



COLLECTIVE RIGHTS MANAGEMENT PRACTICES AROUND THE WORLD

A Survey of CMO Practices to Reduce the Occurrence of
Unclaimed Royalties in Musical Works

Commissioned by the U.S. Copyright Office

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This report is provided to, and was commissioned by, the U.S. Copyright Office in an effort to provide background information regarding practices of other collective rights management organizations (CMOs) for the U.S. Copyright Office, the U.S. Comptroller General and the general public to consider. The report is provided in connection with the U.S. Copyright Office’s ongoing policy study, as directed by the Music Modernization Act (MMA), regarding best practices that the Mechanical Licensing Collective (MLC) may implement to effectively reduce the occurrence of unclaimed royalties.

1. INTRODUCTION

The Music Modernization Act requires, in part, the following.

The Register of Copyrights must solicit public comments from music industry participants and other interested parties on what they believe would be best practices for the MLC to:

- Identify and locate copyright owners of musical compositions (referred to as “works” in this report) for which unclaimed royalties have accrued and are being held by the MLC;
- Encourage the copyright owners of those works to claim those royalties through the MLC; and
- Reduce the incidence of such unclaimed royalties.

The MMA provides, in connection with royalties that remain unclaimed after a specific period of years, that distribution of accrued royalties shall be paid to copyright owners of musical works identified in the records of the MLC, following a public notice period, and in accordance with the law and policies and procedures adopted by the MLC. The copyright owners’ shares of unclaimed royalties accrued for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative market shares of copyright owners as reflected in usage reports from digital music service providers (DSPs) for covered activities for the periods in question. The data on the use of the works (“usage data”) that is to be considered must include data provided by the DSPs to the MLC as well as usage data in connection with download licenses and related to copyright owners that entered into voluntary licenses for covered activities, to the extent such information is available to the MLC.

After receiving the public comments, the Register of Copyrights, in consultation with the U.S. Comptroller General, must submit a report about the proposed best practices to the House of Representatives and the Senate Judiciary Committees.

The law requires that the MLC then “carefully consider, and give substantial weight to, the recommendations” submitted by the Register of Copyrights to the Congressional committees when establishing the procedures of the MLC with respect to identifying and locating copyright owners of works and distributing unclaimed royalties.

In an effort to provide to the U.S. Copyright Office and interested members of the public substantive and useful information from experienced organizations that have been working with similar issues for many years, this report provides summaries of activities, efforts and experiences of other CMOs around the world in connection with these specific or similar issues.

This report does not provide advice or recommendations. Rather, the report is a compilation of information provided to the author of this report from cooperating CMOs, which may be used if or as needed, to better inform all decision makers, including the commenting public.

2. REPORT PREPARATION

This report is intended to provide information on the experiences and operations of other CMOs as well as options, based on their operations, for decision makers to consider in connection with operating the MLC. To be able to share these experiences, the research for this report consisted of enlisting the cooperation and participation of many CMOs around the world that represent mechanical and/or performing rights in musical works or public performance rights (neighboring rights) in recordings. The information in this report was compiled from January through April 2020.

In an effort to obtain and provide as much helpful information as possible for this report while respecting possible privacy and competition concerns, certain representations were made to CMOs when requesting their participation. One condition of cooperation was that the identities of the participating CMOs would be kept in confidence as well as the exact number of participating CMOs, the latter to further protect their identities.

Another condition was that the author would refrain from sharing with anyone the specific responses from each CMO since some of the information may not be publicly available or for other reasons. To meet this condition, the author agreed with the CMOs to gather information from each CMO in a journalistic manner (i.e., protecting the identities of the specific sources), compile all responses into summaries per category of questions (i.e., combining similar responses into one summary), and then prepare the report based on those summaries. The completed report would then be delivered to the U.S. Copyright Office.

The author represents and believes, based on 30 years of experience working in the international music industry, that the number and locations of the participating CMOs and the detail provided in written and oral responses, which make up this report, represent significant and substantive information on the specific issues. In addition, the information was obtained from multiple CMOs and experienced individuals with CMOs from around the world. The author did not receive or include input from anyone other than those participating CMOs and experienced individuals employed by CMOs (i.e., no songwriters, publishing companies or DSPs were asked for, or provided, any information or input for this report), with the exception that

the author in some instances included relevant information obtained in the past from various CMOs around the world not in connection with this report.

Note that CMOs are referred to by various names throughout the music industry: performing rights organizations (PROs) or societies; mechanical rights societies or agencies; authors' rights societies; copyright societies; neighboring rights societies or music licensing companies; collecting or collective rights societies; and collective rights management organizations (CMOs). In this report, those entities representing musical works (whether performing rights, mechanical rights or both) and those entities representing public performance rights in recordings (neighboring rights) are together called CMOs.

Please note that some CMOs are set up as membership organizations while others are set up to have contractual agreements with affiliates. This report refers to both members and affiliates simply as CMO members.

