August 27, 2025

Via email

Emily Chapuis
Acting General Counsel and Associate Register of Copyrights
United States Copyright Office
Library of Congress
101 Independence Ave. SE
Washington, DC 20559-6000

Re: Summary of The MLC's August 19, 2025, Ex Parte Meeting with the U.S. Copyright Office Concerning Docket No. 2024-1, Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator

Dear Ms. Chapuis,

This letter summarizes the videoconference that took place on August 19, 2025, between the Mechanical Licensing Collective ("The MLC") and representatives of the U.S. Copyright Office (the "Office"). The people participating in the meeting for The MLC were Alisa Coleman (Board Chair), Kris Ahrend (Chief Executive Officer), Rick Marshall (General Counsel), Ellen Truley (Chief Marketing and External Affairs Officer), and outside counsel Benjamin Semel (Pryor Cashman). The people participating on behalf of the Office were Michael Druckman, Jalyce Mangum, and John Riley.

The following summarizes the discussion:

The MLC identified two primary purposes for requesting the meeting: (1) to respond to remarks made by the Digital Licensee Coordinator (the "DLC") during its August 1, 2025 ex parte meeting with the Office, as summarized in its letter dated August 8, 2025 (the "DLC Letter"), and (2) to highlight areas the Office may wish to examine further in its review of the DLC's designation.

I. The MLC's comments on the DLC Letter

The MLC compared the substance of our July 2025 Meetings with the Office—during which we provided detailed updates on operational enhancements and reaffirmed our commitment to continuous improvement—with the DLC's decision to offer limited new information in support of its own designation. Instead, the DLC largely reiterated generalized criticisms of The MLC that have already been raised in prior joint submissions with DIMA (see DIMA/DLC Initial and Reply Comments) and thoroughly addressed by The MLC and other stakeholders (see The MLC Reply Submission at 23-38).[1]

The MLC also noted that, although the DLC has officially stated its support for The MLC's continued designation, it appears to be attempting to use this statutorily mandated process as a vehicle to

[1] This submission adopts the same defined terms as in The MLC's Initial and Reply Submissions.

advocate for regulatory outcomes that benefit select members of DIMA/DLC. Such advocacy is inappropriate, particularly given that DIMA/DLC are familiar with established procedures for proposing rulemakings. Any such requests should be pursued through those formal channels, not unilaterally promoted as part of this designation review.

In addition to observing that the topics raised by the DLC fall outside the scope of this proceeding and have already been thoroughly addressed, The MLC responded to certain statements in the DLC Letter to correct several of the more significant inaccuracies it contained:

Governance: Contrary to the DLC's assertions, DSPs have meaningful and recurring opportunities to provide input to The MLC. These include but are not limited to the seat the DLC occupies on The MLC's Board; regular meetings between The MLC's and DIMA's executive leadership; DSP participation on The MLC's Operations Advisory Committee (the "OAC"); attendance at regularly occurring "All Committee" meetings; and ongoing interactions with The MLC's DSP Relations team. Claims of marginalization are inconsistent with this long-established and well-documented pattern of engagement.

In particular, the assertion that DSP representatives on the OAC have "not been given meaningful opportunities to provide recommendations, in contravention of 17 U.S.C. § 115(d)(3)(D)(iv)," is unfounded and disingenuous. The OAC has met at least quarterly for six years, and the record reflects that these meetings have covered a variety of operational topics of interest, all of which were suggested or supported by the DSP members of the committee. Moreover, the DSP representatives of the committee have had the ability to make recommendations regarding The MLC's operations during any of these meetings. The DLC offers no evidence to support its claim that The MLC has ever prevented DSP representatives from providing recommendations during committee meetings. The suggestion that The MLC has done so in a manner that violates federal law is completely baseless.

Budget Process: The DLC has mischaracterized the existing budget process. As the DLC admits and as The MLC has already addressed in detail, the DLC has significant avenues for participating in The MLC's budget process and numerous opportunities to provide feedback on The MLC's budget and spending. (See The MLC Reply Submission at 30-34). For example, the Budget Performance Advisory Committee ("BPAC") was jointly created with the DLC and meets regularly to review budget information and provide related input to The MLC's Board. The BPAC comprises 12 members: 6 appointed by the Board and 6 by the DLC. The MLC shares detailed forecasts and reports quarterly, consistent with terms expressly agreed to by the DLC. Notably, these terms were *negotiated by the DLC* as part of the voluntary settlement of the initial Administrative Assessment and represent a greater degree of involvement in The MLC's budget process than the DLC would otherwise be entitled to under the MMA.

