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Via email

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United States Copyright Office
Library of Congress
101 Independence Ave. SE
Washington, DC 20559-6000

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

Dear Ms. Smith and Mr. Sloan,

We represent the Mechanical Licensing Collective (the “MLC”) and write in response to your June 8, 2020 letter requesting responses to questions from the Copyright Office (the “Office”) concerning the inclusion of sound recording audio links in connection with usage reporting by digital music providers (“DMPs”).

The MLC responds to the Office’s questions directed to the MLC as follows:

- 1. The MLC’s comments, along with others, suggests that the utility of audio links primarily rests in identifying unmatched works in a public claiming portal, but the MLC requests that links for all sound recordings be included in each monthly report. Why does the MLC need links for every reported monthly use if the wide majority of sound recordings will be automatically matched to musical works? Are there more tailored methods the MLC could use to accomplish its goal of having links in the portal, such as issuing subsequent requests to DMPs to provide links limited to unmatched works, or, in appropriate cases, obtaining a recording from a single source when the identity of the sound recording is not in dispute (e.g., through a confirmed ISRC) but information identifying the musical work or its copyright owner(s) are incomplete?**

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What are the different burdens to the MLC associated with various approaches, in terms of time and expense?

The MLC notes first the overwhelming agreement on the value of audio access to address matching in general, and the specific value for users to be able to listen to audio in the MLC claiming portal. The primary issue now should be one of implementation: How can the MLC, together with the DMPs, best accomplish this acknowledged goal?

The MLC's proposed approach is for DMPs to provide the audio links for all sound recordings as part of the already-existing usage reporting process by which DMPs will provide data with respect to the sound recordings that it has used on a monthly basis and the MLC will ingest and process that data. The monthly usage reporting will be an automatic process, delivered using a standard format that all participants will have integrated into their workflow. Adding a single field to that workflow to accommodate the provision of audio links would not appear to add any incremental burden outside of setting up that one field. If, on the other hand, the audio links are not conveyed as part of that existing process, the MLC will need to build an additional, process to ingest and process these links separately. Creation of this second process is certainly more burdensome than adding a single field to the existing reporting.

Moreover, in the sequence of royalty processing events, the usage reporting by DMPs comes *before* the MLC matching process. So, limiting audio file links to only unmatched uses would not be possible without creating a burdensome secondary process simply because it would not yet be known which uses will end up being unmatched. Indeed, a process by which the MLC would issue subsequent requests to DMPs to provide links limited to unmatched works would require DMPs to still set up the audio link field, but then also undertake an additional recurring reporting process on top of the existing monthly usage reporting process. The MLC would need to undertake additional data request and ingestion processes.¹ These separate processes, as noted, would be burdensome for the MLC, and, indeed, we believe, for all parties involved.²

¹ In addition, these separate processes would result in DMPs providing audio links later in time which would necessarily delay when the MLC would be able to add those audio links to the claiming portal, meaning that portal users would not have as much time to use these links to identify and claim unclaimed or unmatched works.

² While the DMPs' initial set up of their processes to provide audio access may require additional effort by DMPs, the MLC is unaware of reasons why a DMP would also want to have an additional monthly process that would require a separate exchange of audio links data, rather than simply incorporating the audio links into the monthly usage reports that they will already have to report to the MLC. A second, parallel process requiring the DMPs to respond to MLC requests and to deliver audio links data separately would seem to be more burdensome for the DMPs than providing such data at the outset in a single automated process.

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Accordingly, a more “tailored” method by which audio links are limited to only unmatched uses would not simplify the process but would require the creation of an entirely new and separate reporting process.

Further, requiring the MLC to obtain audio from a single source other than the DMPs when the identity of the sound recording “is not in dispute” but the musical work or copyright owner(s) are unknown raises multiple additional concerns for the MLC. First, it would require the MLC to design, create, and perform a completely separate process for cross-matching the sound recording data contained in each DMP usage report against other DMP usage reports and/or sound recording data received from a selected authoritative third-party provider. As with separate reporting, this adds a cumbersome additional process to apply.³

In sum, any “tailored” solution raises both temporal concerns (i.e., one cannot know what is unmatched until after a matching process has occurred) and requires an additional, bespoke process, that will jeopardize the statutory timelines. It seems more appropriate to merely require the audio link as part of the existing usage reporting.

