC, negotiate and agree to a reasonable confidentiality agreement with the MLC to keep confidential the deliberations of the MLC board to the extent the confidential information relates to the internal operations of the MLC and is not intended to be shared with the DLC. This representative also will be required to sign a similar agreement with DLC, Inc., preventing the representative from sharing with the MLC the confidential information related to the internal operations of the DLC and not intended to be shared with the MLC. In addition, in the discretion of DLC, Inc., the representative will be screened from receiving confidential information that poses an unnecessarily high risk of inadvertent disclosure. The representative will agree not to share information obtained through the MLC pertaining to a particular member of DLC, Inc. with any other member of DLC, Inc. DLC, Inc. anticipates that the foregoing agreements will contemplate the return or destruction of any inadvertently provided confidential information.

DLC, Inc. will also appoint representatives to serve on the MLC Operations Advisory Committee (pursuant to Section 115(d)(3)(D)(iv)). This committee makes recommendations to the MLC's board concerning its operations, including efficient investment in and deployment of information technology and data resources. *Id.* Through this visibility into the operations of the MLC, the DLC appointees will be able to help facilitate discussions between the MLC and DLC regarding the ongoing evaluation of the administrative assessment, and help streamline any potential CRB proceedings with respect to determining that cost and apportioning it among the

digital service licensees. DLC, Inc. will appoint representatives to serve on the MLC Operations Advisory Committee within thirty days of initial designation by the Copyright Office.

**D. Engage in Proceedings Before the Copyright Royalty Board and Copyright Office**

As noted above, the DLC will participate in any CRB proceedings to determine the administrative assessment to fund the authorized operating costs of the MLC. The DLC will also gather and provide available documentation for use in the proceedings periodically held by the CRB to determine the rates and terms of the mechanical license under Section 115(d)(5)(C)(i)(V). Specifically, DLC, Inc. will help ensure that the CRB has relevant information from the broadest cross-section of the licensee market, including market trends, usage metrics, consumer preferences, technical capabilities, international comparators, and policy analysis and expert opinions. In addition, DLC, Inc. will support the licensees' efforts to engage in negotiations with the copyright owner participants, in order to streamline (or even resolve) the issues to be determined by the CRB.

The DLC is also authorized to initiate and participate in regulatory proceedings before the Copyright Office (pursuant to Section 115(5)(C)(i)(IV)). Several issues have already been identified for consideration by the Copyright Office, including: (i) the form of the notices of license and of non-blanket activity; (ii) usage reports and adjustments; (iii) information to be included in the musical works database to be created by the MLC; (iv) requirements for the usability, interoperability, and usage restrictions of that database; and (v) the disclosure and use of confidential information. *See* Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator, 83 FR 65747-02; 17 U.S.C. § 115(d)(12)(C).

Because DLC, Inc. represents the digital services with the greatest percentage of the licensee market for uses of musical works in covered activities under Section 115, and its members

were actively involved in the development and passage of the MMA, DLC, Inc. will be able to provide valuable input to the Copyright Office (including the input of smaller licensees who might not otherwise participate) to assist the Office in devising appropriate regulations with respect to these aspects of the blanket licensing regime.

DLC, Inc. will establish a **Regulatory Committee** to direct its efforts with respect to both the CRB proceedings and the Copyright Office proceedings. DLC, Inc. will establish the Regulatory Committee within thirty days of receiving designation from the Copyright Office, and the committee will be empowered to engage outside counsel as needed to assist in reviewing information (including any information collected from DLC, Inc. members), and preparing written submissions to the CRB and Copyright Office. The committee will take action as necessary based on the notice and comment/participation schedules set by the CRB and Copyright Office.

#### **E. Maintain Records of Activities**

To ensure that records are properly created and maintained (as required by statute), DLC, Inc. will appoint a Secretary (an officer position required under the By-Laws, discussed below). The Secretary, or his or her designee (pursuant to the By-Laws), will be responsible for keeping minutes of all meetings (of members, the board, and all committees). Pursuant to the By-Laws, the Secretary also will serve as DLC, Inc.'s custodian of records, and have responsibility for ensuring that books, reports, statements, certificates, and all other documents and records are properly kept and filed. This information will include (but not be limited to) any tax filings, a current list of contact information for each member, copies of the corporate governance documents (certificate of incorporation, By-Laws and any amendments thereto), information on membership dues, any vendor agreements and copies of all documents submitted by the DLC in connection with any CRB and/or Copyright Office proceeding, and/or any other litigation. As is provided in

the By-Laws, the Secretary may delegate custody of certain records containing confidential or sensitive information to outside counsel, to the extent necessary or appropriate to protect any member or members of DLC, Inc.

