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VIA EMAIL

Regan Smith
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Re: Ex Parte Letter re: July 22, 2020 Copyright Office Virtual Meeting

Dear Ms. Smith,

I write on behalf of Digital Licensee Coordinator, Inc. (“DLC”) to follow up on the virtual meeting hosted by the Copyright Office on July 22, 2020 regarding the reporting of metadata to the mechanical licensing collective (“MLC”).¹ During the meeting, the DLC made the following points:

As an overarching matter, DLC noted that the most critical issue for the industry is how to transition from the decentralized song-by-song mechanical licensing system to a centralized blanket licensing system administered by the MLC, by January 1, 2021. This is no small feat, especially given the substantial lead time required to develop the necessary reporting systems, which (as the MLC’s representative made clear) could also entail first working with international standard setting bodies like DDEX on new reporting standards.² Making that transition will, in and of itself, be a historic achievement that brings significant benefits to copyright owners. After license availability date, copyright owners will receive, for the first time, a single statement with information about all statutory mechanical uses of their works across all digital music providers. Moreover, the MLC will have the first public, authoritative database of musical works information, populated with data provided by copyright owners, which will bring significant improvements to the ability to properly match sound recordings to musical works and ensure that the proper copyright owners are paid. And the rules proposed by the Copyright Office will already expand the data reported by DMPs into the system, which will bring improvements to both matching and

¹ Attendees are listed in the Appendix.

² The MLC’s representative admitted that the MLC’s unaltered metadata proposal required adding new fields to the DDEX standard. That added step will only expand the lead time required by DMPs to re-code their systems.

the MLC's other statutory obligations. This transition alone, which is far from simple and which involves new obligations on all participants in the system including licensees, will bring substantial improvements to the existing administration of mechanical licensing.

There is also a secondary issue of how, once the transition to the blanket license has occurred, to further improve the system. DLC does not question that there will be improvements identified based on actual performance, data, and experience that could help better identify works and find copyright owners. But at this stage, before the initial transition has even occurred, it is a far sounder approach to put the basic system in place, and without delay. The MLC and DLC can collaboratively and continuously evaluate potential areas for improvement once all parties have had more experience with the new blanket license system. As the DLC has repeatedly emphasized, this type of work should fall squarely in the mandate of the MLC's statutorily-mandated Operations Advisory Committee.

As DLC explained on the call, the unaltered metadata issue, even by the MLC's own account, falls firmly into the latter bucket, at best, as it will be relevant only to a minuscule fraction of reported usage. As participants on the call noted, this is so for several reasons. First, as multiple DLC members explained, it is practically impossible at this point for digital music providers to provide unaltered metadata for the tens of millions of tracks currently in their system, because the original data was not maintained.³ There was apparent agreement between the MLC, DLC and record label representatives that there should be no obligation for DMPs to try to recreate such data from new feeds from the sound recording copyright owners. Thus, at most, any rule requiring reporting of unaltered data could apply only on a going forward basis, after an appropriate transition period, in light of both the time needed to operationalize such a change to internal systems and the associated additional costs.⁴

Second, the Alliance for Recorded Music (ARM)—representing the major and indie labels—explained that nearly all commercially relevant recordings have ISRCs associated with them. There was no substantive disagreement, even from the MLC, that obtaining the ISRC and a few additional pieces of sound recording metadata (artist and title keyword, which will be

³ To be clear, the suggestion during the call that somehow DMPs should be held to a “burden of proof” about the absence of data they were never required to maintain is one that the DLC rejects outright. In no circumstances should the Office be considering changing the rules the DMPs have operated under in a retroactive fashion that carries with it the potential loss of either the limitation on liability or the availability of the blanket license.