Please note also that this report includes a reference to CISAC. Most performing rights organizations and mechanical rights societies around the world belong to the Paris-based group CISAC, whose membership also includes societies representing other types of authors in the arts (film, graphic and others).

Please note that over the decades, CMOs have entered into bilateral, reciprocal agreements with other CMOs around the world to help them license and collect fees for uses of their members' musical works or recordings in other countries. They are 'bilateral' because each contract is only between two societies. They are 'reciprocal' because each agreement grants the signing CMOs rights to the works or performances represented by the other CMO's members.

Finally, note that when CMOs do not receive and/or process music usage reports identifying every work that was used, a CMO may distribute royalties based on a 'sample' of the works that were used in the same way or by using an 'analogy' to determine, essentially, which works should be assumed to have been used.

For example, hypothetically, if a CMO does not receive a report on every work performed over a certain terrestrial radio station, the CMO may use a sample of the works performed over other terrestrial radio stations and distribute royalties based on those performances for those works. In contrast, if a CMO does not receive a report on every recorded work performed in a restaurant, for example, the CMO may make an analogy that works performed in a restaurant are similar to works performed on commercial radio. The CMO would then distribute royalties for background music to the rights holders in the works performed on commercial radio for that period. Note that terms like proxy or benchmark may be used at times synonymously with analogy.

3. BACKGROUND: NOTABLE DISTINCTIONS

The Mechanical Licensing Collective is an anomaly within the global network of CMOs. As such, the MLC faces challenges in setting up and operating a collective that meets the needs and desires of the relevant rights holders around the world and DSPs. As an anomaly, the MLC also has opportunities to combine information about the experiences of others with new strategic thinking to form a best-of-breed collective. Neither overcoming the great challenges nor taking effective and efficient advantage of the great opportunities will be simple or easy.

When considering the experiences of, and choices made by, other CMOs, the anomalies must be kept in mind. The following are just a few of the differences between the MLC and CMOs around the world.

The MLC is only responsible for administering licenses for a singular and narrow rights in musical compositions. The license is for reproduction and distribution (to make and to distribute, a.k.a. the mechanical right); it may not administer licenses for the public performance right. The licenses are then only for works covered under the statutory compulsory license provisions (section 115), which means only non-dramatic musical works that have been recorded and previously released to the public as a phonorecord or digital phonorecord delivery (i.e., audio-only in physical or digital format) in the U.S.¹

In contrast, most CMOs outside the U.S. that administer rights in musical works are collecting royalties and/or licensing for performing (performance, communication to the public) rights and mechanical rights together, whether through an agreement between separate performing rights and mechanical rights societies that choose to have one CMO or entity collect royalties or license both rights on their behalf, or as a CMO that represents both rights.² This may result in those CMOs receiving and/or distributing royalties generated from digital uses differently than if they were only representing one right as the MLC will be representing. This distinction should

¹ Section 115 states, in part: “A person may obtain a compulsory license only if the primary purpose in making phonorecords of the musical work is to distribute them to the public for private use, including by means of digital phonorecord delivery, and—(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery; or (ii) in the case of a digital music provider seeking to make and distribute digital phonorecord deliveries of a sound recording embodying a musical work under a compulsory license for which clause (i) does not apply—(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and the sound recording copyright owner has the authority of the musical work copyright owner to make and distribute digital phonorecord deliveries embodying such work to the public in the United States; and (II) the sound recording copyright owner, or the authorized distributor of the sound recording copyright owner, has authorized the digital music provider to make and distribute digital phonorecord deliveries of the sound recording to the public in the United States.” 17 U.S.C. § 115(a)(1)(A).

² The ways in which rights flow from songwriters to publishers and/or CMOs around the world are dependent upon many factors, including local copyright laws, contractual agreements, CMO membership or affiliate agreements, the CMO’s membership in particular groups representing CMOs and more. An explanation of these rights and the collective management of the rights around the world is beyond the scope of this report.

be kept in mind when reading about some of the CMO practices in connection with unclaimed royalties mentioned in this report.

The MLC is only responsible for administering licenses for a very narrow category of uses. Those uses are, based on the law and current types of digital music services available in the U.S., primarily digital exploitation as downloads and as interactive (on-demand) streams. In contrast, other CMOs that administer works for digital and mobile uses do so for most forms of non-digital and digital exploitation, including non-interactive (not on-demand) digital music services and, in some places for some works, digital audiovisual uses.

The MLC will be granting a blanket license, which means a single license covering all works that fall under the compulsory license (other than those shares of works licensed by rights holders directly to DSPs). The MLC will not be granting per-work (transactional) licenses. This is in contrast to the past in the U.S., when historically mechanical licenses were mostly transactional licenses (i.e., a separate license for each work, sometimes multiple licenses for a single work with a license per use or per format). The license fee for the blanket license will not be a lump sum but will instead be an amount determined by several factors that include the type of digital service, type of music offering and the usage of particular works.