The Secretary will establish an electronic drive, organized into appropriate subdivisions, to store all documents and records, and will adhere to confidentiality and security protocols developed by DLC, Inc. with respect to access to, and protection of, stored information. The Secretary will draft a set of recordkeeping guidelines based on consultation with the board (and legal counsel, as appropriate). As necessary, the Secretary will develop additional recordkeeping procedures for the activities of DLC, Inc.

In addition to these and other functions set forth in the By-Laws, the Secretary will be responsible for managing the confidentiality and security of sensitive information that will be shared between the DLC and the MLC, in accordance with the confidentiality requirements that will be prescribed by the Register of Copyrights (17 U.S.C. § 115(d)(6)(B)(ii)), and in accordance with confidentiality agreements that will be executed by each DLC, Inc. member and/or officer.

#### **F. Prepare for Re-designation in Five years**

By statutory mandate, the Register of Copyrights must review its designation of the DLC (and the MLC) every five years following the initial designations. 17 U.S.C. §§ 115(d)(5)(B)(ii); 11(d)(3)(B)(ii). DLC, Inc. will create a **Re-Designation Committee** to prepare for its re-designation in five years. This committee will be responsible for collecting evidence of DLC, Inc.'s performance of its statutory functions and effective representation of Section 115 licensees in connection with the operation of the Section 115 license regime, and preparing any submissions necessary for re-designation by the Register. In connection with this preparation, DLC, Inc. will review its By-Laws and Business Plan, and assess whether any adjustments are necessary or

appropriate.

Pursuant to the statute, the Register will publish a notice in January 2024 soliciting information concerning whether the existing designation of the DLC (and the MLC) should be continued. To prepare for this process, DLC, Inc. will establish the Re-Designation Committee six months in advance, or by June 2023. This committee will also be responsible (to the extent appropriate) for preparing any submission in connection with the MLC re-designation. The Re-Designation Committee will be authorized to work with outside counsel to prepare the submissions in connection with this procedure.

### **III. Administrative Capabilities**

DLC, Inc. is organized to be a lean and efficient non-profit corporate entity, managed by subject-matter experts with relevant industry experience and relationships. Through its corporate governance, initial Board of Directors, and initial plan of operation detailed herein, DLC, Inc. has developed the capabilities to carry out its statutory functions and help ensure that the blanket licensing system is implemented successfully, to the benefit of all stakeholders in the industry.

#### **A. Corporate Structure**

DLC, Inc. is already incorporated as a Delaware non-stock, non-profit organization, based on its filing its Certificate of Incorporation with the Delaware Secretary of State. The Certificate of Incorporation is attached hereto as Exhibit A.

DLC, Inc. has also established an initial Board of Directors, which has adopted a set of By-Laws, attached hereto as Exhibit B. The By-Laws set forth DLC, Inc.'s governance structure, criteria for membership, and requirements relating to dues. In particular, the By-Laws give equitable representation in decision-making among DLC, Inc.'s members with respect to those matters coming before the members for a vote. While there are three classes of members (principal

members, charter members, and general members), with principal and charter members having the right to appoint a representative to the Board, general members may become charter members, and each charter member will have the same voting power. The By-Laws also provide protections for smaller licensees by requiring that certain extraordinary actions be approved by the members.

Any licensee may apply for membership in DLC, Inc. by completing an application (which will include an interest statement) and submitting it to DLC, Inc. pursuant to the information provided with the application. DLC, Inc. may request additional information in order to determine such applicant's eligibility for membership, but will approve for membership any licensee that is a licensee under the Blanket License or is a Significant Nonblanket Licensee, as those terms are defined in Section 115(e) of the United States Copyright Act. Moreover, DLC, Inc. will conduct outreach efforts to solicit digital licensee members, beginning within three months of designation by the Copyright Office.

DLC, Inc. anticipates periodically reviewing its governance structure and criteria for membership and dues, to ensure that they remain appropriate and the entity is best serving its statutory functions. DLC, Inc. is empowered to amend its By-Laws as may be appropriate.