Finally, as to burden, the MLC is already tasked with an extraordinary and vital mandate, and directed to implement its systems on an unprecedentedly short timeline. Adding additional, distinct monthly reporting or matching processes on top of the standard monthly processes jeopardizes the MLC’s timeline and budget. No one could quantify now precisely how many hours or dollars would be lost to undertake such additional processes, as no one has implemented a nationwide blanket compulsory mechanical license, let alone on this time frame. But it is easy to see how burdens would arise, both in planning and implementation. Separate audio link reporting would require a new format for delivery and updating of the links, and new workflows to request the links. It would also require taking delivery of the links and integrating the links with the regular usage reporting. Any errors in the process of integrating the data will require manual intervention

³ As the MLC discussed in its comments to this proceeding (at pages 12-15), the process for cross-matching sound recording data is a substantial one that is outside the MLC’s mandate. ISRCs and other identifiers or metadata are neither always available nor always correct when available, a problem that persists in the growing long tail of uses. The workable approach to deduplicating DMP audio would be for DMPs to pre-match their data against an authoritative source of sound recording data and audio, or digitally match their audio against an authoritative database of sound recording audio, and then provide the unique ID field for the audio in that authoritative audio database, along with access for the MLC to the audio from the authoritative database. This would provide a workable process for the MLC to incorporate a single audio link for multiple DMP use records. Again though, it must be stressed that this process is never going to effectively capture all of the DMP sound recording usage reporting, particularly the growing long tail uses (Spotify claims that over 40,000 tracks are added to its service every day), and so it would remain an additional process on top of the necessary standard process.

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and troubleshooting. And the process would cause delays. The process of retrieving the links would not begin until after the matching process is done, and so making records public would either have to be delayed until the separate link retrieval was completed or initial records would have to be posted without links, forcing copyright owners to do incomplete or duplicative reviews on the claiming portal. Moreover, even if links were limited to the unmatched, a work that may not have been identified as unmatched may later go into dispute, and having to begin the process to retrieve the links once the dispute begins could delay resolution of the dispute. With respect to rolling up DMP audio into single links, that process could not even begin until the source of the authoritative audio is identified and a process for getting links from that source is identified, and then the MLC would have to build two separate workflows for serving audio. In short, the knock-on complications of adding additional, separate monthly processes that have to be designed and integrated together can manifest in numerous different ways and run real risks for disrupting the MLC's execution of its mandate. This is especially so where there is no demonstrable efficiency created by the additional processes to layer on top of regular processes.

2. How does the MLC anticipate the claiming portal will operate where the same unmatched sound recording exists across multiple services (e.g., where the recording has been identified and matched to a musical work, but a copyright owner of the musical work (or a share thereof) has not been identified and located). Will there be a single entry in the claiming portal or will there be a separate entry for each DMP that reported usage of that work, each linking to each different service?

Where DMP sound recording uses remain unmatched to any musical work, the MLC anticipates that there will be separate records in the claiming portal for each unmatched DMP use, linking to the audio being played by that DMP. Where DMP sound recording uses are matched to a musical work, but some of the shares in that work remain unclaimed, the MLC intends to display all of the DMP uses as matched to that musical work record, but would continue to maintain separate links to the audio being played by each DMP.

The reason is because, as noted in the response to Question 1 above, merging records of DMP audio with confidence would require the MLC to validate and deduplicate sound recording records, which is not part of the MLC's statutory mandate. In other words, the question appears to presume that the MLC will be deciding which unmatched sound recordings are "the same," but the MLC will not know that unless it undertakes a separate and comprehensive sound recording cross-matching process that is beyond the MLC's statutory mandate, and would be costly and time consuming to perform (and if performed might jeopardize its ability to meet the statutory deadlines for its mandated work).

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This is again not to say that the MLC will not be matching multiple sound recordings to the same musical work and listing all of those sound recordings together as associated with the musical work, which as discussed above is something that the MLC will do. Rather, it is the additional step of having the MLC be the arbiter of which sound recordings are “the same,” as opposed to just reflecting which ones match to the same musical work through similar metadata, that can be problematic.⁴

- 3. As noted in the NPRM, the Office understands the dispute to center around whether monthly reports of usage must include clickable URLs, or if DMPs may instead provide a DMP identifier, where in either scenario (at least where DMPs have such identifiers) the MLC will receive access to the sound recording actually played by the DMP. The MLC is invited to clarify if it has a different understanding. If DMPs are required to provide the MLC with a no-cost subscription suitable for the MLC and public users of the claiming portal to obtain appropriate access to unmatched tracks using these DMP identifiers, is this sufficient for the MLC’s purposes? If not, please explain why not.**

The MLC shares the Office’s understanding that the current dispute centers on whether DMPs should be required to provide URLs (which is the MLC’s position) or unique DMP identifiers (the DLC’s position), as there does not appear to be a dispute that registered users of the MLC portal should be provided access to audio without the need for a subscription. In other words, the dispute centers not on whether audio should be delivered, but on how it should be delivered.

