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STUDY ROUNDTABLE)

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Remote Roundtable
 Suite 206
 Heritage Reporting
 Corporation
 1220 L Street, N.W.
 Washington, D.C.

Friday,
 March 26, 2021

The parties met remotely, pursuant to notice,
 at 10:00 a.m.

PARTICIPANTS:

Session 1: Holding and Distribution, Part 1

STEVEN AMBERS, Society of Composers, Authors and
 Music Publishers of Canada (SOCAN)
 RICK CARNES, Songwriters Guild of America (SGA)
 ALI LIEBERMAN, SoundExchange, Inc.
 IAIN MORRIS, Pandora
 WILLIAM NIX, Creative Projects Group
 SAM SOKOL, Artist Rights Alliance
 SHANNON SORENSEN, National Music Publishers
 Association (NMPA)
 ERIKA NURI TAYLOR, The MLC (Unclaimed Royalties
 Committee)

PARTICIPANTS: (Cont'd.)

Session 2: Holding and Distribution, Part 2

JOHN BARKER, ClearBox Rights
ALISA COLEMAN, The MLC
TODD DUPLER, Recording Academy
JÖRG EVERS, The International Council of Music
Creators (CIAM)
FRANK LIWALL, The MLC (Unclaimed Royalties
Committee)
MARK MEIKLE, Easy Song/Giddy Music
JOHN SIMSON
JENNIFER TURNBOW, Nashville Songwriters
Association International (NSAI)

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PROCEEDINGS

(10:00 a.m.)

MS. SMITH: Good morning, everyone. My name is Regan Smith. I'm General Counsel of the U.S. Copyright Office. And welcome to day two of our roundtables in connection with our study to recommend best practices for the mechanical licensee to consider in connection with its project of reducing the incidence of unclaimed royalties.

Before we begin, I'm going to go over a few logistical items for the whole day. So, first, the roundtable sessions will be moderated by Copyright Office attorneys. We will pose questions and call on panelists to respond. You can either raise your hand old school or use the Zoom button to indicate if you would like to speak. And if you're not speaking, I know we know this, but please mute your audio.

Given the panelists and the topics that we hope to cover today, we ask that you try to limit your responses to two minutes and to stick to the question posed. We'll kind of go through everything in an order, so thanks for understanding that.

Second, there's three sessions today. They can all be accessed using the same Zoom link we are on now. And so, if anyone has any technical

1 difficulties, just type in the Q&A, and someone from
2 the Copyright Office will respond and help you out.

3 Our last session of the day is an audience
4 participation session in which members of the public
5 are able to provide comments for the record. So, if
6 you are interested in participating, you may sign up
7 using a SurveyMonkey link that is provided in the chat
8 right now by no later than 12:45 p.m. Either you are
9 not on a panel but would like to contribute to the
10 discussion or even you were a panelist and wish to add
11 something on a topic that is of a different subject
12 matter.

13 That will start around 1:00 p.m., and we
14 will call up those who have signed to participate. If
15 you could please try to limit your comments to about
16 three minutes, that would be in keeping with our
17 general approach.

18 So, third, today's event is being recorded,
19 and the video is going to be posted on the Copyright
20 Office website. Please note that we will also have a
21 court reporter, who is transcribing the proceedings,
22 and that transcription will also be posted online.

23 So, before we begin, I'd like to ask my
24 Copyright Office colleagues to introduce themselves.

25 MR. SLOAN: Hi, everyone. I'm Jason Sloan,

1 Assistant General Counsel.

2 MS. SCIORTINO: Good morning, everyone. My
3 name is Cassie Sciortino. I am a Barbara Ringer
4 Fellow with the Copyright Office.

5 MS. SMITH: Thank you. And now I'm going to
6 ask the panelists to introduce themselves. If you can
7 provide your name, your affiliation, and whether you
8 have any connection with MLC or the Digital Licensee
9 Coordinator. We'll go in alphabetical order, so Mr.
10 Ambers.

11 MR. AMBERS: Hi, I'm Steven Ambers. I am
12 the Vice President of Corporate Development at SOCAN.
13 We are a mechanical rights society in Canada, a lot of
14 the performing rights, so we do have about 300,000
15 copyrights as a, I guess they would call us a
16 publisher with the MLC. Previously, we owned MediaNet
17 and were members of the DLC, but we have sold MediaNet
18 and are no longer members of the DLC.

19 MS. SMITH: Thank you. Mr. Carnes?

20 MR. CARNES: Yes, I'm Rick Carnes, President
21 of the Songwriters Guild of America and a professional
22 songwriter. I have no current affiliation with the
23 MLC.

24 MS. SMITH: Thank you. Ms. Lieberman?

25 MS. LIEBERMAN: Hi, I'm Ali Lieberman. I'm

1 the Senior Director of Business Process and Product
2 Management at SoundExchange. We do not have a current
3 affiliation with the MLC. SoundExchange is a
4 collective management organization in the U.S. for
5 sound recordings and performance royalties.

6 MS. SMITH: Thank you. Mr. Morris?

7 MR. MORRIS: Hello, Iain Morris. I head up
8 publishing, licensing, and songwriter relations for
9 Pandora. We are an MLC blanket licensee, and we're
10 also part of the DLC.

11 MS. SMITH: Thank you. Mr. Nix?

12 MR. NIX: I am the CEO of a company called
13 Creative Projects Group, as well as an adjunct
14 professor at Pepperdine University, and not affiliated
15 with the MLC.

16 MS. SMITH: Thank you. Mr. Sokol?

17 MR. SOKOL: Sorry. I'm Sam Sokol. I am
18 with the Artist Rights Alliance. We're an artist-run
19 nonprofit organization advocating for fair pay for
20 music creators and the digital economy. We work for
21 musicians and songwriters. No affiliation with the
22 MLC or DLC.

23 MS. SMITH: Thank you. Ms. Sorensen?

24 MS. SORENSEN: Hi, thanks for having me. I
25 am Vice President for Legal and Business Affairs at

1 the National Music Publishers Association. NMPA was
2 part of the coalition that helped create and propose
3 this MLC. And our executive vice president and
4 general counsel, Danielle Aguirre, sits on the board
5 of the MLC as a nonvoting member.

6 MS. SMITH: Thank you. And Ms. Taylor.

7 MS. TAYLOR: Hi, thank you for having me.
8 I'm Erika Nuri Taylor. I am a Grammy-nominated and
9 ASCAP award-winning songwriter. I'm also on the
10 Unclaimed Royalties Oversight Committee for the MLC.

11 MS. SMITH: Thank you all for joining us
12 this morning. I want to provide sort of a quick
13 roadmap so you know the order of the questions. So
14 we're hoping to touch upon four main areas. First is
15 any recommendations of best practices for the
16 appropriate length of holding of unclaimed royalties
17 before they ultimately are distributed to those
18 copyright owners who are identified; second, best
19 practices regarding the market share calculations
20 required under the statute for making those
21 distributions; third, issues relating to the advance
22 public notice required to go out for distribution; and
23 fourth, any considerations for general transparency in
24 the holding and distribution process.

25 So starting with the holding period, I want

1 to just refresh our minds on the statute this Friday
2 morning. So, under the MMA, the MLC will not
3 distribute any of the historical unmatched royalties
4 until 2023 at the earliest. And the statute also sets
5 a minimum three-year holding period going forward
6 before any unmatched royalties can be distributed by a
7 market share as unclaimed royalties. And if you are
8 doing math and wondering how we get to 2023 since the
9 MLC didn't hold any royalties until 2021, I think it's
10 because, in February of this year, the MLC received
11 \$424 million transferred for so-called historical
12 unmatched royalties, some of which has been held by
13 DSPs for uses dating back prior to 2020.

14 So two of our panelists today, Ms. Taylor
15 and someone else, Mr. Liwall on the next session, are
16 members of the Unclaimed Royalties Oversight
17 Committee. And, Ms. Taylor, I wonder, could you start
18 out just by explaining what that committee is and if
19 there's any current thinking you would be able to
20 share about the committee's approach to these issues?

21 MS. TAYLOR: So, yeah, the Unclaimed
22 Royalties Oversight Committee is a committee of
23 songwriters and publishers, and we talk about and
24 discuss what the best way is to make sure that all
25 copyright owners, rightful copyright owners, are able

1 to collect their mechanical royalties. The process of
2 outreach, the process of getting people familiar with
3 the portal, getting people signed up at the MLC,
4 getting people to make sure that they upload the
5 correct data, that's really, really important.

6 Also, just making sure that we educate a lot
7 of the songwriters and educate a lot of the copyright
8 owners. This is completely new. The MLC is new, so
9 we're starting from zero. Everyone is familiar -- a
10 lot of people are familiar with ASCAP, and a lot of
11 people are familiar with BMI and the PROs. But people
12 are not familiar with how mechanical royalties are
13 going to be now collected and distributed.

14 So definitely this is something that I'm
15 very passionate about as a songwriter as I feel like
16 it's very important for songwriters to make sure that
17 they're collecting all of their money. It doesn't
18 matter if it's a dollar. I feel like it's important.

19 They worked for it, and it's theirs, you know. So it
20 doesn't matter what the amount is. You know, if it's
21 based on their ownership of a song, then they should
22 be collecting it.

23 As far as distribution, I feel like
24 definitely there should be some guide points in
25 distribution. Like, I would love to see kind of,

1 like, maybe, like, a five touchpoint where, you know,
2 as far as contact, was that writer emailed, did we
3 call that writer, did someone call that writer, you
4 know, did someone call their publisher.

5 We have to try to find every single
6 copyright owner that we can. And I feel like, if
7 there's a guide of, okay, like, a checklist of did we
8 do this, did we do this, did we do this, I think that
9 would really, really help. And maybe there's a
10 certain criteria that we need to have to say, okay,
11 we've tried this, we've tried this, we've tried this,
12 and, you know, at this point, we've exhausted every
13 single possibility of finding this writer and having,
14 you know, their money distributed to them before we
15 consider going to market share.

16 MS. SMITH: Thank you, Ms. Taylor. And I
17 guess for those who don't know, the committee is going
18 to be also developing policies and procedures that
19 aren't written for the distribution practice. So,
20 hopefully, this session will be informative to you.
21 And then, under the statute, the board will ultimately
22 approve the policies and procedures developed by this
23 committee.

24 Can you just remind everyone the makeup of
25 the committee, so you're a songwriter -- how many

1 people are on the board and what is the
2 representation?

3 MS. TAYLOR: So there's five songwriters and
4 five publishers on the oversight committee, and the
5 MLC really wanted to make sure that copyright owners
6 and songwriters were represented in the best way. And
7 I think the best way is to have actual songwriters on
8 that board and knowing how to communicate with
9 songwriters.

10 It's a small -- I mean, even though there's
11 millions, right? There's millions of songwriters,
12 they're still, like, in each genre, they're still a
13 small-knit community, and I know a lot of people and a
14 lot of other songwriters. So MLC felt it was really
15 important for there to be representation and as far as
16 songwriters and publishers as well so we could really
17 give some inside information of, you know, the
18 publishers, how they're collecting, what are the
19 problems that they see on a daily basis, the
20 communication between publisher and songwriter, and
21 that's all, like, very, very important.

22 MS. SMITH: Thank you. So teeing up the
23 question of the holding period, I want to focus first
24 on the initial holding period. So, by the statute,
25 once the MLC makes an initial distribution by market

1 share, it must do so on a yearly basis, but, arguably,
2 it has discretion to hold off timing for the first
3 distribution. Does anyone want to offer key factors
4 that the MLC should evaluate in considering an
5 appropriate initial holding period, as well as in
6 general when determining when unclaimed royalties
7 should no longer be held? So Ms. Taylor suggested a
8 checklist approach. I see Ms. Lieberman with your
9 hand raised. Would you like to go?

10 MS. LIEBERMAN: Yes, sure. So, you know,
11 SoundExchange was in a very similar situation when we
12 launched in 2003. And Ms. Taylor touched on this
13 point, which is exactly right in that -- is the
14 organization exhausting all efforts to make sure
15 royalties are paid accurately and quickly and
16 correctly. You could argue that the timeframe in
17 which unclaimed royalties are held is a bit arbitrary.
18 So, you know, thinking through -- is that checklist
19 being met? Are all efforts being exhausted?

20 SoundExchange, for example, we're permitted
21 to release unclaimed funds after three years. We
22 actually waited about 10 years before we released any
23 money to make sure, in the unclaimed royalties, to
24 make sure -- is our data quality up to our high
25 standards? Is our match rate up to our high

1 standards? You know, in terms of outreach efforts,
2 are we doing everything we can to reach the
3 rightsholders to let them know about SoundExchange and
4 that we have money for them? Is our operational
5 efficiency where it needs to be?

6 So, until we felt like those high standards
7 were met, we weren't comfortable releasing royalties.
8 So, again, the timeframe, it should not be considered
9 in isolation. You want to look at all the efforts
10 that the organization's doing before those unclaimed
11 funds are released.

12 MS. SMITH: Thank you. Can I just probe a
13 little bit as to SoundExchange's approach? And I see
14 others are wanting to chime in too. But did
15 SoundExchange develop a specific set of criteria? Was
16 it a little more organic? And relatedly, what was
17 sort of the first initial pool and how was that
18 defined?

19 MS. LIEBERMAN: Yeah. So we have a lot of
20 different functional organizations or functional
21 groups within SoundExchange, so within each group we
22 had certain criteria. So, you know, our matching team
23 had certain criteria in terms of match rates. Our
24 customer services team had certain criteria in terms
25 of what are the steps we're taking to reach out to the

1 rightsholders and artists who aren't registered. We
2 have an industry relations team that was, you know,
3 working a lot of different events in the industry,
4 working with other organizations to build up that
5 trust.

6 So within each sort of functional group, we
7 had specific criteria that we were looking to meet.
8 And I believe the first release of unclaimed funds was
9 in 2013. I'm not sure of the exact amount, but that's
10 when we first released unclaimed royalties.

11 MS. SMITH: Okay, thank you. So I think the
12 order I saw people is Mr. Ambers, then Ms. Sorensen.
13 But, if I'm missing anyone else, just give a wave.
14 And Mr. Sokol. Okay. Those will be the next three.
15 So Mr. Ambers?

16 MR. AMBERS: Yeah, so a couple points I want
17 to make. We're based in Canada. And in Europe,
18 things are done a little bit differently than they are
19 here, so let's explain how the processes over there
20 and how it's handled and comments about here.

21 In Canada, in Europe, it's mostly a claiming
22 function, so the DSPs or the services would provide
23 usage data to all the organizations that are claiming
24 on behalf of their members. They will then invoice
25 the DSPs for that. So it's the entities, like SOCAN

1 ourselves or the European societies, don't really have
2 unmatched because they're only receiving what is
3 already matched.

4 Currently, in Canada, I can tell you we have
5 made a deal with the record labels for physical that
6 it's us and CMRA that are the two sides that collect
7 mechanicals. We created an entity that's jointly
8 called CSI, and the record labels provide us all the
9 what is unmatched, and we have it on a joint site
10 together that we try to clear up that unmatched and
11 get claimed before it gets paid out.

12 In Europe, my understanding is after a point
13 in time the services will do some sort of distribution
14 to the societies, but it's done at the DSP level, not
15 at the society level.

16 With regards to holding periods, I know one
17 thing that was important to the sides that we talked
18 to and our society is not based on when the society
19 receives the royalties but as actually, like, when
20 they put it up on the portal and it's available to be
21 claimed.

22 And the other, like, just general questions,
23 there's different reasons why things are unmatched.
24 Some are just purely unmatched. You don't know who it
25 belongs to. Some are you know who the songwriter is

1 or the publisher, but you can't get a hold of them, a
2 change of address, someone's passed away, an estate,
3 things of that reason.

4 And the other reason why things don't get
5 distributed is because of disputes, and, you know,
6 what's going to happen with those royalties that are
7 in dispute. I know a lot of those disputes take a lot
8 more than three years to be resolved.

9 MS. SMITH: And is it your recommendation
10 that it be a best practice to sort of segregate those
11 buckets when thinking about a holding period? So
12 going by the claiming period if someone is identified
13 but not located or if there's disputes, separating
14 that out?

15 MR. AMBERS: Yes.

16 MS. SMITH: I just want to clarify for the
17 record what I'm hearing you saying.

18 MR. AMBERS: Yes, yeah. I think, yeah,
19 there should be different policies for each bucket of
20 why things are in the unclaimed.

21 MS. SMITH: Thank you. Ms. Sorensen?

22 MS. SORENSEN: Thanks. I mean, just as a
23 guiding principle, we think that, as Ali said, it's
24 not exactly like a number of years that this is
25 sufficient to match everything. It's probably going

1 to be a little bit of a moving scale as the MLC's
2 operations get underway. And as we learn more, you
3 know, especially as the MLC begins to assess the
4 historical unmatched royalties that it received in
5 February and understand more about that data, we think
6 that we'll get a better understanding of how long is
7 needed for the MLC to attempt matching and how long to
8 allow rightsholders to view and claim.

9 And that will probably change a little bit
10 over time, but the general principle is the funds
11 should be held as long as the matching efforts
12 continue to be effective, and, you know, I don't know
13 what that is yet, but I think we will soon.

14 MS. SMITH: Mr. Sokol?

15 MR. SOKOL: Yeah, thanks very much. So we
16 agree very much with what you said at the outset,
17 Regan, that the MLC does under the statute have
18 discretion to hold longer. The statute establishes,
19 it seems, minimum holding periods and then it can
20 distribute at some point after those.

21 We very much agree with what Erika said at
22 the outset too, that, you know, holding as long as it
23 takes to really feel you've done all you can. I mean,
24 the goal is, you know, for no royalties to go out by
25 market share, certainly, as much as possible to be

1 matched to specific publishers and writers that
2 generated them and are owed them. Then, you know,
3 market share, ultimately, is a fallback that is just
4 kind of inherently a rough justice and imperfect
5 measure.

6 I think, you know, what Shannon just said
7 too about it's, you know, a moving target and that
8 sort of as you see efforts to the extent you are doing
9 things that feel productive and learning more and the
10 effort seems worth it, continuing on with that effort
11 until you've sort of exhausted it seems very much like
12 the right call.