Within the global CMO network, there are blanket licenses covering all works represented by a CMO in return for payment of a single license fee (a lump sum), which is then distributed to rights holders based on the distribution policies of each CMO. There are also blanket licenses covering all works represented by a CMO in return for payment of a tariff (royalty rate), the calculation of which may depend on a number of different factors. How a CMO distributes royalties for unclaimed works often depends on the type of use, which often defines which type of license is granted and for which type of license fee (lump sum or other amount). Blanket licenses for a lump sum are typically granted for broadcasts, background music at public venues, live concerts and some other uses.

In the global CMO network, note that under a blanket license to DSPs for fees based on the use of each work represented, DSPs typically provide CMOs with a digital usage or sales report. Each CMO then provides the DSP with an invoice for the works that the CMO identifies as works that it controls. DSPs pay based on the invoice as long as rights claimed for any particular work by all CMOs and publishers together do not exceed a 100 percent share of that particular work for that use in that territory. This process may result in royalties for unclaimed works to be held, typically in special accounts, by DSPs until the ways in which those amounts should be distributed are resolved by stakeholders. This is similar to accrued mechanical royalties that have been held by North American record companies in various kinds of 'pending and unmatched' accounts.

Another distinction is that the MLC does not have members who choose to join the collective and to have their works represented by the MLC. The law automatically places the works that fall under the statutory, compulsory license provisions (section 115) under management of the

MLC. Notably, the MLC board of directors includes 10 publisher members who can assist in this start-up phase, and the Harry Fox Agency has been selected by the MLC as a vendor with a large, significant database that will seed the MLC database. Nevertheless, unlike other CMOs, the MLC still does not have a large base of members created through membership drives or membership agreements spanning decades, that is, member songwriters and publishers upon whom a CMO can fairly easily call upon for information about specific works that may belong to them, especially unidentified works. Further, the MLC, at least as formed and initially, does not have agreements with CMOs around the world to share works data or to have access to their works or recording databases.

The MLC is not an established CMO with a membership roster built over decades; representing rights in works for multiple uses; and, as such, built upon a substantial amount of information about each work that CMOs require to be provided to them under membership or affiliate agreements. DSP usage reports to established CMOs do not contain substantial information about each work (sometimes little or no information at all), yet established CMOs may still be able to match and identify the works based on the extensive amount of information they have on each work in their databases. While the MMA requires DSPs to provide monthly usage reports that include all works used, including an identification of works licensed directly from publishers, the MLC may need to proactively search for additional information about the works in order to accurately identify them, activities that established CMOs would not necessarily need to perform.

4. OBTAINING INFORMATION ABOUT WORKS & COPYRIGHT OWNERS

The participating CMOs receive the kinds of information that is relevant to this report from multiple sources, including primarily from the following:

- Songwriter or performer members through work or performance registrations or notices;
- Publisher or producer/record label members through work or recording registrations or notices;
- Domestic CMOs that also manage music rights and with which the CMO has a bilateral agreement (where there is more than one CMO in the country);
- Foreign CMOs with which the CMO has a bilateral agreement;
- The Interested Party Information (IPI) database administered by the Swiss copyright society SUIISA (access restricted) (some CMOs' databases are set up to automatically synchronize daily with the IPI database);
- The CIS-Net network, which essentially provides a portal to access at least 23 separate 'nodes' or separate databases of works and work-related information, which are populated with data from more than 70 CISAC-member societies that contribute information from their domestic works databases and from more than 45 societies that

contribute information about international (sub-published) repertoires (access restricted);

- The databases of those CMOs that have created regional 'hubs' that have a database combining information from, and matched with, multiple CMO databases (access restricted); and
- Responses to inquiry lists published on CMOs' websites (i.e., lists about unidentified works or unclaimed royalties).

In addition, CMOs obtain information about musical works or rights holders by:

- Proactively contacting individual members for information under certain circumstances, such as when a CMO employee notices that a work with identifying information in a usage report has generated a high amount of royalties but the work has not yet been registered;
- Messaging members via newsletters reminding them to register works/recordings; and
- Researching publicly available information (later verified by the CMO).

Information is sent to these CMOs using any of the following:

- Individual agreement registrations (i.e., contractual agreements aimed to prove that the individual or company holds rights in particular works in particular territories and time periods, and perhaps for certain uses, that are filed or registered with the CMO);
- Work registrations, often registered by transmitting a Common Works Registration (CWR) file, which provides a standard set of information;
- Electronic batch registrations for registering a large number of works at the same time;
- Special forms designated by the CMO as necessary to change bank details or to prove an individual's or a company's identity;
- Proprietary bulk registration formats;
- The Musical Works Information Database (WID), which is an online repository for data about works to enable CISAC-member societies to identify works; and
- Other documents using formats for Microsoft Word, Microsoft Excel or PDF files.

Depending on the kind of information provided, delivery methods to the CMO include the use of:

- CMO online portals for members;
- CMO proprietary registration platforms;
- Web tools developed as proprietary tools by or for the CMO;
- Web tools developed or made available by CISAC;
- Email;
- Telephone communications; and
- Mail (paper documents).

