CHRIS CASTLE

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Admitted in California and Texas

August 22, 2025

By email

John R. Riley, Acting Deputy General Counsel
Jalyce Mangum, Assistant General Counsel
Michael Druckman, Attorney-Advisor
United States Copyright Office
Library of Congress
101 Independence Ave, SE
Washington, DC 20559-6000

**Re: Summary of *ex parte* meeting regarding Redesignation of the Mechanical Licensing Collective**

Dear Mr. Riley, Ms. Mangum and Mr. Druckman:

This letter summarizes the August 14, 2025 Zoom videoconference meeting among the three of you attending as representatives of the Copyright Office, Abby North and me in my capacity as counsel to the Artist Rights Institute in this matter. Unless mentioned by name, Ms. Mangum and Messrs. Riley and Druckman are referred to as the "Copyright Office" or "you," and Ms. North and I are referred to individually or as "we" or "us."

At the outset, we are mindful that MLC oversight is a significant drain of resources on the Office. We note that the legislative history of the Music Modernization Act ("MMA")[1] suggests that the Copyright Office can turn to the Government Accountability Office to conduct the kind of examination of the MLC that we think is desperately required. This is particularly the case with respect to The MLC's "investment policy" and continued failure to answer questions candidly about allocation of trading profits and losses including written questions from Members of Congress.[2]

[1] *The Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Public Law 115–264, 132 Stat. 3676 (2018).*
[2] *Questions for the Record from Chairman Darrell Issa for the Mr. Kris Ahrend*

We express sincere appreciation for the Office's time, attention, and the substantial resources it devotes to overseeing the MLC—a task we recognize is demanding and often thankless. At the same time, we stressed that the redesignation process must serve as a moment of real accountability, not a rote process.

It goes without saying that Congress entrusted the Office with broad regulatory authority precisely because the MLC was an experiment, and this first five-year review is the critical opportunity to evaluate whether that experiment is working for songwriters. Without rigorous oversight, transparency, and enforceable benchmarks, the MLC will continue to fall short of its statutory mandate.

To that end, we have outlined below a summary of specific regulatory actions the Office can take ranging from conditional redesignation tied to performance metrics, to clear rules on metadata responsibility, to enhanced transparency in governance and investments. We also convey our willingness to collaborate closely with the Office in drafting proposed rules, with the shared goal of achieving practical, enforceable improvements that meaningfully protect creators while supporting the Office in its important oversight mission.

The following summarizes the discussion:

***Redesignation Conditions and Benchmarks***

The MLC's redesignation should be conditional. If recommendations are not implemented and goals are unmet by the end of the second five-year term or an earlier date, serious consideration must be given to designating a new MLC. Performance must be measured against international benchmarks, such as CMRRA's reported 93% match rate. Given that a significant Congressional mandate is that the DSPs investment covers building a state-of-the-art musical works database,[3] The MLC is not as constrained by cost-benefit concerns as other CMOs and should be expected to achieve at least best-in-class results.

*"Five Years Later – The Music Modernization Act*", June 27, 2023 available at https://docs.house.gov/meetings/JU/JU03/20230627/116155/HHRG-118-JU03-20230627-SD012.pdf

[3] 17 USC §115(d)(3)(E)

***Need for Ongoing Oversight and Transparency***

There must be a formal mechanism for the U.S. Copyright Office (USCO) or a designated *independent* representative experienced in royalty accounting, database management and royalty compliance examinations ("audits") to regularly review The MLC's benchmarks for matching, claiming, and distribution. Some tasks may require more frequent review than others. These reviews must culminate in public-facing results available on both The MLC and USCO websites and should be tied to satisfaction of conditional standards on the pending redesignation. Transparency should be the default standard.

Additionally, recommendations from advisory committees must be publicly posted on The MLC's website. Once a recommendation is issued, the process that follows—including whether the board acts on it—should be clearly outlined and accessible to stakeholders.

***Data Transparency and Matching Architecture***

The MLC and HFA must publish a clear data flow chart that delineates which entity is responsible for each stage of data handling. This should include a database architecture diagram that shows how data is organized and whether DSP data remains siloed or has been consolidated into a data "lake." This transparency is critical for evaluating how efficiently data is being processed and matched.

