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*Re: Docket No. 2020-5
Music Modernization Act Reports of Usage – Metadata*

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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 provide written responses to the questions below and to participate in a joint *ex parte* teleconference concerning the reporting of sound recording and musical work metadata.

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 reporting of sound recording and musical work metadata. The issue primarily surrounds the practice of digital music providers (“DMPs”) sometimes altering certain data received from sound recording copyright owners and other distributors for normalization and display purposes in their public-facing services, and whether DMPs should be permitted to report the modified data to the MLC or instead be required to report data in the original unmodified form as acquired.² Relatedly, the DLC contends that for substantial operational and engineering reasons, DMPs should be permitted not to report certain data fields even when the data is within the DMP’s possession.³

To address the competing concerns raised by the parties, the NPRM proposed an approach where altered data could be reported in certain situations and certain data fields would only need to be reported to the extent practicable, but for many fields, reporting of unaltered data would be required.⁴ In response, both the MLC and DLC expressed concerns with respect to data alteration, and the MLC opposed the Office’s proposal as to reporting practicability. Neither, however, provided much more granular or operational detail regarding the MLC’s professed needs or the DMPs’ professed burdens.⁵

The Alliance for Recorded Music (“ARM”) commented regarding its equities on these subjects, including because individual DMPs receive different metadata feeds, including the provision of certain business sensitive information, from its record label members. ARM suggested that if the Office convened a “stakeholder meeting to explore solutions to this particular issue, we and relevant executives from our member companies would be happy to participate in such a process,” and recommended that “SoundExchange, which has almost two decades of experience

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

² *Id.* at 22,522–23.

³ *Id.* at 22,531.

⁴ *Id.* at 22,523, 22,525, 22,531–32. The Office noted that: “[A]fter analyzing the comments and conducting repeated meetings with the MLC, DLC, and recording company and publishing interests, it is apparent to the Copyright Office that abstruse business complexities and misunderstandings persist. . . . [I]t is not clear that the relevant parties agree on exactly which fields reported from sound recording owners or distributors to DMPs are most useful to pass through to the MLC, which fields the MLC should be expected or does expect to materially rely upon in conducting its matching efforts, or which fields are typical or commercially reasonable for DMPs to alter.” *Id.* at 22,523.

⁵ See DLC Comments at 4–7; MLC Comments at 16–17, 21–26, 38–39.

managing, normalizing and deconflicting sound recording data, should also be included in any such meeting.”⁶

The Office agrees with ARM’s suggestion to have a stakeholder meeting to help progress this rulemaking. Additionally, the Office requests that the MLC and DLC provide responses to the below questions ahead of such meeting.

Questions for the DLC:

1. List each data field proposed in § 210.27(e)(1) that individual DLC members may revise, re-title, or otherwise edit or modify in the ordinary course. For each such field, describe the typical nature of any such modification (*e.g.*, to distinguish among different recorded versions, to normalize an artist name, etc.) and estimate, in percentage terms, how often the field is typically modified by DMPs.⁷
2. The DLC explains in its comments to the NPRM that “[i]t is not uncommon for DMPs to fill in empty data fields when the relevant information is known to them.”⁸ List each data field proposed in § 210.27(e)(1) that individual DLC members may fill in in the ordinary course when first received blank from sound recording copyright owners or other distributors. For each such field, explain from where such supplementary information is typically acquired and estimate, in percentage terms, how often the field is typically filled in by DMPs.
3. Describe the estimated burden, including time, expense, and nature of obstacle, that individual DLC members anticipate they will incur if required to report all sound recording and musical work data fields required by the proposed rule in the unmodified form in which it is acquired.
4. What, if any, operational burdens would be associated with DMPs being required to report the source of reported sound recording and musical work data and/or denote whether the DMP made any modifications from the source material? If required, would the DLC’s members be able to do so by the license availability date? If not, how long of a transition period would reasonably be appropriate? Please suggest any proposed regulatory language with respect to a potential data provenance requirement.
5. List each data field proposed in § 210.27(e)(1) that the DLC contends would be overly burdensome for certain DLC members to report if the Office does not limit reporting to the extent practicable (but still conditions reporting on the data being appropriately acquired).⁹ For each such data field, describe the estimated burden, including time,

⁶ ARM Comments at 6.