The MLC believes full URLs are the better solution because they should provide complete information for how to access the audio. Nonetheless, the MLC could receive unique DMP identifiers if URLs are not available, provided that those identifiers provide the MLC and users of

⁴ Even if the MLC were able to develop a process to “roll up” some sound recording metadata records from multiple DMPs into a single entry, it would remain important to maintain separate audio links for the different DMP uses, if only to allow those “roll ups” to be verified. It would not be prudent to develop an unprecedented system like this, and then immediately remove all of the data (namely, the different audio links) by which the public could provide the feedback on whether the process works as intended. Beyond that, there also remains the question of what data would be reflected for a rolled up sound recording record. Choosing a single DMP to provide source data for all DMPs does not seem appropriate, but there is no separate authoritative source identified for serving the rolled up audio. And again, these roll-up processes would never be applicable for all DMP uses, given the constant stream of new and long-tail uses, and thus the standard process would have to be implemented as well. In sum, while it may be possible in the future to develop ways to deduplicate *some* sound recording information, usage reporting with audio links will remain necessary.

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the claiming portal with no-cost access to the audio played by the DMP, to be used in connection with the claiming and matching activities on the portal.⁵

The MLC appreciates that the process of deploying audio links benefits from communication and collaboration with DMPs on the details, and agrees with the Office's exhortation for the parties to "collaborate upon a solution." Indeed, the MLC has been working with the DLC and DMPs on this issue. The MLC and DLC have had productive discussions about process improvements in general, and about audio links in particular. Since the publication of the Office's NPRMs on April 22, 2020, the MLC's Operations Advisory Committee ("OAC"), comprised of representatives chosen by the MLC and DLC, has made progress in advancing the issue of the use of audio content by the MLC, and intend to continue that progress. The OAC conversations have been highly productive, addressing questions asked by the Office in its letter as well as other relevant considerations.

The MLC is open to including language in the regulation to acknowledge explicitly that details of how audio file access will be implemented may be reached by collaboration, and providing a deadline for the MLC and DLC to present a plan. To be clear, though, the MLC feels that the requirement of audio file link monthly reporting is vital to driving the collaboration forward, and that requiring such reporting in broad terms, while leaving the details to be worked out through collaboration, is appropriate and necessary.

- 4. Some commenters, including the MLC's own Unclaimed Royalties Oversight Committee, have noted other potential applications for using audio links to assist in the MLC's matching efforts beyond inclusion in the public claiming portal, such as by "employ[ing] 'fingerprinting' technology to compare unidentified audio files to known sound recordings" and "allowing the ability to match based on lyrics, melody, harmonic elements, [and] rhythmic patterns." Does the MLC have plans to use audio links outside of the claiming portal to engage in these or other matching techniques? If so, when would the MLC expect to be able to begin using links in these ways? What are the operational differences to the MLC between using direct URLs and DMP identifiers for such purposes?**

The MLC agrees wholeheartedly with its Unclaimed Royalties Oversight Committee that audio fingerprinting technology has tremendous potential to assist in reducing unclaimed accrued royalties (a point that the MLC has noted repeatedly dating from its first submission in the

⁵ To be clear, reporting of DMP identifiers instead of links would have to be accompanied by full instructions for how to convert the DMP identifiers into links so that the MLC can provide access to the audio to users within the portal.

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collective designation proceeding in March 2019, in which it noted that the MLC “is excited to explore how [audio content analysis] can be leveraged to reduce unmatched uses”).

To be clear, the MLC will not utilize the audio file links reported under these proposed regulations to undertake fingerprinting analysis. To begin with, fingerprinting analysis would require downloading the audio onto the MLC’s servers and making additional copies to create the audio fingerprints. Simply by virtue of the proposed regulation in this rulemaking, the MLC would not consider itself authorized to download and make additional copies of audio accessed through the audio links. Furthermore, an audio content analysis platform with hundreds of millions of sound recordings is a massive data processing project, and the MLC would not design such a project based on scraping audio from the reported links. Rather, the MLC will explore a more systematic and direct process with the cooperation of sound recording licensors and DMPs. This important project is one where the MLC, in the words of its Unclaimed Royalties Oversight Committee, “looks forward to seeing the industry come together to empower the MLC to use audio files to improve matching.” The MLC hopes that, beyond providing audio links for MLC portal users, this proceeding marks the beginning of that collaboration to build full audio content analysis processes.

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The MLC is available to provide further information or respond to further questions from the Office upon request. The MLC appreciates the Office’s time and attention, and looks forward to participating in the upcoming telephone conference on this matter.

Sincerely yours,



Benjamin K. Semel