***Performance Metrics, Vendors, and Matching Accuracy***

The MLC should publish performance metrics and results, if any, for its five matching vendors. Stakeholders need clarity on whether vendors have commenced their engagements, met performance goals, and whether such goals were ever formally established. There is also a need for clarity around what "match" means. Is it identifying the composition within a sound recording, attributing the proper ownership share, or allocating money to the right parties? Furthermore, how many of the musical-work-to-sound-recordings matches are correct matches?

As we discussed, cases where an ISRC is matched to 18 to 100 different MLC Song Codes are troubling—especially when the recording is not a medley. This raises questions about quality control. Likewise, titles that do not match between recordings and works should prompt human review and unmatching where appropriate.

There has been a longstanding disconnect in the oversight of mechanical licensing between what is "unknown" or "unmatched" and what is just a failure to spot obvious mistakes. For example (not discussed on the ex parte call), DSPs were able to get away with claiming "Fragile (Live)" by Sting was an unknown musical work copyright owner when the song was clearly "Fragile" by Sting and "Live" was an informational modifier that merely *referred to the sound recording, not the song.*

***Access to Tools and Member Empowerment***

There is significant concern over lack of access to the bulk matching tool for MLC members. If publishers deliver CWR files containing ISRCs, why must they still manually match the recordings? Once catalog data is submitted, The MLC has a responsibility to ensure that the data makes its way into the production environment accurately and completely.

For example, there is currently no mechanism for rightsholders to "unmatch" works that have been incorrectly linked by The MLC or under its authority. This gap leaves errors uncorrected and perpetuates inaccurate royalty flows.

***Who is Responsible for Metadata?***

Responsibility for metadata accuracy must be clearly defined. The MLC uses metadata from HFA or other sources that may be ingested into government's musical works database it stewards before copyright owners have confirmed the accuracy. Whatever data The MLC uses in the musical works database, it bears the responsibility that the data is accurate.

Publishers have a duty to deliver their catalog data comprehensively and accurately. But once delivered, the MLC bears responsibility for ensuring that rightsholders' "truth" makes it into the musical works database.

Because the MLC exports its data feed globally, errors propagate downstream to DSPs, sub-publishers, and societies worldwide, compounding the harm beyond domestic royalty distributions by The MLC.

The MLC should set and publish specific improvement goals (both percentage reduction targets and dollar-value impact), with timelines for reaching them as a condition of redesignation.

Moreover, disputes should not be automatically generated when a publisher confirms by listening that a recording embeds their work. The MLC should respect informed matches made by rightsholders, even if the work or recording title differs.

***Audits and Litigation***

The MLC appears to devote substantial detail to peripheral matters while omitting or obscuring disclosure of more consequential information that bears directly on its statutory duties and fiduciary obligations. For example, transparency is needed around board governance. Has The MLC board approved the recent audits of DSPs, litigation against Spotify and Pandora? Given the large number of audits noticed by The MLC, it seems unlikely that many if any audits have been moved past the fieldwork stage. It is also important to publicly disclose the status of audits on a regular basis so that songwriters can stay informed of the progress. On reflection after the call, it should also be made clear how the audits and litigation are funded.

***Edge Cases: Termination, Matching Small-Dollar Recordings***

When terminated works appear in medleys, interpolations, or samples, The MLC must determine whether the original grantee or the post-termination rightsholder is entitled to the royalties. Guidance from the USCO on this point would be helpful.

Finally, recordings in the unmatched pool (black box) that generate less than $3.00 should be given the same level of matching attention as those worth hundreds in order to preserve the integrity of the musical works database. Given the Congressional mandate, there is no excuse for ignoring low-dollar recordings. The MLC's job is to find the correct parties, regardless of royalty amount in order to preserve the integrity of the musical works database.

### *Investment Policy and Interest as a Penalty, Not a Windfall*

To further clarify our discussion with you about The MLC's investment policy[4] and stock trading, The MLC's 2023 Form 990 tax return[5] shows the non-profit is holding $1,212,282,220 invested in publicly traded securities as of 12/31/23. It will be years before we know the current amount as The MLC does not definitively state that amount except on its tax returns that it does not make public until after the Form 990 is filed (and is essentially hidden on The MLC's website navigation bar under "Governance").