13 I mean, it's helpful in terms of an
14 organization looking for benchmarks and procedures and
15 very clear rules, but it's like, you know, when you're
16 trying to figure out when to take popcorn out of the
17 microwave, and it's sort of like it's slowing down,
18 but how much has it slowed down that it really feels
19 just kind of done. And, you know, as matching rates
20 decline and as the things you can think of to do feel
21 like the things you've already done, you know, is
22 probably the time that, you know, you wouldn't want
23 distribution before then.

24 And just lastly, I would acknowledge that,
25 you know, we very much align ourselves with the

1 Recording Academy, which has been very active in
2 making this point. Multiple filings discussed the
3 SoundExchange, the choices that SoundExchange made
4 supportively and behind the idea of taking all the
5 time that's needed to do as complete a job matching as
6 possible before the initial distribution.

7 MS. SMITH: Ms. Taylor, I think you had
8 raised your hand and then Mr. Nix.

9 MS. TAYLOR: Yeah, I just wanted to add that
10 on the disputes, those disputed monies will be held
11 until those disputes are resolved. That dispute money
12 will not be sent out in market share. So I just
13 wanted to make that clear.

14 MS. SMITH: Thank you. And so that was one
15 of the questions I had. In the MLC's view, you would
16 say if there's a pending dispute, it's not considered
17 unattributable. It's not considered in the potential
18 pool of unclaimed funds, is that correct?

19 MS. TAYLOR: Yeah, that's correct. We're
20 going to wait until everything is resolved, and then
21 that's when it will be distributed. So it'll be held.

22 MS. SMITH: Thank you. So Mr. Nix and then
23 I see Mr. Carnes. I think you may need to unmute.

24 MR. NIX: I'm looking to say if you go back
25 to historical precedents to even the institution of

1 the copyright royalty tribunal, there are a lot of
2 startup issues, and there were many of exactly these
3 same sorts of issues that were arising back then, and,
4 you know, they were sort of bumpy in the beginning and
5 then sort of it became more institutionalized where
6 representative organizations, you know, began to weigh
7 in and deal with the issues. So I think that, you
8 know, the Copyright Office has always risen to the
9 occasion over time to sort of do this.

10 When I was looking at this change, I was
11 also looking in relating this to what was done with
12 the study back in 2015 of orphan works and, you know,
13 solutions to the orphan works problem as well. And
14 this is very much, I think, the same kind of issue
15 that we're dealing with.

16 I think probably what's going to be needed
17 is a massive education effort once the systems get put
18 into place with as soon as we need to go to all forms
19 of representatives, whether it's lawyers,
20 representative organizations, agents, managers, all of
21 that, and particularly to reach down to artists who
22 may not, you know, be within the system to get the
23 information out there as to how there's compliance.

24 The other question I had in looking at this
25 and sort of jumping into the trademark area is that

1 trademarks are protectable almost indefinitely as long
2 as you're using them, but there's a 10-year check in.

3 And I wonder whether there's some level of
4 responsibility of copyright owners and their
5 representatives and the artists to stay current in
6 their registrations and some sort of system that could
7 be put into place, the way you have to re-register
8 every 10 years and show proof of use, some things of
9 that sort. That kind of responsibility, you know,
10 placed on the artists and representatives, I think, is
11 an appropriate thing to consider as well.

12 MS. SMITH: Thank you. Mr. Carnes.

13 MR. CARNES: Yes. Before we start talking
14 about rules and holding periods and all these
15 formalities like re-registering every 10 years, those
16 sort of things, perhaps we should talk about what the
17 goal is in terms of, you know, what metric defines
18 success in distributing these royalties.

19 And I know the Copyright Office commissioned
20 an independent report a few years back about how the
21 global CMO -- what they considered to be an effective
22 successful match rate, and their match rates that this
23 report determined were 80 percent. And I think that
24 the MLC should be able to do better than that. So,
25 when we talk about unmatched funds, if we don't know

1 what our destination is, there's no way we should be
2 mapping the route, okay?

3 And I would like to see some sort of
4 discussion from the Copyright Office about what the
5 MLC ought to be accomplishing, because the potential
6 for conflict of interest here, assuming that -- and
7 this is in the legislation. We have a high unmatched
8 percentage right. That's all going to be distributed
9 on market share. And the people on the board of the
10 MLC will -- that unmatched will accrue to their
11 benefit. So, with that in place, somebody outside of
12 the MLC needs to establish what success looks like and
13 hold them to that rate. Thank you.

14 MS. SMITH: Thank you, Mr. Carnes. And, you
15 know, you're referring to the statute says when there
16 is a distribution, it goes to those who are identified
17 in the MLC's records. But you're sort of, I think,
18 making the jump that those who are on the board are
19 more likely to be identified.

20 And I guess, I shared with you yesterday we
21 tried to go through, like, can we set a date or a
22 benchmark, and the first panel did have a little bit
23 of pushback on identifying metrics that easily. So
24 one sort of question in the background if there's not
25 consensus on that is can disclosure or a number of

1 potential metrics be helpful if we're still trying to
2 define what is success, because I think the Copyright
3 Office, you know, shared we don't want the MLC to feel
4 like it is based on a moving target of trying to be
5 successful without defining what it is.

6 So, Mr. Morris, you can comment on that or
7 anything else that, you know, the previous question.
8 Thank you.

9 MR. MORRIS: Thank you. Yes, I just really
10 wanted to echo the sentiment that one size doesn't
11 really fit all in this area, and it's not uncommon for
12 splits to be unconfirmed two to three years after
13 release, and that's for major releases if there's a
14 cowriter or producer who's difficult to track down.

15 And on top of that, the international aspect
16 is something that we really need to look at, and the
17 matching efforts domestically versus internationally
18 are going to be very different. I think someone
19 mentioned on a panel yesterday the idea of MLC joining
20 CISAC and tapping into an existing network of folks
21 around the world, and I think that would be a good
22 idea to consider here for matching.

23 MS. SMITH: Do you or does anyone else think
24 that sort of reporting in certain buckets, such as the
25 amount being held because there's a dispute or the

1 amount because we may know who to pay, but we can't
2 find them, would that help the project? I see Ms.
3 Taylor has her hand raised and then I think Mr.
4 Ambers.

5 MS. TAYLOR: Yeah, hi. I just wanted to --
6 let me take my hand down. I mean, that's one of the
7 reasons why the MLC has songwriters on the Royalty
8 Oversight Committee, right, unclaimed money, because,
9 like, we don't want to see market share distribution
10 go out, right? We want to match 100 percent. Is
11 that, you know, completely -- you know, is 100
12 percent, you know, is that, like, you know, really
13 realistic? You know, we may get to 99 percent. There
14 may be that 1 percent that we can't find.

15 But, you know, I think that it's important
16 for Rick to know that, you know, we will do everything
17 in our power to make sure that songwriters and
18 copyright owners are going to be receiving what they
19 should be receiving and, you know, to match the
20 royalties and get it distributed to them.

21 It's just very, very important. You know,
22 this is not something that we want, you know, money to
23 go out and just say, oh, we couldn't find them, you
24 know. Oh, sorry. Like, no, that's not the goal at
25 all. Like, we definitely want to make sure that every

1 single songwriter is paid what they're supposed to be
2 paid.

3 MS. SMITH: Mr. Ambers and then Mr. Carnes
4 if you wish to respond.

5 MR. AMBERS: Yeah. I would just want to add
6 one other bucket for the initial 424, and that would
7 be relating to settlements in the past for unmatched.
8 So, if a party has already settled with a MediaNet,
9 for example, or Spotify and then that unmatched was
10 part of the 424 and they already received their market
11 share, they shouldn't be able to claim --

12 MS. SMITH: Can you put a pin in that?

13 MR. AMBERS: Yeah.

14 MS. SMITH: Because I think that's going to
15 some of the distribution questions we'll get to later.

16 MR. AMBERS: Okay. That's fine.

17 MS. SMITH: So, Mr. Carnes.

18 MR. CARNES: Yes, I wanted to address Ms.
19 Taylor's statements. First of all, I'm not in any way
20 impugning the motives of any of the songwriters on
21 that Unclaimed Royalties Committee. I truly believe
22 that they are diligently going to go after that money.
23 I just wanted to point out that there needs
24 to be a metric in place to determine what success is
25 because, as well intentioned as the songwriter members

1 of that unclaimed board might be, they answer to the
2 main board, and main board has 10 publishers and four
3 songwriters, so there's complete imbalance there,
4 unlike most of the rest of the world, where the boards
5 are majority songwriters or at least 50/50.

6 So, in view of that imbalance and the nature
7 of the power in the board's structure always answering
8 to the main board, I think that the metric needs to be
9 set by an independent agency of some sort and not by
10 the MLC, because I don't think the MLC has the proper
11 economic incentives to set that rate. Thank you.

12 MS. SMITH: Okay. So I would like to move
13 the discussion now to something that came up earlier,
14 which is sort of the MLC's startup nature. So, in our
15 2019 kickoff symposium, I think a representative from
16 the MLC said, well, we'll be ready to function at the
17 license availability date, which was last January.
18 But ultimate performance may take three to five years
19 to be fully judged because then you have to develop
20 and build out everything. We also heard yesterday
21 that the claiming portal is planned to be up and
22 running in June, with the ability to claim the
23 historical unmatched royalties available in
24 mid-September.

25 So that period of royalty shortened the

1 minimum claiming period from two years to 15 months.
2 How do we factor in some of this initial ramp-up phase
3 to the MLC? Should we measure it? Or should it just
4 be something that it is generally cognizant of in
5 delaying any first potential distribution? Anyone?

6 (No response.)

7 MS. SMITH: Does anyone think it should not
8 be factored in?

9 (No response.)

10 MS. SMITH: All right. Well, then we will
11 let the record show no one disagreed, so maybe we have
12 identified a best practice.

13 So are there any other criteria or metrics
14 that the MLC should consider? You know, I think
15 people have thrown out different ones. Some idea is,
16 you know, should we look at where key metadata is
17 missing? Should we look at economic value or number
18 of uses for streams? Mr. Carnes?

19 MR. CARNES: Yes. I hate to sound like a
20 broken record about this. I know you've heard this
21 10,000 times. Put in the database in the metadata of
22 every file a songwriter's identifying number, okay.
23 We could put this in ID3 in the mp3 files, whatever.
24 But we really need to have that number because that's
25 the only thing that doesn't change. Publishing

1 information changes every 10 minutes. My catalogues
2 have been bought and sold and distributed around the
3 world. But, if we had a global or at least a United
4 States -- let's start there -- ID number for every
5 songwriter, we probably wouldn't even be talking right
6 now. The MLC wouldn't even be necessary because they
7 could have identified these funds by the songwriter
8 number and distributed them to begin with.

9 But I've been talking about this for 20
10 years, and the only people that I've really gotten any
11 traction with is the Patent and Trade Office. They've
12 been interested, and I know they've discussed this
13 with the Copyright Office. And I know you guys are
14 not in, you know, charge of telling the software
15 writers how to put in, you know, ID3 files and mp3
16 files, but you could state that there's going to be a
17 database set up at the Copyright Office of this number
18 for songwriters.

19 A creator and composers, a creator
20 identifying number so that it is put in the mp3 files
21 so every time Pandora or Spotify or Apple Music or
22 something gets one of these files uploaded to them,
23 that number is in there and they will not have a
24 problem matching it with the songwriter. Just wanted
25 to say it one more time. Thanks.

1 MS. SMITH: Okay, thank you. And you know
2 we're lucky that our new register of copyrights comes
3 from PTO and we have a good relationship, so that's
4 slightly adjacent to this study, but thank you for the
5 contribution. And, Mr. Morris, I think you wanted to
6 respond.

7 MR. MORRIS: Yes, I just wanted to respond
8 to your comment on tying this to economic value. Just
9 to make the point that I think some international
10 societies in the past have used a kind of sliding
11 scale, like one to four dollar signs, in terms of
12 unmatched, so not showing the actual amounts but at
13 least categorizing it into, I guess, open table style
14 value.

15 MS. SMITH: Okay, thank you. One question
16 for the group, is there a countervailing point at
17 which holding unattributable royalties too long is
18 detrimental to the overall goal of reducing -- getting
19 people to come forward and claim the royalties? Can
20 the length of the holding period if something's very
21 unlikely to be matched affect the incentives for
22 people to come forward in a negative way? Ms.
23 Sorensen.

24 MS. SORENSEN: I don't know that it impacts
25 the incentive for people to come forward. I think the

1 incentive for people to come forward is to claim the
2 royalties that are owed to them that they haven't
3 received yet.

4 But there is a point at which holding too
5 long has a negative impact on the industry. Part of
6 the goal and I think why a lot of publishers and
7 songwriters supported the MMA and in particular this
8 provision of distributing historic unmatched was those
9 royalties matter a lot to songwriters and to small
10 publishers and all publishers. When you're holding
11 funds for an indefinite period of time, those are
12 funds that are not going back into the industry's
13 pocket, and that's really important.

14 MS. SMITH: Mr. Sokol, then Mr. Carnes.

15 MR. SOKOL: Well, with that really, I would
16 just agree with what Shannon said. I think it goes
17 back to where we started, the little bit of know it
18 when you see it. But, at some point, there's some
19 folks in the industry, the individuals that make up
20 the industry, you know, that this is their livelihood.

21 So, you know, it's just within a balance of
22 probably not three years. Also, I mean, I would say,
23 you know, probably not the 10 years that SoundExchange
24 needed, which was standing up at a very different time
25 and kind of just trailblazing and figuring out new

1 problems, that the MLC has been able to benefit from
2 that experience and see the issues of data matching
3 the sort of digital ecosystem much more clearly. So,
4 hopefully, it would be less time than that.

5 And the only other, I would just add I think
6 there's the historical unmatched, that's one set of
7 money and a time period for those. But then the
8 rolling annual distributions, our understanding is
9 those don't need to be complete. It's not that every
10 year you've got to get out -- you've had them for
11 three years.

12 The same question remains how long to hold
13 each of the buckets that have been discussed, how to
14 communicate around them, how to describe them. And,
15 you know, as with the disputes needing more time
16 because the dispute takes what it takes as opposed to
17 sort of purely, you know, orphan-type royalties that
18 maybe at some point you kind of feel, you know, that
19 you just know how much you don't know about something.

20 MS. SMITH: Mr. Carnes?

21 MR. CARNES: Yes. Something I haven't heard
22 mentioned so far in any discussions about the MLC, and
23 I know this is going to be determined later. But, when
24 we're talking about holding period, and I think this
25 is critical because I've written over 2,500 songs, and

1 the vast majority of those haven't earned more than
2 \$10. And most publishers hold funds until it accrues
3 to \$25 or more before they pay it out because paying
4 it out nowadays, particularly when you, you know, earn
5 15 cents on a whole bunch of songs, they don't want to
6 cut a check for 15 cents and send it out to you,
7 right? So I'm wondering what if --

8 MS. SMITH: I think --

9 MR. CARNES: Go ahead.

10 MS. SMITH: I just want to keep you guys on
11 time. We did do a rulemaking about this, and \$5 is
12 the answer when --

13 MR. CARNES: So they're going to hold
14 everything under \$5, but what's going to happen is the
15 vast of that \$400 million, how long are they going to
16 hold that \$5 before they distribute that? Or do they
17 ever distribute it? And if they don't, that's going
18 to amount to more than \$400 million very shortly.

19 That's all I want to say because it may seem
20 like \$5 is a very low amount, but you have to
21 understand these are independent songwriters that
22 weren't identified to begin with. There's going to be
23 a tremendous amount of \$5 and under money.

24 MS. SMITH: Right. I am not suggesting that
25 \$5 is not important, but I do think it is lower than

1 some of the other thresholds, at least, is what our
2 rulemaking demonstrated. But I think, if something
3 has accrued to a payee, it would also not be in the
4 unattributable bucket. So it's just in a different
5 bucket where it wouldn't be eligible for market share
6 distributions. I'm hoping that is helpful to the
7 point you're trying to say.

8 MR. CARNES: But over a period of time, if
9 it's not distributed, it will be a tremendous amount
10 of money. That's all I'm saying, because we make
11 pennies --

12 MS. SMITH: Okay. That is --

13 MR. CARNES: -- off of every one of these
14 services.

15 MS. SMITH: Right. It would be aggregate,
16 and it is just sort of separate from the question of
17 the unattributable royalties because it would be
18 attributable in that case.

19 All right. So one last question about
20 holding periods before we switch to distribution is,
21 when money is held at different times, should the pool
22 be by time period, or should it be broken up into
23 these buckets that people are talking about?

24 I can see yesterday, for example, people
25 mentioned maybe 3 to 5 percent of pieces made would

1 be, like, nature recordings or public domain sort of
2 things where it's very unlikely that a copyright
3 holder is ever going to come forward, and then we've
4 identified disputes as another area that really need
5 to be taken out of the pool.

6 So, when we start thinking about the hold
7 period, should it be by time period or by type or, you
8 know, by category? Anyone?

9 MS. TAYLOR: Yeah. Hi. I think it should
10 be by both. I think that we should have as many
11 categories as we need. So I think it should be, you
12 know, by the type of royalty that it is, but it also
13 should be by time period because I think, when you
14 think of an arc of a song or the way in time it makes
15 money, you know, there are songs that, you know, are
16 hits and they're hits forever and they play and they
17 generate, you know, a consistent amount of income
18 every single year, right? But then you have other
19 songs that, you know, may generate a large sum of
20 money in a three-month period, you know, and then kind
21 of trail off, right? And then you have those other
22 songs that were hits 10 years ago and someone redoes
23 them and then they're hits again.

24 So I think it's important that it's not one
25 or the other, but I think as many categories as we

1 need for holding, I think, is important.

2 MS. SMITH: Thank you. So that is a great
3 segue if that approach is taken to figuring out how
4 the distributions will go. I like how Mr. Nix brought
5 up the Copyright Royalty Board because I know at the
6 Copyright Office we work a lot for the judges on some
7 of the key issues that can stem from the way in which
8 you do those distributions, which I think may be some
9 issues for the MLC to consider too. So I wonder, Mr.
10 Sloan, do you want to refresh everyone's understanding
11 of the statutory background for distributions?

