

**Before the
U.S. COPYRIGHT OFFICE
Library of Congress
Washington, DC**

In the Matter

Music Licensing Study

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Docket No. 2014-03

COMMENTS OF DIGITAL DATA EXCHANGE, LLC

Digital Data Exchange, LLC (“DDEX”) hereby submits these Comments in response to the Copyright Office’s Notice of Inquiry dated March 17, 2014 in the US Federal Register, Volume 78, Number 51. In particular these Comments focus on questions 22 (regarding Data Standards) and 24 (other pertinent issues).

1 Introduction to DDEX

DDEX was formed in 2006 by a consortium of leading global media companies, musical work licensing organizations, digital service providers and technical intermediaries. A list of DDEX’s current members and activities can be found at www.ddex.net.

The members of the consortium realized that the developing legal digital music industry needed to adopt standards related to the way it communicated information about works, tracks and products (including ownership and sales information). This “metadata” needs to be communicated in a common format and then delivered between companies in a common way so that each party requiring access to the metadata can understand and automatically process it. In the early days of the digital music industry, companies were each developing their own formats and methods of delivery. This meant that any organization wishing to transact with more than one other company had to be able to handle multiple formats delivered in multiple ways. As the music industry transitioned from a (comparatively) high value, low volume model to a low value, high volume one, this way of formatting and communicating metadata was expensive and inefficient.

Therefore DDEX has standardized the formats in which information is represented in XML messages (and, in some cases, in “flat file” formats) and the

method by which the messages are exchanged between business partners. Now, DDEX is becoming the de facto standard for the formatting and delivery of metadata relating to the digital music supply chain. However, what has become clear over the last couple of years is that DDEX's standards have equal application in the physical media supply chain.

In Section 2 of these Comments seeks to address question 22 relating to identification standards: "*Are there ways the federal government could encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process?*".

2 DDEX and other Standards

One of the prime tenets of the development of DDEX messaging standards is that the messages should allow, and indeed encourage, the use of other relevant standards. This is particularly the case with unique identification standards relevant to the music industry such as the International Standard Work Code (see <http://www.iswc.org>) for musical works and the International Standard Recording Code (see <http://isrc.ifpi.org>) for sound recordings as referenced in the Notice.

DDEX's standards also reference the appropriate unique identification standards relevant to other media industries including the International Standard Audio-visual Number (see <http://www.isan.org>), the Entertainment Identifier Registry (see <http://eidr.org>) and the International Standard Book Number (see <http://www.isbn.org>).

DDEX believes that the use of such global identification systems is critical to the effective communication of information between music industry partners. The identifiers in such systems are rarely of any value if the identifies are not communicated amongst business partners. DDEX's standards enable such communication in standard formats for a range of transactions across the digital music supply chain. DDEX would therefore recommend to the Copyright Office that it "encourage the adoption of universal standard for identification" but also encourage the communication of such identifiers through messaging.

The remaining sections of these Comments seek to address question 24: “*Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study*”.

3 DDEX Standards

The initial focus for DDEX was developing standards that enabled the communication of information, usually between record companies and digital retailers, about products being offered to consumers, and information about what had been sold or used. Thus early versions of the Electronic Release Notification Message Suite (“ERN”) and the Digital Sales Report Message Suite (“DSR”) were developed. Early attempts to implement these standards showed that more work was required and so further developments followed until late 2008 when the message suites in the form they are now being implemented were published. DDEX recently published the Electronic Release Notification Message Suite v3.7 and the Digital Sales Report Message Suite v4.3.

Although these standards were created for a specific purpose as described above, they have also been used for other purposes. Most notably the ERN has been used to send product data from record companies to music licensing companies (such as SoundExchange¹ or PPL in the UK or SCPP in France) and also for sending product data from record companies to metadata companies (such as Gracenote or Rovi).

In its eight years of existence DDEX has published many other standards information about which can be found at <https://kb.ddex.net>.

Any organization wishing to use any of the DDEX standards is required to apply for a DDEX implementation license, which is free of charge. The license is obtained by simply completing the application form² and, through a “click-through” process, agreeing to the license terms³. Currently DDEX has issued over 1,600 such licenses, which indicates the widespread implementation of its standards.