MECHANICAL LICENSING COLLECTIVE 84-2642688

Form 990 (2023) Page **11**

**Part X Balance Sheet**

Check if Schedule O contains a response or note to any line in this Part X . . . . . ☐

| | | | | (A) Beginning of year | | (B) End of year |
|---|---|---|---|---|---|---|
| Assets | 1 | Cash - non-interest-bearing | | NONE | 1 | NONE |
| | 2 | Savings and temporary cash investments | | 138,750,322. | 2 | 7,744,155. |
| | 3 | Pledges and grants receivable, net | | NONE | 3 | NONE |
| | 4 | Accounts receivable, net | | 790,893. | 4 | 981,491. |
| | 5 | Loans and other receivables from any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons | | NONE | 5 | NONE |
| | 6 | Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), and persons described in section 4958(c)(3)(B) | | NONE | 6 | NONE |
| | 7 | Notes and loans receivable, net | | NONE | 7 | NONE |
| | 8 | Inventories for sale or use | | NONE | 8 | NONE |
| | 9 | Prepaid expenses and deferred charges | | 475,893. | 9 | 637,489. |
| | 10a | Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D | 10a 1,497,703. | | | |
| | b | Less: accumulated depreciation | 10b 350,012. | 1,297,691 | 10c | 1,147,691. |
| | 11 | Investments - publicly traded securities | | 804,555,579. | 11 | 1,212,282,220. |
| | 12 | Investments - other securities. See Part IV, line 11 | | NONE | 12 | NONE |
| | 13 | Investments - program-related. See Part IV, line 11 | | NONE | 13 | NONE |
| | 14 | Intangible assets | | 3,028,125. | 14 | 2,066,482. |
| | 15 | Other assets. See Part IV, line 11 | | 5,142,098. | 15 | 4,585,825. |
| | 16 | **Total assets.** Add lines 1 through 15 (must equal line 33) | | 954,040,606. | 16 | 1,229,445,353. |
| Liabilities | 17 | Accounts payable and accrued expenses | | 910,224. | 17 | 1,283,469. |
| | 18 | Grants payable | | NONE | 18 | NONE |
| | 19 | Deferred revenue | | 6,964,097. | 19 | 5,335,956. |
| | 20 | Tax-exempt bond liabilities | | NONE | 20 | NONE |
| | 21 | Escrow or custodial account liability. Complete Part IV of Schedule D | | NONE | 21 | NONE |
| | 22 | Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons | | NONE | 22 | NONE |
| | 23 | Secured mortgages and notes payable to unrelated third parties | | NONE | 23 | NONE |
| | 24 | Unsecured notes and loans payable to unrelated third parties | | NONE | 24 | NONE |
| | 25 | Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D | | 936,214,765. | 25 | 1,190,123,917. |
| | 26 | **Total liabilities.** Add lines 17 through 25 | | 944,089,086. | 26 | 1,196,743,342. |

[4] Although we did not discuss duties specifically, I would argue that by unilaterally adopting an investment policy and deploying unmatched royalties in the securities markets, the MLC has undertaken fiduciary obligations to the unknown copyright owners whose money it invests without their consent. As a fiduciary, the MLC must act with loyalty, prudence, and transparency—standards it has yet to demonstrate it can meet. Because these actions are outside of the MMA, The MLC's officers and directors are not protected by any limitation of liability in the statute.

[5] Available at https://www.themlc.com/hubfs/990-2023-Combined.pdf

The unsigned Supplement to the MLC's 2023 tax return[6] describes this investment (emphasis mine):

> In our Form 990 for 2023, we provided information regarding funds we were holding in banks and investments as of the beginning of 2023 and the end of 2023. These included **assessment funds** that we subsequently use to fund our operations; **royalty funds we were not yet able to distribute and on which we are *required* to earn interest in accordance with the Music Modernization Act** (MMA) of 2018; and **royalty funds we were holding pending distribution**.

As we discussed with you, the Institute takes the position (which I believe is well-supported in the statute and legislative history) that the MMA does not "require" the MLC to *earn* interest on unmatched royalties, "essentially" or otherwise. The MMA requires The MLC to *pay* interest to the rightful copyright owners—regardless of how The MLC comes up with the interest payment or whether The MLC generates that interest through investments.

