



June 26, 2020

Via email

Regan Smith
General Counsel and Associate Register of Copyrights
Jason Sloan
Assistant General Counsel
United States Copyright Office
Library of Congress
101 Independence Ave. SE
Washington, DC 20559-6000

Re: Docket No. 2020-5 and June 22 *Ex Parte* Conference Call

Dear Ms. Smith and Mr. Sloan,

On June 22, the Recording Academy participated in a conference call convened by the U.S. Copyright Office (“Office”) to discuss the proposed collection of server fixation dates by the Mechanical Licensing Collective (“MLC”) and its effect, if any, on copyright termination rights for songwriters, pursuant to the Office’s rulemaking on data collection under the Music Modernization Act (“MMA”). The Academy was represented by Todd Dupler, Managing Director of Advocacy and Public Policy. Also participating on the call were representatives from the MLC, the DLC, Music Artists Coalition, Peer Music, Songwriters Guild of America, and Songwriters of North America (See attached appendix for full list of participants).

The Recording Academy is the only trade association that represents all music professionals (and no companies), including thousands of songwriters and composers involved in the creation of musical works and sound recordings. The Academy’s attention was drawn to this issue by the possible negative impact of the Office’s rulemaking on the termination rights of songwriters.

During the conference call, the representatives of the MLC attempted to explain in detail why the server fixation date was a necessary data point for the effective operation of the MLC and the blanket license established by the MMA. Despite stating repeatedly that the MLC has no interest in altering, changing, or diminishing the termination rights of songwriters, it was clearly conveyed that one of the primary

reasons for seeking this data is to determine the appropriate payee for the use of a musical work that is the subject of a termination. The Academy's view is that using the data in this way *would* diminish termination rights. The MLC and other participants on the conference call then continued to discuss other potential data points that could be used to make the same determination.

The Academy expressed its concern during the call that the Office in its rulemaking should not affirm the MLC's view on the efficacy of the server fixation date, or other data, to determine the appropriate payee for the use of a musical work, nor should the Office endorse a different viewpoint on whether such data can be dispositive in this regard or even opine on the appropriate manner in which to settle a dispute regarding these matters. The rulemaking in question should be neutral with regard to any substantive issues involving ownership disputes or termination issues.

To go further, a requirement that the MLC should collect server fixation dates or related data from digital services should not be viewed in any way as the Office making a determination as to whether such data is useful, effective, or appropriate for identifying the rightful payee for the use of a musical work that has been subject to termination. Because these questions could be negotiated or litigated by future parties in a dispute, the Office should not intentionally or unintentionally tip the scales through a process-oriented rulemaking on the operations of the MLC and the new blanket license established by the MMA. For example, the Office's rulemaking should not imply or assume that a terminated party necessarily continues to benefit from the blanket license after termination.

A representative from Songwriters of North America explained on the call how the MLC was erroneously using the server fixation date as a proxy for a grant of a license. The Academy affirmed this view and went on to suggest that should the Office include a disclaimer in its final rule to safeguard the termination rights of songwriters, such disclaimer should also stipulate that the server fixation date of a work should not be interpreted as a proxy for a grant of license of the work.

Following the conference call, the Office also requested that participants provide their own proposed disclaimer language that should be included in the final rule to protect the termination rights of songwriters. The Academy believes that the language previously submitted jointly by Music Artists Coalition and Songwriters of North America in their initial comments is a good start: "The records required to be collected and maintained under paragraph (m)(2) shall not be construed to alter, limit, or diminish the ability of an author, an author's heirs, or the representatives of an author's estate to exercise rights of termination as provided in sections 203 and 304(c) of title 17."

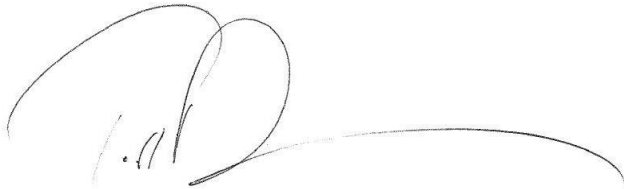
This language should be expanded or adjusted to make clear that neither the obligation to collect and maintain server fixation dates or other related data, nor the data itself, should be interpreted or construed in any way that changes, diminishes, or alters termination rights, or in any way that makes a substantive determination about the

nature of those rights. The data also should not be interpreted to represent, or serve as a proxy for, a grant of a license.

Finally, the Academy applauds the attention the Office has given to this issue, including the decision to engage with interested stakeholders in the songwriter community to discuss these concerns. A critical feature of the Music Modernization Act was providing the Copyright Office with a robust oversight role in the establishment and activity of the MLC. The Office's deliberate and careful effort to understand the current issue demonstrates a fulfillment of congressional intent.

Thank you for your consideration of the Academy's views in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Dupler', with a long horizontal flourish extending to the right.

Todd Dupler
Managing Director, Advocacy & Public Policy

Recording Academy
1200 G Street NW, Suite 950
Washington, D.C. 20005

June 26, 2020

Appendix: Meeting Attendees

U.S. Copyright Office

Regan Smith
Anna Chauvet
Jason Sloan

John Riley
Terry Hart
Cassandra Sciortino

MLC

Kris Ahrend
Richard Thompson
Ellen Truley
Alisa Coleman
Bart Herbison

Danielle Aguirre
Ben Semel
Frank Scibilia
Abel Sayago
Maurice Russel

DLC

Garrett Levin
Sy Damle
Sarah Rosenbaum

Music Artists Coalition

Susan Genco
Ned Waters

Peermusic

Timothy A. Cohan

Recording Academy

Todd Dupler

Songwriters Guild of America

Rick Carnes
Charles J. Sanders

Songwriters of North America

Lauren Hancock
Jacqueline Charlesworth
Dina LaPol
Michele Lewis

Jack Kugell
Adam Gorgoni
Cameron Berkowitz