12 MR. SLOAN: Sure. Thank you. So we talked
13 about it a bit, but just before we dive into it, to
14 refresh everyone's memory, the MMA provides that at
15 the end of the statutory holding period, accrued
16 royalties that are still unmatched become eligible for
17 distribution at that time to identified copyright
18 owners in the MLC's records, and at that point, they
19 become what are called unclaimed accrued royalties
20 under the statute.

21 And the way that works, the MMA says, is the
22 copyright owners' payment shares for the unclaimed
23 royalties for a particular reporting period is
24 determined in a transparent and equitable manner based
25 on data indicating relative market share of those

1 copyright owners as reflected in the usage reports
2 provided by the digital services for the relevant
3 periods. But that can include, in addition to usage
4 data provided to the MLC, usage data provided to
5 copyright owners under voluntary licenses and
6 individual download licenses as well to the extent
7 that the MLC has that material.

8 So keeping in mind those statutory
9 parameters, are there any best practices for the
10 Unclaimed Royalties Oversight Committee and MLC that
11 they should be looking to for guidance in establishing
12 how that market share calculation should actually be
13 done? Ms. Lieberman.

14 MS. LIEBERMAN: Yeah. So, at SoundExchange,
15 we actually don't look at market share in the
16 traditional sense. I think, as some others have
17 pointed out, it's an imprecise metric when you're
18 looking at market share and specifically on how
19 different companies can be categorized within a market
20 share allocation.

21 So what we've done at SoundExchange is we've
22 taken a more precise approach in that we are looking
23 at transactional details from past royalties, looking
24 at usage and allocation and payments of what's
25 happened in past periods, and that's how we determine

1 how those funds should be distributed. So, again, not
2 looking at market share in the traditional sense but
3 trying to take a more granular approach to how those
4 funds should be allocated.

5 MR. SLOAN: And so I know, in the past,
6 SoundExchange has made some proxy-based distributions.
7 I think there are some times in the past where you
8 found royalties but no reporting under the 114
9 license, for example. Is what you just said, is that
10 kind of the methodology SoundExchange used in those
11 instances?

12 MS. LIEBERMAN: Not exactly. We're more so
13 looking at prior payments from the past year to
14 determine who's received funds in the past year and
15 then basing the allocation on that distribution
16 period. So, yeah, not exactly looking at proxy logs
17 with no reports but looking at who's received
18 royalties in the past year and making the
19 determination that way, which we like because you tend
20 to pay more people that way. Like, everyone's
21 eligible to receive some of the unclaimed royalties
22 using that method if you've received royalties in the
23 past.

24 MR. SLOAN: Thank you. Anyone else? Yes,
25 Ms. Sorensen.

1 MS. SORENSEN: Yeah. So, as you said, the
2 statute requires that the unmatched be paid out based
3 on actual usage either reported by the digital
4 services under the blanket license or reported under
5 direct licenses. So the way that the royalties
6 statement is divvied up between all copyright owners
7 for any given month should be the same way that the
8 unmatched is divvied up for that month.

9 So this means any rightsholder that receives
10 royalties for a given period should also receive a
11 share of the unmatched for that given period. So, for
12 example, if you had a really big hit in February and
13 your usage is higher, your usage, your market share
14 for the purposes of the distribution will be higher
15 for that period. So, as always, that market share is
16 maybe not totally the right -- it may be a little bit
17 of a misnomer because what we're really talking about
18 is actual usage, not, like, the size of the company
19 but how many streams did you have in a particular
20 period. And that's what the unmatched should be paid
21 out based on.

22 MR. SLOAN: Just to clarify, what I hear you
23 saying is it's market share in the sense of the market
24 share of the copyright owner for that particular month
25 in terms of the usage and, of course, whatever

1 royalties for that particular snapshot in time?

2 MS. SORENSEN: Yes. Bingo. So, for a
3 particular month or a particular payment period, the
4 amount of royalties that's accrued is based on the
5 actual usage. That's the same basis on which the
6 unmatched should be paid out.

7 MR. SLOAN: Thank you. In terms of, you
8 know, and maybe it's not any more complicated than
9 that, but in terms of doing the actual processing of
10 that, are there any other potential analogues to look
11 to? I think the comments mentioned some prior
12 industry arrangements or agreements, and, obviously
13 I'm not asking anyone to disclose anything
14 confidential, but is there anything in any of, like,
15 the NMPA and DSP pending and unmatched agreements that
16 have any relevance that might be useful for guidance
17 or I think the 2009 RIAA and NMPA agreement or if
18 those are just totally not relevant here? I just
19 wanted to see if anyone has anything to say about
20 that. Yes, Ms. Sorensen.

21 MS. SORENSEN: I'm happy to jump in since
22 those are our agreements. And without saying anything
23 confidential about exactly how those are calculated,
24 it's really following this exact same pattern most of
25 the time based on actual usage. Based on how much

1 royalties you received in a period, that's how much of
2 the unmatched that you receive for that period. We
3 think the statute is written in a way that reflects
4 industry practices 99 percent of the time.

5 MR. SLOAN: Thank you. Yes, Mr. Carnes.

6 MR. CARNES: Yeah, I would like to point out
7 in the context of the private agreements, in the
8 settlements that have already been made, some of them
9 just prior to the passage of the MMA, we're still
10 looking for the money that was distributed. We have
11 contacted all three major publishers that we, you
12 know, thought these people at least know more than
13 anybody else will about this, and we're still looking
14 for the money.

15 So, when we talk about these distributions
16 and how they should be handled in terms of market
17 share, et cetera, remember this stuff is coming into
18 the publishers in a non-title-based way. And every
19 songwriter nowadays has a different level of contract.
20 Some people are getting 50 percent, some people are
21 getting 70, up to 90 percent of the publishing money
22 themselves.

23 So, when we talk about transparency,
24 transparency doesn't stop at the moment that the money
25 is distributed to the publishers. If the real goal of

1 this process is to get the money to the songwriters,
2 it needs to be transparent all the way through to the
3 songwriter. Thank you.

4 MR. SLOAN: Thank you, Mr. Carnes. And we
5 definitely are going to get to transparency in a
6 little bit, but just to stay focused on the actual
7 distribution for the moment, I want to ask if there
8 are any steps -- well, and this is kind of related to
9 some of what was said earlier. Are there any steps
10 the MLC can take to ensure confidence in how the
11 market share calculation is done, you know, speaking
12 to some of what Mr. Carnes was raising earlier?
13 Should it be performed by or at least checked by,
14 like, an independent third-party accountant or auditor
15 or someone approved by the Unclaimed Royalties
16 Oversight Committee or anything along those lines?
17 Yes, Mr. Carnes?

18 MR. CARNES: My concern is, if it isn't
19 checked independently, then it's going to be checked
20 legally. You know, it's going to end up in court. I
21 mean, am I wrong about that? That somebody's going to
22 ask for injunctive relief and try to stop the
23 distribution if they don't think the distribution is
24 fair. So I think that something ought to be done to
25 independently verify this so that it doesn't end up in

1 court.

2 MR. SLOAN: Thank you. Mr. Ambers. I think
3 you're muted.

4 MR. AMBERS: Yeah. Just a couple things.
5 With regards to the prior settlements, and I was a
6 publisher before I joined SOCAN during some of them
7 and at SOCAN when we did the Media Net one. It was
8 based on the period as a whole, not, like, on a
9 monthly period. So that was my understanding of those
10 settlements.

11 I do agree that, you know, there should be
12 some independent or someone verifying that. And what
13 I mentioned before, I think there should be something
14 with regards to the parties that received settlements
15 in the past that the distribution would be for them
16 again that they -- I think that was part of -- I think
17 Warner Chappell made that comment, that they're not
18 expecting any more from previous settlements because
19 they already received their money. And I think the
20 money should be going market share to the parties that
21 weren't a party to any of those settlements.

22 MR. SLOAN: Yes, Ms. Sorensen.

23 MS. SORENSEN: I just want to note a couple
24 of things just while we're talking about this, that
25 self-published writers are going to be paid directly,

1 not through publishers, right? So only songwriters
2 that are affiliated with a publisher are going to be
3 getting their funds through their publisher. Everyone
4 else that's self-administered or self-published will
5 be getting their royalties straight from the MLC. And
6 for those songwriters that are getting their payments
7 through their publisher, the statute requires that
8 they get at least 50 percent as a minimum. So that's
9 one thing to note for transparency.

10 And then also songwriters also have an audit
11 right in the statute. So I think there's a lot of
12 stopgaps here or a lot of safeguards that protect
13 against -- that provide for the kind of transparency
14 and double-checking that we're talking about.

15 MR. SLOAN: Thank you. And so, since we're
16 talking about these agreements, I do want to open it
17 up and ask if there are any other kinds of special
18 considerations that should be accounted for here with
19 some of these pre-MMA agreements where certain
20 copyright owners might have received certain unclaimed
21 royalties or may have given certain releases for
22 particular periods in the past.

23 I believe some of the comments suggested
24 they might not, maybe shouldn't share in the
25 distribution of the unclaimed in the same way as

1 others, and I want to see if anyone has anything
2 they'd like to say about that.

3 MS. SORENSEN: I'll jump in.

4 MR. SLOAN: Sure, Ms. Sorensen.

5 MS. SORENSEN: I mean, it's important to
6 consider that settlements are not necessarily always
7 just a distribution of unclaimed but also a settlement
8 of infringement claims sometimes. So, without having
9 the details about each specific settlement, it's
10 really impossible to say. I know that we provided a
11 lot of feedback on this exact point in the recent
12 rulemaking, so I'll just refer back to those comments.

13 MR. SLOAN: Thank you. Yes, Mr. Sokol.

14 MR. SOKOL: Yeah, ARA has made that point
15 too, along with SOCAN in this discussion, and I just
16 thought I'd echo our prior position that, I mean, the
17 going-forward distribution of unmatched royalties, and
18 I thought what Shannon said about, you know, each time
19 period's different and each month is its own, that was
20 very interesting. And sort of just as she said, under
21 the old agreements, kind of 99 percent of the time
22 just that sort of very somewhat mechanical market
23 share based on actual usage is the industry practice.

24 And covers, it's just I think those comments
25 acknowledged just kind of the fact that the time

1 period and context matters in that 1 percent of the
2 time.

3 The situation with the \$424 million, a large
4 sum of long-held unmatched royalties covering this
5 pre-MMA period, as Mr. Ambers said, we share the view
6 that the statute created a process for those
7 historical unmatched royalties to be paid and an
8 effort made to match them as robustly and for as long
9 as it's needed, as we've discussed, and to hopefully
10 have there be no market share distribution at the end
11 or to have that as small as possible but, at the end
12 of the day, to distribute that out, you know, on a
13 sort of rough justice basis to writers and publishers
14 that hadn't been paid that were sort of, you know,
15 finding someway to get that money out of the services
16 and into the hands of the people who generated it in
17 some fashion.

18 For folks who settled their claims to
19 either -- I mean, characterized as -- I mean, the
20 payments are for the usage of music under those
21 settlements, whether it's by way of kind of getting a
22 license through a royalty concept or a use fee if I
23 had a license and we have an infringement claim
24 against you, to us, it seems to amount to the same
25 thing. And so we would think that folks who have

1 already been paid, who have already received
2 significant payments for that period of time shouldn't
3 share at the end of the day after the matching and
4 distribution of what's left, and those monies should
5 go to the folks who haven't been paid.

6 I think that the statute allows for -- it
7 certainly contemplates that just with its repeated, as
8 Jason said, in the authorizing provision creating the
9 MLC, it authorizes it to conduct equitable
10 distributions of unmatched royalties. The sort of
11 market share description, which specifically talks
12 about an equitable distribution based on the usage,
13 doesn't say exactly how that usage must be used. It
14 doesn't provide a formula. It doesn't sort of say,
15 here's the calculation, map it out.

16 The fact that the statute contemplates the
17 Unclaimed Royalties Oversight Committee, you know,
18 establishing policies and sort of figuring out how to
19 do this also is kind of as an administrative law.
20 Certain matter contemplates that there's still
21 questions to figure out and just discretion to --

22 MR. SLOAN: Mr. Sokol.

23 MR. SOKOL: -- do what's fair, right.

24 Sorry.

25 MR. SLOAN: So are you suggesting that they

1 should get nothing, or are you suggesting that there
2 should be some kind of offset against what they got
3 previously? I mean, hopefully, right, everyone hopes
4 the unmatched is very small, but just to discuss all
5 scenarios, if it were the case that there would be
6 money left after such an offset, do you think they
7 would be entitled to that?

8 MR. SOKOL: I think that, you know, they
9 certainly through the matching process should, may and
10 should receive additional money if new things are
11 matched that don't appear to be covered by the prior
12 settlements and payments that they're able to make a
13 showing that these are monies that are outside of what
14 those previous payment agreements contemplated because
15 of the timeframe they're in or the market they were in
16 or other. You know, we were not privy to the
17 agreements to know exactly what the payment -- how
18 they were characterized.

19 Certainly would hope that at the end of the
20 day the unmatched that goes out through this broader
21 distribution is small and certainly open, look, to a
22 process in discussing it. I haven't exactly talked
23 with my board about that precise question, so I
24 wouldn't want to get further than they've authorized
25 me to say in terms of what seems fair.

1 I have a reaction and based on the kind of
2 equities and how they've looked at it in our
3 organization, just how it seems to go that at the end
4 of the day, yeah, distributing nothing to folks who
5 have already received and entered into agreements to
6 receive substantial payments, releasing their claims
7 for usage of their music during this period, shouldn't
8 receive more and that it should all go to individual
9 writers and publishers that didn't enter into those
10 releases who instead went to Congress with the problem
11 to fight for the MMA and for this system regarding
12 these historical unmatched royalties.

13 MS. SMITH: So I want to sort of reframe Mr.
14 Sloan's question and ask again and maybe direct it at
15 Mr. Ambers, since we told you to put a pin in it
16 before. And so I think there is still the question of
17 who is maybe potentially participating but also the
18 time period because we did do a lot of regulatory work
19 when it was sort of unknown what would be transferred.
20 Now that we know what has been transferred, it is a
21 very small proportion, I think, that could be
22 implicated. There are a lot of time periods where
23 there's no dispute that there's been no sort of
24 offset.

25 So do you agree with, what I guess what Mr.

1 Sloan was suggesting, that if anything were to be
2 factored into account, it would be sort of a
3 proportionate consideration for the specific time
4 period at issue and that would be how that might
5 operate?

6 MR. AMBERS: Yes, I agree with that, Regan.

7 Yes, so it's only for the period that the settlement
8 was part of and if there's any monies in that period.

9 But other periods from the same DSP, no, they should,
10 you know, receive like any other distribution.

11 MR. SLOAN: Thank you. Sticking on the
12 topic of distribution, at what point in time would it
13 be appropriate for the market share calculation to be
14 performed? And I understand the market share is by
15 period, but in terms of, you know, at what point
16 before an unclaimed distribution is about to be made
17 should that market share calculation be done to know
18 how much you're paying which identified owner?
19 Anyone? Mr. Carnes.

20 MR. CARNES: Yeah, once again, I don't think
21 this is about a timeframe. I think this is about
22 reaching a destination, reaching an objective. I
23 mean, once we --

24 MR. SLOAN: Well, no, I --

25 MR. CARNES: Yeah.

1 MR. SLOAN: Sorry.

2 MR. CARNES: Yeah. Once we get to the point
3 where we understand that we've done best efforts, once
4 we have verified the best efforts, it's not about
5 timeframe. If you can do that in two months, that's
6 fine. But, if you can't, then it should go as long as
7 statute of limitations or whatever will allow it to
8 go.

9 MR. SLOAN: Yes, Ms. Sorensen.

10 MS. SORENSEN: I think, as Rick said, just
11 as late as possible that still provides the MLC enough
12 time to do those calculations and figure out the exact
13 distributions. The distributions of unmatched should
14 be based on as much accurate usage information as we
15 have. So that means you have to wait until you've
16 done most of the matching and you understand who owns
17 most of those songs that were used. So I say that
18 calculation should be done at the very end.

19 MR. SLOAN: Thank you. Just being mindful
20 of our time here, I have just one more
21 distribution-related question in terms of the
22 mechanics. As was mentioned before, since the market
23 share calculation under the statute is for the same
24 reporting period as the unclaimed royalties being
25 distributed, if partial distributions were made, that

1 was kind of referenced to earlier where some unclaimed
2 royalties for certain works from the reporting period
3 would get distributed while other royalties for other
4 works from the same period might get held back, for
5 example, if you were making a distinction between
6 completely unidentified owners versus identified
7 owners that you just haven't tracked down and located
8 yet, how does that impact the market share
9 calculation?

10 Because you have -- you know, you
11 potentially are depend -- if you pay out some stuff
12 while holding back other stuff and then there's
13 additional matching, now you have additional
14 identified owners. Does that make it necessary to do
15 a recalculation to adjust everyone's relative market
16 share at that point?

17 MS. SORENSEN: Is that directed to me, or is
18 that directed in general?

19 MR. SLOAN: Anyone who'd like to answer,
20 but, by all means, please, lead off.

21 MS. SORENSEN: I think -- so, if I'm
22 understanding your question correctly, you're saying
23 if we're identifying a matching and then making some
24 payments out and then later identifying additional
25 people and if that somehow implicates the splits or

1 the usage percentage that someone is owed, should we
2 go back later and adjust it.

3 I don't have an exact answer for that, and I
4 don't want to, you know, get out ahead of my
5 organization at all. So I don't know exactly the math
6 that should be done there, but I imagine that the
7 statutory period should at least come into play a
8 little bit here because part of the balance of the MMA
9 is to make sure that the money is being sent back to
10 people, not being held.

11 So, if you indefinitely hold it and never
12 pay out any unmatched, you'd never encounter that
13 problem. But we want to make sure that that's not
14 what's happening. So I don't think it makes a lot of
15 sense for the MLC to be going back and reclaiming
16 unmatched payments that have gone out. I think that's
17 partly why it's important to hold for a very long
18 period of time, as long as it's possible, and then to
19 pay out at the end of that period if that makes sense.