The types of information that CMOs may require or recommend be provided related to musical works include (this list is not exhaustive):

- Titles of musical works;
- Various standard identification codes for the works, if available;
- Complete names of the party/member and, if a songwriter or performer, pseudonyms used;
- In some instances, the names of musical groups or bands in which the individual belongs;
- Various identification codes for the party, if available, such as the IPI number for parties with an interest in musical works, the IPN (International Performer Number) for performers for neighboring rights CMOs, and rarely now but expected to increase in use significantly, the ISNI (International Standard Name Identifier);
- The role or effective participation of the rights holder and/or other persons and the role codes used by the CMO, if available;
- The type and share of ownership, which typically also requires a statement of truthfulness and accuracy made by the right holder and acknowledgement of the obligation to communicate any changes to information to the CMO;
- Contact information including place of residence and/or place of business, mailing address, telephone number and email;
- Date of birth;
- Official, current documents to prove identity;
- Nationality;
- Country of birth;
- Tax-related identification numbers;
- Territorial rights;
- Documents proving ownership and/or rights per territory; and
- Any other documentation deemed necessary to correctly identify the rights holder and/or their contact details and/or tax residence.

When information about a recording is requested, the information sought may include:

- Title;
- The name of the main or featured artist;
- The number of featured and non-featured performers on the recording (sometimes their names);
- A list of performances fixed to sound recordings that have been or are being exploited;
- Album/single titles, if available;
- Catalog/reference numbers, if available;
- Name of record company, if available;
- Name of label, if available;

- Year of publication, if available;
- Year of recording, if available;
- Date and place of first fixation, if available; and
- ISRC (International Standard Recording Code) or other identifiers of the recording, such as a UPC (Universal Product Code used on retail packaging), if available.

5. UNCLAIMED ROYALTIES: INABILITY TO IDENTIFY

A. USAGE REPORTS

There are circumstances under which CMOs typically do not process usage reports. Either the CMO chooses not to process a report or a CMO does not require or receive reports identifying the music used (neither identifying the recording nor the work).

A CMO may choose not to process a usage report even though music has been identified, when:

- The cost of processing the data would exceed the amount received from the licensee. How the CMO handles these royalties often depends on the type of use that generated the royalties. For example, the CMO may use a combination of techniques to distribute the royalties in a representative manner (using samples or analogies), such as using independent research and statistical methods to select works that were likely used by the licensee or used for the same type of use by other licensees. When royalties are generated by a small DSP, the CMO may simply add the royalties to a pool for general distributions; and
- The use was a retransmission of a foreign broadcast channel. The usage report may have titles in a different language, or the works may not be in the CMO's database. The CMO would typically send the usage report and royalties to the CMO in the country where the programs on the channel were originally broadcast. As an analogy for purposes of this report, if a recording is, or can be, identified in such a way as to recognize that is a French recording, a Korean recording or a Mexican recording, this policy would mean paying the royalties accrued for the work recorded to the French CMO, the Korean CMO or the Mexican CMO, respectively, even though the work or the rights holders in that work have not been identified by the CMO where the use occurred.

While the MLC will only be administering licenses for certain digital uses, the instances when a CMO may not require licensees to provide usage reports may be enlightening and useful. The licensees and instances include:

- Small digital music users, such as individual small business websites or individuals' websites that include music;
- Background music used in public places (e.g., restaurants, shopping malls). To select the works to pay, some CMOs may use as analogies usage reports from broadcast radio, reports from business-to-business services that provide music to public places, non-interactive streaming services or some combination of these uses. A CMO may have survey results that indicate the different sources of the music used, such as streaming services or radio as well as which digital services or radio channels are used by most business operators to help the CMO determine which analogies to use;
- Small broadcasters when the license fee is below a certain amount, such as below \$100,000 (currency provided converted to U.S. dollars). The money collected may be distributed by using such samples of other radio broadcasts or analogies to live music reports;
- Minor licensees such as groups that use relatively small amounts of music in their activities, such as social clubs, community groups and so on. The analogies used are often radio broadcasts;
- Local commercial television broadcasters' catch-up services. The benchmark used may be that broadcaster's linear channel reports; and
- Private copying remuneration (blank tape tariffs). The analogies may include broadcasts, music recordings (mechanical royalties for recorded music) and record rental distribution pools.

Also, the experience of the participating CMOs has shown that only a part of the actual usage of the works appearing on user-generated-content (UGC) platforms are covered per DSP in their usage reports. The CMO will typically use data from other types of uses as a benchmark to select the works that may have likely been used. Since the MLC will not be administering works within audiovisual offerings, this report will not provide these details.

B. MATCHING

The participating CMOs point to a number of reasons why they may not be able to link a recording title reported by a DSP in a digital sales or usage report to a specific work or to specific rights holders and be able to distribute money to those specific rights holders.

