

Congress of the United States
House of Representatives
Washington, DC 20515-0550

December 16, 2021

Ms. Shira Perlmutter
Register of Copyrights
United States Copyright Office
101 Independence Ave SE
Washington, DC 20540

Dear Register Perlmutter,

We appreciate the significant and sustained attention the Copyright Office has devoted to improving the music licensing ecosystem, including the ongoing implementation of the Music Modernization Act (“MMA”) and the Office’s continued commitment to an efficient, effective, and more transparent system. We write today regarding continued challenges related to authoritative public performance data, and the need for a comprehensive, bulk access database.

The MMA made significant strides toward a more workable system by establishing a blanket license for digital reproductions and distributions of musical works and by mandating the creation of an authoritative database of musical works information to be used for administering that license. Even as the MMA takes full effect, there remains more work to be done to facilitate an effective music licensing system, particularly in relation to data surrounding ownership of public performance rights in musical works. Today, there are multiple performing rights organizations (“PROs”), most songs have multiple songwriters, and data challenges are made even more daunting by split ownership and the historic lack of a comprehensive database of musical works information. The wide range of licensees that publicly perform musical works, ranging from restaurants, local broadcasters, hotels, music venues, and streaming services, have essentially no choice but to obtain a license from each PRO in order to cover any meaningfully sized repertoire, and even then, data about what is being licensed remains fragmented and unreliable.

As you noted in response to questions for the record from the House Judiciary Committee’s May 2021 oversight hearing, the two largest PROs, ASCAP and BMI, have launched their Songview initiative to provide additional transparency around works in their respective repertoires, either in whole or in part. While we agree this is a step in the right direction, it does not solve the data challenges plaguing licensees across the country for a variety of reasons. This database does not provide users with access to authoritative information about works represented by other PROs, including SESAC and GMR. Moreover, it is unable to be used in a functional, bulk format necessary to administer tens of millions of musical works that are licensed from these PROs, and instead only provides limited use on a work-by-work basis. This means works must be searched individually and even then, the full data picture is not always available. Finally, the database lacks standard industry data, which keeps licensees from knowing exactly what they are

licensing from the PRO. We firmly believe licensees should pay rightsholders the amount they are owed, but we question a system that, due in large part to lack of transparency and an authoritative database, leaves licensees paying for more than 100 percent of a work.

Data challenges have long existed in the music space, and those challenges negatively impact creators, rightsholders, and licensees alike, generating uncertainty in proper license coverage and inefficiency and errors in matching and payments to the correct rightsholders. The MMA took strides to fix this and called for the creation of a publicly accessible “database containing information related to musical works.” It allows the Register of Copyrights to prescribe additional information to be included in such a database. The Copyright Office engaged on this question in response to requests for PRO information during the rulemaking process to establish regulations under the MMA. As you noted in your responses to the previously mentioned questions for the record, the Office has thus far deferred from taking action to encourage the inclusion of PRO information, while noting that the Mechanical Licensing Collective could optionally include PRO affiliation.

Unfortunately, the MLC’s lack of action on this issue means that its public database is not as robust as it could be, even as the MLC may already be receiving PRO-affiliation data through standard reporting by rightsholders. Not only does it limit the availability of relevant, familiar data that the MLC (and its songwriter and publisher constituents) could use to match musical works to sound recordings as part of its statutory mandate, but it presents a missed opportunity to provide millions of businesses (such as restaurants, hotels, bars, online streaming services, and more) with access to the type of comprehensive PRO licensing data or functionality to effectively administer musical works. While the core function of the MLC’s database should be to assist the MLC in undertaking its vital role in mechanical licensing, its creation and public availability present a golden opportunity to further improve the efficiency and effectiveness of music licensing more broadly. Songwriters of North America, the Music Innovation Consumers Coalition, and most recently, a songwriter at the Copyright Office’s unclaimed royalties symposium have all supported the inclusion of PRO related information in the database established and maintained by the MLC.

As you continue efforts to implement the Music Modernization Act and as you engage on music licensing issues more generally, we believe efforts to improve transparency in this space remain critical. The Office itself has long highlighted the difficulties with fractured and incomplete ownership data for musical works, and we encourage you to consider the benefits of a comprehensive, searchable, easily navigable database that includes bulk data functionality for full musical composition copyrights. We firmly believe you have the regulatory authority and policy role necessary to help make improvements in this space – improvements that could help in matching before the Mechanical Licensing Collective, as well as the broader ecosystem, ultimately ensuring data exists to create a fairer, more transparent system for rightsholders, songwriters, and licensees alike.

We request your commitment to continued efforts to improve data transparency and take steps towards a robust and functional database. Work remains to be done as it relates to the public performance of musical works, and we urge you to assist in finding a solution, be it as part of the

MLC database or otherwise. We look forward to working with you to continue to improve the system for all stakeholders.

Sincerely,



Darrell Issa
Member of Congress



Scott Fitzgerald
Member of Congress



Deborah Ross
Member of Congress

Cc: Kevin Amer
Jason Sloan



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The Honorable Scott Fitzgerald
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The Honorable Deborah Ross
United States House of Representatives
1208 Longworth House Office Building
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February 7, 2022

Dear Representative Issa, Representative Fitzgerald, and Representative Ross:

Thank you for your letter of December 16, 2021, addressing continued challenges related to authoritative public performance rights data for musical works.

As your letter noted, as part of the implementation of the Music Modernization Act (“MMA”), the Copyright Office previously considered requests to require performing rights organization (“PRO”) information to be included in the public musical works database established and maintained by the Mechanical Licensing Collective (“MLC”),¹ and further elaborated on this issue in response to questions for the record from the House Judiciary Committee’s May 5, 2021 oversight hearing. The Office agrees that improving data transparency as it relates to the public performance of musical works is an important goal, and we appreciate your request that we assist in finding a solution to the challenges you have identified. While we continue to believe that the MLC should not be compelled by regulation to include such information in its database at this time, we welcome the opportunity to explore this matter further and to work with you and stakeholders on any potential alternative ways to address the concerns raised in your letter.