It is worth noting that what the MMA actually says in the black box penalty language (emphasis mine):

> Interest-bearing account.—Accrued royalties for **unmatched works** (and shares thereof) ***shall*** be maintained by the mechanical licensing collective in an interest-bearing account that earns monthly interest—
>
> (I) at the Federal, short-term rate; and
>
> (II) that accrues for the benefit of copyright owners entitled to payment of such accrued royalties.[7]

Because the interest payment is inextricably tied to job performance—in this case matching—it makes no sense that the interest charge would *not* be a payment *borne by the licensees* as part of the administrative assessment as "collective total costs."[8] The licensees control all aspects of royalty payments

[6] Id.

[7] 17 USC §115 (d)(3)(H)(ii).

[8] 17 USC § 115(e)(6)(vii).

through The MLC so if The MLC does a poor job resulting in delays in payment *that is The MLC's fault*.[9] The MLC and the licensees can address the cost allocation through their board representation or failing a result at the board level, through the Copyright Royalty Board and the administrative assessment proceeding.

While we understand from the DLC's ex parte filing[10] that the DLC has issues with the degree to which they are included in decision making at The MLC (and even the extent that The MLC's board of directors has complied with standard corporate maintenance presumably to avoid alter ego issues), if the licensees paid the interest penalty as described in the statute, the DLC would be in a position to complain due to its board membership, at least in theory. This seems to have been the intent of Congress.

It is, in my view, absolutely false and misleading to state in a matter under the jurisdiction of the federal government that The MLC is in compliance with a code section that does not say what they say it says. *Particularly when there is over a billion dollars on the line*. And it's not just this one time—as I mentioned on our call with you, the CEO has said almost these exact words in testimony to the House IP Subcommittee and in supplemental written testimony to answer questions for the record from the Subcommittee.[11]

***Profit and Loss***

The MLC reported $8,679,109 of net unrealized gains in 2023, but net unrealized losses of -$1,911,766 in 2021 and -$6,571,438 in 2022. Accordingly, the issue of who bears the losses and who gets the gains on The MLC's investment activity is clearly material and germane.

[9] This would be a common burden-shifting provision in any direct license and is likely an industry standard.

[10] Available at https://www.copyright.gov/rulemaking/mma-designations/2024/Digital-Licensing-Coordinator-to-USCO-Aug-8.pdf

[11] Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary, *Five Years Later – The Music Modernization Act,* Field Hearing, Belmont University, Nashville, TN June 27, 2023, Responses to Questions for the Record by Kris Ahrend CEO of the Mechanical Licensing Collective (August 11, 2023).

Because all the investment activity on The MLC's portfolio is comingled on its tax returns, it is not clear how much of the gains and losses are attributable to unmatched black box, administrative assessments, or accrued but unpaid royalties. It appears that The MLC's investment policy covers all these accounts although its cash management policy states "Royalties Pending Distribution shall not be commingled with The MLC's own operational funds. Royalty accounts must be maintained separately…" It is unclear what monies the gains and losses were attributable to.

Chairman Issa asked a specific question (Question 2) in his Questions for the Record to MLC CEO Kris Ahrend following the IP Subcommittee's 5-year review hearing at which Ms. North testified. That question is: "**If the MLC invested royalty funds under its investment policy, and those investments resulted in net losses [which had already occurred in the millions of dollars in each of 2021 and 2022], how would the MLC address the resulting shortfall in royalty funds according to its investment policy?"** This is particularly pressing as The MLC admits that it is investing *accrued but unpaid* royalties it collects under the government's imprimatur.

To further illuminate our discussion, Mr. Ahrend begins his answer by stating that there is no black box: "It is important to first clarify that, while there are still unmatched royalties, 'black box' royalties no longer exist under the U.S. compulsory mechanical license – The MLC fulfilled the MMA's directive that the black box be illuminated." I find this to be a bizarre and nonresponsive statement, particularly from an entity that is sitting on over a billion dollars in other people's money that, in my view, it has invested without authority of any kind. There obviously is a black box, an unmatched lake of money, or whatever you want to call it. And whatever you call it, one thing it is not is "illuminated" to the public or to the songwriters for whose benefit the entire enterprise was undertaken.

***Can The MLC Move Markets?***

Mr. Ahrend goes on to react to some of the issues we discussed with you:

> Our financial advisors have advised that we not make public any details about specific investment solutions. Their reasons include security concerns and concerns that such information could be used alongside our public royalty distribution timelines to engage in market timing to the detriment of The MLC. Public knowledge about large-scale trades can be

> used to exploit the market for an investment to the detriment of the known trader.