20 And I'm sure we can get more detailed information on
21 that question.

22 MS. SMITH: I do think it's good to start
23 considering -- and I see Mr. Sokol, I think, was a
24 little bit before you, Mr. Carnes -- because, in the
25 Copyright Royalty Board context, they do do different

1 phases of distributions, and the way that works is
2 they make whole and they sort of recalculate at
3 various points to get everyone to the end as opposed
4 to cutting off one distribution, then another
5 distribution.

6 And I can say when we engaged with them, as
7 well as legal issues with connection with the
8 Copyright Office Licensing Division because we are the
9 fiduciary for those royalty funds once they come into
10 the Office, it's very complicated financial
11 transactions. So I think it's something that the MLC
12 is going to have to grapple with, and, you know,
13 there's certainly a role for the UROC here. So Mr.
14 Sokol.

15 MR. SOKOL: No, I think Shannon really
16 covered exactly what I was going to say too about it.
17 That feels like a very hard question, and it certainly
18 feels, like, impractical to be trying to reclaim,
19 especially, you know, maybe these payments may be
20 small, but money that's gone out the door to
21 independent publishers, especially through to their
22 writers does.

23 But I just lean towards not doing that and
24 with a bias towards waiting longer before those
25 initial distributions at least to minimize the

1 possible shift. And maybe you find this spot where
2 the shift would ultimately be immaterial with the
3 amount of money that's left for the additional
4 matching that could happen and you would just feel
5 like it's fair to come up with a market share for a
6 period when you begin doing distributions and have
7 further distributions according to that market share.

8 But that's me reacting really in the space
9 of this call more than talking to my organization
10 about how they would view the equities in detail.

11 MR. SLOAN: Thank you. Ms. Lieberman.

12 MS. LIEBERMAN: Yeah, this point is a little
13 more anecdotal unless getting into the specific
14 details on how it's calculated. But I will say at
15 SoundExchange we typically engage in outreach surge
16 efforts and matching efforts before any unclaimed
17 funds are released.

18 So leading up into that period, you know,
19 we're kind of firing on all cylinders to make sure
20 that we're getting things matched. We're doing
21 outreach efforts to get folks registered before we
22 actually start the calculations of the release of
23 those unclaimed funds.

24 So speaking more in broader terms, it's, I
25 think, a best practice to make sure that, you know,

1 there is a surge in efforts leading up to that
2 release.

3 MR. SLOAN: So let me use that as a segue
4 into the next topic with the few minutes we have
5 remaining, which is the statutory notice that's
6 required to go out at least 90 days in advance of one
7 of these distributions. If anyone would like to speak
8 to how that should be publicized and the content of it
9 and kind of the how, where, and when of the notice if
10 anyone has any thoughts on that. Yes, Ms. Taylor.

11 MS. TAYLOR: Yeah, I'll jump in. I feel
12 like that should be a huge effort to get the word out
13 that there's still 90 days for you to, you know,
14 connect with the MLC, let the MLC know that you are
15 the copyright owner of this song. So I feel like it
16 should be -- you know, I feel like the music community
17 in a whole also needs to kind of take responsibility
18 for this as well.

19 So should it be blasted on, you know,
20 websites, label websites? Should it be, you know, on
21 ASCAP's website? Should it be on BMI's website? It
22 should definitely, you know, I feel like award shows,
23 right? Award shows, you know, everyone watches award
24 shows. Everyone wants to see, like, even the public,
25 right? Like, those are the high touch kind of venues.

1 We really have to get the word out.

2 And I feel like, if you're not in the music
3 community, if you're not a songwriter, maybe you're
4 not necessarily paying attention to that. So we have
5 to use social media. I feel like we have to use also
6 influencers, right, celebrities. Everyone wants to
7 know what celebrities are doing.

8 And, you know, so I feel like we should use
9 every single avenue to let people know that, you know,
10 look, in 90 days, there's going to be a distribution,
11 and if you know anyone, right, that maybe had a song
12 released and they know nothing about the way that
13 royalties are collected, it's like, you know, we got
14 to get the word out. It's like tell your friends,
15 tell your family members, you know.

16 But I feel like social media, TikTok is
17 huge. I feel like things go viral, you know. And
18 it's like, email, I think all the publishers also
19 should send a mass email out to all of their writers,
20 which, you know, I think, if we try to target every
21 single avenue of communication, I think we can -- I
22 mean, obviously, that will help with finding unmatched
23 as well. But as far as distribution and the statutory
24 notice, I think it should be blasted everywhere.

25 MR. SLOAN: Thank you.

1 MS. SCIORTINO: Just to follow up and
2 elaborate on the medium of publicizing the notice,
3 besides posting the notice on its website and issuing
4 a general press release about it, what else should the
5 MLC do to publicize the notice and promote the pending
6 distribution? And this bleeds a little into
7 third-party partnerships and the role that they play
8 and overall, you know, as discussed yesterday, the
9 MLC's education and outreach strategy.

10 So, again, what should the MLC be doing to
11 publicize the notice in considering the overall
12 education and outward strategy and potential
13 third-party partnerships? Ms. Lieberman?

14 MS. LIEBERMAN: Yeah, I'm going to echo a
15 lot what my colleague, Linda, mentioned on the
16 Education and Outreach Panel, I think, and Erika was
17 mentioning this as well. The biggest thing to do, I
18 think, and what one of the main channels that we've
19 exercised in that exchange is to meet the rights
20 owners, those artists, songwriters where they are.
21 So, you know, that means going to trade events, going
22 to South by Southwest. You know, the best thing you
23 can do is meet someone face-to-face or virtually. Let
24 me tell you about SoundExchange, register, and here's
25 money for you ready to go.

1 So it's really not expecting the public to
2 consume information that's posted on a website. That
3 alone is not sufficient. So it's really just
4 activating all of those outreach channels and going
5 through trusted third-party resources, like the NMPA,
6 like SONA, like these other organizations that are a
7 trusted resource and a known resource. That way, you
8 have more warm introductions rather than cold calling.

9 MS. SCIORTINO: Thank you. Mr. Carnes, I
10 saw you had your hand up?

11 MR. CARNES: Yes. I don't understand why
12 ASCAP, BMI, and CISAC haven't been proactive on this.

13 I don't know whether the MLC has contacted them, but
14 they're the only groups that can actually reach all
15 the songwriters or at least all the professional
16 songwriters and most of the amateur songwriters. And
17 they did this with an email blast, like, the day
18 before Christmas Eve telling people to support the
19 MMA. So why are they not now sending out something to
20 tell the writers how to claim their work?

21 MS. SCIORTINO: Thank you.

22 MR. SLOAN: Thank you. I see we're actually
23 out of time. We're going to go a couple minutes over.

24 I just have one more quick question on notices before
25 we ask one or two questions on transparency, and

1 that's in addition to how the notice goes out, does
2 anyone have any best practice suggestions for the
3 actual content of the notice, what should be in it?

4 MR. SOKOL: I'll just refer to the testimony
5 yesterday from my Executive Director, Ted Kalo, who,
6 you know, gave a lot of examples coming and urged the
7 MLC and the office in the study to look, as the MMA
8 contemplates, beyond just music industry outreach and
9 communication practices into the broader universe of
10 lost property and bank accounts, class action
11 litigation notices, all areas where people have rights
12 and kind of there's a whole meeting them where they
13 are, plain English, ways to avoid their kind of
14 bullshit -- sorry, their spam detector and kind of
15 sense that this is people saying they want to give me
16 money and throw it away. And a lot of information
17 there, and we're happy to talk more offline about what
18 our research in that area has shown.

19 MR. SLOAN: Thank you. Okay. Let's, I
20 guess, move to transparency very quickly.

21 MS. SCIORTINO: Sure. So just quickly, how
22 can the MLC be open and transparent in making
23 distributions of unclaimed royalties? For example,
24 making practices, procedures, and its decision-making
25 publicly available on its website? Does anyone have

1 insight as to that? Ms. Taylor.

2 MS. TAYLOR: Yeah. I think, for
3 transparency, I think that the public database that
4 you can actually go on now, that anyone can go on now,
5 you don't have to be a member, and search your work.
6 It's great to see if your work -- if all of your data
7 is there, if there's anything missing for any of your
8 songs.

9 Also, like I said, I think, you know, social
10 media is huge and is a great way for people to get
11 notified. So I don't think that things should just
12 live on the website. I know for me, honestly, like, I
13 hardly ever go onto websites. I definitely prefer an
14 app on my phone just to go to or link, you know.

15 And also I think it's important too, and
16 this may be off topic a little bit, but to have some
17 type of a sharing mechanism in the MLC so that just
18 say a songwriter goes in and they look up their song
19 and they're like, oh, wait, my cowriter's information
20 is missing, let me just share this link with them to
21 let them know, like, hey, you got to put your
22 information, you know, you got to put your information
23 in here.

24 And I feel like it doesn't need to have any,
25 you know, any other information. It doesn't need to

1 have any classified information. It's just like,
2 look, we wrote this song together, you're missing your
3 information, like, you know, go ahead and put it in
4 there. So, yeah, I think that's important as well.

5 MS. SCIORTINO: Thank you. I guess, lastly,
6 is there anything the MLC should do to empower
7 songwriters who are seeking to ensure that their
8 publishers are properly sharing or distributing these
9 distributions with them, as required under the MMA?
10 Mr. Carnes.

11 MR. CARNES: If there's some way to notify
12 them that a distribution has gone out, because we
13 didn't know the private agreements were being
14 negotiated when they were being negotiated. We don't
15 know what they're doing. So, I mean, yes, if they
16 really want to make sure the money gets to the
17 songwriters, then they should at least let the
18 songwriters know some money has gone out.

19 MS. SMITH: Thank you, Mr. Carnes. I think
20 that was a good closing remark because I think the MMA
21 establishes an obligation for that to happen that
22 we're all hopeful will be an improvement. So thank
23 you all for your contributions. We ran a little bit
24 over, so we're going to take a break and come back at
25 11:30 with our second panel, which will cover similar

1 topics. Thank you.

2 (Whereupon, a brief recess was taken.)

3 MS. SMITH: So we're going to start the
4 second session now. My name is Regan Smith, General
5 Counsel of the Copyright Office. This is the second
6 session on Holding and Distribution Best Practices to
7 Recommend to the Mechanical Licensing Collective in
8 connection with its overall project of reducing the
9 incidence of unclaimed royalties from the mechanical
10 license.

11 I think probably most viewers may have
12 watched the prior panel today, but not everyone, and
13 this will also live on the Copyright Office website
14 later. There may be a little bit of repetitiveness
15 for context. So I'm going to go very shortly over
16 some logistics.

17 We will be moderating this panel, posing
18 questions and calling on respondents. You can either
19 wave your hand or use the Zoom button to indicate that
20 you would like to speak. And please mute your audio
21 if you're not talking. Please try to limit any
22 responses to two minutes. In the questions posed,
23 I'll provide a roadmap so people have a sense of where
24 we're trying to go.

25 One thing to flag for anyone watching right

1 now is at 1:00 today, shortly after this session, we
2 will have what we're calling the audience
3 participation session, so anyone can sign up to
4 provide comments. We actually are limiting it to
5 around three minutes for the record that's to be
6 included in our study. There is a link to a
7 SurveyMonkey link in the chat that you can use to sign
8 up, and you should do that now in the next hour or so.
9 That will be the last opportunity for public input in
10 our study. So, if you are interested, please go ahead
11 and sign up.

12 We will be posting this video to the
13 Copyright Office website, as well as the transcript.
14 And to start off, I'd like to ask my Copyright Office
15 colleagues to introduce themselves.

16 MR. SLOAN: Hi, everyone. Jason Sloan,
17 Assistant General Counsel.

18 MR. RILEY: Hello. I'm John Riley,
19 Assistant General Counsel.

20 MS. SMITH: And now let's introduce our
21 panelists. If you could please provide your name,
22 your affiliation, your current organization, and also
23 whether you have any relationship with the Mechanical
24 Licensing Collective or the Digital Licensee
25 Coordinator. We will go alphabetically, so Mr.

1 Barker.

2 MR. BARKER: Thanks for having me, Regan.
3 And John Barker, President, CEO of ClearBox Rights,
4 independent administration company based in Nashville,
5 representing hundreds of clients from small
6 songwriters who own their own publishing to medium
7 publishers with tens of thousands of songs, and also
8 heirs who have received termination rights. And no
9 affiliation with the MLC, sorry.

10 MS. SMITH: Thank you. Ms. Coleman.

11 MS. COLEMAN: Hi, Regan. My name's Alisa
12 Coleman. I'm the COO of ABKCO Music and Records, Inc.
13 I'm also the board chair of the MLC.

14 MS. SMITH: Thank you. Mr. Dupler.

15 MR. DUPLER: Hi, I'm Todd Dupler. I'm the
16 managing director of Advocacy and Public Policies for
17 the Recording Academy, a membership organization
18 representing thousands of songwriters, musicians,
19 performers, producers, and engineers. And we do not
20 have any formal affiliation with the MLC or the DLC.

21 MS. SMITH: Thank you. Mr. Evers.

22 MR. EVERS: Hi, I'm Jörg Evers. I'm the
23 Vice President of International Council of Music
24 Creators, CIAM. And we are representing all around
25 the world nearly 500,000 creators which are members

1 from the CISAC societies. And I'm also a songwriter,
2 and I'm not affiliated with MLC or DLC.

3 MS. SMITH: Thank you. Mr. Liwall, I'm not
4 sure if I'm saying that right?

5 MR. LIWALL: Frank Liwall. I'm President,
6 CEO of the Royalty Network. We are an independent
7 music publisher. And I am a member of the Unclaimed
8 Royalty Oversight Committee.

9 MS. SMITH: Thank you. Mr. Meikle.

10 MR. MEIKLE: Regan, I'd like to thank you
11 and your colleagues for holding this Unclaimed
12 Royalties Study Roundtable. Thank you, United States
13 Copyright Office. My name is Mark Meikle. I'm from
14 Easy Song Licensing. We help do-it-yourself artists
15 navigate the music business. We're proud to be one of
16 a few companies that puts their phone number high and
17 proud and bold on the top of their website. We are
18 probably one of the newest members of the DLC.

19 MR. SIMSON: Hi, I'm John Simson. I am the
20 Director of the Business and Entertainment Program at
21 American University. I'm also counsel at Fox
22 Rothschild. More importantly for this panel, I was
23 one of the people who launched SoundExchange in 2000,
24 and I ran it from 2001 to 2010.

25 MS. SMITH: Thank you. And Ms. Turnbow.

1 MS. TURNBOW: Hi, I'm Jennifer Turnbow. I
2 am the Chief Operating Officer for the Nashville
3 Songwriters Association International. We are a trade
4 association for songwriters, and we have a nonvoting
5 board seat on the MLC.

6 MS. SMITH: And can you remind me, are you
7 also involved in any of the committees?

8 MS. TURNBOW: I am a nonvoting observing
9 member on the operations committee.

10 MS. SMITH: Great, thank you. So I'm going
11 to give a quick roadmap. We're going to follow sort
12 of the same structure of the prior panel. And, again,
13 if anyone wants to refer back, if they can provide
14 some context for the discussion so it is
15 understandable, but we're hoping to cover four main
16 areas. This is to recommend best practices for the
17 MLC.

18 So first is best practices for the
19 appropriate length of time and how to calculate that
20 for the holding period with respect to unclaimed
21 royalties; secondly, any issues with respect to the
22 market share calculation for making a distribution;
23 third, issues related to the advance public notice
24 required by statute to go out before distribution; and
25 fourth, any general best practices in transparency or

1 disclosure to make the project understandable.

2 So starting with the holding period, brief
3 statutory background. Under the MMA, the MLC will not
4 be distributing any of the historical unmatched
5 royalties until 2023 at the earliest, although,
6 arguably, it has discretion to hold it back longer.
7 There's a minimum three-year holding period going
8 forward before any unmatched royalties can be
9 distributed by market share.

10 I wonder if someone from the MLC, either Ms.
11 Coleman or Mr. Liwall, wants to sort of tee it off and
12 say anything about how the MLC is thinking of this
13 project.

14 MS. COLEMAN: Sure, I'll start. So,
15 obviously, the goal is to match the maximum and to
16 continue to match over time. Three years is the
17 number set in the statute, but it's not a number that
18 we necessarily need to live by. We intend to dig
19 deep, reach out and really find the owners of the
20 compositions and the songwriters and the publishers in
21 order to make the distributions.

22 The timeframe for 2023 for the period of
23 what we're talking about, the \$424,000,000 that was
24 collected, really will over time, you know, be churned
25 and churned and churned through various ways. You

1 know, the hope is, of course, to allow people to go
2 into a portal and make their own matches through audio
3 matching. It's so important that we have direct
4 access and, you know, that the DSPs give us insight
5 and make it easy for us to listen to the sound
6 recordings because only the songwriters and the
7 publishers really know if that's their song once they
8 listen to it.

9 So all these things need to come together in
10 order to make that happen, and, you know, we want to
11 work towards that goal for however long it takes.
12 Thank you, Regan.

13 MS. SMITH: Thank you. And, you know, Mr.
14 Liwall, I think we started the last panel asking your
15 counterpart to explain the role of the Unclaimed
16 Royalties Oversight Committee. Could you do the same
17 for this panel? So, by the statute, there's a
18 committee, explain its makeup and its project of
19 proposing policies and procedures to the MLC board?

20 MR. LIWALL: Sure, thank you, Regan. So the
21 Unclaimed Royalty Oversight Committee is a committee
22 of 10 members, five independent music publishers and
23 five songwriters. I speak for, you know, my company.
24 We are an independent publisher. We represent
25 hundreds of independent songwriter-owned publishing

1 companies, as well as hundreds of thousands of
2 copyrights that are administered by us.

3 You know, we have vast experience on the
4 committee dealing with matters of matching songs,
5 trying to determine unpaid pools of money, going in
6 claiming unpaid and trying to match our works to
7 those. And, you know, we tried to put together on the
8 committee some best practices that we can bring to the
9 board and actions for the board to take where possible
10 to ensure that the most equitable and fair matching
11 and distribution is done through the MLC.