⁴ As DLC understands it, the issue arises because label metadata isn't simply saved wholesale in a single table. Instead, that data is processed and divided into a number of different systems built for distinct purposes, and royalty accounting systems pull from those various systems for purposes of generating a report. It is that entire chain that would need to be reengineered to ensure that label metadata is passed through in unaltered form. As one DLC representative noted, it would take at least a year to build the necessary systems to ingest, preserve, and report unaltered metadata.

reported by all DMPs), allow well over 90% of recordings to be identified easily through automated matching.⁵ Moreover, matching those recordings will likely result in an even greater percentage of *usage* matched and, therefore, royalties paid, because ISRCs are very nearly universally assigned to commercially significant tracks. These fields would also allow the MLC to use the SoundExchange database, which was recently designated by the RIAA as the authoritative source of ISRC data in the United States, to obtain authoritative sound recording data for matching and other purposes.⁶

Third, as DLC representatives have repeatedly explained, alterations are rare, and when they do occur they are modest.⁷ If the MLC's matching algorithm cannot handle simple variations like "The Beatles" versus "Beatles, The," it needs to adopt a better algorithm.⁸ Indeed, SoundExchange noted on the call that it does not receive unaltered metadata; as far as we are aware, SoundExchange has never suggested that this has been a material impediment to fulfilling its statutory responsibilities. If the MLC is unable to engage in this task, requiring it to use SoundExchange as an authoritative resource is a far more equitable result than imposing additional burden whatsoever on the DSPs in respect of the usage reports to be delivered.

DLC also observed that the MLC has failed to establish that the benefits of its proposal outweigh the costs. As it is, digital music providers have agreed to fund the MLC to the tune of \$33.5 million in startup costs, with a \$28.5 million annual operating budget in 2021, and escalating budgets every year thereafter.⁹ DLC estimates that this represents an approximately 300% increase in the amount of money DLC members have collectively spent on the annual administrative expense of mechanical licensing. That money is meant to go primarily to matching, including manual matching efforts. To be clear, the DLC members' commitment to the success of the MLC and the new blanket licensing system goes beyond that financial commitment, including by

⁵ In response to these points, MLC representatives repeatedly asserted that ISRC *alone* was not sufficient for that level of matching, but no party is advocating for such an approach, nor is that contemplated by the Office's proposed rule.

⁶ During the call, the MLC appeared to acknowledge that the SoundExchange data could be used to populate sound recording information in the public facing musical works database and claiming portal, as requested by the Alliance for Recorded Music. Given that doing so would require some level of matching, DLC does not understand why the same matching process could not be used for processing of usage reporting.

⁷ DLC July 13, 2020 Letter at 3-4. During the call the specific question was asked about alterations to the ISRC. DLC can confirm that only one service has reported to DLC that it alters ISRCs but even then only to fix obvious data errors like spaces or extra characters.

⁸ Indeed, on the call the MLC conceded that, *even under its proposal*, it will have to deal with at least three sets of different metadata, as labels provide differently formatted data to Apple and Spotify.

⁹ 37 C.F.R. § 390.2.

reporting more information than previously required. DLC has also repeatedly, including through its filings with the Copyright Office, made clear that it is open to and interested in further discussion and collaboration on areas for improvement on areas such as access to audio through the MLC's claiming portal. For the most part, those entreaties from the DLC are met instead with the MLC's continued insistence on onerous regulations that will require the DLC members to each spend significant additional sums to build a parallel system for reporting unaltered metadata for still-unclear benefit to its matching system.¹⁰

Moreover, as the call revealed, there are circumstances where reporting unaltered metadata would *undermine* the MLC's matching efforts. For instance, under the current proposed rule DMPs are required to report through the unaltered playing time metadata. As one DLC representative explained, there are some instances where the playing time as reported by the record label is inaccurate, and the service might affirmatively fix it in its reporting. Faced with that fact, the MLC changed its position from saying that playing time should *always* be reported through in unaltered form¹¹ to saying (for the first time on the call), that services should now change the playing time if it is inaccurate.¹² Another example is where a particular distributor has made an obvious misspelling of an artist's name for a particular set of tracks (*e.g.*, "Taylor Wift" instead of "Taylor Swift"). MLC's solution to this issue was to suggest another change to its proposal (again, for the first time on the call), requiring reporting of *both* altered and unaltered metadata. That proposal would require an even greater burden, as it would require DMPs to preserve two sets of data, and track any changes to the metadata, across their systems.