Enforcement: The DLC Letter continues a troubling pattern of the DLC selectively advancing arguments that serve the specific interests of individual DIMA/DLC board members, some of which are engaged in active litigation with The MLC. These DLC arguments are outside of the statutory functions of the DLC, and there is no evidence that these arguments reflect any sort of consensus view among the DSPs operating under the blanket license—the constituency the DLC purports to represent.[2] These arguments

[2] DLC Reply Submission at 7 (stating "In contrast to MLC, Inc., DLC, Inc. was established with the specific

openly seek to undermine The MLC's statutory enforcement activities and are not part of the DLC's statutory purpose, as discussed further in the section entitled "Adherence to Statutory Functions" below. As DIMA/DLC acknowledged in their joint Initial and Reply filings, Congress expressly mandated The MLC to enforce rights and obligations under Section 115.[3] The MLC takes this mandate seriously, pursuing enforcement only after careful legal analysis and with fiscal responsibility. Since the inception of the blanket license, The MLC has initiated only two enforcement actions, each undertaken after extensive internal review and seeking recovery of hundreds of millions of dollars in royalties potentially due to rightsowners. As outlined in The MLC's PRD submissions, Annual Reports, and in direct discussions with DIMA/DLC, The MLC has resolved the overwhelming majority of DSP compliance issues it has identified over the past five-plus years without needing to resort to litigation. Importantly, The MLC's enforcement efforts ensure not just that copyright owners receive the royalties they are entitled to, but they also ensure that all DSPs operating under the blanket license do so on a level playing field by preventing individual DSPs from gaining an unfair competitive advantage through underpayment of royalties. Any objective review demonstrates that The MLC's exercise of its statutory enforcement obligations has been both judicious and completely compliant with the parameters of its statutory mandate.

II. The MLC's observations on DLC redesignation

Like The MLC, the DLC should also be held to a high standard to retain its designation. Although the DLC's statutory functions are narrower and less complex than those of The MLC, they are nonetheless mandatory and expressly prescribed by Congress. The MLC has always met rigorous benchmarks of independence, transparency, accountability, and adherence to statutory purpose. The MLC believes that the Office should undertake a similar scrutiny in its oversight of the DLC. In that spirit, we respectfully suggest the following areas the Office may wish to examine further:

Independence: Section 115(d)(5)(B)(ii) mandates that the DLC be a nonprofit entity "not owned by any other entity." In practice, however, DIMA's CEO, who serves as the DLC's representative on The MLC Board, has publicly explained that "DIMA administers the DLC, so the running of the DLC is done by DIMA, and we have a cost charge for the time we spend on doing the DLC."[4] This "administering," "running" and "doing" of the DLC by DIMA raises questions about its eligibility under Section 115(d)(5)(B)(ii). The DLC has no employees, and its work is carried out entirely by DIMA. The voting board of the DLC is also appointed by the DIMA member companies. Moreover, the DLC's Form 990 filings do not appear to show revenues or expenses that reflect the activities actually conducted by the DLC, and in particular, the work of outside counsel in the DLC's name.[5] DIMA has offered vague references to

intention that it represent and coordinate the activities of DMPs in connection with the blanket license system . . .").

[3] DIMA/DLC Reply Comments at 12 (stating "…the Services actually *agree* that [The MLC] has a proper role in enforcing the terms of the blanket license and have not argued otherwise.") (emphasis original).

[4] Kristin Robinson, *DIMA CEO: Legal Fights, Transparency & Neutrality—Improvements Streamers Suggest for the MLC*, Billboard (July 29, 2024), https://www.billboard.com/pro/dima-ceo-mma-mlc-interview-legal-fights-transparency-neutrality-improvements/.