12 So we are highly engaged with the MLC on
13 those matters, and, you know, as details come in and
14 as we're exposed to some of the data that they're
15 receiving, we'll be able to suggest processes that
16 will hopefully minimize any unmatched funds in the
17 future.

18 MS. SMITH: Thank you. So the first piece I
19 want to tee up is criteria for determining when the
20 first initial distribution should start because, by
21 statute, once the MLC starts, it needs to make a
22 distribution annually. So I think that first point is
23 going to be of interest to a lot of people. And I
24 wonder, Mr. Simson, I'm not sure if your ears were
25 burning yesterday, but there was a lot of discussion

1 about SoundExchange's practices when you were at the
2 helm. Do you want to offer any insight into best
3 practices for the MLC or what your experience or
4 approach was when you were at SoundExchange?

5 MR. SIMSON: Sure. You know, when
6 SoundExchange started -- and, again, we did our first
7 distribution in November of 2001 -- there were
8 royalties being paid into escrow by the very early
9 services who were paying for online music under the
10 DPRA passed in 1995. But, you know, when you look at
11 \$424 million, we had \$6.3 million paid into escrow
12 from services who were streaming music at that time.
13 So it was tiny.

14 So 1996 was the first obligation for
15 services to pay for online music. So, when we
16 started, it was already five years old. We waited
17 until 2006 to do our first pool distribution, so ten
18 years from those early royalties. But, again, very
19 small amount. What we did was to a) try to publicize
20 as much as we could, get as much press as we could
21 about these royalties, who were owed these royalties.

22 But I think we also kept a 30 percent reserve so that
23 if there were latecomers that they wouldn't lose their
24 money. Ten years later, there was still money in that
25 reserve. So you can only imagine that either people

1 never came forward or it was bad data that was
2 corrupting our ability to find them and pay them.

3 But we waited five years from our inception,
4 ten years from the first royalties. It'd be very
5 similar, I think, for the MLC to wait five years. I
6 think it serves many purposes. One, I think it gives
7 the community a better sense that they're really
8 trying hard to make payments to the deserving people
9 who are owed them.

10 MS. SMITH: And can I just confirm you
11 waited five years before making a distribution of
12 otherwise unattributable usage of the royalties, or
13 was that longer?

14 MR. SIMSON: It was five years. It was
15 2006. Our first distribution was in 2001.

16 MS. SMITH: Okay.

17 MR. SIMSON: And, again, the monies we were
18 distributing was a pool that we inherited from an
19 escrow account that was collected between 1996 and
20 2000 from basically services that were providing. We
21 took over cable, satellite. Internet radio still
22 didn't actually pay. Their obligation to pay wasn't
23 fixed until October 30, 1998.

24 MS. SMITH: Okay. I see Ms. Coleman.
25 Sorry, but I just want to make sure, so the first

1 unattributable distribution was five years, and you
2 did that. How did you determine who to pay? And then
3 how did you determine 30 percent was the right amount
4 to hold back?

5 MR. SIMSON: I think we kept the reserve
6 thinking it was just the right amount to keep back
7 just to pay latecomers given how -- remember, too,
8 there's a very big difference between a brand-new
9 digital performance for sound recordings, which no one
10 had ever -- you know, we would contact well-known
11 managers and agents and business managers who would
12 say, oh, there's no digital performance right now.
13 There's no right for artists to collect money.

14 With the mechanical royalty, people should
15 be well aware. It's been here since 1909. So there's
16 a different education process that's required. But,
17 you know, I think, you know, there's another huge
18 difference. They had a 30-plus-million-dollar fund to
19 work with to create their organization and to gear up.

20 I had five employees in 2000, and I had 13
21 in 2002. So, for us, it was all technology trying to
22 match things, and, you know, we were very creative.
23 What we would do is we would take our unpaid list and
24 match it against the unions. We'd match it against
25 Reverb Nation later on. We would go to South by

1 Southwest and match it against every band that was
2 showcasing there. We did lots of really creative
3 things to try to find people.

4 Remember, the Copyright Office regulations
5 didn't require us to find people back in those days.
6 We took it upon ourselves to do that. We just thought
7 it was the right thing to do.

8 MS. SMITH: Thank you. Ms. Coleman.

9 MS. COLEMAN: Yes, I want to point out,
10 thank you, John. John and I have had a lot of
11 conversations about this over the years, the last
12 couple of years at least, and, you know, one of the
13 important things to recognize, especially with the
14 historic unmatched money, is that there will be a lot
15 of matching done with that in the first period right
16 away and that money will be distributed as soon as
17 it's matched. In June, when we get more information
18 from the DSPs as to information on that money, that
19 will be distributed.

20 So, Regan, you brought up a really good
21 point, which is that the law requires that once we
22 make the first unmatched distribution, we're required
23 by law to continue to make distributions year after
24 year. So, you know, that is an extremely important
25 thing to keep in mind, that we have to keep going and

1 going and going.

2 Now, of course, that doesn't mean the
3 historic unmatched is going to keep going. The
4 unmatched will continue to keep going. So, you know,
5 it's all about how we segregate what we're paying,
6 when we're paying, how we're paying it.

7 And I kind of wanted to just take a moment
8 to go back to a comment that was made on the previous
9 panel because I kind of want to head that off a little
10 bit, which is everyone that is not on the board and
11 the committees is a volunteer, and the majority of the
12 volunteers that are with the MLC are from the indie
13 and songwriter community. And in the board makeup,
14 okay, there are only a few major publishers. The
15 majority is made up of indie publishers and
16 songwriters, and everybody only gets one vote.

17 So there's no unbalanced weighting where the
18 majors have more influence than anybody else in making
19 decisions on how this all rolls out. In fact, the
20 UROC committee is only made up of indie publishers and
21 songwriters. So, you know, we're very aware of making
22 sure that the little guys and the medium guys really
23 have a voice in this process. Thank you.

24 MS. SMITH: Thank you. Mr. Dupler.

25 MR. DUPLER: Thanks, Regan. So, on the

1 holding period, you know, a couple of thoughts. One,
2 I think it's really positive that I think there's
3 general consensus that although the law says the first
4 distribution can take place January of 2023, everyone
5 agrees that it can take longer. It doesn't have to be
6 January 2023. And I think there's also growing
7 consensus that it will take longer than January 2023.

8 We're hearing, you know, that the MLC is very much a
9 startup and there's things that will continue to come
10 online and be added throughout this year, and June of
11 this year will be on another benchmark. And so I
12 think an acceptance that it will take longer, I think,
13 is a good thing.

14 I think, in terms of how long and how do you
15 measure that, you know, on the last panel, there was a
16 lot of discussion of the unclaimed distribution that
17 SoundExchange made in 2013 that was, like, 10 years
18 running that they waited to match that money. And I
19 think one thing that stood out to me in reading
20 accounts of when they announced that distribution,
21 John's successor, the current CEO, said, you know, I
22 think the biggest reason we waited was we just kept
23 wanting to give people a little more time to sign up.
24 And I think that principle, that idea, should be the
25 governing principle.

1 One of the discussions on the last panel was
2 how long is too long, you know, is there a point where
3 holding it too long is detrimental or harmful. And I
4 think, if you're going to err, you should err on
5 waiting a little bit too long to give songwriters a
6 chance to find their money as opposed to doing it a
7 little bit too early before they don't.

8 Two things that you could look at as metrics
9 beyond just a percentage of a match. I think, again,
10 outreach could be a metric that can be measured. And
11 what kind of outreach are you doing? There's two
12 different kinds of outreach. One that's been talked
13 about a lot yesterday was the MLC inviting people to
14 come in, come look at our portal, come look at your
15 data, come see what's there. But the other critical
16 piece is the MLC going out and again finding
17 songwriters where they are, and that has to be more
18 than just the obvious. Of course, you have to engage
19 with organizations and trade groups and all the big
20 festivals and all the big conferences. But the
21 songwriters that are going to be unmatched are also
22 going to be the songwriters that are hardest to find.

23 And so, again, as people were talking about
24 John yesterday of him going with his laptop to visit
25 business managers and lawyers and show them where the

1 money was, I think the MLC will have to think about
2 how do we find those hard-to-find songwriters and do
3 that outreach. I think that should be part of the
4 consideration.

5 I think the other is, are you continuing to
6 match people? If you've been waiting three years, but
7 you're still finding people and still matching money,
8 wait a little longer and keep doing it. If you see a
9 change in the curve where you found more people,
10 you're paying out more, and now, all of a sudden, it's
11 leveling off and you're not finding people the way you
12 used to, maybe that's a useful metric.

13 Ted Kalo yesterday talked about the number
14 of small payouts. Are you increasing or finding that
15 you are making more small individual payouts to indie
16 songwriters? Again, those hard-to-find songwriters.
17 I think that could be a useful metric.

18 And, finally, I was amused by Sam's anecdote
19 about popcorn in the microwave. You know, as long as
20 popcorn is still popping, let it keep popping. You
21 know, keep finding those songwriters and give them
22 that extra time. So I don't know that you have to say
23 it should be 10 years, but I do think you should err
24 on, if you are having success and you are still
25 finding those songwriters, then let that process

1 continue a little bit longer.

2 MS. SMITH: Thank you, Mr. Dupler. Can I
3 just get one factual quick question? Maybe you know
4 or maybe Mr. Simson or someone else knows. But the
5 date saying SoundExchange's first distribution was
6 2001 and then also 2013 from Ms. Lieberman, what is
7 the difference between those two distributions so
8 we're clear for our report if anyone can offer that?

9 MR. SIMSON: Well, I can only speak to the
10 2006 distribution because, obviously, that
11 distribution was done under my watch. And, again, as
12 I mentioned, it was a distribution of unclaimed funds
13 that had been accumulating where it had 2 million
14 prior to our launch, so between 1996 and 2000, and we
15 distributed that pool in 2006.

16 The 2013 distribution occurred after I was
17 gone. And it's very possible that SoundExchange
18 waited. You know, there was also a huge explosion in
19 revenue toward, you know, my last years at
20 SoundExchange, up to \$300 million a year from the
21 first year in 2001, when it was \$3 million. So, you
22 know, there was a lot more to dig into. And,
23 obviously, we also had -- you know, I went from five
24 employees to 80 employees over that period of time,
25 and now they're at 185 employees.

1 So the advantage that the MLC has is that
2 they have the funding to be fully staffed up. It's a
3 massive task taking this on. There's a lot of, you
4 know, work to do. But, you know, I don't know that
5 you need 10 years, but, you know, I certainly think
6 three is too short. Five may be right, seven might be
7 right. You know, again, I think, as Todd said, you
8 will find out as you see how much you're actually
9 churning each year, how many people are coming forward
10 and getting signed up.

11 MS. SMITH: Thank you.

12 MR. SIMSON: And one other thing is really
13 critical, which is following the dollar. A collecting
14 society has to be efficient. It does not make any
15 sense to spend \$500 to find someone owed five. I hate
16 to say it, but it's true. You know, we would start at
17 the top of our list and work our way down, and that's
18 really the only -- you know, obviously, you can do all
19 these matches that we did. Matching technology is way
20 better now than it was when we started, and AI is
21 certainly helping that. But, you know, again, you
22 have to be efficient as well as being accurate.

23 MS. SMITH: Thank you. So I want to turn
24 this next to Mr. Barker to talk about what, you know,
25 criteria we're going to know if the popcorn is still

1 popping, and, you know, encourage if you want to
2 comment upon the follow-the-dollar approach. One
3 thing different for the MLC is that it does not need
4 to pay -- its administrative costs are covered by an
5 assessment levied by the DSPs as opposed to coming out
6 of the pool, so I don't know if that shifts some of
7 the calculus in terms of where efforts can go to try
8 to identify those lost in the unattributable royalty
9 pool. Mr. Barker?

10 MR. BARKER: Yeah, thanks, Regan. I think,
11 first of all, I want to make sure we clarify. And as
12 it was done in the earlier panel, there's at least
13 three buckets of what we're calling unidentified.
14 There's the unmatched songs to the recordings. That
15 may be the biggest part of it. There's the
16 unidentified payees or writers or publishers. And
17 then there's the dual claim or misclaimed or
18 overclaimed songs, conflicts.

19 I think what I want to really address is the
20 unmatched primarily because I think that's going to be
21 the biggest part of it. And maybe, you know, to
22 John's point in SoundExchange's days, maybe it was
23 less about the identification of the recording, it was
24 more about trying to find the payees. I think this is
25 a little bit of a different scenario.

1 I want us to remember -- in my opinion, I'm
2 not a fan of market share distribution, but that is in
3 the law, and I respect that. But market share
4 distribution is knowingly paying the wrong people
5 money. So I try to avoid that, and I would love to
6 see the MLC do that. And, honestly, I agree with
7 Frank and his committee in what they have put in their
8 comments suggesting that these royalties be held
9 indefinitely. That sounds like a long time, but, you
10 know, whether it's, you know, to John's point, three,
11 years, five years, 10 years, we may not know that.

12 But I think the thing to remember here,
13 again, is unidentified, we're talking two primary
14 buckets, if you will, of money. The 424, that's for,
15 potentially, 10 or more years of unidentified, which
16 probably has the least identification data attached to
17 it. The monthly that starts in January of '21 we all
18 hope is going to be better. Yes?

19 MS. SMITH: I have sort of two questions
20 coming off of that, so I'm going to break it up to
21 give others an opportunity to respond. One is, you
22 touched on something that came out in prior panels,
23 which is maybe this pool of unattributable royalties
24 should be conceived of in buckets. And so you said
25 the buckets should be unmatched, unidentified,

1 overclaim or disputes, which I think the last panel
2 suggested that shouldn't be considered unattributable,
3 maybe unlocatable where you know who the copyright
4 owner is or who is entitled to it, but you just can't
5 find them to pay them.

6 And then I think there's at least one more
7 bucket that came up yesterday, which were things that
8 really are kind of public domain or nature sounds,
9 things that sort of end up in there where it's really
10 unlikely that someone's going to come forward.

11 Do people agree, first, that this is a best
12 practice to segregate it this way? And, secondly, are
13 these the right buckets? Are there more? Are there
14 less? Anyone? Mr. Evers?

15 MR. SIMSON: Three, yes --

16 MS. SMITH: Let's let Mr. Evers go.

17 MR. EVERS: Okay. There might be another
18 category, and this is for unknown works, unknown
19 songs, unknown writers, and no conflicts. Okay, the
20 conflict is that everything's unknown, of course. And
21 if you imagine that there are so many works around,
22 especially in the unclaimed market, which are from
23 unpublished writers, which may be from -- or there are
24 publishers or they are published which are not
25 assigned to MLC from international, from India, from

1 Asia. The world is big, you know.

2 And I guess, in America, there are diasporas
3 everywhere, and they have their special listening
4 habits, and the creators and the writers of those
5 works will never assign to MLC. Okay, we hope in the
6 future that they will assign the works to MLC. But
7 this is a big bucket of rights we have to find the
8 right-holders, so there's a lot of work to be done,
9 and I guess the three years won't be enough to find
10 all those right-holders which are heavily used in the
11 U.S.

12 MS. SMITH: Thank you. Ms. Coleman.

13 MS. COLEMAN: Sure. So I just want to
14 clarify something. In the buckets, in the world of
15 the buckets, anything that is matched to a song, and
16 the song's shares are already determined, but we don't
17 know who to pay because they hadn't registered or we
18 don't have their payee information is not considered
19 unmatched. That will not go into the market share
20 distribution. We've matched that. We know that money
21 is due to that song. It's just that we now need to
22 find that copyright owner and the song owner.

23 If there's a share that is not claimed, that
24 share could go into the unmatched. So we're talking
25 about entire songs that could be unmatched. We're

1 talking about portions of songs that could be
2 unmatched. We're not talking about disputes.
3 Disputes are identified. We know that eventually when
4 the dispute gets determined we know we'll know who to
5 pay. So we're going to hold that money for as long as
6 it remains active in order to find those people. That
7 will never go into the market share distribution.

8 The only thing that will go into the market
9 share distribution is something that is totally
10 unidentifiable, a recording that is not matched to a
11 song that we don't have any copyright, songwriter,
12 owner, or publisher information. So it needs to be
13 really clear.

14 MS. SMITH: Thank you. Mr. Dupler.

15 MR. DUPLER: So thanks. I actually have a
16 question, a clarifying question following up on that
17 point, and it's kind of a definition of terms issue
18 that could be for the Copyright Office and/or Alisa,
19 which is you have a term unmatched and you have a term
20 unclaimed. The term in the statute usually is
21 unclaimed royalties. And so I just want to be extra
22 clear and confirm what Alisa just said, which is that
23 if you have a work where the songwriter or the
24 rights-holder is identified, so it's matched, but you
25 have not been able to pay it because that person has

1 not come forward to register with the MLC or get the
2 money from the MLC, you're saying that that will not
3 be considered an unclaimed royalty that would be
4 distributed in the unclaimed royalty distribution. Is
5 that correct? And does everybody else agree that
6 that's correct?

7 MS. SMITH: Well, Mr. Dupler, I think you're
8 right that the statute does speak to that somewhat.
9 So unmatched means unidentified or unlocated. And
10 then there's a statutory definition of unclaimed
11 accrued royalties, which are those which are eligible
12 for distribution. So, you know, if anyone else wants
13 to comment on that, I think you are putting your
14 finger on an issue.

15 MS. COLEMAN: Unclaimed is unmatched, but
16 when we know who it is, we at least have somewhere to
17 start looking for somebody. So, in that particular
18 bucket of unclaimed, you know, but it's matched, it's
19 a better starting point than where we are. It's kind
20 of like the same situation that the Copyright Office
21 has espoused on on orphan works. It's the same thing.
22 You know, we have to look at all of that.

23 MS. SMITH: Can I ask a slightly different
24 question, and this may be for you, Ms. Coleman, or
25 someone, maybe Mr. Liwall. But Mr. Barker also talked

1 about differences in the data on the historical
2 transfer that was received, as well as those which are
3 going to start coming into the MLC for the blanket
4 license, which we have gone through a regulatory
5 process to try to get a lot of data to be provided,
6 and we know there's been industry efforts to improve
7 data quality.