4 Musical Work Licensing Message Suite

One of the standards developed by DDEX that is relevant to the Study is the Musical Work Licensing Message Suite (“MWL”), currently available in

¹ It is recognised that strictly speaking SoundExchange is not a “licensing” organisation but for these purposes it undertakes basically the same processes as the similar organisations in other territories.
² See <http://ddex.net/content/implementation-licence-application-form>.
³ See <http://ddex.net/apply-ddex-implementation-licence>.

version 2.1. The purpose in creating the standard is to provide a suite of messages to enable a uniform mechanism that can be used for the communication of musical work, sound recording and product/release-related information between music industry value chain participants, to enable the efficient data management of the licensing of musical works. However, the choice of the information flows that are used between business partners and the choice of individual messages from the standard that are used is a matter for agreement between the potential licensees and the potential licensors, whether this occurs on a bi-lateral basis or as part of any collectively negotiated procedures. The standard is therefore “without prejudice” to any such negotiations that might lead to the establishments of such information flows or choices of message.

The suite of messages contained in the standard provide a mechanism for release providers (usually record companies) or release distributors (typically digital or mobile service providers) to obtain licenses or statements of rights claims from parties that hold relevant rights in the musical works for (i) the creation of the release embodying the musical work(s) and/or (ii) exploitation of the releases embodying the musical work(s). These rights holders are typically music rights societies or music publishers. Sending or receiving a message from the musical works licensing message suite standard does not imply, however, that all legal obligations relating to the creation and exploitation of releases embodying musical work(s) have been met.

The table below summarizes when each message is sent. The table also indicates who sends which message to whom.

Message Name	Initiating Event	Sender	Recipient
1 LicenseOrClaim RequestMessage	A licensee wants to create and/or use one or more releases embodying one or more musical work(s) for which a licence may be required or for which a claim needs to be notified under an existing licence.	Licensee ⁴	Licensor ⁵
2 LicenseOrClaim Request Cancellation Message	A licensee has previously sent a LicenseOrClaimRequestMessage, but has since realised it does not need such Licence(s) or notification of a claim under an existing licence.	Licensee	Licensor
3 Licensing Information RequestMessage	A licensor has received one or more LicenseClaimRequestMessages and determines that, before a licence can be issued or a claim notified under an existing licence, additional information needs to be provided by the licensee.	Licensor	Licensee

⁴ The term here is to include prospective licensors.

⁵ The term here is to include prospective licensees.

Message Name	Initiating Event	Sender	Recipient
4 LicenseOrClaim Message	A licensor has received information that indicates that one or more licences for one or more rightshares can or needs to be issued or one or more claims for one or more rightshares can or needs to be notified under an existing licence to a licensee. Note: this includes the conveyance of a refusal to issue one or more licence(s) or to notify one or more claim(s).	Licensor	Licensee
5 LicenseOrClaim Confirmation Message	A licensee has been issued with one or more licence(s) or notified of one or more claim(s) under an existing licence for one or more rightshares and wants to indicate to the licensor whether the licence(s) are accepted as issued or not, or, whether the claim(s) are acknowledged as notified or not.	Licensee	Licensor
6 LicenseOrClaim Revocation Message	A licensor has previously sent a LicenseOrClaimMessage, but has since realised that the licence(s) issued need to be revoked or the claim(s) notified under an existing licence need to be withdrawn.	Licensor	Licensee
7 LicensingProcess StatusRequest Message	A licensee has previously sent a LicenseOrClaimRequestMessage, but has not received response(s) from the licensor to all requests for issuance of licence(s) or for notification of claim(s).	Licensee	Licensor
8 LicensingProcess StatusMessage	A licensor has previously received a LicensingProcessStatusRequest-Message, and wishes to communicate to the licensee the status of the processing of each request for issuance of licence(s) or for notification of claim(s). Note: this message can also be sent independently of receipt of a Licensing-ProcessStatusRequestMessage	Licensor	Licensee

4.1 Implementations of the MWL

In late 2008, a proposed class action was initiated in Ontario, Canada, by the estate of the late Chet Baker as the representative of a proposed class consisting of songwriters and music publishers whose musical works have been embodied in sound recordings released or distributed in physical formats in Canada by the four major record companies, Sony BMG Music (Canada) Inc., now Sony Music Entertainment Canada Inc., EMI Group Canada Inc., Universal Music Canada Inc., Warner Music Canada Co., in circumstances where the record companies had allegedly failed to secure the necessary mechanical licenses and

for which royalties had been accrued on the record companies' so-called "pending lists".

Settlement agreements were reached between the original plaintiffs and the defendant record companies in July, August and December 2010, which involve the payment of defined amounts of unpaid pending list royalties into a settlement trust to be administered by CMRRA/SODRAC Inc. ("CSI"), with the proceeds of the settlement to be paid to or for the benefit of rights holders of musical works.