[5] Known DLC work in 2020 consisted primarily of its full participation in at least five Copyright Office rulemakings, involving more than 20 written submissions and 10 meetings with the Office, represented throughout by DIMA's outside counsel Latham & Watkins. The DLC reported no expenses in connection with this work on its Form 990.

"secondment" of resources from DIMA and "cost charges" to DIMA for resources, but this falls short of explaining how the DLC meets the statutory requirement of independence, especially since DIMA represents only a small subset of the 70+ digital services that interact with The MLC.[6]

Because nonprofits lack traditional equity ownership, the term "owned" in the MMA must be evaluated under a standard other than equity. While the MMA does not lay out a particular standard, the law has developed multiple frameworks for evaluating similar issues in other contexts. These frameworks consistently identify ownership through operational control, governance overlap, and financial dependency. The alter ego doctrine may be the most established set of principles to inform a determination of ownership outside of traditional equity. Federal courts have explained that "a nonshareholder… may be, 'in reality,' the equitable owner of a corporation where the nonshareholder… 'exercise[s] considerable authority over [the corporation]... to the point of completely disregarding the corporate form.'"[7] These courts determine whether such "complete control" exists by examining factors including: "(1) disregard of corporate formalities; (2) inadequate capitalization; (3) intermingling of funds; (4) overlap in ownership, officers, directors, and personnel; (5) common office space, address and telephone numbers of corporate entities; (6) the degree of discretion shown by the allegedly dominated corporation; (7) whether the dealings between the entities are at arm's length; (8) whether the corporations are treated as independent profit centers; (9) payment or guarantee of the corporation's debts by the dominating entity, and (10) intermingling of

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See DLC Form 990 for 2020 (available at https://projects.propublica.org/nonprofits/organizations/844697435/202123199349313337/full); DLC Comments in Response to NOI, Docket No. 2020-8 (June 8, 2020); DLC Comments in Response to NOI, Docket No. 2019-6 (Aug. 3, 2020); DLC Comments in Response to NPRM, Docket No. 2020-12 (Aug. 17, 2020); DLC Reply Comments in Response to NOI, Docket No. 2019-6 (Aug. 31, 2020); DLC Comments in Response to NPRM, Docket No. 2020-8 (Oct. 19, 2020); DLC Comments in Response to Supplemental NPRM, Docket No. 2020-12 (Nov. 25, 2020); DLC Comments in Response to NPRM, Docket No. 2020-5 (May 22, 2020); DLC Comments in Response to NPRM, Docket No. 2020-7 (June 8, 2020); DLC Letter re: Copyright Office Meeting (Feb. 14, 2020); DLC Letter re: Feb. 11, 2020 Meeting (Feb. 24, 2020); DLC Letter re: Mar. 2, 2020 Meeting (Mar. 4, 2020); DLC Letter re: Audio Links (June 15, 2020); DLC Letter re: June 19, 2020 Audio Link Call (June 23, 2020); DLC Letter re: June 19, 2020 Copyright Office Webex and Call (June 26, 2020); DLC Letter re: Updated Regulatory Language Regarding Audio Links (July 8, 2020); DLC Letter re: Altered Metadata Questions (July 13, 2020); DLC Letter re: July 22, 2020 Copyright Office Virtual Meeting (July 24, 2020); DLC Letter re: August 7, 2020 Copyright Office Virtual Meeting (Aug. 11, 2020); DLC Letter re: August 25, 2020 Copyright Office Virtual Meeting (Aug. 27, 2020); DLC Letter re: October 9, 2020 Copyright Office Virtual Meeting (Oct. 14, 2020); DLC Letter re: November 6, 2020 Copyright Office Virtual Meeting (Nov. 10, 2020); DLC Letter re: November 13, 2020 Copyright Office Virtual Meeting (Nov. 17, 2020); DLC Letter re: December 9, 2020 Copyright Office Virtual Meeting (Dec. 11, 2020). Likewise, the DLC reported no legal fees in 2019, despite being represented by outside counsel in connection with extensive work on the Office's initial designation proceeding (Docket 2018-11) and the CRB's administrative assessment proceeding (CRB Docket No. 19-CRB-0009 AA).