The reasons include the following (beginning with the most prevalent reasons):

- The usage report identifies recordings to some extent but does not provide any information on the work, the songwriters or the publishers;
- The data in the usage reports cannot be automatically matched and requires manual research that either has not yet been performed or would be too costly to perform;
- A work has not yet been registered by the rights holder with the CMO or with other collectives that share information with the CMO;

- The CMO does not know a rights holder's share of rights;
- The information in the usage reports is of poor quality (missing, incomplete or inaccurate information);
- Data on the works received from other CMOs is incomplete or inaccurate;
- The CMO's database and the CIS-Net nodes' databases do not include works that can be identified or matched accurately to the recordings (e.g., there is no data about this recording that is linked in any way to any specific work);
- The recording in the usage report cannot be identified (therefore, the work recorded could not be identified);
- There is a dispute over ownership or specific shares of the work between multiple claimants that has not been resolved;
- The CMO has not received agreements proving ownership or control by specific rights holders for the work;
- The CMO no longer represents rights in the work (rights were withdrawn from collective management), and the data has not been updated by the rights holder or the database has not been updated on the change;
- Multiple registrations have been received for the work with conflicting data;
- No reports of usage received;
- Data on a registered work has not yet been verified;
- Usage reports do not identify specific uses of identified music (this makes a use questionable);
- The CMO does not know the names of rights holders for the CMO's territory;
- The CMO does not know the names of the rights holders for the specific time of usage (e.g., past uses not under current licenses);
- Information on a foreign interested party is missing or has not yet been received;
- The CMO does not know the current address or other contact information (including bank account information) for the rights holders;
- The work has subsequently been identified as a public domain work; and
- The work is royalty exempt (e.g., the recording is only a sound effect).

6. UNCLAIMED ROYALTIES: ATTEMPTS TO IDENTIFY AND MATCH

Note that in the U.S. under the MMA, the MLC must maintain a publicly accessible online platform that has its contact information and that lists unmatched works (and shares of works), through which a copyright owner may assert an ownership claim for that work. The MLC is also required to engage in diligent, good-faith efforts to publicize throughout the music industry any pending distribution of unclaimed accrued royalties (and interest) at least 90 days before the date on which the distribution is made, among other things.

For the CMOs participating for this report, after using automated and manual methods to match as many works to recordings and rights holders to works as possible, there are a number

of additional methods they may implement to identify works and rights holders and to locate them.

The following include efforts currently undertaken as well as some that are hoped, or expected, to be taken in the near future:

- Most commonly, sharing lists of unidentified or partially identified works with members and others to compare and possibly match information to works in their databases. This process varies for publishers and songwriters. Publishers (and other CMOs), because they typically administer tens of thousands, hundreds of thousands or millions of copyrights, may have access directly into a specific part of a system or platform (for example, access via a File Transfer Protocol (FTP) network) in order to initiate their own automated bulk matching processes with the unidentified works, while songwriters, who typically have small numbers of works, may have access to a different portal or only to the CMO's publicly available web pages. For the same reasons, publishers may be provided more information than songwriters to assist in matching large numbers of works. For example, the works accessible to publishers may be categorized into specific value ranges (high, medium or low value) to assist publishers in prioritizing matching processes (to be cost effective), while songwriters would not be provided with values/royalty amounts. These lists may be shared in some of these ways prior to distribution to known rights holders for known works depending on the distribution cycle (e.g., if royalties are distributed semi-annually, then there is more time to distribute the lists prior to each distribution; if royalties are distributed monthly or quarterly, there is less time to circulate and match those lists prior to distribution);
- Most commonly, allowing rights holders who have checked their income statements from CMOs and believe they are missing claims to access the lists and to initiate inquiries;
- Most commonly, posting such lists with a reasonable amount of non-private information on the CMO's website. Some CMOs only list on a website those works that generated more than a certain value (amount of royalties), such as \$100 or more (U.S. dollars used for this example), with works generating smaller amounts not available for specific claiming due to the cost of processing such claims (that money becoming part of a pool to be shared as unclaimed works). Note, however, that this information is not always available to the general public from every CMO (or is not easily found on the website). While CMOs often have public databases in which members of the public may search for limited information about works represented by the CMO, CMOs are membership or affiliate organizations and typically distribute royalties only to their members, affiliates and collective rights societies with which they have bilateral, reciprocal agreements. Therefore, unclaimed royalties or unidentified works in some instances may only be available to these parties;
- Depending on the kind of digital platform that a CMO may have, making such lists available through an online claiming portal through which all usage data from the DSP is

made available to verified rights holders, who may use self-service matching verification tools and claim rights in the works;

- Placing advertisements in official journals, national newspapers and other broad-reaching publications to communicate to potential rights holders that royalties may be available to them (note that national newspapers may not be effective in large countries like the U.S., and advertisements often have limited reach to songwriters or performers as advertisements are often skipped over to read more substantive content in publications); and
- Less frequently (although CMOs are exploring more possible future use), using audio fingerprinting solutions to help identify works not accurately reported by licensees. This requires rights holders and CMOs to work toward ensuring that providers of fingerprinting solutions have the audio files (when available) of at least the most active works in their databases to enable upfront identification of the works and to lessen the amount of royalties falling into the pool of unclaimed royalties.