8 About the historical use, right now, the MLC
9 should have a variety of data points for the
10 historical unmatched, such as artists, ISRC, ISWC,
11 title, writers, maybe catalogue or label or UPC. Is
12 the MLC doing -- and then you're going to get more
13 data in June. The MLC, has it thought about either
14 making that data available in advance or starting some
15 of the matching between now and June? Or, you know,
16 sort of what is the thinking about how to handle that
17 issue? Mr. Liwall?

18 MR. LIWALL: Sure. You know, the first
19 blanket royalties that have been received, this is the
20 first set of data that's actually coming in to the
21 MLC, and that will reveal a lot of issues. It will
22 also determine some things clearly that are going to
23 be unmatched in the first blanket distribution are
24 clearly some songs that were left over from the
25 historical unmatched as well. So that may already

1 start the process, kick it off in terms of clearing up
2 some of the historical unmatched as well. And, you
3 know, the more data, as we start to receive it month
4 after month, you know, processes can be put in place
5 that make the matching efforts more effective.

6 So, you know, this first blanket royalty
7 distribution that will be coming next month is going
8 to be, you know, the first real effort that's put
9 into, you know, having a look at what's in the
10 unmatched pool. And also just seeing those data
11 points is going to allow the MLC to perhaps, you know,
12 change their methods, their methodology in terms of
13 matching and what is going to be the most effective
14 way at moving forward and starting to clear up the
15 historical unmatched.

16 MS. SMITH: Okay. One question for you, Mr.
17 Liwall, and then I see Mr. Barker and Mr. Meikle. Do
18 you know -- I guess it's really a two-part question --
19 but whether the MLC is also looking at the data it's
20 already got for the historical at the same time? And
21 also, is there any sense -- and if you don't know,
22 that's fine -- but if the MLC has an understanding of
23 how much time might pass between, you know, going
24 forward once it's operating when it receives the usage
25 report and the time in which the data will become

1 available in the portal? Because I think you'll get
2 data on a monthly basis going forward.

3 MR. LIWALL: So the historical data is not
4 being turned over until June, so the MLC has not
5 received that.

6 (Technical interference.)

7 MS. SMITH: -- the MLC has got that already?

8 MR. LIWALL: I'm sorry, you were muted, so I
9 didn't hear what you were saying.

10 MS. SMITH: So the MLC does have a lot of
11 data already on the historical unmatched. So unique
12 identifiers for the same criteria that was supposed to
13 be reported in monthly statements for the old 115
14 license have already been turned over to the MLC or
15 was required to be at least?

16 MR. LIWALL: Right. But the services have
17 until June to turn over all the identifiers and all of
18 the portions of songs that are unmatched. So we may
19 know 50 percent of a song was matched, but we can't
20 yet identify what 50 percent of the song may have been
21 matched and paid. So, if there's three parties or two
22 parties on a song, we may not have all the details yet
23 as to what party was paid. We only know 50 percent
24 was unpaid, although we don't know what 50 percent was
25 unpaid.

1 MS. SMITH: Okay, let's go to Mr. Meikle.

2 MR. MEIKLE: Yeah. Regarding the holding
3 period, I think Mr. Barker's spot on. If you were to
4 ask a songwriter, an artist, I'm holding money of
5 yours, it's your money, but we just don't know it's
6 your money, how long do you want me to hold that for
7 you, what do you think the response would be? Well,
8 hold it until I figure that out and get it to me,
9 right.

10 And then I think, collectively, as a music
11 business, we have a tremendous opportunity to greatly
12 reduce, if not prevent, unclaimed royalties going
13 forward. I've thought quite a bit about this recently
14 in listening to these roundtables, and you think of a
15 case of ownership where there's not a lot of mistakes,
16 motor vehicles. Why is that? Because, at the point
17 of creation, at every point of transfer, and at the
18 point of termination of the vehicle, it's clearly
19 defined what is required to establish who owns this.

20 At the point of entry of music, which would
21 be distribution, it's possible to collect the
22 information we need, including an ISRC and an ISWC,
23 for every song or just say it's not going up unless we
24 have this. If we do that, if we make that decision as
25 a music business going forward, we can significantly

1 reduce this problem going forward. And as Alisa said,
2 yes, we can churn through the past as much as we need
3 to and give them time to do that. But there's a real
4 opportunity here and it needs to be thought about.

5 MS. SMITH: Thank you. So going, I think,
6 in order of hand raise, I think we have Ms. Coleman,
7 Mr. Barker, then Mr. Evers.

8 MS. COLEMAN: Well, I just wanted to make a
9 comment to Mark's comment. We would love that. We
10 would love those required metadata, that the DSPs say
11 to aggregators we have to have this or we won't put
12 these songs up on our services. I think publishers
13 and songwriters would rejoice up and down. So thank
14 you, Mark, for making that point. That's really what
15 I wanted to just clarify. I'm glad to hear you're on
16 the DLC committee, and we hope that we can get that on
17 vote. Thank you.

18 MS. SMITH: Mr. --

19 MR. BARKER: I think you said Mr. Barker. I
20 think you turned off here real quick, so I'll go. And
21 two quick points, Regan. One is just as a reminder,
22 the 424 that has come in as previously unidentified
23 is, as we've, I think, talked and Frank has even
24 suggested, they don't even have all the data yet and
25 it's probably the least unidentified data. Yet the

1 law, unfortunately, gives it the shortest trigger to
2 pay out. Everything else is held for minimum three
3 years. This is held for really less than three years.
4 Yeah, and --

5 MS. SMITH: Well, it's also held for three
6 years. I think you would factor in the time the
7 service has been holding it or has --

8 MR. BARKER: Correct, correct. But, in
9 reality, if the claiming portal is this summer, then
10 there's really reality 18 months or so to claim it
11 before it potentially gets paid out. I'm not hearing
12 anybody saying they're anxious to pay it out in 2023,
13 but just to know that the law says that.

14 I think the second point is to kind of
15 support what I'm trying to suggest as well as what I
16 have read from the unclaimed committee. The longer we
17 hold it may be the better because the question is,
18 what parties are going to be negatively impacted the
19 longer it is held? It won't be the people who are
20 supposed to be receiving the money. Thanks.

21 MS. SMITH: Thank you. Mr. Evers?

22 MR. EVERS: Yeah, I would like to second Mr.
23 Meikle because there is a very interesting tool
24 available from CISAC, and I hope you know about them.
25 This is the ISWC allocation service, which would

1 guarantee the publishers in 24 hours to get an ISWC,
2 and this would solve the biggest problem, matching the
3 ISRC to the ISWC. This is one tool which should be
4 promoted by all the music industry.

5 And there's another tool that CISAC
6 developed that is called the unidentified use, usage,
7 UP, the unidentified users, and the UDS, the
8 undistributed shares, which gives you information of
9 all the unidentified works and unclaimed works all
10 over the world, and it would be very good if the MLC
11 could join this project in a special way.

12 MS. SMITH: Thank you. Next question, which
13 we raised in the last panel too, and it speaks to what
14 Mr. Meikel is saying, is there ever a point where
15 holding royalties indefinitely or too long is
16 negatively affecting the incentive to come forward?
17 Do people have thoughts about that?

18 MR. SIMSON: Yeah, I don't think negatively
19 affect those people who waited or just weren't sure,
20 weren't educated, didn't know. Certainly, we had that
21 education problem early on, and I think it's
22 imperative that the MLC, the Copyright Office, and
23 every organization in the industry as an ecosystem
24 gets the word out and does a lot of work.

25 As I mentioned before, we did matching

1 exercises, which helped get people educated. That got
2 people understanding that there was money being held
3 for them. And I think, you know, go to GAMA, go to
4 CISAC, go to all of the organizations around the world
5 that represent thousands and thousands of songwriters
6 to do a match when you have unidentified unclaimed
7 work. You might find that songwriter in their
8 database. So I think it's important.

9 One other thing about -- this came up on the
10 earlier panel. One thing, I have to say Pandora was a
11 fabulous partner with us. We fought over the rates,
12 what they should pay, but when Pandora accepted a song
13 into their music genome, they would send an email out
14 to that group saying, right now, I'm tabbing it to
15 SoundExchange royalties if you get played on our
16 service. And they gave a link to our site. You know,
17 if the DSPs did that, if Spotify did that, if Apple
18 did that, they reach far more people.

19 MS. SMITH: Yes.

20 MR. SIMSON: They are the vice.

21 MS. SMITH: And they do have an obligation
22 under the statute to publicize availability of the
23 MLC. Thank you for reminding us of that. Ms.
24 Turnbow?

25 MS. TURNBOW: I certainly advocate for

1 holding the unmatched longer than the minimum amount
2 of time, but I will say I think at some point, when
3 you start to get to a diminishing return on matching,
4 a call to action, a moment of, hey, either show up or
5 you're going to lose this, is a motivator for people.
6 You know, at some point, people will just
7 procrastinate unless you give them a reason that they
8 have to stop. And, no, that's probably not two to
9 three years, but I don't think it can be indefinite
10 either.

11 MR. SIMSON: Regan, I think that's a really
12 good point. Let me just make a point that in 2006,
13 when we said we were going to do a pool release, we
14 got coverage on NBC Nightly News. We got coverage in
15 the L.A. Times, in the New York Times, lots of major
16 publications saying, artists, you're going to lose
17 your money if you don't come forward and claim it now.
18 And so she's absolutely right, it does do that. It's
19 a motivator.

20 MS. SMITH: Thank you. Ms. Coleman.

21 MS. COLEMAN: Yeah. Look, the minute they
22 announced that we collected \$424 million everybody's
23 hands went up and, you know, we got calls from all
24 over the world, you know, when am I going to get it.
25 And, you know, everybody wants to know when they're

1 getting it. So the first thing I'm going to say is I
2 don't think there is a too long, but I am concerned
3 about the starting date because the starting date sets
4 a trigger to have to do it every year after that, and
5 that every year after that concerns me more than when
6 the initial date is.

7 The other part of that is that, you know,
8 we've begun reviewing the historical data, but our
9 priority is on getting the January statement right now
10 and getting that out the door in the spring, okay.
11 And then those unmatched will be the first things that
12 everybody will be able to see to make claims to, which
13 will then trigger back to the historical unmatched.

14 We know it's all tied together. We know
15 generally most songs are repeated. You know, we know
16 the catalogue songs are done over and over again.
17 There's consistency within this. So, you know, there
18 are new songs added to the system every day that don't
19 get identified, but, over time, we know they'll all
20 filter back.

21 So right now we're focusing on January, and
22 those will be the first unmatched things that people
23 will see up in the portal. Thank you.

24 MS. SMITH: Thank you, Ms. Coleman. We are
25 about halfway in this session, and so I wanted to say

1 this is sort of a last call to sign up for the
2 audience participation at 1. The information is in
3 the chat if anybody is watching and listening.

4 And then my final question about the holding
5 period is, you know, Ms. Coleman pointed out what is
6 making her nervous is once you start the distribution
7 you have the trigger. And my question is, does the
8 pool distribution -- should that be defined only by a
9 particular period, or should it also be sort of
10 partial based on these buckets that I think we're sort
11 of loosely circling on as being a best practice for
12 the MLC to think about? Because that, I think as we
13 saw on the next panel, might tee up some questions
14 about how the distribution can be calculated.

15 So does anyone want to speak to that or
16 anything else for that holding? I see Mr. Dupler.

17 MR. DUPLER: Yeah, my only comment on that
18 would just be whatever facilitates the most
19 opportunity to continue to match unmatched funds,
20 that's the direction that the default should be. I
21 was going to joke that I was not told that math would
22 be a part of this panel, but I think, in terms of
23 defining whichever approach allows you to continue
24 matching as long as possible, that's the approach that
25 should be taken.

1 MS. SMITH: Yeah. I think anyone who is
2 interested in entertainment law or accounting didn't
3 realize how in the weeds it can get. So Ms. Turnbow,
4 then Mr. Evers.

5 MS. TURNBOW: Well, I certainly think that
6 there are some of those buckets that have more of an
7 opportunity to be matched than others. I mean, if
8 there's songs that have portions matched, you know,
9 there's the opportunity to put manhours, which is
10 going to take time, into reaching out to the known
11 owners to say, hey, do you know anything about these
12 other people, where, on things where we've got
13 absolutely nothing and we've had absolutely nothing
14 for 10, 12 years, that's much less likely to ever
15 result in any sort of matching.

16 So, yeah, I definitely think that it makes
17 sense to parcel these things into how likely they are
18 if we put the time and effort and, frankly, man hours.
19 I mean, it's not all going to be able to be done by a
20 machine. You know, certainly, I think we want to make
21 sure that if there's any chance that we're parceling
22 that out, even if the time period is the same.

23 MS. SMITH: Thank you. Mr. Evers?

24 MR. EVERS: It's very important, you know,
25 especially for those songs where you don't know

1 anything, and this is why I'm referring to the works
2 which come from far away, you know, and with the
3 different language, nobody knows the title. And this
4 is so important that you have the audio track. Then
5 you can define it and analyze it.

6 And I don't have any idea how this tool,
7 this feature will be implemented because this would be
8 a very, very helpful tool especially for the thousands
9 of foreign songs. Do you have any idea, Alisa? You
10 were talking about this implemented how big is the
11 percentage of these audio files which could be heard
12 by the interesting parties?

13 MS. COLEMAN: Currently, the Operations
14 Advisory Committee is working with the -- they're
15 working together. The Operations Advisory Committee,
16 it's made up of DSPs and publishers and songwriters.
17 And Jennifer sits as an oversight. And they are
18 discussing how to move that forward to get everybody
19 access to that information. So that's a work in
20 progress, but it is a priority for us.

21 MR. EVERS: So I would like this to depend
22 on the period, you know. I would like to depend it on
23 this availability of this feature as another action
24 item.

25 MS. SMITH: Thank you, Mr. Evers.

1 So return to distribution, Mr. Sloan, do you want to
2 refresh the panelists of some of the statutory
3 requirements?

4 MR. SLOAN: Sure. I don't know if everyone
5 was watching the last session, so at the risk of being
6 repetitive, the MMA, just as a reminder, says that at
7 the end of the statutory holding period the accrued
8 royalties that remain unmatched at that time become
9 eligible for distribution to copyright owners that are
10 identified in the MLC's records and at that point,
11 they become what's called unclaimed accrued royalties
12 under the statute.

13 And the MMA requires that the identified
14 copyright owners' payment shares of the unclaimed
15 accrued royalties for a particular reporting period is
16 determined in a transparent and equitable manner based
17 on data indicating the relative market shares of those
18 copyright owners as reflected in reports of usage
19 provided by the digital services for a particular
20 period. And that includes, in addition to the usage
21 data provided to the MLC, usage data provided to
22 copyright owners under voluntary licenses and
23 individual download licenses to the extent that
24 information is available to the MLC.

25 So keeping those statutory parameters in

1 mind, does anyone have any best practice
2 recommendations for the Unclaimed Royalties Oversight
3 Committee and MLC to be looking to for guidance on how
4 to actually carry out this statutory market share
5 calculation? I see Mr. Barker.

6 MR. BARKER: There we go. Thanks, Jason. I
7 think, you know, I've given a lot of thought to this
8 because we have a wide variety of types of clients and
9 songs that we collect, and we've experienced some
10 prior market share distributions for settlements that
11 were done through another means, which we've been able
12 to recognize are not necessarily fair in a lot of
13 areas.

14 So, here, we have an opportunity to do
15 something at a higher level, I think. And my
16 suggestion is because we're trying to make sure,
17 number one, that the proper owners somehow share in it
18 and that the songwriters share in it as well, in my
19 opinion, the only way to do a market share correctly
20 is to do it at the song level rather than the
21 publisher or the owner level, the reason being, as you
22 said, if I understand the statute correctly, the
23 period that the DSPs provide in order to establish
24 market share is important because five years ago, if
25 that is the period, a song may have been bought or

1 sold or perhaps terminated since that date.

2 So the interested party today is different
3 than it was five years ago. And if a payment goes out
4 to the owner from five years ago, first of all, that
5 publisher may not even be in business. Second of all,
6 the likelihood that that would, indeed, get passed on
7 to the writers is pretty slim.

8 So I think it has to be at a song level
9 basis, and the information sounds like it would be
10 there to do that to assure that the songwriters
11 participate in that at the level that they should.

12 MR. SLOAN: Thank you. Anyone have anything
13 to add?

14 MR. SIMSON: Yeah, I would add. And, again,
15 Alisa made a comment that maybe impacts this, but I
16 had typically thought of there being two pools. One
17 was bad data where, you know, the data that you got is
18 so bad you're never going to be able to distribute
19 that royalty, and that royalty is likely to be a
20 market share distribution in the sense that the people
21 who have the most likely -- you know, in songs,
22 they're the mostly likely to have a song with bad data
23 as others.

24 But where it is identified but unclaimed,
25 when the majors or publishers or whatever publishers

1 have done their direct licenses, they've sent all the
2 data of who they represent to the DSP and, therefore,
3 when that money gets distributed, it shouldn't go --
4 they shouldn't be involved in that pool. It should
5 only be the money flowing through the MLC at that
6 point. So I think two buckets is important if, in
7 fact, we're going to distribute money that's
8 identified but unclaimed at some point.

9 MR. SLOAN: Thank you. Ms. Turnbow.

10 MS. TURNBOW: I just wanted to make the
11 point that the paragraph that you read was
12 painstakingly written and negotiated while we were
13 working on the bill because we wanted to make sure
14 that when we ultimately had to make a distribution of
15 unclaimed that it was made in the most fair way
16 possible, that market share didn't mean, you know, I'm
17 publisher A and I have 50 percent of the market, that
18 it really was attributable all the way down the line
19 to, you know, the smallest self-published songwriter
20 who earned money from that service during that period.

21 And, to me, even more importantly, we made
22 it statutory that at least 50 percent of that money
23 flows through to the songwriters. And so that, I
24 think, is a really important distinction from
25 distributions we've seen in the past.