[6] The DLC Reply Comments in this proceeding raised more questions than they answer on this topic. The DLC explained its view that it is "sensible and economical" for the DLC to have its operations run by DIMA staff "given DIMA's (and its employees') longstanding familiarity with, and expertise navigating, the unique issues faced by DMPs in connection with statutory licensing of musical works." (DLC Reply Comments at10).

[7] *See Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1051 (2d Cir. 1997).

property between the entities." *Id.* at 1053.[8] The DIMA/DLC relationship implicates virtually every relevant factor.[9]

The MLC respectfully encourages the Office to analyze the appropriate standard to be applied in this context and to obtain information from DIMA/DLC necessary to assess compliance with the requirements of the MMA.

Adherence to Statutory Functions: The DLC appears to have diverged from the functions outlined in its 2019 designation petition and required by the MMA. (See DLC, Designation Proposal at 7, U.S. Copyright Office Dkt. No. 2018–11 at Ex. C (Mar. 22, 2019) ("DLC Designation Proposal")). While it originally committed to enforcing administrative assessments, supporting public awareness of The MLC and unclaimed royalties, assisting in rate proceedings, and maintaining independent records, there is little public evidence that it has met these responsibilities consistently during the term of its initial designation. (See DLC Designation Proposal at Ex. C). Instead, the DLC has focused on openly challenging The MLC's fulfillment of its statutory enforcement activities, particularly where those efforts affect specific individual DIMA board members. It remains unclear whether, and to what extent, the DLC is fulfilling its core statutory functions. (See 17 U.S.C. § 115(d)(5)(C)).

Conflicts of Interest / Selective Advocacy: The MMA expressly prohibits the DLC from "engag[ing] in government lobbying." (See 17 U.S.C. § 115(d)(5)(C)(ii) ("Restriction on lobbying")). Yet the DLC's current organizational structure raises serious concerns about its compliance with this restriction and with broader expectations of independence. For example, DIMA's CEO—who also serves as the DLC's representative on The MLC Board—and DIMA's General Counsel both appear to actively lobby Congress and federal agencies on behalf of DIMA's members. This dual role creates a significant risk of blurred lines between prohibited lobbying activity and the DLC's statutory responsibilities, particularly since, to our knowledge, the DLC has not adopted any policy requiring these individuals to clarify that they act solely in their capacity as DIMA representatives when engaging in lobbying, and not in their capacity as representatives of the DLC.

Moreover, DIMA represents only a handful of the largest digital services, and its bylaws require that it "must advance the interests of [DIMA] Member Companies," not the interests of other digital

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[8] See DLC Reply Comments at 8-9 (confirming that the same DSPs provide the funding for both DIMA and the DLC and that "DLC, Inc.'s largest DMP members (who also support DIMA and its different operations and activities) invest their resources to allow smaller DMPs to become DLC, Inc. members at dramatically lower dues… only the largest DMPs have the resources to completely fund DLC, Inc. and its efforts."). . These same five DSPs comprise the boards of both entities.

[9] Federal law in other contexts has likewise looked at control in assessing ownership beyond equity. *See, e.g.*, 34 C.F.R. § 682.302(f)(3)(v) (Department of Education regulation recognizing that "ownership and control" of a nonprofit can exist when another entity effectively directs its governance or its core operational decisions, such as staffing); 26 C.F.R. § 1.509(a)-4(g)(1)(i) (IRS regulation to identify when one nonprofit controls another, evaluating meaning of "operated, supervised, or controlled by" and looking to "a substantial degree of direction over the policies, programs, and activities" of the nonprofit, a relationship the IRS describes as "closely akin to that of a parent and subsidiary"); 31 C.F.R. § 1010.380(d)(1) (implementing the Corporate Transparency Act, and defining "beneficial owner" through discussion of elements of "substantial control"). While these regulations and standards do not apply in this context, they illustrate a consistent principle supporting evaluation of nonprofit ownership through the lens of operational control.