Note that some CMOs outside the U.S. may have more data on many individual or specific U.S. works (as a result of past claims conflicts involving sub-publishers or matching activities performed with multiple CMO databases) than any single U.S. mechanical rights agency or U.S. performing rights organization may have.

In addition, CMOs conduct research services that are performed by expert research officers. Note, however, that CMOs may maintain a proportionate approach to matching and distribution manually. This approach prioritizes manual work only for works that exceed a certain value (money generated from those works, e.g., \$10) or amount of use (e.g., a significant number of streams). This policy is aimed to ensure that the manual matching efforts are likely to succeed so that payments will be distributed to matched works and rights holders without excessive cost.

For manual matching, the researchers may look to sources including the following:

- Most commonly, domestic CMOs that also manage music rights and with which the CMO has a bilateral agreement (where there is more than one CMO in the country);
- Most commonly, foreign CMOs with which the CMO has a bilateral agreement;
- Most commonly, the IPI database administered by the Swiss copyright society SUISA (access restricted);
- Most commonly, the nodes in the CIS-Net network (access restricted);
- The databases of those CMOs that have created regional hubs (access restricted); and
- Publicly available information on websites.

Information obtained by researchers is typically reviewed by quality assurance teams through a series of processes set up by the CMO to help ensure accuracy. If a CMO is able to identify that a work belongs to an unrepresented local rights holder, efforts may be made to contact that rights holder directly.

Note that there will never be a 100% match rate. The experiences of CMOs (and other stakeholders) are that claims by any company or CMO of achieving a 100% match rate should be viewed with suspicion. Those who claim to achieve this match rate may be capturing only a representative amount or a sample of usage. They are likely counting matches that are false positives, which may arise from assuming the existence of a recording or a work that exactly matches a reported recording or work and creating a data entry for that assumed match when, in fact, the usage, the recording or the work may have been matched from poor quality data or data actually relating to a different recording or work.

Likewise, there are no match rates that are concrete or considered to be the best match rate, although, based on the author's past conversations with executives internationally who work in this area, matches from current DSP usage reports to works represented by the CMO (as registered by members) in the high 80 percentile range are generally considered to be very good. Accuracy in the matching based on information from authoritative sources is key. This is indeed challenging.³

7. UNCLAIMED ROYALTIES: CONFIDENCE MEASURES FOR MATCHING

Based on information provided by participating CMOs and on the author's knowledge of industry activities as previously reported, CMOs employ a number of confidence measures to determine when a work is matched to a recording and rights holders are matched to works as accurately as possible. They include the following.

CMOs may employ a team of matching experts to review the data reported by individual sources to ensure each file format has been correctly adhered to through automated and manual validation checks. Once each file has been run, the results of automated matching processes are compared against expected benchmarks and high value records reviewed for accuracy. Additional quality assurance checks are made prior to finalizing each distribution,

³ From the author's publication, Music Confidential, Feb. 28, 2019, Tag That Song! (Part One): "A digital music service sent a monthly report of music use to a collective recently. The list included around 20 million recordings. More than 50% of those titles had no information identifying the composition (the song) recorded—no songwriter names, no publisher names, no unique identifiers like the ISWC (International Standard Musical Work Code). One month. One DSP. One territory. More than 10 million songs not identified, only the recording information provided. How many of those titles were the same or nearly the same? Well, tens of thousands of recordings had titles with the same few key words. My go-to title is Angel. This is a title that I previously reported returns more than 14,000 title results in searching a society's song database, returns the maximum of 10,000 titles in searching the U.S. Copyright Office database (it would not return more than 10,000 results [on a simple search]) and, reportedly, turns up tens of thousands of unique recordings with Angel in the title. Think about trying to match each of the 35,000 Angel recordings with just one of the more than 14,000 songs with Angel in the title. There can even be more than one-quarter of one million (more than 250,000) recordings with the same few keywords. Ah, what 'love' does for the creative mind."

which require staff to review amounts payable to individual shares and compare against previous distributions and verify that all amounts allocated to high earning shares are correct.

CMOs may include a wide variety of industry-standard identifiers in the matching process, which are typically a combination of numbers (including ISRC for recordings, ISWC for musical works, DSP usage codes, IPI for parties) in addition to text (titles, names of publishers, names of songwriters, names of featured artists, pseudonyms) when running matches and comparison checks.

More recently, some CMOs may use 'learned' automatic matching functions in their systems that take into account various information on the work including all applicable identifiers (ISRC for recordings, ISWC for works), titles, featured artists and songwriters. Following automated matching, manual matching would be performed, and the 'learnings' from those manual matches would be included in subsequent auto matches.

CMOs may perform manual or automated reviews of earnings on specific works, looking for any sizeable gaps between current and historical earnings, which would trigger a review and investigation into the proposed matches.

CMOs provide members with the opportunities to provide feedback on missing uses or perceived errors, which would be investigated and, if necessary, corrected.