## **B. Board of Directors and Officers**

The initial Board of Directors is well qualified to serve and support DLC, Inc. in carrying out its functions and exercising its authorities. In particular, the Directors who comprise the initial Board have many years of collective experience in digital music streaming operations, rights management, and the music industry in general. Specifically, the initial Directors will be the following:

- **Nick Williamson.** Mr. Williamson has been responsible for the strategic development and day to day running of music publishing operations at Apple for the past seven years. He has played significant roles in the expansion of the iTunes Store around the world, the global launch of Apple Music, and the development of Apple's music publishing

operations in the USA. Prior to joining Apple, Mr. Williamson was co-Managing Director of Celas, a company he helped set up to manage the pan-European licensing and administration of the online mechanical rights of EMI Music Publishing (now part of Sony ATV) and the matching performing rights of societies including PRS, ASCAP, and BMI. He also led the formation of IMPEL, a special purpose vehicle for the management of the online mechanical rights of independent publishers in Europe, similar to Celas. Mr. Williamson has served as the Chairman and Chairman Emeritus of music industry technical standards body, DDEX, for the past four and half years, a period during which he has overseen, amongst other things, the development and implementation of new worldwide standards for on-demand streaming services to report their music usage, the creation of an industry wide conference event for participants to discuss shortfalls and opportunities in the content and meta data pipeline, the DDEX Summit, and the doubling of the DDEX membership.

- **Lisa Selden.** Ms. Selden is a digital media executive with deep publishing expertise, and serves as the Global Head of Publisher Operations for Spotify. She is responsible for ensuring publishers get paid quickly and accurately. Ms. Selden works with a combination of operations teams at publishers, multiple vendors / back offices and internal Spotify staff to improve matching and copyright accuracy. Ms. Selden also oversees the roadmap and development for Spotify publishing systems. Prior to joining Spotify in July 2018, Ms. Selden was the Senior Vice President, Digital Operations and Head of Songwize, ASCAP's administration business. She processed U.S. streaming performing royalties for Amazon, Apple, Pandora and YouTube. Ms. Selden also launched ASCAP's first ever claiming deal on YouTube's claiming platform. In addition, she led the data collaboration with BMI, which entailed a deep dive analysis and comparison of musical works copyright metadata, data and business rules and policies and practices in order to build an implementation roadmap. Earlier in her career, Ms. Selden served as Senior Vice President, Strategy, Operations and Business Development in the digital group at Viacom's music brands (MTV, VH1 and CMT) for eleven years. She licensed music videos and other music rights for Viacom's digital platforms. Ms. Selden also launched a publishing business within Viacom. She created a high quality library of music from its TV shows that generated revenue by licensing to other TV programmers around the world. Ms. Selden's first foray into digital music was in business development for the legal Napster, for four years beginning in 2001. She executed a variety of partnerships with hardware manufacturers and retailers to get more subscribers to the digital music service. Ms. Selden has an MBA from the NYU Stern School of Business.
- **Sarah Rosenbaum.** Ms. Rosenbaum is Music Counsel at Google. Ms. Rosenbaum works on the music publishing team at Google with a focus on North American music licensing, internal rights and data management initiatives, Section 115 compliance work, and policy

work in connection with the Music Modernization Act and Copyright Royalty Board proceedings. Ms. Rosenbaum has worked directly on the legislative efforts to pass the Music Modernization Act and has worked on the front lines of the efforts to implement the bill post-passage. Ms. Rosenbaum has spoken about the Music Modernization Act at several conferences and symposiums. Ms. Rosenbaum previously served as Director, Business & Legal Affairs at Music Reports, a leading provider of Section 115 license administration and data management services. At Music Reports, she helped oversee the operation and expansion of Music Reports' Section 115 administration platform on behalf of major streaming services, including the launch of a claiming portal for unmatched works and an online license opt-in platform for scaled direct license campaigns. Ms. Rosenbaum previously served as a Rights Attorney at NBCUniversal where she advised internal business units on ownership and distribution rights in television and film properties and helped modernize internal rights databases. During law school, Ms. Rosenbaum drafted film, television, and video game licenses for Warner Bros. film studio, counseled music clients in the intellectual property clinic at her law school, clerked for the Hon. Nan R. Nolan in the U.S. District Court for the Northern District of Illinois, and co-produced and moderated panels for an entertainment and technology law conference series. Prior to law school, Ms. Rosenbaum supported business development and music licensing efforts for a start-up music download service and simultaneously managed local music talent and ran a nightlife promotions company that produced live music and fashion events.