These 11th-hour, internally inconsistent shifts in position only highlight why these complex issues should be evaluated collaboratively through actual experience with the blanket license reporting system, rather than through *ex ante* regulations of significant scope and questionable benefit.¹³ Indeed, the MLC appeared to be deciding what it wanted to propose from moment to moment, ticking through the list of reporting requirements in Section 210.27(e) and

¹⁰ For those DLC representatives that are able to provide ballpark estimates of the costs associated with these internal changes, the estimates reach as high as millions of dollars.

¹¹ MLC NPRM Comment at xxxiii.

¹² That said, DLC would not oppose a requirement to report, in all instances, the playing time value based on the processing of the actual sound recording file, rather than the value reported by the label. But DLC would oppose the MLC's suggestion that DMPs engage in a back and forth with the label to get the label to correct its own metadata and redeliver it; that process is inefficient and unnecessary to the MLC's mission.

¹³ The Office asked DLC members whether a rule specifying the precise fields that had to be reported through in unaltered form would be more or less burdensome than a rule requiring "all" metadata to be reported in unaltered form. Again, DLC does not believe that either rule is appropriate at this time, but would prefer a rule specifying the exact fields that must be reported through in unaltered form.

making case-by-case assessments whether the altered (only) or the altered-and-original versions of each data field should be mandated. The MLC also indicated that many of the fields that DMPs are required to report under the proposed rule *will not* be used for matching, directly contradicting the MLC’s statement in its recent letter to the Office that “[a]ll of the metadata fields proposed in §210.27(e)(1) will be used as part of the MLC’s matching efforts.”¹⁴

Unfortunately, as DLC noted on the call, the MLC’s comments to date have treated the unaltered metadata issue on par with the basic reporting requirements in importance. As a result—and completely understandably—the Office has treated resolution of this issue as a gating item to promulgating reporting regulations. It is not. And, at this point, any continued effort to finely tune regulations to deal with this issue only risk delaying the successful transition to the blanket license. DLC understands and appreciates the Office’s desire to get things right and the seriousness with which it has approached its critical role in this historic transition. DLC further understands the MLC’s desire to bring improvements to the mechanical licensing system. The DLC’s members share that goal and believe it can be accomplished through further collaboration. Once the blanket license is in place and the initial kinks worked out, the DLC is committed to finding ways—whether through regulation or otherwise—to improve the ability for the MLC to find and pay the right copyright owners for uses of their works.¹⁵

DLC thanks the Copyright Office for hosting the July 22, 2020 virtual meeting and call. As always, we stand ready to offer any further information that the Office would find useful.

Best regards,



Sarang V. Damle

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¹⁴ MLC July 13, 2020 Letter at 7.

¹⁵ As a final point, there appeared to be universal agreement that the reporting of the DDEX “DPID” in the sound recording copyright owner field was unnecessary, particularly because the DPID does not resolve in all cases to the actual copyright owner of sound recordings. DLC supports elimination of the requirement to report DPID.

APPENDIX

Attendees July 22, 2020 Copyright Office Virtual Meeting

U.S. Copyright Office

Regan Smith
Anna Chauvet
Jason Sloan
John Riley
Terry Hart
Cassandra Sciortino
Megan Efthimiadis

MLC

Danielle Aguirre
Kris Ahrend
Alisa Coleman
Bart Herbison
Abel Sayago
Benjamin Semel
Richard Thompson
Ellen Truly

DLC

Sy Damle
Peter Durning
Kevin Goldberg
Alan Jennings
Garrett Levin
Dan Mackta
Jen Rosen
Lisa Selden
Daniel Susla
Alex Winck

Alliance for Recorded Music (ARM)

Susan Chertkof, RIAA
Ken Doroshov, RIAA
David Hughes, RIAA
Josh Hurvitz, AI2M

Universal Music Group

Kim Beauchamp
Tony DeNeri
Aaron Harrison
Chris Horton
Amy Isbell
Tegan Kossowicz

Sony Music

Andrea Finkelstein
Jay Gress
Lisette Morton
Colleen O'Connell

Warner Music Group

Mark Baker
Brigette Boyle
Annie Brinn
Rick Marshall
Elsa Vivero

SoundExchange

Luis Bonilla
Brad Prendergast
Colin Rushing