1 MR. SLOAN: Just to follow up on what you're
2 saying, Ms. Turnbow, do you have a particular
3 perspective on the ideas that Mr. Barker and Mr.
4 Simson were just expressing?

5 MS. TURNBOW: More specifically?

6 MR. SLOAN: Do you agree, disagree, have any
7 other thoughts?

8 MS. TURNBOW: I don't have any additional
9 thoughts on that. I think, you know, we tried to
10 craft the law very specifically so that there wasn't
11 really a question as to when these distributions were
12 made, how they should be made, that there wasn't this
13 gray area of, you know, could publisher X get way more
14 and pocket it, you know, that there really was this
15 sort of transparency and pass-through to the
16 songwriters, and that was what was really important to
17 us.

18 MR. SLOAN: Thank you. So, in terms of
19 analogues, I mean, we talked about this a little bit
20 on the previous panel, but are there any in particular
21 that might be relevant? I know we talked previously
22 about some of the previous industry settlements that
23 it was suggested might be reasonable to look at for
24 guidance. And then we also talked a little bit also
25 about SoundExchange specifically and some of these

1 proxy distributions they have made in the past. Would
2 anyone like to speak to either of those? Mr. Evers?

3 MR. EVERS: I would like to speak about the
4 settlements I guess the major publishers have done
5 because they apparently include unclaimed royalties.
6 That's what we think about. And this has led to a big
7 criticism all around world in the community of
8 creators because this is probably money which is owed
9 to creators worldwide. And so there is a danger that
10 if they are those artists which have received those
11 settlement monies will cash in another time, you know,
12 on the disadvantage of the real claimants and the
13 parties who would deserve those monies.

14 So this is a reason why we are very critical
15 all around the world in the creative communities what
16 refers to this point. So this must be cleared in a
17 way which is understandable for everybody, yeah. So
18 please, in the U.S. Copyright Office, you can find a
19 solution to minimize this dissatisfaction.

20 MR. SLOAN: Thank you. I believe, Mr.
21 Simson, I saw your hand earlier.

22 MR. SIMSON: Yes. I was just going to say
23 that we did have one major influx of money in 2002
24 early on. I mentioned earlier that webcasters didn't
25 have to pay until October of 1998. Unfortunately,

1 there was no rate set in October of 1998. The rate
2 didn't get set until 2002. So webcasters were
3 supposed to be escrowing money. I'm not sure at what
4 rate because there was no historic rate to even do
5 that, but they were also supposed to be keeping data.

6 The big services like Microsoft and AOL and
7 Yahoo sent us big checks and basically said, oh, we
8 don't have any data, we didn't keep the data. So here
9 we had money, no data at all, and so our job at that
10 point was to figure out what's the proper proxy, can
11 we look at the channels that they were playing and
12 what kind of repertoire they were using, and we tried
13 to backfill that.

14 And we then filed, you know, a notice with
15 the Copyright Office and said, look, we have no data.

16 Here's what we think is an appropriate proxy. I
17 don't know if you can back into the same thing for
18 your unmatched where you know what channels these are
19 being played on, on Apple or Spotify or, you know,
20 playlists or things like that if the data comes that
21 granularly. But that would certainly make for a more
22 fair distribution of this unmatched money.

23 MR. SLOAN: Thank you. Ms. Coleman.

24 MS. COLEMAN: Well, I'm going to address
25 John and then I'm going to address Mr. Evers. But,

1 yes, the data is that granular, and you can go to our
2 website and see how the historical unmatched was
3 reported to us for each period by each service from
4 each identifier, and so we can make distributions
5 based on service by service. You know, we can take
6 all that into consideration when planning this out.

7 I want to address Mr. Evers' comment about
8 those settlements that we made. Obviously, I can't
9 speak to any publisher's particular settlement, but I
10 can tell you that the services have to tell the MLC
11 who they settled with, that the MLC has to reach out
12 to that publisher to verify that they were part of the
13 settlement, and then the timeframe, there's about a
14 year period that goes on. Don't quote me on something
15 like that. And then, in that timeframe, those
16 publishers that are part of the settlement do not
17 participate in the market share distribution whenever
18 that happens for those historical unmatched periods.

19 So nobody's getting, you know, paid twice if
20 they were part of a settlement already and they agree
21 that they were part of that settlement. In fact, if
22 you look at the income that was received out of the
23 \$424 million, only 12-and-a-half percent of that money
24 is attributable to the period prior to 2018. Sorry
25 about the math, Todd. And, you know, it's all very

1 interesting. And if you go to the MLC website, you
2 can drill down on that information if you have the
3 time. Thank you.

4 MR. SLOAN: Thank you. So, in terms of
5 distributions, since before we were talking about
6 potentially having different buckets of unclaimed
7 depending on various aspects of what the money's
8 related to, that kind of raises this potential issue
9 of partial distributions I was asking about on the
10 previous panel. I just want to pose the same question
11 here, which is, if you are doing, you know, because
12 the market share calculation under the statute is for
13 the same reporting period as the unclaimed that's
14 being distributed, if you're only distributing part of
15 the unclaimed from a given reporting period at one
16 time and then you do subsequent distributions from the
17 same reporting period after there's been additional
18 matching and, therefore, additional identified owners
19 that could potentially share in those later
20 distributions, how does that impact the market share
21 calculation? Or are there any suggestions on how that
22 should or should not be accounted for? No takers?
23 Yes, Mr. Barker.

24 MR. BARKER: Yeah, I'll take a stab at that
25 because I heard that question on the prior panel. You

1 know, I think it's -- I don't know that the market
2 share -- again, if we go at the song level, that it
3 really is going to matter at that point. If 50
4 percent of something gets paid out and the other 50
5 percent remains unidentified, at that point, it's not
6 identified and not unmatched because we matched it in
7 order to pay out the first 50 percent.

8 Then there's no reason that that should not
9 continue to be -- that 50 percent, I believe, should
10 be passed -- or should not be passed out on market
11 share once the determination is made to do it at the
12 song level because, again, I think the correct writers
13 and payees would participate in that. So I see no
14 problem with doing it the way you suggested.

15 MR. SLOAN: Thank you. Does anyone else
16 have any thoughts on partial distributions? Yes, Ms.
17 Coleman.

18 MS. COLEMAN: Well, I need a little clarity
19 on your question, okay? So, in my estimation, market
20 share does not dramatically -- dramatically is the
21 word -- fluctuate, you know, over time for the same
22 period of time in my experience. So can you drill
23 down a little bit more about what --

24 MR. SLOAN: Sure. So I think all I was
25 getting at -- I'm asking you guys if it's an issue.

1 I'm not necessarily suggesting it absolutely is. I'm
2 asking your opinions on it. But let's say you do a
3 partial distribution at one point in time for, you
4 know, everything's been held long enough for everyone
5 where you haven't identified anyone, and that's 100
6 rights owners, but you hold on to everything that
7 you've identified but not located, and that's another
8 100, but you identify 50 of them later in time and
9 then so, at the end of the day, there's only 50 left
10 that goes into that final distribution of unclaimed.
11 So now, instead of 100 copyright owners having their
12 relative market shares being calculated, there's 150
13 owners. So what kind of adjustments do you need to
14 account for the shares of those other new 50 owners,
15 is kind of the idea.

16 MS. COLEMAN: Yeah, I guess that's why
17 timing is everything here and why we really need to
18 take our time and not be forced into a position to
19 make a distribution before the -- I like the popcorn
20 analogy. The popcorn's popped. I just think that
21 that's the key.

22 MR. SLOAN: Thank you.

23 MR. EVERS: Jason, I think --

24 MS. SMITH: Yeah, I think --

25 MR. SLOAN: Just because we're short on

1 time, I know -- I'm sorry, Ms. Smith.

2 MS. SMITH: I heard it, but let me say the
3 one thing that I think a real question is whether it
4 would make sense for the MLC for efficiency reasons to
5 be able to cut off if it does a partial distribution
6 phase and not have to recalculate the prior
7 distributions, right, because of, at least in this
8 year, the really complicated accounting. And so, if
9 you do have more people coming forward, that's great.
10 You just calculate it based on the distribution of
11 what's located or not, but maybe that's not right.
12 So, okay.

13 MS. COLEMAN: But, to that point, we already
14 had an issue because of CRB rates where we've
15 collected money on the historical unmatched based on a
16 rate that's not set. So we're going to have to make
17 adjustments, you know, depending upon how the CRB rate
18 turns out.

19 MR. SLOAN: Thank you. I see a bunch of
20 hands. I want to let everyone respond, but just keep
21 in mind we're very short on time and have more topics
22 we want to get to. I believe I saw the order and
23 forgive me if I get it wrong, but I saw Ms. Turnbow,
24 Mr. Evers, and then Mr. Dupler.

25 MS. TURNBOW: I was going to say I think

1 that you have to -- the way that you're explaining
2 this, I think the best you can do is to operate on
3 what you have at the time of distribution, and if that
4 changes for a later distribution, then, yes, you
5 recalibrate for that next distribution. But you can
6 only operate on the information you have at the time.

7 MR. SLOAN: Thank you. Mr. Evers?

8 MR. EVERS: Yeah, there might be cases where
9 you only know the language and you only know the
10 territory where this recording of this work is coming
11 from. And this could be a hint that you can send the
12 revenues, for instance, to the MRO, to the Mechanical
13 Rights Organization, in that country because there's
14 no other way to make for it, so there's a high
15 probability that this stems from this country. So
16 that might be a possibility.

17 MR. SLOAN: Thank you. Mr. Dupler.

18 MR. DUPLER: So sort of step back a little
19 more generally from that question but also echoing
20 what Jennifer said about you have to do the best you
21 can with the data you have when you have it. The
22 point in that paragraph in the statutory language, as
23 was discussed in the last panel, it does talk about an
24 equitable manner for calculating market share and for
25 making it -- you know, that word, equitable, is used a

1 few different times. And so I think that does give a
2 little bit of latitude in discretion on how you're
3 making these calculations.

4 And I think, again, as Jennifer pointed out
5 in the legislative history, yeah, we know that this
6 kind of distribution is not the perfect solution
7 because it's awarding money to people that have
8 already had their works matched, but, you know, we try
9 to make it as equitable as possible within that
10 constraint. And so I think even when you're talking
11 about how to treat, you know, participants in the
12 settlement or other things, whatever you can do to
13 make that market share calculation most equitable to
14 increase the likelihood that people that haven't
15 gotten paid are able to get paid, I think all of that
16 could be taken into consideration.

17 MR. SLOAN: Thank you. I'd like to move on
18 to notices. As we discussed on the earlier panel,
19 under the statute, there's a required advanced public
20 notice that has to go out at least 90 days before a
21 distribution of the unclaimed happens. Does anyone
22 have any comments or thoughts about best practices for
23 this notice in terms of how it should be publicized
24 and its content and things like that? I saw Mr.
25 Liwall.

1 MR. LIWALL: Yes. A little bit more of what
2 Mr. Evers said. You know, I think, when we actually
3 have a look at what the undistributed song titles look
4 like, just from historical settlements in the past,
5 you know, we often find foreign titles tend to be the
6 most problematic when it comes to actually matching
7 songs that are not fully matched.

8 So I think, when we have a look at what the
9 dataset looks like and if we can determine that
10 they're foreign language titles from India or Latin
11 titles, I think further engagement can be done to make
12 sure that notices are sent to those, whether they're
13 specific societies within a particular country, you
14 know, or just further engagement with the clientele
15 that those songs are likely to have come from, you
16 know, just in terms of being able to make sure within
17 that 90-day window we're reaching, you know, the
18 audience or reaching the potential pool of more likely
19 suitors for the unmatched.

20 MR. SLOAN: Thank you. Mr. Evers?

21 MR. EVERS: Yeah, especially in this case,
22 there must ever be done a big promotion campaign,
23 international promotion campaign with the
24 international, the CISAC net, to reach those people
25 who monies are owed to, or this 90 days must be

1 prolonged in cases where you have foreign titles and
2 not enough information about the right-holders.
3 Otherwise, there's no solution in sight, I would say.

4 MR. SLOAN: Thank you. I think I saw Ms.
5 Coleman's hand.

6 MS. COLEMAN: Thank you, Jason. So, first
7 of all, the MLC has already established relationships
8 with almost 50 societies around the world and have
9 engaged with them in coming aboard to review the
10 portal, submit songs if they have the right to collect
11 in the territory, and generally advise them as to
12 what's happening. And we will engage them in the
13 unmatched as well. So that's currently happening.

14 As far as public announcement, we just have
15 to be everywhere and anywhere. Anyplace. It means
16 aggregators especially need to go out to people that
17 have contributed to them. It means all the PROs. It
18 means PROs around the world as well, everyone. You
19 know, any public place we need to be. We need to make
20 announcements far and wide.

21 You know, the banking industry prints pages
22 and pages and pages in newspapers that no one reads
23 anymore of all of the accounts that they're about to
24 turn over. You know, we can do a better job than
25 that.

1 MR. SLOAN: Thank you. Ms. Turnbow.

2 MS. TURNBOW: I think the at least is really
3 important in that paragraph, that, you know, three
4 months, we should certainly send out notice far longer
5 ahead than that. You know, that's not a limiting
6 factor, the 90 days. And also I think it's going to
7 be really important in the public campaign around any
8 of these distributions to explain to people that this
9 isn't hard. This is a user-friendly website. Go
10 here, we'll walk you through it. We want to help you.
11 We want you to claim this money.

12 And we'll need the help of organizations
13 like the Copyright Office to reinforce that the MLC is
14 legitimate, that this is really your money. Give them
15 your information so that you can get this, you know,
16 so the people aren't afraid to go in and provide that
17 kind of information too.

18 MR. SLOAN: Thank you. Mr. Meikle.

19 MR. MEIKLE: Yeah, you know, I think there
20 are a lot of do-it-yourselfers, widows of songwriters
21 that just have no idea what to do. And as easy as the
22 MLC website might actually be, it can be intimidating
23 for a lot of those people. So I think it's important
24 to let the market reach out to some of those people,
25 and, I mean, there's so many ways to do it. You know,

1 it's kind of a hard problem for us to solve right
2 here. What I think we're all in consensus on is that
3 every channel in the music business needs to get this
4 word out there.

5 At the same time, I just want to point out
6 that there are existing companies, distributors, just
7 small music licensing companies that are right there
8 on the ground level with these widows or just DIYers
9 that have no idea what they're doing to help them and
10 kind of maybe act as an interface between them and the
11 MLC website.

12 MR. SLOAN: Thank you.

13 MR. RILEY: I think these comments were a
14 good lead into kind of some questions we have about
15 how to increase transparency and what best practices
16 of the MLC would be to make it clearer to the public
17 when they're making distributions of these unclaimed
18 royalties.

19 So I know we're running a little late in
20 overtime right now, but if anyone has any comments on,
21 for example, ways to increase transparency, including
22 documenting practices and procedures and putting it on
23 the MLC's website or anything of the like that the MLC
24 can do to help songwriter transparency. I saw a hand,
25 Mr. Barker.

1 MR. BARKER: Yeah, thanks, John. I think a
2 very quick point on that is, first of all, let me say
3 I appreciate what I'm hearing from both Frank and
4 Alisa with the way the MLC and the subcommittee will
5 treat all of these unidentified royalties. It sounds
6 like everybody's on the same page.

7 However, I heard yesterday there's a
8 perception at least that there's an imbalance on the
9 MLC board, which has the voting rights, whereas
10 there's a five and five makeup on the subcommittee.
11 So, if there is communication between the two -- let's
12 say the subcommittee proposes something -- I would
13 suggest that those be made public, especially if
14 there's a difference between the subcommittee and the
15 board. So I think that transparency for those who may
16 have the perception of imbalance would be very
17 important.

18 MS. COLEMAN: I kind of addressed that
19 imbalance at the start of the call in that the board
20 is made up of songwriters, indie publishers, and major
21 publishers. Everyone has one vote. And the major
22 publishers do not outweigh the songwriters and the
23 indie publishers. So I appreciate what you're saying,
24 John, but I think that is someone else's perception.
25 It's not a reality.

1 MR. BARKER: And again, Alisa, I'm not
2 saying it is a reality, but it is a perception. So I
3 think, as we're asking for transparency, that would
4 help do away with that perception.

5 MR. EVERS: I would second Mr. Barker's
6 statement because, in CIAM, where most writers, global
7 writers, are under one roof, there is a big -- they
8 are not very amused about this board's composition,
9 which is 10 to four, you know, because we are used, as
10 you might know, for instance, with JASRAC or with
11 GEMA, we are used to two-thirds creators and one-third
12 publishers.

13 MR. RILEY: Mr. Evers, I appreciate the
14 comments. I'd like to keep people on point because we
15 only have a couple of minutes before the audience
16 participation portion. So I appreciate that point,
17 but I'd like to give anybody else the opportunity to
18 talk about transparency. I see Mr. Simson.

19 MR. EVERS: You were talking, though --

20 MR. SIMSON: Yeah. No, I just think it's
21 kind of interesting that, you know, people on the
22 songwriter side have been jumping on this 10 to four.
23 I mean, mechanical royalties have always historically
24 been collected by publishers, who then split them
25 50/50 with the writer. So the publisher and the

1 writer, you know, they're partners in this particular
2 revenue stream even though the publisher collects it.

3 So, you know, I think it's more being made,
4 you know, and I just think we do not worry about
5 conspiracy theories. I think transparency is very
6 important. I think it's really important that the MLC
7 go out and show that they're really trying to track
8 people down, they're doing everything they can. Alisa
9 saying that there's 50 societies that they've already
10 been in touch with, great news. You know, it looks to
11 me like they're doing all the right things.

12 Let's not focus on the 10 to four because I
13 just think that, you know, 50 percent of songwriters
14 are stuck at BMI. There's not one artist on the BMI
15 board. It's all broadcasters. Why have you not
16 raised that as an issue, you know? So, you know, to
17 me, it's apparent, frankly.

18 MR. RILEY: Okay. Well, let me ask one
19 final question and relate it to transparency because I
20 think we've been -- you know, I appreciate the
21 comments about having the committee submit their
22 information and make that public. But I want to talk
23 for a minute if anyone has any comments about best
24 practices that the MLC can do to help empower
25 songwriters seeking to ensure that they are getting

1 their share properly from publishers. So not the
2 publishers themselves but the MLC in its best
3 practices. Ms. Turnbow.