The Office shares your view that accurate, comprehensive, and publicly accessible rights data is essential to an efficient and transparent music licensing system. As part of our MMA implementation duties, the Office promulgated interim regulations prescribing categories of information to be included in the MLC’s public musical works database, as well as requirements governing the usability, interoperability, and proper usage of the database.² Additionally, the

¹ Public Musical Works Database and Transparency of the Mechanical Licensing Collective, 85 Fed. Reg. 86,803, 86,810–11 (Dec. 31, 2020).

² 37 C.F.R. §§ 210.31–32.

Office's recent report, *Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective*, includes numerous detailed recommendations reflecting our commitment to enhancing transparency, data quality, and database functionality, usability, and accessibility.³ With respect to requiring the MLC to include PRO information in its database, however, there are countervailing considerations to be taken into account.

First and foremost, it is important for the MLC to focus its time, attention, and resources on its core statutory duty to administer the compulsory blanket license for making and distributing phonorecords of nondramatic musical works. This license for “mechanical rights” does not directly implicate public performance rights, which the MLC is statutorily barred from administering.⁴ In promulgating the interim regulations governing the MLC's database, the Office accepted the MLC's assertion that “it ‘should be afforded the opportunity to focus on its main priority of a robust and fulsome mechanical rights database,’ and not include PRO affiliation.”⁵

Fully operationalizing the MMA is a complex task. While the MLC has made substantial progress, significant work remains. For example, the MLC's public database is still a beta version and does not yet contain unmatched works. Additionally, the MLC has not yet completed addressing the numerous recommendations from the Office's comprehensive Unclaimed Royalties Report. We believe that the MLC should attend to the outstanding tasks that are directly connected to administering the new blanket mechanical license before turning to other activities. This understandable need for a multiyear ramp-up period is largely why the Office recommended in its report that the MLC not make any distributions of unclaimed royalties “for at least five years from the date that the ability to claim in the [MLC's user] portal is made available to the public with complete and full functionality and populated with all unmatched usage from periods prior to the license availability date.”⁶ After the MLC reaches this important milestone, it may be appropriate to reconsider a requirement to include PRO information in the MLC's database.

³ See generally U.S. COPYRIGHT OFFICE, UNCLAIMED ROYALTIES: BEST PRACTICE RECOMMENDATIONS FOR THE MECHANICAL LICENSING COLLECTIVE (2021), <https://www.copyright.gov/policy/unclaimed-royalties/unclaimed-royalties-final-report.pdf> (“UNCLAIMED ROYALTIES REPORT”).

⁴ See 17 U.S.C. § 115(d)(3)(C)(ii), (iii).

⁵ 85 Fed. Reg. at 86,810 (quoting MLC NOI Comments at 10, U.S. Copyright Office Dkt. No. 2020-8, <https://www.regulations.gov/comment/COLC-2020-0006-0013>); see also MLC NOI Reply Comments at 36, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0031> (“[T]he MLC is currently focused on populating the mechanical rights database with accurate mechanical rights information so that it can administer mechanical rights commencing on the [license availability date]. Requiring the MLC to, on top of that significant task, also gather, maintain, update and include in the database performance rights information—which rights it is not permitted to license—would require significant effort which could imperil the MLC's ability to meet its statutory obligations with respect to mechanical rights licensing and administration by the [license availability date]. It would also entail significant cost not contemplated in the assessment amount agreed upon to fund the MLC's operations, and so additional funding would be required for the MLC to engage in those additional and substantial efforts, which will have little current practical benefit.”).

⁶ UNCLAIMED ROYALTIES REPORT at 91–92.

If this issue is revisited in the future, we will need to carefully consider whether other various concerns can be adequately addressed within the MMA’s framework. One issue is that, in contrast to the monetary incentives for copyright owners to provide accurate mechanical rights ownership data to the MLC, there are no such incentives for copyright owners to provide the MLC with PRO information. Another concern is that the MLC’s PRO information would coexist and potentially compete with the PROs’ own databases as an alternative data source. Such a situation could lead to data conflicts, gaps, and inaccuracies.⁷ Ultimately, issues like these will need to be resolved if the MLC were to successfully integrate authoritative and reliable PRO information into its database. This would require future discussions with stakeholders, as these issues are not squarely contemplated by the MMA.

With respect to potential paths forward, the Office remains committed to supporting efforts to improve musical work data transparency. We would be happy to discuss ideas and possible next steps with you, or your respective staffs, at your convenience.

Sincerely,



Shira Perlmutter
Register of Copyrights and Director,
United States Copyright Office

⁷ See Music Innovation Consumers (“MIC”) Coalition NOI Initial Comments at 3, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0009> (“At any given time, a significant percentage of a PRO’s repertoire (15 percent according to ASCAP) is in flux. Especially in the world of songwriting where it is typical to have more than one songwriter on any given song and writers change PRO affiliations frequently, multiple databases will result in conflicting data. Additionally, multiple databases, each with its own user interfaces and other operational differences, will likely create major inefficiencies and confusion among users (and potentially among songwriters.)”); Future of Music Coalition NOI Reply Comments at 3, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0033> (“While we share some frustration about the lack of a single comprehensive database with PRO information, it’s difficult to see how including PRO information in the MLC database could work—as the MLC won’t be paying PROs, it’s hard to envision what would incentivize keeping this data accurate and authoritatively up to date.”).