⁷ Although the Office has previously asked for similar information, the DLC has only provided partial information for two services. *See* DLC *Ex Parte* Letter #3 at 2.

⁸ DLC Comments at 5.

⁹ The Office notes that several of the data fields proposed by the Office were either contained in the DLC’s proposed regulations submitted with its reply comments to the notification of inquiry (*e.g.*, version, release date, distributor), see DLC Reply Add. at A-7 (Dkt. No. 2019-5), or in the example of a current data row contained in a presentation

expense, and nature of obstacle, that individual DLC members anticipate they will incur if required to report.

6. For the fields identified in response to question #1, if the rule required reporting of unaltered data, would the DLC's members be able to do so by the license availability date? If not, how long of a transition period would reasonably be appropriate? If the answer varies depending upon the field being modified, please explain.
7. For the fields identified in response to question #5, if reporting of these fields were required (to the extent the data was appropriately acquired by a DMP, rather than also to the extent practicable), would the DLC's members be able to do so by the license availability date? If not, how long of a transition period would reasonably be appropriate? If the answer varies depending upon the field being reported, please explain.
8. With respect to the sound recording copyright owner field, which the Office proposed DMPs could report by using the DDEX fields of DPID, LabelName, and PLine, ARM objects to the DPID numerical identifier being disclosed, and requests that the DPID party's name be the data point that is reported to the MLC.¹⁰ Are DMPs able to convert the DPID numerical code into the party's actual name for reporting purposes? If the DLC contends a transition period would be required to report the party name, please provide an estimate for this period.

Questions for the MLC:

1. The DLC explains that “[i]t is not uncommon for DMPs to fill in empty data fields when the relevant information is known to them,”¹¹ and that track title alterations made by at least one of its members are “in every case at the request of the labels.”¹² Please clarify the MLC's desired treatment of data in the following scenarios:
 - a. where data is acquired from a source other than the sound recording copyright owner or other distributor (*e.g.*, the DMP adds data to an otherwise blank field);
 - b. where data is modified by the DMP at the request of the sound recording copyright owner or other distributor; and
 - c. where data is modified through some automated process initiated by the sound recording copyright owner or other distributor, such as an updated data feed.

Should the data in any of these scenarios be considered “modified” or “altered” data for the MLC's purposes? If so, why?

made to the Office during the DLC's first *ex parte* meeting (*e.g.*, album UPC, album name, label name), see DLC *Ex Parte* Letter #1 Presentation at 15.

¹⁰ ARM Comments at 10–11.

¹¹ DLC Comments at 5.

¹² DLC *Ex Parte* Letter #3 at 2.

2. For each data field proposed in § 210.27(e)(1) that the MLC understands DMPs to revise, re-title, or otherwise edit or modify in the ordinary course, describe how and to what extent receiving reported data in altered form would materially impede the MLC’s matching efforts. The MLC has explained that differences in the number of characters in a title can be relevant to an automated string comparison algorithm.¹³ Please respond to the DLC’s assertions that “any reasonably sophisticated matching algorithm would be able to handle th[e] alterations [made by DMPs].”¹⁴ For example, if the title string comparison algorithm does not yield a match, what other matching strategies will be employed? If the MLC believes that the reporting of altered data in the fields at issue would frustrate those additional matching efforts, please explain, and include illustrative examples.

3. To what extent, in time, expense, and/or increased amount of unmatched works, does the MLC estimate that permitting reporting of data in certain fields altered for DMP display purposes will affect its matching efforts? In your answer, please consider that the proposed rule would require the reporting of many fields unaltered, including the ISRC and other universal identifiers, and the DLC has represented that over 99% of tracks will be reported with an unaltered ISRC. Please include any other information that would be helpful for the Office to consider.

