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**Via email**

Suzanne Wilson, General Counsel and Associate Register of Copyrights  
Jason Sloan, Assistant General Counsel  
John R. Riley, Assistant General Counsel  
Jalyce Mangum, Attorney-Advisor  
United States Copyright Office (the "Office")  
Library of Congress  
101 Independence Ave, S.E.  
Washington, D.C. 20559-6000

**Re: Summary of *ex parte* meeting regarding SNPRM concerning Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the MMA**

Dear Mses. Wilson and Mangum and Messrs. Sloan and Riley,

This letter summarizes the January 17, 2024 meeting ("January 17 Meeting") held via Zoom videoconference between the National Music Publishers' Association ("NMPA") and representatives of the Office. Danielle Aguirre and I participated on behalf of NMPA, and Suzanne Wilson, Jason Sloan, John Riley, and Jalyce Mangum participated on behalf of the Office. The following was discussed:

- The parties discussed the Office's potential next steps following the SNPRM. NMPA shared thoughts on a path forward and stressed the concerns that publishers and songwriters have regarding delays in payment while issues related to the NPRM and the SNPRM are resolved.
- The Office acknowledged that it understands the stakeholders' desire for expediency in reaching a final rule and their concerns regarding the impact any rule might have on private contracts.
- The parties discussed potential revisions to the proposed rule in the SNPRM. NMPA explained that a rule requiring payment to the owner at the time of use ("time of use rule") could have unintended consequences and create unnecessary complexity with adverse effects on the industry, particularly if not limited to the termination context. If not narrowly tailored, such

impact would extend beyond even the blanket license. NMPA further explained that the MMA does not clearly require implementation of a time of use rule. In any event, the Office need not answer this question because the MLC's process of whom to pay (outside the termination context) is working, without apparent objection by stakeholders. Moreover, far-reaching questions of copyright law should be left to the courts to decide.

- NMPA and the Office discussed examples of problems that could arise and industry norms that could be upset by a default time of use rule, with or without caveats. NMPA noted that problems are likely to arise if a new rule differs from industry participants' expectations as to whom royalty payments are distributed, particularly where such expectations have been memorialized in private contracts. The Office noted that it understands NMPA's concerns about upsetting industry norms and contracts.
- NMPA explained that it believes the best path forward would be to revert to the original focus of the NPRM relating solely to termination and to expedite the final rule. NMPA reiterated that while it does not believe that the original proposed rule can or should be applied retroactively, there is nonetheless clear industry support for the fundamental purpose of the NPRM: to provide that post-termination copyright owners are to receive blanket license royalties for sound recordings notwithstanding the derivative works exception to statutory termination.

To that end, NMPA noted that it has drafted proposed regulatory language to share with the Office.<sup>1</sup> NMPA based its proposed language on the Office's original proposed rule annexed to the NPRM, making revisions primarily to explicitly limit the rule to statutory terminations in the context of the blanket license. In addition, NMPA's proposed rule would apply prospectively only. NMPA's proposal is a compromise aimed at reaching a final rule as quickly as possible, in that it applies a time of use rule solely in the termination context. NMPA believes, however, that a rule providing for payment to the owner at the time of distribution in all contexts is the more appropriate one for the music publishing industry.

NMPA asked that, to the extent the Office continues with a retroactive rule, the Office work with the MLC to ensure the MLC can operationalize any deadlines for retroactive adjustments and/or corrective payments. NMPA also requested that any retroactive component in the final rule not impact the MLC's ability to pay out adjustments from the Phono III period. Phono III adjustments and payment of historical matched royalties from the Phono III period are an important priority to publishers and songwriters given the significant amounts estimated to be distributed.

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<sup>1</sup> As requested by the Copyright Office, NMPA's proposed rule is attached to this *ex parte* letter.

- The parties discussed the MLC's request for guidance from the Office and its proposed regulatory language. NMPA conveyed its desire for the Office to provide any guidance the MLC has requested. NMPA noted that it believes that the Office can provide such guidance to the MLC while still limiting the final rule to the termination context. NMPA does not have a position on the MLC's regulatory proposal.
- Finally, the parties discussed issues related to how the MLC should handle disputed ownership and situations where the MLC has already made a payment to a party that is ultimately not the correct party. NMPA generally indicated that the MLC is the best party to answer these questions. However, NMPA pointed out that: 1) there must be a focus on whether the MLC can operationalize any particular rule, and 2) the MLC's duty to pay the correct party can only extend to the ownership/payee information contained in its records.

NMPA thanks the Office for its time and attention during the January 17 Meeting, as well as its efforts in this rulemaking process.

Sincerely,



Kerry M. Mustico

SVP, Legal and Business Affairs

cc: Rhea Efthimiadis, USCO, Assistant to the General Counsel  
Danielle M. Aguirre, NMPA EVP and General Counsel

**PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS**

- 1. The authority citation for part 210 continues to read as follows: Authority: 17 U.S.C. 115, 702.
- 2. Amend § 210.29 by adding paragraph (b)(4) to read as follows:

**§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.**

\* \* \* \* \*

(b) \* \* \*

(4) Subject to 17 U.S.C. 115(d)(3)(J), where termination of one or more grants of rights subject to 17 U.S.C. 115 in or to a musical work (or share thereof) has been validly effected pursuant to 17 U.S.C. 203 or 17 U.S.C. 304, resulting in the reversion of such rights covered by such grant(s) to the author, authors, or other persons owning termination interests under 17 U.S.C. 203 or 17 U.S.C. 304, the following rule shall apply to the distribution of royalties pursuant to a blanket license:

(i) The persons owning termination interests or their assignee(s) shall, after the effective date of termination, be considered the copyright owner(s) of such musical work (or share thereof) and, subject to the notice requirements in § 210.30(c)<sup>1</sup>, entitled to all royalty payments and other distributable amounts (e.g., accrued interest) for the uses of that musical work (or share thereof) which occur during or after the monthly reporting period during which the effective date of termination with respect to such musical work (or share thereof) occurs.

(ii) The derivative works exception contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A) shall not apply to any blanket license and no individual or entity shall be construed as the copyright owner of a musical work (or share thereof) with respect to any blanket license uses based on such exception. As used in this subsection (b)(4), the term “uses” means all covered activities engaged in under blanket licenses during that monthly reporting period as reported by blanket licensees to the mechanical licensing collective.

(iii) The mechanical licensing collective shall implement a policy for accepting and processing notices of statutory termination, and distributing royalties in connection therewith, that is not inconsistent with this section.

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<sup>1</sup> Note: Reference is made to § 210.30(c) as provided in the Proposed Rule submitted by the MLC in its Reply Comments on the Supplemental Notice of Proposed Rulemaking.