More recently, some CMOs may emphasize, and make great efforts toward, 'pre-matching' recordings to musical works, which means performing the matching process as soon as new recordings are known or expected to be released, before receiving reports of use from DSPs. This is in contrast to current and past processes by most CMOs, which wait until receipt of usage or sales reports or some other trigger to perform the matching process.

CMOs may reject any data that is received in extremely poor quality and pass that data back to the supplier of that information to be revised and re-submitted. This process may be provided by a third party rather than performed by the CMO.

CMOs may employ a policy for reviewing manual matches. The policy may include a requirement for a researcher to add commentary to outline their reasons for believing the source of information for the match. This commentary would be scrutinized by a member of a quality assurance team for additional validation.

CMOs may have a website that may be accessed for internal use only by employees, which is a knowledge base for researches. This knowledge base ("wiki") may include training guides, process documentation and decision trees (i.e., a decision support tool that uses a tree-like model of decisions and their possible consequences).

CMOs may have tools that perform quality checks. For example, a tool may create groups of sample automatic matches that will then be checked daily by a quality assurance team member. A tool may gather samples from the results of researchers for special review.

CMOs may employ technology meant to ensure that both rights holders and licensees (such as DSPs) deliver information that meets set standards for quality. The technology may track and measure the data quality for specific repertoire and the data quality for the related uses of that repertoire (such as streams) over time. This automated tracking and measuring would enable the CMO to identify exceptional or unusual activity to flag for further analysis and perhaps escalate inquiries directly to rights holders or licensees (such as certain DSPs).

CMOs may set objective, expected matching rates for automated matching and manual, research matching.

CMOs generally have policies that set out all of the factors that must be met for a match to be considered sufficient as well as different types of information that must be compared. The specific policies of CMOs are too extensive to be provided in this report.

Policies that could also fall within the category of confidence measures also relate to erroneous distributions. CMOs report that a reserve of royalties should be set aside to cover any claims made for erroneous distributions.

Additional CMO routine controls to ensure the accuracy of the distribution process may include:

- An analysis to ensure that all relevant data has been included in the distribution;
- Checks to ensure that all matching routines have been completed (both manual and auto-matching routines);
- Checks to ensure that all medleys have been registered correctly;
- Checks to ensure that all contributor shares add up to 100 percent (both before and after distribution);
- Checks to ensure that all member and affiliate (e.g., other CMOs) queries on the distribution have been resolved;
- Reviews of high value unmatched uses (e.g., the top 50 revenue generators);
- Reviews of specific member and affiliate notifications to ensure that they have been reflected in the distribution;
- Ensuring that all updated publishing and sub-publishing agreements are reflected in the distribution;
- Reviewing uses found for non-registered works and ensuring that new registrations are received and matched;
- Reviewing notifications received from members and affiliates to ensure that any specific notifications are matched;

- Reviewing suspense accounts, which is one of multiple names that may be used to describe an account in which monies (royalties) are held when the works identified in usage reports have not been identified, for reasonableness and comparing to previous distributions;
- Reviewing allocations for system-based errors;
- Conducting an analytical review of distribution by comparing it to the previous distribution and explaining any material variances; and
- Ensuring that a quality control report and distribution payment files have been reviewed and signed by the appropriate executives (such as distribution, membership and finance personnel).

8. DISTRIBUTION RULES: DISTINCTIONS

As noted in this report, CMOs represent works for many different types of uses, often multiple rights and frequently many different types of authors.

CMOs have many different distribution rules developed over decades based on many different factors. Some CMOs have so many different distribution rules that, if printed, by page count they would far exceed 100 pages. Some have written summaries that alone fill a five-inch-thick binder or larger.

While these distribution rules are far beyond the scope of this report, it may be helpful to understand at least a few of the reasons that there are different rules for who shares how much of the royalties or license fees collected by a CMO.

For example:

- Rules for calculating royalties received for TV and cable use may take into account when the music was played during the day, the size of the station and the how the music was used (e.g., theme vs. background);
- Rules for calculating royalties received for concerts may take into account not only the length of a work in comparison to the length of the total concert, but also whether it was part of the headline or supporting act in a concert;
- Rules for calculating royalties received for radio broadcasts may take into account the size of the station as measured in estimated audience size or revenues;
- Rules for DSP distributions are usually based solely on the revenue received by the DSP and the specific usage for a particular period of time, although revenue has many different definitions and may be subject to certain reductions or discounts;
- Rules may distinguish between which rights were licensed. For example, there are different values placed on different rights for different uses at CMOs in some countries (e.g., communication to the public, making available, private copying and rental). Also,

CMOs representing mechanical and performing rights usually split an amount received for a stream into a percentage attributable for the mechanical right and a percentage for the performing right, with percentages for each varying from country to country;

- Rules differ when music is part of an audiovisual work, part of an audio-only work, make up the entire audio-only work and so on; or
- Rules may include a number of weighting factors to decide on the shares to be distributed for each work. Weighting factors may include how the music is used; where the music is used; when the music is used; and how much money is available for the distribution.