4 MS. TURNBOW: One of the things that the MLC
5 is working on that the songwriters have requested is
6 what we call a songwriter portal. I think the MLC's
7 using a different term for it. But essentially an
8 opportunity for songwriters who are not their own
9 publisher or their own administrators, so they don't
10 have -- you know, they aren't members at the MLC.
11 They have someone else administering their copyrights.

12 A way for them to sign in, see all of the
13 data that is attributed to them as a songwriter, and
14 be able to flag issues with that. So, you know, hey,
15 I see I wrote this song, ABC, and it shows that I have
16 25 percent and I actually have 33 percent. So to be
17 able to very easily flag that so that it goes directly
18 to their administrator or publisher for correction and
19 then get a response that there's been a correction or,
20 no, you're wrong, here's the paperwork behind it, you
21 know, I'm sorry you thought you had 25 percent, but
22 you don't actually.

23 So that is a huge piece of transparency for
24 songwriters and, honestly, the first time they've ever
25 even with a public portal been able to get a look at

1 all of this data and have an opportunity to make
2 corrections on it.

3 MR. RILEY: Thank you.

4 MR. LIWALL: I just want to add that, you
5 know, the success of this whole program is engagement,
6 right? So, you know, as publishers, our engagement
7 with songwriters should be like Jennifer said, like,
8 you know, right now, it may have a look at a public
9 portal, which fully discloses all of their shares,
10 what they should look at.

11 And I think it's a matter of, you know,
12 success being the engagement that's going on between
13 publisher and songwriter, between the MLC and the
14 independent songwriters, who own their own copyrights,
15 who now have the ability to join an organization and
16 collect their mechanical streams where, in the past,
17 when an independent songwriter would try to figure out
18 how to collect from Spotify, you know, they would be
19 in this mire of information that they could get never
20 get through.

21 Right now, you know, the MLC is doing a
22 great job at engaging as much as possible. More can
23 still be done. And, of course, you know, I think
24 that's why we're having these roundtables, to gather
25 other ideas from others where we can put those things

1 into best practices so that we are engaging with the
2 audience that needs to be engaged with.

3 But I think, you know, we've moved so far
4 just in building the MLC, so far ahead of where things
5 were. And there's still work to be done, but, you
6 know, at the end of the day, I think so much of this
7 comes back to engagement, songwriters talking with
8 their publishers and the MLC reaching out to those
9 independent songwriters who own their copyrights, for
10 them to be engaged and become a part of the MLC.

11 MS. SMITH: Thank you. Thank you, Mr.
12 Liwall, and thank you to all of our panelists today,
13 as well as yesterday. I think due to our time we're
14 going to go straight into the audience participation.
15 So I think ending on a note talking about the
16 importance of engagement, you know, totally fits our
17 theme.

18 So we'll just sort of segue right into the
19 sign-up for audience participation. So the panelists
20 now, if you have said your piece, maybe you can turn
21 off your video and thank you again for all of your
22 contributions.

23 If there's anyone who wished to speak
24 yesterday and did not get the chance or if you're now,
25 if you can just signal in the Q&A, we'll find you and

1 we'll promote you to a panelist. We do have a list of
2 people to start with. And I'll read the three people
3 so you know that we have you to start. So Adam
4 Gorgoni will be first, then Cecille Chen, then Michele
5 Vice-Maslin. So if any of you maybe get ready and if
6 we can promote Mr. Gorgoni to panelist.

7 Okay, and then if you turn on your video.
8 So thank you again for signing up. Do you want to
9 state your name, what organization you're with, and
10 then the floor is yours.

11 MR. GORGONI: Sure. I'm Adam Gorgoni. I'm
12 a professional composer and songwriter, co-chair of
13 Advocacy for Songwriters of North America, SONA.
14 First, I just want to thank you, Regan, and all your
15 colleagues and the Copyright Office for hosting these
16 discussions and for all the hard work you guys have
17 been doing on all of the topics, you know, herding the
18 various cats that you encounter, and we really do
19 appreciate you and look forward to continue working
20 with you.

21 Very quickly, SONA's an organization made up
22 of working professionals, mostly middle-class
23 songwriters, although we run the gamut from young
24 songwriters who are just starting out to some heavy
25 hitters. Our organization was an active participant

1 in the passage of the MMA and all the negotiations
2 that have led up to it and are now working with
3 everyone on the implementation. We have SONA members
4 on the board, as well as on all of the different
5 committees, and we are very much a part of the process
6 and want to be as helpful as we can.

7 Just very quickly on the topics that have
8 been discussed today and yesterday, we believe that
9 the more data the better. The MLC should be sourcing
10 its data from as many sources as possible. For
11 example, if we can get the MLC into the CISAC hold, it
12 could avail itself of the fact that the CISAC
13 societies share their unclaimed works databases, and
14 the sooner we clean up the data the better, and
15 there's no reason why, in our opinion, that the MLC
16 should not be getting help from anywhere it can.

17 And in that same vein, we would strongly
18 support the idea that the MLC create some kind of a
19 songwriter data repository that was mentioned earlier
20 where songwriters can deliver their knowledge of the
21 data. We think we know as much as anyone about our
22 material in our songs, splits, all of those things.
23 And, currently, there's no way for, as was said, a
24 songwriter to communicate if they're not actually a
25 member. They have to do it through their publisher.

1 And we think that creating a shortcut there would be
2 advantageous.

3 Quickly, and I'll finish in a second, as far
4 as the unmatched works, we believe the MLC should take
5 as -- you know, what's the rush? The MLC should take
6 as long as is legally possibly to try to match
7 unmatched works and pay the rightful owners and
8 thereby minimize any distributions by market share.
9 Obviously, there's things in the statute that, you
10 know, will govern that process. But, as far as we're
11 concerned, let's take as long as we have to, and let's
12 all work to match as much as possible and pay out as
13 much as possible to the people who deserve it.

14 I was tickled by the popcorn analogy. You
15 know, the idea to me would be let's make sure most of
16 the kernels are popped before we turn off the heat.

17 And, lastly, we have been, you know,
18 continuing, we have been working very hard to reach
19 out to various songwriting communities that, you know,
20 we have members, and we're getting more and more
21 members in making outreach into different communities
22 that we haven't touched so far. And there's
23 definitely huge gaps in knowledge and information.
24 And we are going to continue these educational
25 activities working with all the songwriters and all

1 the various stakeholders to make this thing work. And
2 we are proud to be participating, and thank you for
3 all your efforts.

4 MS. SMITH: Thank you and thank you for
5 participating. We really appreciate your contribution
6 today. Thank you.

7 I think the next person who signed up is
8 Cecille Chen. Can we get her up here? Hello there,
9 Ms. Chen. If you could please introduce yourself, any
10 organization or affiliation you have, and then, you
11 know, the floor this yours.

12 MS. CHEN: Hello, good afternoon. My name
13 is Cecille Chen, and I'm Director of Business Affairs
14 and Royalties at Smithsonian Folkways Recordings, the
15 nonprofit record label of the Smithsonian Institution.
16 We're a DSP with over 60,000 tracks. That includes a
17 significant number of sounds that are in the public
18 domain, or PD. Our testimony focuses on the issue of
19 royalties charged by the MLC for streams of PD songs.

20 Streaming royalties are based on a DSP's
21 total revenue, and so, in effect, DSPs are paying
22 royalties on all streams, including streams of PD
23 songs. Royalties paid for unmatched PD songs will be
24 deposited into the unclaimed royalties account, and
25 money unclaimed after three years will be distributed

1 to known copyright owners in proportion to their
2 market share.

3 We believe this approach is inconsistent
4 with the Section 115 compulsory license framework.
5 That framework is derived from Clauses 1 and 3 of
6 Section 106, which grant copyright owners exclusive
7 rights to make and distribute phonorecords of
8 copyrighted works. Although Section 115 does not
9 specifically exclude PD songs, royalties under Section
10 115 can only be charged for copyrighted works.

11 With regard to unclaimed royalties, Section
12 106 authorizes the MLC to establish a process by which
13 "royalties for songs for which the owner is not
14 identified or located are equitably distributed to
15 known copyright owners." A PD song by definition has
16 no copyright owner, and the MLC thus is not authorized
17 under Section 115 to distribute unclaimed royalties
18 from PD musical works to known copyright owners.

19 For these reasons, we believe the MLC's
20 collection and distribution of royalties charged for
21 PD songs is inconsistent with the law. We'd like to
22 suggest a solution. The amount of royalties charged
23 for PD songs can be calculated by multiplying the
24 royalty per play by the number of songs that have been
25 reported by DSPs as believed public domain in their

1 usage reports.

2 If the MLC deducted royalties charged for PD
3 songs from the invoices of DSPs that reported songs as
4 believed public domain, then the MLC's royalty
5 obligations would more effectively align with the
6 requirements of Section 115. And should a publisher
7 later claim valid copyright ownership of an
8 arrangement of a PD song that was previously reported
9 as believed public domain by a DSP, then the MLC may
10 issue a notice of default for erroneous reporting,
11 which provides the DSP with a 60-day cure period in
12 which to pay retroactive royalties for the copyrighted
13 arrangement.

14 We appreciate that the MLC is not charging
15 royalties for downloads of PD songs, and this is
16 possible under the current rate structure because
17 download royalties are calculated on a per unit basis.

18 But the issue of streaming royalties is also of
19 significant concern, particularly to DSPs like
20 Smithsonian Folkways that specialize in genres of
21 music that are predominantly PD. And there are many
22 nuances to this issue that we are unable to address in
23 a brief statement, but we believe our proposal would
24 provide an equitable solution that is consistent with
25 the letter and spirit of Section 115. Our proposal

1 would also directly further one of the stated goals of
2 the Unclaimed Royalty Study, to reduce the incidence
3 of unclaimed royalties.

4 Finally, we understand that the rate
5 proceeding for royalty rates for 2023 to '27 is
6 currently under way, and we urge the Copyright Royalty
7 Board to consider the issue of PD musical works in its
8 deliberations. Thank you.

9 MS. SMITH: Thank you, Ms. Chen. That is an
10 interesting comment. We appreciate it. I do think
11 the DSP obligations to report is on covered activity.
12 So, if there's something known to be public domain,
13 it may not fall in. And so the reporting rules that
14 we've set up are, you know, kind of complicated to
15 look up, but they may somewhat address some of your
16 concern already. But, if it is something, you know,
17 that you would wish to engage with the office on
18 separately, we'd be happy to take a meeting. And I
19 think separately yesterday there was a comment related
20 to the administrative assessment amount by the
21 Copyright Royalty Board for services that mainly use
22 public domain works. That would also be something
23 where the Copyright Office or Library of Congress, you
24 know, has a role, but it's the Copyright Royalty Board
25 and not the Copyright Office that sets the regulations

1 with respect to the administrative assessments.

2 So I mainly wanted to clarify that from
3 yesterday, but we very much appreciate your comments.
4 Thank you.

5 MS. CHEN: Thank you.

6 MS. SMITH: So I think the last person is
7 Michele Vice-Maslin. And I'm not sure, Michele, if
8 you have video capability today or not, but could
9 you -- I guess, can we make her a panelist? Oh, here
10 you are.

11 MS. VICE-MASLIN: Yes, hi there.

12 MS. SMITH: Hi.

13 MS. VICE-MASLIN: So sorry, I'm outside, but
14 it's early here in L.A., and my husband keeps musician
15 hours, so he's still sleeping, so I am relegated to
16 being outside.

17 But, first of all, I just wanted to thank
18 you, Regan, and all of the panelists the last two days
19 for doing this. It's wonderful. I want to thank you
20 for the opportunity to speak. And I want to say I'm
21 grateful that the MLC exists. It gives us all such a
22 new and great opportunity to be paid.

23 My name is Michele Vice-Maslin. I'm a
24 songwriter and music publisher. I have published my
25 catalogue most all of my 41-year career except for

1 sometimes being signed to major publishers. I do have
2 major sub-publishers in some territories. My
3 catalogue is quite, quite large, and I've had many hit
4 songs worldwide.

5 So I made some notes and I might be reading
6 them a bit just to make sure that I don't stumble too
7 much, and there's a few things I wanted to comment on,
8 first to add what Adam just said about sharing data.
9 It'd be really wonderful if the MLC could have PRO
10 information to aid with the transparency and matching.

11 I was on an early planning committee for the
12 MLC, and I was very surprised that PRO information was
13 not to be included in the MLC's song information
14 because this so aids in our ability to match the
15 unmatched in my humble songwriter opinion. I hope
16 that you'll work on that.

17 And this was touched on next, another point
18 of it, and I'd like to expand, ISWC codes. ISWC codes
19 would be so helpful in matching our songs. But, of
20 course, it is so impossible to get an ISRC code. I
21 have hundreds of songs that are reconciled at the PROs
22 and still don't have ISWC codes, so I hope the MLC can
23 help in this. I don't know why it is so difficult to
24 get an ISWC code.

25 And I heard someone mentioning on this

1 previous panel -- forgive me, my brain is not
2 remembering who it was -- but somebody mentioned about
3 the concept of an ISWC code being allocated at the
4 moment of registration regardless of reconciliation.
5 And I think that's a really good idea because this
6 having to wait until reconciliation and then even
7 afterwards still not having a code is not helping us
8 in our mission to get paid as writers and publishers
9 and our mission with the MLC to find all these
10 unmatched royalties. So I'd like that to be looked
11 at.

12 Now, in terms of education, we've been
13 discussing how do we get more affiliates to hop on
14 that could have unmatched songs or even matched songs
15 that are not getting paid, publishers and songwriters.
16 Something that hit me very much when the MLC was
17 first being brought up and Chris discussed on some
18 platforms but has not been discussed that I've heard
19 the last two days as I missed some of the early panels
20 because it's too early for people in L.A., but the
21 concept of not being able to opt out is, I think, very
22 imperative.

23 The concept that we can opt in by choice,
24 but if we don't, we cannot opt out, I think, really
25 resonated with me thinking, well, then I'm going to

1 opt in, of course, because, if I can't opt out and I'm
2 not going to get paid if I don't opt in, then that's a
3 no-brainer. So I think that we should make that more
4 clear to potential affiliates, that they cannot opt
5 out.

6 Now one more thing. This just happened
7 today, that I took a look in my MLC portal while this
8 webinar was going on, and now I searched one
9 registration of mine, a hit song. It's been out since
10 October and it's quite a nice hit, and the
11 registration has disappeared from my portal. I don't
12 know what happened. I know it was there. But, when I
13 go in the public search, I do find it. That is not
14 helping the situation of us getting our catalogues
15 organized or getting our unmatched royalties.

16 Then I looked for another hit song, and that
17 one, I found the information was correct in my
18 personal portal, but in the public search, only my
19 co-writer is listed and his publishing company, yet my
20 name, as the writer, and my publishing company do not
21 exist in the public search. So the opposite of the
22 other song.

23 Then I see another hit song that has two
24 major label artists attached because, gratefully, I
25 had two major artists on major labels record and have

1 hits with the same song. The ISRCs are missing
2 completely from both songs. So these are the basic
3 things that really need to be addressed and need to be
4 aligned and should be the same in one's personal
5 portal as it is in the public search. So this will
6 also aid, in my humble opinion, in matching unmatched
7 royalties.

8 And the last thing I'd like to mention is
9 that it's very difficult to search song by song in
10 one's catalogue if one has a very big catalogue
11 because the number of songs per page in one's personal
12 portal is so small that you have flip through, like,
13 500 pages to find a song if you're going song by song,
14 which I did in my search trying to figure out why is
15 this available in the public search and not in my
16 portal. Maybe just the search box is not working.

17 So I would also think that in order to help
18 us expedite our mission of matching that there might
19 be a way to expand to even 500 a page as opposed to --
20 I don't know. Now it seems like there's only about 20
21 or 25 registrations.

22 So those are my little points to make today,
23 and I'm grateful for the opportunity. Thank you all
24 very much.

25 MS. SMITH: Thank you very much. Thank you

1 for getting up so early on the west coast and
2 contributing. We really appreciate it. I think that
3 our study is benefitting from a lot of participation.
4 And we know it's very early out in Los Angeles. I
5 know for some of our European participants the last
6 couple days it got quite late. You know, the
7 Copyright Office really believes that full input will
8 help inform our studies, so thank you.

9 I think we have one last commenter, which is
10 Herman Rodriguez Mahandas. Hopefully, I'm pronouncing
11 that fairly right. But if we can find him. And thank
12 you, Ms. Vice-Maslin.

13 MS. VICE-MASLIN: Thank you.

14 MS. SMITH: Okay, if you could turn on your
15 video, please. Mr. Rodriguez Mahandas, I don't know
16 if you have video capability or if you could unmute
17 yourself, but we would love to hear from you. Oh,
18 there you are. Can you hear me? I think you're here
19 on the screen, but if you could please unmute
20 yourself. I know we'd be happy to hear from you.
21 Hello? I think we can hear you. Can you say
22 something?

23 (No response.)

24 MS. SMITH: Okay. So I think what we will
25 do, because it appears we might be seeing some

1 technical difficulties, is, Mr. Rodriguez Mahandas, if
2 you're not able to speak, maybe you could shoot the
3 Copyright Office a short note. If someone could put
4 an email address in the chat or the Q&A, we can
5 consider that as part of our record.

6 And I think this will conclude the Copyright
7 Office's roundtables in connection with its study on
8 best practices for the Mechanical Licensing
9 Collective. Our study will be provided to Congress by
10 July 28 of this year.

11 And thank you, everyone, for signing up and
12 contributing. It's now at least finally a sunny day
13 in Washington, D.C. So I hope everyone enjoys the
14 rest of the day. And, again, thank you very much.

15 (Whereupon, at 1:25 p.m., the meeting in the
16 above-entitled matter adjourned.)

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CERTIFICATE

CASE TITLE: Unclaimed Royalties Study Roundtable

DATE: March 26, 2021

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the digital recording and notes reported by me at the meeting in the above case before the Library of Congress.

Date: March 26, 2021

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