



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

June 10, 2020

Digital Licensee Coordinator, Inc.

Sarang V. Damle
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
sy.damle@lw.com

R. Peter Durning, Jr.
Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
peter.durning@lw.com

Allison Stillman
Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
astillman@mayerbrown.com

Mechanical Licensing Collective

Frank P. Scibilia
Benjamin K. Semel
M. Mona Simonian
Pryor Cashman LLP
7 Times Square
New York, NY 10036-6569
fscibilia@pryorcashman.com
bsemel@pryorcashman.com
msimonian@pryorcashman.com

Peermusic

Timothy A. Cohan
Peermusic
901 W. Alameda Ave., Suite 108
Burbank, CA 91506

Recording Academy

Michael Lewan
Todd Dupler
Daryl Friedman
Recording Academy
1200 G Street NW, Suite 950
Washington, DC 20005

Songwriters of North America and Music Artists Coalition

Michelle Lewis
Songwriters of North America
9000 Sunset Blvd., Suite 800
West Hollywood, CA 90069
info@wearesona.com

Jack Quinn
Music Artists Coalition
1050 Connecticut Ave. NW, Suite 600
Washington, DC 20036
jquinn@manatt.com

Re: *Docket No. 2020-5*
Music Modernization Act Reports of Usage – Server Fixation Date and Termination

Dear Commenters:

Thank you for your participation in the Copyright Office’s ongoing rulemaking proceeding to implement the Music Modernization Act. Following the receipt of comments in response to the Office’s notice of proposed rulemaking (“NPRM”),¹ the Office is providing you with the opportunity to participate in a joint *ex parte* teleconference concerning the reporting of server fixation dates and their relationship to copyright termination under 17 U.S.C. 203 and 304(c).

The Office issued its NPRM following a notification of inquiry that revealed disagreement between the mechanical licensing collective (“MLC”) and digital licensee coordinator (“DLC”) regarding the MLC’s request to require digital music providers (“DMPs”) to report the date on which each sound recording is first reproduced by the DMP on its server.² The MLC contended that the server date is necessary for determining who to pay royalties to, where there has been a statutory termination because of the application of the derivative works exception contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A). The DLC questioned the merits of the MLC’s reasoning, and asserted that not all DMPs store the server date.

While the NPRM neither endorsed nor rejected the MLC’s legal interpretation, the Office noted that, at least in certain situations, it seemed reasonable for the MLC to want to know the relevant license date.³ At that time, the Office had not received any comments from publishers or songwriters (or representative organizations) addressing this topic. In response to the NPRM, the Office has now received comments from such groups that comment upon or question the MLC’s proposed approach and applicability of termination issues to the current proceeding.⁴

To progress this rulemaking, the Office invites commenters who addressed this topic to a joint *ex parte* teleconference concerning the issues raised by the comments with respect to this aspect of the rulemaking. Participants will be required to submit a letter summarizing their substantive participation in the call, in conformance with the Office’s *ex parte* guidelines.

¹ 85 Fed. Reg. 22,518 (Apr. 22, 2020).

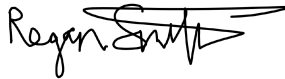
² *See id.* at 22,532–33.

³ *See id.* at 22,532–33 & n.210 (while observing that the MLC’s interpretation “seems at least colorable,” “[t]he Office does not foreclose the possibility of other interpretations” and “does not find it prudent to itself elaborate upon or offer an interpretation of the scope of the derivative works exception in this particular rulemaking proceeding, which is not primarily focused on termination issues”).

⁴ *See* SONA & MAC Comments at 8–12; Recording Academy Comments at 3.

Please email me at regans@copyright.gov and Jason Sloan at jslo@copyright.gov by **no later than June 15, 2020, at 11:59 p.m. Eastern Time** with your availability to participate in a teleconference on this issue on June 19 or 22, 2020. The Office will be in touch to confirm a time that is most amenable to the commenters.

Sincerely,

A handwritten signature in black ink that reads "Regan A. Smith". The signature is written in a cursive style with a prominent horizontal stroke at the end.

Regan A. Smith,
*General Counsel and
Associate Register of Copyrights
U.S. Copyright Office*