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August 21, 2020

**Via E-mail**

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Library of Congress  
101 Independence Ave. SE  
Washington, DC 20559-6000

**Re: Summary of ex parte call regarding Transparency of the Mechanical Licensing Collective and its Database of Musical Works Information (Docket No. 2020-8)**

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

This letter provides additional information in response to questions raised by the Office on the August 12, 2020 call (“August 12 Call”) between the Mechanical Licensing Collective (the “MLC”) and representatives of the U.S. Copyright Office (the “Office”) concerning the Office’s notice of inquiry concerning promulgation of regulations on the issues of transparency of the MLC and the public database of musical works information (Docket No. 2020-8).<sup>1</sup> The MLC has previously submitted a letter summarizing the portions of the August 12 Call concerning other topics. The MLC thanks the Office for its time and attention in meeting with the MLC concerning the above-referenced rulemaking proceeding.

The persons participating in the August 12 Call for the MLC were Kris Ahrend (CEO), Richard Thompson (CIO), Alisa Coleman (Chair of the Board of Directors), Danielle Aguirre

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<sup>1</sup> See Notification of Inquiry, *Transparency of the Mechanical Licensing Collective and its Database of Musical Works Information*, 85 Fed. Reg. 22568 (April 22, 2020).

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(Board member), Abel Sayago (DSP Technical Lead) and counsel Benjamin Semel and Frank Scibilia.

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

The following addresses the topics raised on the call concerning Docket No. 2020-8.<sup>2</sup>

1. Ownership of data.

The MLC agrees that the data in the public MLC musical works database is not owned by the MLC or its vendor. The data in this database will be accessible to the public at no cost, and bulk machine-readable copies of the data in the database will be available to the public, either for free or at marginal cost, pursuant to the MMA. *See* 17 U.S.C. §115(d)(3)(E)(v).

2. Population of the musical works database.

The Office requested further information concerning how information in the musical works database will be populated. The MLC explained that for uses where the sound recording has not yet been matched to a musical work, the sound recording data received from DMPs will be used to populate the database, as that is the only data the MLC will have for such uses. For uses where the sound recording has been matched but all musical work ownership shares have not been claimed and are not known, the database will contain the sound recording data received from DMPs, organized and displayed under each individual musical work to which the MLC matched that sound recording usage data. (The musical works data will be sourced from copyright owners.)

As the MLC has previously noted, receiving from DMPs the unaltered sound recording data they originally received from the corresponding sound recording owners would both improve the MLC's ability to match musical works to sound recordings, as the MLC would have fewer metadata matches to make (i.e., between musical works and the unaltered data for an associated sound recordings), and would better allow the MLC to "roll up" sound recording data under entries that are more likely to reflect more "definitive" versions of that sound recording data (i.e., the unaltered data originally provided by the sound recording owners).<sup>3</sup> However, the

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<sup>2</sup> Except where noted, reference or citation to public comments herein refer to comments submitted in Docket No. 2020-8.

<sup>3</sup> As the MLC has also noted, "rolling up" different versions of the data for individual sound recordings under a single entry that reflects sound recording metadata that is different from the sound recording metadata received from DMPs (e.g., such as sound recording data received from a third-party like SoundExchange) would require the MLC to match that sound recording data

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MLC still needs to show the disparate versions of that sound recording data used by the DMPs and shown on their commercial services in order for copyright owners to be able to see how their works were matched to the sound recordings as they are displayed on those commercial services, so they can claim their royalties for the usage of those recordings on those services.

Thus, to be clear, for sound recordings that are matched to a specific musical work and for sound recordings that are unmatched, the MLC intends to include sound recording information in the disparate forms received from the DMPs that provided that information. The MLC intends to show the provenance of each such row of sound recording data (*i.e.*, the DMP from which the MLC received the sound recording data concerned), including both the name of the DMP and the DPID for that DMP.

The Office asked about conflicting sound recording information and whether the MLC will take steps to verify the accuracy of sound recording information before making it available in the public database. As noted above, the MLC needs and intends to display all of the sound recording data in the disparate forms received from the DMPs, as that is ultimately how the MLC provides transparency to copyright owners regarding how their musical works were actually exploited by DMPs. The musical works database is not intended to be an authoritative source of sound recording information *per se*; its purpose is to aid in the matching of sound recordings used by DMPs to the musical works embodied therein, so that the owners of those musical works can be paid.

The Office also asked whether the MLC member portal will be populated with the same information as the public database. The MLC confirms that the musical works data made publicly-available and the musical works data made available in the MLC portal will be the same. The MLC intends to design and populate the portal in a manner that is user-friendly and efficient (e.g., the MLC is looking into providing ways for users to simultaneously claim their works in multiple recordings), and that provides the greatest amount of useful information to those seeking to claim works.