9. DISTRIBUTING UNCLAIMED ROYALTIES

For the MLC, the law (MMA) already provides that copyright owners' payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in usage reports from DSPs for covered activities for the periods in question. This usage data that is to be considered includes data provided by the DSPs to the MLC as well as usage data related to voluntary licenses for covered activities and download licenses, to the extent such information is available to the MLC.

The participating CMOs most often do not use copyright owner market share calculations to distribute royalties accrued for unidentified or unclaimed works. Although their distribution rules do not align perfectly with the MLC or with the obligations set out in the MMA, this report shares the information gathered from participating CMOs for general information purposes in the event that some of the methods for determining their distributions may be helpful.

In determining who will receive a share of unclaimed royalties and how much each participant receives, the shares of unallocated royalties to be distributed have been or are:

- Allocated across a representative dataset of individual works, rather than rights holders, related to the source and time period for that component of unidentified earnings;
- Paid to all of the rights holders in that distribution stream over the same time period;
- Calculated pro-rata based on the amount paid per year to all rights holders;
- Calculated primarily by work, and only then by individual rights holders based on rights holders' shares of the work;
- Calculated for distribution without mixing different years of collections together;
- Made part of the pool for the next distribution for the same type of use and shared among the current earners of that upcoming pool;
- If identified in some way as a foreign work from a particular country, but without enough information to identify the foreign copyright holder or the local representative of the foreign copyright holder, distributed to the CMO in that country;

- Pro-rated based on the source of the data. For larger DSPs, using data from that particular service for the relevant period to distribute to rights holders who received royalties from that service. For smaller DSPs, grouping their payments together and selecting the data from a single larger similar service over which to make a combined payment (e.g., royalties from downloads using data from a download service, royalties from streaming services using data from a larger streaming service);
- Distributed to identified rights holders in the distribution pool from that source of royalties during that period because some of the works are likely to belong to those rights holders and cannot be identified as a result of bad data;
- Pro-rated and distributed to all CMO members whose works were reported in the DSP usage reports, whether or not the members withdrew their rights from representation in order to make direct license agreements;
- For works identified but past copyright owners unidentified, distributed to the current copyright holder;
- Distributed by market share, which is calculated by catalog and not by copyright owner or administrator;
- Used to first cover costs of the CMO operations; or
- Used in some proportion to fund items that are beneficial to all members, such as anti-piracy initiatives, or to fund social, cultural and educational activities for the benefit of rights holders.

A note on the use of funds for educational activities. There are different philosophies concerning the overriding purposes of collective rights management.

In most Continental European and Latin American countries, there is a view that CMOs exist primarily to promote cultural purposes. As a result, most of these CMOs deduct portions of the money collected for the use of music and use it to fund social, cultural and education activities. In the global music industry, this is very controversial when that money is a large sum, if the way in which it is used is far from transparent and when it is deducted from foreign rights holders without their permission and does not benefit them.

In most other countries (especially English-speaking countries), the view is that CMOs exist (or should exist) primarily to generate as much value and revenue as possible for member creators and copyright owners and to administer those licenses and those rights as cost effectively as possible for the benefit of members/affiliates. This is a more commercial view.

Nevertheless, nearly all CMOs around the world engage in 'educational' activities of some sort. They may provide information on their websites about copyright and licensing to members and music users. They may provide information helpful to songwriters in advancing their careers, collaborating with other creators or promoting their music.

Some CMOs perform certain educational activities as ways to compete with other CMOs for members or to provide a better service to their own members. Some CMOs produce creative

conferences or host songwriter 'camps' to share information or promote creative collaborations. Some CMOs perform these activities to please government policy makers in order to gain their support for future 'asks,' such as cultural funds.

The source of the money used for these activities varies from CMO to CMO.

BIOGRAPHY

Susan Butler is an American business analyst, journalist and media publisher, entertainment and tech attorney and published author. Through Butler Business & Media LLC, she writes and publishes the weekly international news & analysis report Music Confidential and produces select private executive summits.

Susan has been reporting and writing professionally for nearly two decades, including while practicing law. After practicing law for 21 years representing clients throughout the world in the entertainment and technology fields, she began writing full-time in 2004, achieving a number of “firsts” for an entertainment industry trade journalist.

In addition to the weekly Music Confidential reports written and published since 2008, other publications include:

- World Intellectual Property Organization (WIPO) Introduction to the Global Digital Music Market (2019) (commissioned by WIPO)
- Commercial White Paper on Licensing Rights in Compositions throughout Europe for Digital Uses (2010)
- eBusiness Legal Kit For Dummies (2000) part of the For Dummies book series, describing how to launch an international online business and the legal issues involved, including sample contracts

Susan is also the producer and facilitator of invitation-only private executive summits, 19 of which have been held to date, in the U.S. and Europe aimed at finding solutions to music industry operational challenges in the digital marketplace. She has been a keynote speaker in the U.S., Brazil and Poland among other countries.

Additional biographical information and comments from music industry executives available on MusicConfidential.biz.