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June 17, 2020

**Via email**

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

**Re: Docket No. 2019-5**  
**Summary of ex parte call regarding Music Modernization Act Implementing**  
**Regulations for the Blanket License for Digital Uses and Mechanical Licensing**  
**Collective**

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

This letter summarizes the June 12, 2020 call (“June 12 Call”) between the Mechanical Licensing Collective (the “MLC”) and representatives of the Copyright Office. The MLC thanks the Copyright Office for its time and attention in meeting with the MLC concerning the above-referenced rulemaking proceeding.

The persons participating in the June 12 Call for the MLC were Kris Ahrend (CEO), Richard Thompson (CIO), Alisa Coleman (Chair of the Board of Directors), Danielle Aguirre (nonvoting Board member), Abel Sayago (DSP Technical Lead) and counsel Benjamin Semel and Frank Scibilia.

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On behalf of the Copyright Office, Regan Smith, Anna Chauvet, Jason Sloan, Terrence Hart, John Riley and Cassandra Sciortino participated in the call.

The following summarizes the discussion:

The MLC raised its request for further rulemaking concerning topics under Section D of the Subjects of Inquiry in the [Notice of Inquiry](#) in the above proceeding (the “NOI,” Docket 2019-5, at 84 Fed. Reg. 49971)

In particular, the MLC discussed its proposed regulations as laid out in Appendix D to its [Reply Comments](#) to the NOI, posted on December 20, 2019 (“MLC Reply”).

With respect to the MLC’s proposed change to §210.20(b)(3)(i) regarding the format of reporting (MLC Reply at Appendix D, page 19), the MLC explained the need to have a consistent format used, and that the content and format should be the same as for standard monthly reporting, since a workflow will already have to be developed by the DMPs and the MLC for reporting in this format. With respect to the objection by the DLC that the new format includes data fields that the DMPs have not been required to maintain and have not maintained (DLC Reply at 24), the MLC is open to the regulation providing that, for the purposes of the reporting under this subsection, data that the law did not previously require a DMP to maintain, *and that was not maintained by the DMP and is therefore unavailable to the DMP*, does not have to be reported. However, if the DMP has maintained the data, the MLC feels that the DMP should be obligated to report it.<sup>1</sup> One of the MLC’s central mandates is to match the historical unmatched, and its ability to execute on this vital task is directly limited by the data that is reported by the DMPs.

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<sup>1</sup> With respect to the DLC’s argument that the MMA “requires the [DMP] to only provide ‘the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner’” (DLC Reply at 24, citing 17 U.S.C. § 115(d)(10)(B)(iv)(III)(aa)), the DLC’s placement of the word “only” implies a different meaning than the actual statutory language. The cited MMA provision simply says that the required payment must be accompanied by a cumulative statement of account “that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner.” The provision does not use the word “only” anywhere, and does not imply that DMPs should not report anything additional or otherwise limit the Copyright Office’s general authority under Section 115(d)(12)(A) to adopt regulations necessary or appropriate to effectuate the provisions of Section 115(d). Indeed, the MLC’s mandate to effectuate the proper disposition of accrued unclaimed royalties is a primary statutory function and focus of Section 115(d), and regulations to secure reporting that is critical to allow the MLC to discharge that function are certainly “necessary or appropriate.”

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With respect to the MLC's proposed change to §210.20(b)(3)(i)(B) (MLC Reply at Appendix D, page 19), the MLC explained that it does not believe that the data requested hereunder expands the scope of data to be required under other provisions requested by the MLC, but given the uncertainty of the outcome of other proposed regulations, this data is also referenced here. The per-play allocation or applicable rates/amounts would be captured by a requirement to follow the standard monthly reporting rules (and is also part of the information that would have been provided to the copyright owner under the prior monthly statements of account). The perpetually unique DMP transaction identifier would also already be provided with reporting that follows the standard monthly reporting rules. The MLC explained that this identifier, which is required to provide any response file to DMPs, uniquely identifies each transaction (e.g., each track and its associated streams) in the monthly report, and is required under the standard DDEX DSRF format that the MLC will employ.