- **James Duffett-Smith.** Mr. Duffett-Smith is Amazon Music's Global Head of Music Publishing. In this role, Mr. Duffett-Smith leads the team that is responsible for Amazon Music's music publishing licensing and operations globally. Mr. Duffett-Smith had significant input into the passage of the Music Modernization Act, including advocating for its passage to members of Congress and their staff. In addition, he helped broker the deal between NMPA and DiMA that led to the foundational concept of the MLC in the MMA. Mr. Duffett-Smith has been working in digital music licensing for fifteen years. Prior to his current role at Amazon, he was at Spotify for seven years, where he held a number of roles licensing music internationally and in the US. He played a significant role in Spotify's global expansion, including negotiating their first licenses to stream recorded music in the United States from companies including Universal Music Group, Warner Music Group, Sony Music and the independent record label group, Merlin. Mr. Duffett-Smith has negotiated scores of agreements licensing rights in compositions in the United States and internationally from performing rights organizations, and major and independent music publishers. He has worked extensively with the statutory licensing framework under section 115 as it existed prior to the Music Modernization Act, and will continue to do so as it has changed in his role at Amazon Music. As a result of his considerable experience in music licensing, Mr. Duffett-Smith has built extensive networks on both the rightsholder and service sides of the digital music industry.



- **Cynthia Greer.** Ms. Greer is Vice President and Associate General Counsel, Sirius XM Radio Inc. (corporate parent of Pandora Media, LLC). Ms. Greer is a seasoned media executive with deep music royalty litigation and licensing expertise. She has been involved in nearly every sound recording statutory license proceeding before the Copyright Royalty Board (and its predecessor, the Copyright Arbitration Royalty Panel) and brings a perspective both as outside and in-house counsel. On the licensing front, Ms. Greer negotiated the first blanket performing rights license for satellite radio, negotiated the only settlement between satellite radio and SoundExchange for sound recording performance royalties, was instrumental in the development of the direct licensing program for Sirius XM and continues today with various content acquisition initiatives. Ms. Greer's knowledge and experience in copyright policy spans over 20 years with work on behalf of satellite radio and internet webcasters in the Digital Millennium Copyright Act, work on behalf of independent webcasters in the Small Webcasters Settlement Act and, more recently, in the Music Modernization Act. Prior to joining Sirius XM, Ms. Greer was of counsel as Pillsbury Winthrop. With the acquisition of Pandora Media, LLC in February 2019 by Sirius XM, Pandora has designated Ms. Greer for this Board position.

Contemporaneously with the adoption of the By-Laws, or as soon thereafter as practicable, the Board of Directors will elect the initial officers from among the Board: Chair of the Board, Secretary, and Treasurer. Detailed descriptions of these officers' functions can be found in the By-Laws.

### **C. Tax-Exemption under Internal Revenue Service Code 501(c)(6)**

DLC, Inc. is organized as a not-for-profit entity, to conduct activities permitted for business leagues described in Section 501(c)(6) of the Internal Revenue Code. No part of DLC, Inc.'s net earnings may inure to the benefit of any member within the meaning of the regulations and authorities for business leagues under Section 501(c)(6) of the Internal Revenue Code.

DLC, Inc. will prepare and submit its application for tax-exempt status under Internal Revenue Code 501(c)(6) within thirty days of designation by the Copyright Office (if not earlier). DLC, Inc.'s Treasurer will be responsible for maintaining the entity's tax-exempt status by (i) reviewing all activities DLC, Inc. intends to undertake for compliance with federal tax law, and

(ii) ensuring that DLC, Inc. timely complies with all required federal and state tax reporting requirements, including but not limited to return filings. The Treasurer will be authorized to consult with outside tax counsel and other qualified tax preparers as necessary.

**D. Qualification to Operate in Washington, D.C.**

DLC, Inc. is a Delaware corporation that will qualify to do business in Washington, D.C. by registering as a foreign entity under Title 29 of the D.C. Code (Business Organizations Act). Within thirty days of incorporation, DLC, Inc. will file the necessary foreign registration forms (including registration of its trade name) with the District of Columbia Department of Consumer and Regulatory Affairs, Corporations Division.

**V. Information Regarding Anticipated Dues**

DLC, Inc. expects its operating expenses to be modest, and intends to minimize overhead costs to the extent possible. Among other cost-saving measures, DLC, Inc. does not intend to lease commercial office space, and will instead utilize the office space of its members, as needed. For example, meetings can be hosted by members on a rotating basis, and/or, where appropriate, by outside counsel. DLC, Inc. has engaged a registered agent for service of process and other contact needs. In addition, DLC, Inc. does not expect to provide any monetary compensation to its Directors as payment for their services.