Finally, the Office asked whether the data in the public database will be the same data used by the MLC for computing and distributing royalties.<sup>4</sup> The MLC confirms that the musical

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to the MLC's musical works data, which would result in incremental work for the MLC. Such a "rollup" also runs the risk of losing information that may be valuable to the matching process. *See, e.g.*, MLC's July 24 letter re: ex parte call concerning altered metadata, at 2-4; MLC's June 15 letter re: ex parte call concerning audio links, at 3 n. 3.

<sup>4</sup> The Office asked whether it would be the same data used by the MLC for "royalty payments." We presume the Office meant royalty computation and distribution. Obviously, tax and bank information used to pay the royalties would not be made public.

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work and sound recording data used by the MLC to allocate royalties to copyright owners will be the same musical work and sound recording data that is made available in the public database.

3. Data provenance.

As noted above, the MLC intends to show the provenance of each row of sound recording data, including both the name of and DPID for the DMP from which the MLC received the sound recording data concerned. However, as the MLC noted in its comments (at 11-12), the MLC should be given sufficient flexibility to determine the best and most operationally effective way to ensure the accuracy and quality of data in its database, rather than requiring it to identify the source of each piece of data contained therein, which presents operational obstacles, and may not be the best way to ensure data quality and accuracy. The MLC intends to put checks in place to ensure data quality and accuracy. (*Id.*)

4. Public testing of portal.

The MLC still intends to publicly roll out the portal for beta testing at or shortly after the end of the third quarter of this year. There will also be alpha testing (to a smaller group) prior to beta testing.

5. Historical data.

The MLC will maintain an archive of data provided to it after the license availability date (“LAD”) and that has subsequently been updated or revised (e.g., where there is a post-LAD change in ownership of a share of a musical work), and the MLC will make this historic information available to the public.

6. Additional database fields.

The Office asked how Label Name and PLine would be labeled in the public database. The MLC noted that this will be determined by DDEX. While the MLC may have some influence over that decision, it is ultimately at DDEX’s discretion.

ARM asked that Label Name be identified as “U.S. Releasing Party (if available).” ARM also asked that PLine be identified as “Sound Recording Owner of Record (who may *not* be the party that commercializes the recording; note that this party may change over time.” (ARM comments, at 5.) As noted, the names or labels assigned to these fields in the public database is not ultimately the MLC’s decision, but, in any event, ARM’s suggested labels seem more like descriptors or disclaimers than labels, and the MLC intends to make available in the database a glossary or key, which would include field descriptors similar to the labels suggested by ARM.

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The Office also asked whether the MLC is planning on making the UPC field available in the database. The MLC does not currently intend to include the UPC field (which is a product field) in the initial versions of the portal or public database (which focus on providing the data needed for matching and claiming), but will consider how it might make it available in future versions of the portal if MLC stakeholders consider such product information relevant.

The Office asked whether opus and catalog numbers for classical compositions would be included in the database. The MLC is working with DDEX to determine if it is possible or appropriate to add Opus Number and (Composer) Catalogue Number to the data specifications.

The Office asked whether “medleys and samples” would be included in the database. Because medleys and musical works that sample other musical works are unique derivative copyrighted works, each will be included in the database as a unique composition. The MLC does not plan at this time to show any relationship between any derivative work and any other work, including the original work on which it is based, as each derivative work is a unique work with its own identifying information and that may have different copyright ownership or shares. The Office noted that SoundExchange’s comments (to the initial omnibus NOI) suggested that information regarding medleys and samples be included because they “may result in one or more owners of the preexisting work[s]” included in the medley or the sample “having an ownership interest in the new work.”<sup>5</sup> The MLC’s approach – treating each medley or work that incorporates a sample as a separate musical work, as to which ownership will be separately claimed and identified – solves this concern.

The Office asked whether unique identifiers assigned by DMPs would be included in the database if reported by DMPs. The MLC does intend to make available unique identifiers reported by the DMPs in the public database.

The Office asked how overclaims and underclaims would be shown in the database. The MLC intends to mark overclaims as such and show the percentages and total of all shares claimed so that overclaims and underclaims will be transparent.

## 7. Data Formats and Standards.

As the MLC stated in its initial comments on the omnibus NOI (at 25-26), the MLC will need time to assess the various data standards that are available and that are being used across the industry, and to test and provide implementation assistance with respect to those standards that are selected, given the various degrees of sophistication of those parties that will be providing data to the MLC. Because standards are continuously evolving and being updated, it is imperative that the MLC have the flexibility to determine these types of formats and standards,

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<sup>5</sup> SoundExchange initial comments on omnibus NOI (Docket 2019-5), at 9.