With respect to the MLC's proposed change to §210.20(b)(3)(i)(C) (*Id.*), the MLC explained that reporting on partially-matched works and the respective shares that the DMP already paid is essential to allow the MLC to properly credit share owners who have been paid and avoid double payments. The MLC offered the example of a musical work for which a DMP historically showed only a 50% ownership share by Publisher A. The DMP would have historically paid 50% of the mechanical royalties to Publisher A, and 50% of the royalties would have been held as unmatched. Now imagine that the MLC has a complete ownership picture showing 50% owned by Publisher A and 50% owned by Publisher B. When the DMP provides its reporting for the 50% unmatched share, if the DMP does not also provide the MLC with information as to who was paid the matched 50%, the MLC will not know if it was Publisher A or Publisher B that was paid (or perhaps even an incorrect Publisher C). Without further reporting, the most fair result the MLC could obtain would be to pay out the unmatched share on the complete ownership picture that it has, thus paying 50% to Publisher A and 50% to Publisher B. However, this would result in Publisher A receiving 75% of the total mechanical royalties and Publisher B receiving only 25%. The problem is easily remedied by having the DMP also report the partially-matched shares and who was paid. The MLC will then know that Publisher A already received its 50% share, and the MLC could pay the 50% unmatched share entirely to Publisher B, resulting in correct payments to all copyright owners.

The MLC noted further that, for DMPs who had historically used the MLC's primary royalty processing vendor (HFA) or its affiliates for compulsory mechanical license administration, the MLC will be able to identify who was paid on partially-matched works, and thus will be able to avoid any double payments. Therefore, if DMPs who used other vendors

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did not report this information, there would be a further disparity as to the accuracy of payments depending on from which DMP the royalties emanated.

With respect to the DLC's objections that information on partially-matched share payments may involve confidentiality restrictions (DLC Reply at 25), the MLC presumes this concern relates to the amounts of royalties paid under voluntary licenses. To address this concern, for royalties paid under voluntary deals, the MLC agrees that reporting could be limited to the share percentage and the owner of the share that was paid, omitting the precise amount of royalties paid under the voluntary license terms. This would still provide the MLC with sufficient information to avoid double payments.

With respect to the MLC's proposed changes to §210.20(b)(3)(i)(D) and (E) (MLC Reply at Appendix D, page 19), the MLC explained that it is essential that the reporting on unclaimed accrued royalties match the accompanying royalty payments to the penny. Thus, accrued interest as well as any claimed deductions need to be clearly identified in the reporting. With respect to the DLC objection that the statute does not require the payment of interest, the resolution of that question is unaffected by this proposed regulation. The proposed regulation provides that "applicable" interest be reported, it does not purport to dictate where interest must be applied or what would be applicable interest. Rather, that question need not be resolved here, because a requirement to report on any interest paid over (whether such interest was required by statute or not) is important regardless. Indeed, the MLC fully expects that some if not all DMPs have kept unmatched royalty pools in accounts that have been earning interest, and expects that those DMPs will turn over the interest along with the principal, if only because it is the right thing to do. This regulation simply ensures that any such interest paid over is also reported, so that the MLC can know to which copyright owners those moneys should ultimately be paid. With respect to claimed deductions or adjustments, to be clear, the MLC does not by this provision intend to approve or condone of applying deductions, but merely wants to ensure that any such changes are properly reported, again so that the MLC can understand and exactly match the reporting to the payments.<sup>2</sup>

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<sup>2</sup> With respect to the DLC's statement that it is unaware of deductions or adjustments that would be made to accrued royalties (DLC Reply at 25), the MLC does not understand that statement, given that one page earlier in its reply comments the DLC proposed a regulation to allow just such deductions, in connection with settlement agreements. (DLC Reply at 24, A-24)

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The MLC appreciates the Copyright Office's time, effort and thoughtful inquiries, and is available to provide further information on request.

Sincerely yours,



Benjamin K. Semel