Aside from the fact that songwriters and members of The MLC likely have no idea who these "financial advisors" are (we certainly don't), Mr. Ahrend's answer is illuminating. As we discussed with you on the call, there is no reason for The MLC to be "investing" over a billion dollars with their track record on matches. If The MLC has an issue with executing large stock trades, it must be said that hedge funds with comparable portfolios manage to get it done.

Even if one takes them seriously, The MLC got themselves into the situation and they can get themselves out of the situation. As I suggested during the call, the Office can consult with the SEC about proper and lawful procedures for disclosing The MLC's portfolio (and whether The MLC is an unregistered investment company under the Investment Company Act of 1940).

The more compelling policy issue is that The MLC are trading stocks with other people's money who have no idea what is going on in the absence of statutory authority or consent. Wall Street will survive if The MLC is required to disclose their portfolio holdings and the identity of their "financial advisors

The following summarizes in a checklist the potential regulatory actions addressed our discussion with you and above.

***Proposed Regulatory Actions for Redesignation of the MLC***

<u>Conditional Redesignation</u>

- Explicitly condition redesignation of the MLC on meeting specific performance benchmarks (e.g., match rates comparable to CMRRA's 93%).

- Mandate ongoing quality control oversight reviews by the Office, GAO or an independent and unconflicted royalty/accounting examiner, with public reporting of results.

- Require publication of data flow and architecture charts showing responsibilities between MLC and HFA.

- Compel disclosure of performance metrics for each matching vendor measured monthly beginning when the vendor was engaged, including accuracy rates and definitions of "match."

Metadata Quality Control

- Create an "unmatch" mechanism for rightsholders to correct incorrect links.

- Clarify metadata responsibility: once publishers deliver accurate data, the MLC must ensure it is carried into production and exports. Once delivered, metadata can only be changed by engaging the senior metadata registrant as a matter of process.

- Require publication of improvement goals (percent error reduction and dollar-value impact), tied to redesignation.

Governance

- Order transparency on governance actions: board approvals of audits, litigation, and investment policy must be disclosed to the public in real time.

- Require MLC to obtain oversight approval of the Copyright Office *before* embarking on adventures like the Investment Policy.

- Mandate regular disclosure to members of audit status (number initiated, completed, and outcomes), along with a projected timeline for each.

- Given that the DLC and licensees may be hostile to audits in general, appoint an independent ombudsman to oversee audits and tactics on both sides to avoid litigation.

Investment Policy

- Determine if MLC ever had the authority to adopt its investment policy and if not, order the unwinding of the portfolio and proper allocation of profits to copyright owners.

- Clarify whether the existing investment policy was adopted without Copyright Office approval and answer whether the investment policy makes The MLC an agent or de facto trustee with an involuntary principal outside of the MMA?[12]

- Require monthly investment disclosures: holdings, financial advisors, and compliance with the Investment Company Act of 1940, if applicable, with songwriter input on ethical concerns over investments in companies that promote or profit from military hardware, pharmaceuticals, conflict zones and the like, or DSPs that might present a conflict of interest.

- Clarify interest rules: require that interest be treated as a penalty borne by licensees, not as a windfall to the MLC for failing to match.

[12] By adopting an investment policy not authorized by §115 or implementing regulations, The MLC may have stepped outside its statutory mandate. If so, it may no longer enjoy the liability protections of the MMA. Instead, it assumes the fiduciary obligations of a *trustee de son tort* or a statutory trustee, with full exposure under general trust law for any mismanagement, self-dealing, or failure to preserve principal. Surely, they thought of this when considering the Investment Policy as they have the most sophisticated lawyers in New York and Washington, DC advising them.

-Disclose all investments made by the MLC and publish monthly updates on portfolio holdings.

-Adopt regulations that prevent the MLC from distributing trading profits as part of market share distribution of black box whenever that distribution is made.

Please let us know if we can provide additional information or address any follow-up questions. We are grateful for the Office's time, careful consideration, and thoughtful engagement with these complex but critical issues, and we look forward to continued collaboration in service of songwriters, publishers and all stakeholders.

Very truly yours,

Christian L. Castle

/s/Abby North
_____
Abby North