

June 23, 2020

VIA EMAIL

Regan Smith
Jason Sloan
Anna Chauvet
United States Copyright Office
Library of Congress
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Re: **Docket No. 2020-5**
Summary of June 19, 2020 ex parte Webex teleconference
Re: Music Modernization Act Reports of Usage – Audio Links
MLC Unclaimed Royalties Oversight Committee

Dear Ms. Smith, Ms. Chauvet and Mr. Sloan,

This letter summarizes the participation of the MLC Unclaimed Royalties Oversight Committee (“UROC”) in the June 19, 2020 Webex teleconference among the Mechanical Licensing Collective (“MLC”), the Digital Licensee Coordinator (“DLC”), the UROC, the Recording Industry Association of America, the Songwriters of North America, the Music Artists Coalition, the Nashville Songwriters Association International, and members of the Copyright Office, regarding whether it is necessary for the Office to prescribe regulations requiring the provision of audio links in connection with every usage reported by digital music providers (“DMPs”) in monthly reports of usage.

The following people were present via Webex on behalf of the UROC: UROC chair Philip Cialdella of Atlas Music Publishing, UROC vice-chair Kay Hanley (Songwriter), Michael Eames of PEN Music Group, Inc., Frank Liwall of The Royalty Network, Inc., and Dan Navarro (Songwriter).

The meeting commenced with the primary speakers for each participating group stating the members in attendance from their respective groups.

Ben Semel then spoke on behalf of the MLC to reiterate its stated points in justifying the utility & value of the inclusion of sound recording audio links in connection with usage reporting by DMPs, to facilitate the matching of unmatched works, as well as validate works already matched. He also updated the group on the status of discussions and need for further discussion between the MLC’s Operations Advisory Committee and the DLC to work out the logistics & mechanism by which such links would be provided, and whether they must be clickable URLs,

or if DMPs may instead provide a DMP identifier which will point to the streaming audio on its respective service.

Speakers on behalf of the DLC included Garrett Levin of the Digital Media Association, Nick Williamson of Apple, Lisa Selden of Spotify, and Sy Damle of Latham & Watkins as outside counsel to the DLC. Points raised by the group included concerns over whether the DMPs had the necessary rights under their label agreements to allow such audio streams to take place (and that a Copyright Office regulation should not be dictating negotiable terms between the labels & DMPs), and that the time & expense that would be incurred in order to build out the necessary infrastructure to allow such inclusion of links in reporting would be considerable, and that the scope of such an endeavor must be recognized by all interested parties.

Regan Smith, General Counsel and Associate Register of Copyrights for the USCO then asked the UROC to weigh in, referencing our submitted comments to the April 22nd, 2020 NPRM which stated “...*it is the committee’s strong belief that delivery by the DMPs, and availability to the MLC and users of its claiming portal, of access to the audio of the sound recordings that the MLC must match to the correct underlying musical works, especially for unmatched sound recordings, should be more than a hoped-for result of collaborative problem-solving amongst the parties. Rather, it must be a required reporting element, as it is necessary to fulfill the MMA’s bedrock purpose – ensuring that all rights owners: songwriters, composers, lyricists, and copyright owners, are duly remunerated for the use of their works pursuant to the statutory license.*”

UROC members Philip Cialdella, Kay Hanley, and Dan Navarro then took the opportunity to speak to the following points.

- As our committee is composed equally of music publishers and professional songwriters, the heart of the UROC’s position on this matter always comes back to transparency, transparency, transparency. Our committee is fully aligned with the Copyright Office’s statement that “transparency is critical where copyright owners are compelled by law to license their works.” All interested parties must therefore be reminded that this is a statutory, blanket license, wherein songwriters are mandated to license their works. As such, transparency must be provided to them, in order for them to have full faith and confidence in The MLC. As we’ve previously stated, “a readily available audio reference is the easiest, most reliable and transparent way to confirm ownership of a song.”
- As several UROC members work heavily in the business & administration side of music publishing, some specifically in operations, we are well-versed & experienced in dealing with the ‘constraints’ that are always a factor in decision-making, whether they be financial constraints, operational/logistical hurdles, resource allocation limitations, hard-deadlines that must be met, the practical realities involved with each project, etc. The realities of constraints are not lost on us. But we also know from experience that when stakeholders who have the most at ‘stake’ don’t have a seat in the boardroom and a voice in the discussion, those boardroom decisions tend to lean too heavily on the constraints, resulting in decisions to do what is expedient, instead of doing what is right. When choosing to do what is right, constraints are merely

variables that must be solved. They are not the deciding factors in and of themselves.

- Providing the highest level of transparency to songwriters and music publishers is the right thing to do here. But even more than being the right thing to do, it is the *strategically smart* thing to do. We are building out the infrastructure of the future music business. Royalty accountings with instantly-accessible references to the underlying audio is as inevitable a reality as broadband was an inevitable advancement to dial-up internet. It will happen eventually, but the unique and opportune time to build it out is right now, as we create new and improved royalty accounting systems from the ground up. To put off this inevitability to ‘another time, another day’ will not only be a lost opportunity, but it will eventually be a more expensive path to the same outcome when at some point in the future this functionality will just wind up being bolted on to existing systems anyway.
- The value of providing audio links in connection with usage reporting isn’t exclusively beneficial to one set of stakeholders in the value-chain here. It is in fact mutually-beneficial to *all* parties involved, because if the highest levels of transparency can be provided under the statutory blanket license mandated by the MMA to songwriters, composers, lyricists, and copyright owners, and if the systems built out to administer the blanket license are visionary and best-in-class globally, that will allow tremendous growth of the overall ecosystem from which all of us will benefit.

Lastly, we reminded the groups in attendance that while the opening discussions of the meeting focused heavily on the use of audio links as part of the claiming portal for unmatched works, the UROC feels strongly that such links must also be provided for matched works as well, so that such automated-matches based on metadata may be validated. This is especially important as the successful matching of existing song catalogs in the early rollout stages following the License Availability Date will be integral to the long-term success of The MLC.

The UROC fully understands the importance and gravity of the constraints and realities of building out the audio-reference capability via streaming audio links, but continues to encourage all parties involved to work together to solve for these issues, and achieve the strategically smart outcome of providing the highest levels of transparency to all stakeholders. Concurrently, we continue to urge the Copyright Office to implement the necessary regulations that will ensure this outcome.

Once again we’d like to thank the Copyright Office of the opportunity to participate in the June 19th teleconference on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip Cialdella', with a long horizontal flourish extending to the right.

Philip Cialdella, UROC Chair