

November 17, 2020

US Copyright Office (Via Email)

Regan Smith, General Counsel and Associate Register of Copyrights

Jason Sloan, Assistant General Counsel, jslo@copyright.gov

Anna Chauvet, Associate General Counsel, at achau@copyright.gov

Library of Congress

101 Independence Avenue, SE

Washington, DC 20559-6003

RE: Ex Parte Letter regarding November 13, 2020 Virtual Meeting

Dear Ms. Smith and team,

On November 13, 2020, Sam Sokol, Ted Kalo, and Casey Murray of the Artist Rights Alliance participated in a virtual ex parte meeting with members of your office and a broad cross section of the music community – including publishers, digital services, the MLC and DLC, and several songwriter groups. This letter summarizes ARA's participation in the meeting.

We stated that we broadly support the approach described in the Supplemental Notice of Proposed Rulemaking issued in Docket 2020-12 and published on November 5, 2020.

We believe the Music Modernization Act is ambiguous on the narrow question whether a digital music provider may offset amounts paid in pre-MMA settlements with music publishers from the transfer of accrued unmatched royalties it must make in early 2021 to qualify for the MMA's limitation on backwards looking liability.

As a consequence of this ambiguity, we believe the Copyright Office has discretion to interpret the MMA's terms and the authority to promulgate a rule that creates a workable, practical system that serves the foundational statutory goal of ensuring songwriters and publishers are accurately, completely, and fairly paid for all uses of their work. Based on our current understanding, the estimate/offset structure proposed in the SNPRM seems to accomplish that while providing business certainty needed to ensure the broadest number of digital music providers possible participate in the transfer of unmatched royalty funds contemplated by the MMA.

We also urged the office to clarify at the soonest possible time that publishers that have already received payments pursuant to these settlement agreements should not be eligible for additional payments out of the remaining accrued unmatched royalties paid into the MLC. Instead, those funds should be distributed solely to non-participating publishers and

songwriters through the matching/distribution process established by the MMA. This is the only way to effectuate the statute's requirement that payment shares for pre-MMA unmatched royalties be determined in an "equitable manner".*

Thank you and your colleagues for the efforts you have made to resolve the current controversy and for all your work implementing this complex and sweeping legislation.

Sincerely,

Sam Sokol
Artist Rights Alliance

* 17 USC § 115(d)(3)(J)(i)(II).