While DLC, Inc. may, at some point, decide to employ one or more dedicated employees, such as to serve the functions of Executive Director and/or Secretary, the entity does not have a current plan to do so. In the event that DLC, Inc. does hire full- or part-time salaried employees, the entity will expect to pay salaries and any associated benefits that are commensurate with those of comparable non-profit positions in the area.

Further, DLC, Inc. does not anticipate relying on third-party vendors to assist in the performance of its statutory functions, with limited exceptions. Those exceptions include outside

counsel, and (potentially) third-party experts in connection with specific matters in which the DLC is expected to participate – including Copyright Office regulatory proceedings, CRB proceedings to determine the administrative assessment and statutory royalty rates, and potential legal actions to enforce the administrative assessment obligations of Significant Non-Blanket Licensees, including through private negotiation and settlement.

It is difficult to estimate such legal costs, because the nature of the various proceedings and matters as to which counsel will be retained are not yet well-defined. For example, as noted above, the CRB has not yet determined the procedural details of the proceeding to set the administrative assessment, the Copyright Office has not yet issued all notices and request for comment on forthcoming rulemakings with respect to implementing regulations, and there are no existing compliance issues with respect to Significant Non-Blanket Licensees.

Moreover, the extent to which DLC, Inc. will need to engage in any such legal proceedings is unpredictable. As noted elsewhere, DLC, Inc. is committed to avoiding litigation to the extent possible, and views as its central mission the effective coordination and negotiation with the MLC, and with other licensees (including Significant Non-Blanket Licensees and non-members of the DLC). DLC, Inc. will work closely with the MLC and other stakeholders to resolve as many issues as practicable through voluntary agreement.

To the extent that legal counsel is needed to assist with the matters identified above, DLC, Inc. will select counsel based on substantive expertise as well as efficiency. DLC, Inc. is empowered, through the voting and dues procedures set forth in its By-Laws, to engage vendors, including outside counsel, on an as-needed basis, and to set a budget – and assess dues to be paid by the members – based on such needs as they arise.

## **VI. Timeline of Action**

The following is an overview of the timeline of the initial tasks described above that DLC, Inc. will complete to carry out its functions and exercise its authorities in the first five years:

### **March 2019 - July 2019**

- Appoint initial Directors to DLC, Inc.'s Board of Directors
- Elect initial officers of DLC, Inc.
- Pre-negotiate administrative assessment costs with MLC stakeholders and support the development of an efficient MLC entity
- Negotiate administrative assessment allocation among digital licensees, engage in outreach to other licensees
- Prepare for CRB proceeding to determine administrative assessment
- Prepare application for membership in DLC, Inc.
- File registration forms to conduct business as foreign entity in Washington, D.C.

### **July 2019 -October 2019 (first 3 months following designation by Copyright Office)**

- Appoint representative to MLC Board of Directors (within first 30 days of designation)
- Appoint representatives to serve on the MLC Operations Advisory Committee (within first 30 days of designation)
- File Form 1024, Application For Tax Exemption (if not filed earlier)
- Establish DLC Regulatory Committee
- Develop standardized text to advertise MLC, and guidelines/request that each licensee post the text on their respective services
- Conduct licensee outreach to solicit membership in DLC
- Submit comments to Copyright Office in response to Notices of Inquiry regarding additional MMA regulations

### **November 2019 - January 2020 (3-6 months following designation by Copyright Office)**

- Work with MLC to develop protocol to guide licensees' outreach to songwriters to inform them of the MLC and ability to claim accrued royalties

- Participate in MLC/industry events for songwriters and publishers to learn about the MLC and claiming royalties

**July 2020 - August 2020**

- Determination of administrative assessment to fund the MLC's operating costs -- as set by voluntary agreement or CRB
- Establish Compliance Committee

**January 2021-December 2022**

- Assist licensees in preparation for, and participation in, CRB determination of rates and terms for the Section 115 license (for the period 2023-2027)
- Evaluate whether to adjust administrative assessment

**June 2023**

- Establish Re-Designation Committee

**January 2024**

- Submit comments to Register of Copyrights re: re-designation of DLC (and MLC)

In addition to the tasks identified above, DLC, Inc. will hold regular meetings and conduct its regular functions in accordance with its By-Laws and the authorizing statute, on a continuous schedule throughout this five-year period.