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and to make appropriate adjustments or alterations as necessary or as standards or technology evolves. For these reasons, the MLC proposed the data formats and standards language annexed as Appendix F to its initial comments on the omnibus NOI, and included that same language in Appendix B to its comments on the NOI in this specific proceeding. The MLC continues to believe that the proposed language at Appendix B (at §(b)(1)) is needed to provide that necessary flexibility.

8. Bulk Access/API.

The MLC continues to agree with the Office's tentative decision that method of access should be determined by the MLC, subject to statutory requirements. (MLC Comments, at 14, citing 85 Fed. Reg. at 25578.) The Office asked the MLC if it is currently planning to provide bulk access to the public data. The MLC does plan to provide bulk access to the public data and will determine how best to do so once it has completed its initial development and rollout of the portal. One of the solutions the MLC is contemplating is to provide bulk access to the publicly-available data via an API.

9. Engagement with foreign CMOs.

The MLC has repeatedly stated that it will engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators. In fact, in its reply comments on the omnibus NOI (at 44), the MLC stated: "The MLC intends to operate on a non-discriminatory basis, and all natural and legal persons or entities of any nationality are welcome to register their claims to works with the MLC."

10. Annual Report.

The Office asked the MLC to identify where it has disclosed information regarding its vendor selection process and vendor performance. As the MLC noted in its comments on this NOI, the MLC has publicly disclosed substantial details of the process by which it selected its primary technology and royalty administration vendors in its designation proposal, and attached thereto copies of its RFI and RFP. (*See* MLC Comments, at 5, citing MLC Designation Proposal at 54-57, and Exs. 3 & 4 thereto.) The MLC noted on the call that the MLC has disclosed as much as it can disclose without violating trade secret and confidentiality restrictions. Requiring disclosure of RFP responses would conflict with confidentiality agreements, would prejudice the MLC's ability to obtain full information in future RFPs, and would go beyond any disclosure required by the regulations governing the Section 114 collective, contrary to Congress's expectation that the MLC's annual report is to look "similar to [reports] of other collectives." (MLC Comments, at 3, citing legislative history.)

With respect to vendor performance, as the MLC noted in its comments (*id.* at 6), the performance of its primary vendor for matching and royalty processing will be manifest in



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various areas of the MLC's annual reporting required by statute, including the disclosure of "aggregated royalty receipts and payments," and its report on "efforts to locate and identify copyright owners of unmatched works (and shares of works)." The MLC will also need to report on its "administrative and technological capabilities to perform the required functions of the collective," in connection with the process of re-designation. 17 U.S.C. 115(d)(3)(A)(iii).

The extensive annual reporting provisions in the statute, as well as those required in the MLC's other public filings, including on IRS Form 990, provide for the reporting that would be meaningful to interested parties, including the songwriters and copyright owners that the MLC represents and that govern it. (*See* MLC Comments, at 3-5.) Further regulation regarding the content of the annual report is not needed.

With respect to vendor disclosures, the statute also provides that the annual report is to set forth information regarding only those "expenses that are more than 10 percent of the annual mechanical licensing collective budget." 17 U.S.C. 115(d)(3)(D)(vii)(I)(gg). This definition will include the MLC's primary vendor, and thus provide even further disclosures.

While, again, the MLC does not believe further regulation in this area is necessary or appropriate, if the Office decided to further regulate disclosure of vendor selection information in the annual report, the MLC proposes the following regulatory language to comport with the statutory language and ensure that the MLC can protect confidential information and run effective RFP processes:

*Mechanical licensing collective annual report.* The information included in the annual report shall be the information required in 17 U.S.C. 115(d)(3)(D)(vii)(I), as well as information sufficient to describe the process by which any vendor (as defined below) was selected. Such description shall include a general description of the RFI and/or RFP process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP, and a general statement of the criteria used for selection. In connection with the disclosure described in this paragraph the mechanical licensing collective shall not be required to disclose any vendor responses to the RFI and/or RFP, any details or portions of any of those responses, or any other confidential or sensitive business, technological or financial information of any vendor, the mechanical licensing collective, or other third party. For the purposes of this paragraph, "vendor" means any vendor who is both performing services related to the mechanical licensing collective's matching and royalty accounting responsibilities and who received compensation in an amount greater than 10% of the mechanical licensing collective's budget.

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

Respectfully submitted,



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