As part of the settlement agreements, it was agreed in summary that electronic exchange of data in a standard format between record companies and CSI to support license requests and license data going forward would be used. As a result of other settlement terms, the use of a standard format enabled the creation of an end-to-end picture of the life cycle of licensing in relation to product released by the major labels.

DDEX's MWL message suite was identified, by the companies that are party to the settlement, as a suitable basis for the introduction of a standard format for the exchange of the relevant information. CSI recognized that additional work would be necessary to ensure the messages captured all of the required elements to support licensing of physical products in Canada. Therefore work was carried out with CMRRA, SODRAC and the labels to gather each organization's requirements, and subsequently identify and document the necessary changes to the messages. An updated version of the standard was developed, along with a corresponding message choreography, through the collaboration of all parties. A message choreography was necessary because the process was more complex than originally thought. Flexibility was a key factor in ensuring timely implementation by all the relevant parties. The DDEX MWL has been live in Canada since January 2013.

4.2 Current MWL Developments

Partly prompted by the success of the implementation in Canada, similar participant organizations in the US have requested that DDEX investigate whether these standards could be applied to the US licensing process, amended as necessary. In addition, an investigation was requested in respect of the process of communication of Letters of Direction, which has direct relevance to the process of licensing.

Therefore DDEX held an open meeting on 25th October 2013 in New York to which were invited representatives of musical work rights owners and administrators, record companies and digital service providers, with specialist

knowledge of the licensing process in the US, to commence the requirements gathering process. Subsequently conference calls were held with most interested parties to cover these processes in more detail to enable the development of a requirements document. The requirements document set out the aggregate requirements as a basis for comparison with the current version of the MWL and the Canadian implementation. These documents will now form the basis for the further development of the DDEX MWL standard for the licensing process in the US.

Following analysis of the requirements document, DDEX has created a Working Draft specification that will be reviewed, developed and finalized during the rest of 2014.

5 Music Licensing Companies' Message

This standard provides a suite of messages that give a uniform mechanism for the exchange of sound recording, music video and related sales data between Music Licensing Companies (“MLCs”). The exchange of such data between MLCs is required to meet the requirements of bilateral agreements between the MLCs that administer the rights of independent producers and performers in several territories.

The standard provides a mechanism for an MLC to claim interest in a Sound Recording to a second MLC and to revoke and request such claim statements. The standard also allows MLCs to report usage and revenue information to other MLCs. The standard comprises five messages:

- Declaration Of Revenue Message: a message containing a declaration of Revenue from the Usage of Releases;
- Declaration Of Sound Recording Rights Claim Message: a message containing details of a Sound Recording;
- Request Sound Recording Information Message: a message containing a request for a declaration of Sound Recordings;
- Revoke Sound Recording Rights Claim Message: a message in which a claim, typically communicated via a Declaration Of Sound Recording Rights Claim Message, is revoked;
- Sales Report Message: a message used by one MLC to inform a second MLC about unit sales of Releases in electronic or physical formats.

A number of MLCs around the world have implemented some or all of the above messages.

6 Conclusion

The adoption of standards cannot, generally, be enforced, although in certain key areas (e.g. public health) governments do make standards obligatory. The media industries are clearly not such a key area. However, governments can play a vital role in encouraging involvement in and promoting the adoption of consortia developed standards such as those developed in DDEX.

As the appropriate US federal agency, the Copyright Office can undertake such a role of encouragement and promotion role. The reason why such a role would be valuable is that some of the issues facing rights owners and rights users have nothing to do with the commercial licensing issues but the administration of licenses once they have been negotiated. There can be a heavy administrative burden in administering license agreements whether they are bi-lateral, collectively negotiated or statutory. This is a particular problem in the digital world where transaction volumes have increased from the numbers in the physical world and continue to grow incrementally and where each such transaction has a low revenue value. In such circumstances voluntary standards can play a vital part in facilitating and automating the administration.

However, it is acknowledged that for many small and medium enterprises implementing standards can be a daunting task or may simply not be financially viable. There may therefore be a role for the Copyright Office in encouraging the development of a market for technology companies (in this context separate from technology companies who are also rights users) to provide standards based administrative services to SMEs in the media industries. The economies of scale that such companies can provide mean that such services can be provided at a cost to SMEs that is in appropriate proportion to the revenue generated through such administrative services.

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