services.[10] This structure inherently limits the DLC's ability to represent the broader DSP community and invites conflicts of interest. For example, the DLC has taken positions, such as resisting an AROU certification mechanism designed to accommodate the operational constraints of smaller DSPs and supporting an assessment formula that favors large DSPs, that serve the interests of the largest DSPs that are members of DIMA, not those of the smaller DSPs that are not affiliated with DIMA. The DLC's representative has also used his privileged position on The MLC Board to question or challenge The MLC's enforcement actions against two specific DSPs who are also DIMA members—despite the fact that these enforcement actions *benefit* other DSPs – particularly, smaller DSPs – in part, by seeking to ensure that those two large DSPs can't manipulate the rules to serve their own interests in a manner that gives them a competitive advantage over other DSPs who do not do so.[11]

The Office may wish to consider whether the DLC should establish and publicly disclose formal written policies to ensure that DIMA's advocacy does not influence or overlap with DLC responsibilities, and to ensure that the DLC's operations remain within its statutory remit. In interactions with The MLC, its Board, or the Office, individuals holding roles with both entities could be encouraged to formally identify the capacity in which they are acting. The Office might also examine whether the DLC has adequate safeguards in place to ensure it represents the full DSP community, not just DIMA members; whether individual DSPs engaged in enforcement actions by The MLC have influence over DLC positions; and whether the DLC consults with non-DIMA DSPs before advancing positions favored by one DSP that could impact all DSP licensees. In the case of joint DIMA/DLC submissions, greater clarity as to whose interests are being represented and who approved the filing is imperative, as the two organizations represent different constituents with differing interests.

Transparency: As noted, while the DLC's statutory functions are narrower in scope than The MLC's, they are no less mandatory. The same core principles of independence, transparency, and accountability that Congress established for The MLC should equally apply to the DLC's designation. A concrete step the Office could take to ensure that the DLC explains how it is fulfilling its statutory functions and honoring these statutory principles would be to require the DLC to produce annual reports comparable to The MLC's for prior periods, which can be reviewed by stakeholders and become part of the record of this proceeding. The dissemination of such annual reports going forward could also support the ongoing evaluation of the DLC's qualifications and activities.

The MMA provides clear legal support for requiring the DLC to produce and publish an annual report, as it imposes several significant, ongoing obligations that warrant more frequent oversight than a five-year review. These include, but are not limited to, ensuring that the DLC operates independently and is not owned by any other entity; refrains from lobbying; and fulfills its statutory duties, such as establishing and maintaining a governance framework and membership criteria; maintaining ongoing records of its

[10] See Declaration of Graham Davies in Support of Amicus Curiae Digital Media Association's Opposition to Plaintiffs' Motion for Reconsideration of Order Granting Motion for Leave to File Amicus Curiae Memorandum, *Eight Mile Style, LLC v. Spotify USA Inc.*, No. 3:19-cv-00736 (M.D. Tenn. Feb. 6, 2024) (declaring "DiMA's Bylaws specify that it must advance the interests of the Member Companies collectively.").

[11] *See also* U.S. Copyright Office, Designation of Music Licensing Collective and Digital Licensee Coordinator, 84 Fed. Reg. 32274, 32295 (July 8, 2019) (noting a DLC function as "ensuring that [DLC] has the broadest possible support of the licensee market")

activities; assisting in publicizing the existence of The MLC; making reasonable, good-faith efforts to promote awareness of the ability of copyright owners to claim royalties for unmatched works and shares thereof through The MLC; and conducting in-person outreach with songwriters. (See 17 U.S.C. § 115(d)(5)(A & C)).

The DLC's annual reports could include: a detailed account of the DLC's annual activities; disclosure of its annual budget and personnel cost allocations for DIMA staff working on DLC matters; its current membership; metrics regarding outreach efforts to DSPs; metrics regarding its efforts to promote awareness of The MLC; identification of any internal committees and committee participants; and a clear explanation of the extent to which any aspect of the DLC's operations is managed or directed by employees of DIMA or any another organization. These annual reports could also require disclosure of any conflict-of-interest policies and related safeguards the DLC puts in place to ensure it is always acting in the interests of all DSPs operating under the blanket license and not just the handful of large DSPs that are also members of DIMA. Requiring such transparency is both consistent with Congress' imposition of significant ongoing obligations on the DLC and essential in maintaining the integrity of the DLC's operations, and it would help to ensure that outside organizations like DIMA do not improperly influence the DLC or operate under the imprimatur of the DLC.

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

Sincerely,

Rick Marshall
General Counsel