4. Please describe the MLC’s approach to matching efforts with respect to other causes of data inconsistencies that the MLC will need to address.¹⁵ Can the MLC describe the anticipated additional level of effort resulting from reporting of data in certain fields altered for DMP display purposes, as compared to these other data inconsistencies?

5. Are there any non-statutorily-enumerated data fields proposed in § 210.27(e)(1) that the MLC either does not intend to use for matching or does not believe will lead to materially better matching results?¹⁶
 - a. If so, please identify which fields.
 - b. If not, describe the usefulness of each of these fields.
 - c. In your response, please consider the following comments. ARM suggests that such fields “(e.g., distributor, album title, UPC, catalog number) are unlikely to be materially helpful for matching in most instances.”¹⁷ SoundExchange says: “[I]t

¹³ MLC *Ex Parte* Letter #2 at 5.

¹⁴ DLC *Ex Parte* Letter #3 at 2.

¹⁵ See, e.g., ARM Comments at 6 (“[I]t is likely that some portion of the data provided by DMPs in their reports of usage (even if they report only unaltered data) will conflict.”); SoundExchange Comments at 6 n.5 (DMP-altered data “is just one potential cause of what will probably be frequent instances where there will not be a perfect match between all the information reported by a service provider to identify its usage and the repertoire information known to the MLC.”).

¹⁶ The MLC has stated that it only “contemplates using some, but not all” for matching purposes. See MLC *Ex Parte* Letter #4 at 11.

¹⁷ ARM Comments at 9; see also *id.* at 11 (questioning whether “product/album-level data,” as opposed to “track-level data,” is necessary for matching and whether such data “may prove confusing for the MLC to receive”).

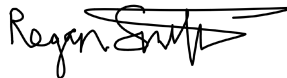
does not seem important for the MLC to learn from service providers every possible detail about sound recordings and musical works—and particularly information about ownership and payment that is most subject to change and most likely to be inaccurate when reported by a service provider. What is important is that the MLC receive from service providers enough data points about sound recordings and musical works to be able to match reported usage to known repertoire, or to have clues about where to look for definitive information about previously unknown repertoire.”¹⁸ And in connection with a separate examination of fields to be reported by the MLC to copyright owners, Songwriters of North America (“SONA”) and Music Artists Coalition (“MAC”) state that “[a]lthough all of the nonmandatory categories are important, we wish to emphasize in particular UPC codes, which are sometimes the only reliable way to identify the particular product for which royalties are being paid.”¹⁹

The MLC and DLC are requested to provide written responses **by July 10, 2020**. Responses should be delivered via email to me at regans@copyright.gov and Jason Sloan at jslo@copyright.gov.

If interested, **by July 3, 2020**, MLC, DLC, ARM, and SoundExchange should email their availability to participate in a teleconference on this issue on either July 21 (before 3:00 pm Eastern Time) or July 22, 2020 (anytime). The Office will confirm a time that is most amenable to the commenters.

To help focus discussion, the Office may limit this meeting to the addressees above. These issues involve substantial operational equities for the MLC and the DLC members, and a dataflow through the digital supply chain that significantly involves ARM members. The Office is inviting SoundExchange at ARM’s suggestion. If other stakeholders wish to separately speak with the Office about these issues, they may request to do so pursuant to the Office’s *ex parte* guidelines.

Sincerely,



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

¹⁸ SoundExchange Comments at 5–6 (“[T]he more data the MLC collects from digital service providers, the more likely it is that the MLC will receive inaccurate and conflicting data. . . . [T]he MLC may find a good match to known repertoire based on just a few data points,” but “in many such cases, there will be other data points reported by the service provider that will not match the MLC’s repertoire information. . . . The likelihood of such messiness in the data is a good reason not to seek excessive information from digital service providers in the first place . . .”).

¹⁹ SONA & MAC Comments Submitted in Response to U.S. Copyright Office’s April 22, 2020, Notice of Proposed Rulemaking (Dkt. No. 2020-6) at 5.