



United States Copyright Office

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October 30, 2020

*Digital Licensee Coordinator, Inc.
Mechanical Licensing Collective*

*Alliance For Women Film Composers
Artist Rights Alliance
Digital Music Association
Music Artists Coalition
Music Creators North America, Inc.*

Via Email

*National Music Publishers' Association
Nashville Songwriters Association
International
Recording Academy
Society of Composers & Lyricists
Songwriters Guild of America, Inc.
Songwriters of North America*

Re: Docket No. 2020-12

Transition Period Cumulative Reporting and Transfer of Royalties to the Mechanical Licensing Collective

Dear Commenters:

Thank you for your participation in the Copyright Office's ongoing rulemaking proceeding to implement the Music Modernization Act. Following the receipt of comments in response to the Office's notice of proposed rulemaking ("NPRM"),¹ the Office has been reviewing submitted comments and hosting several *ex parte* meetings.² The Office is now providing these parties with the opportunity to participate in a joint *ex parte* teleconference concerning industry agreements between music publishers and certain digital music providers ("DMPs") to liquidate royalties for unmatched works through payments based on publisher market share that predated the MMA's enactment.

The Copyright Office issued its NPRM following a notification of inquiry that revealed disagreement between the mechanical licensing collective ("MLC"), digital licensee coordinator ("DLC"), and others regarding the DLC's request for a "regulatory clarification" related to whether and how certain payments made pursuant to such preexisting agreements could be considered in connection with reporting and payments to the MLC required by DMPs to qualify for the MMA's section 115(d)(10) limitation on liability.³ The DLC was concerned that these DMPs would be obligated to pay both under their preexisting agreements and under the

¹ 85 Fed. Reg. 43,517 (July 17, 2020).

² U.S. Copyright Office, *Ex Parte* Communications, <https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html>.

³ 85 Fed. Reg. at 43,523.

limitation on liability provision, effectively creating a requirement to pay “double.”⁴ The MLC contended that the DLC’s proposal would exceed the Office’s regulatory authority.⁵

When issuing the NPRM, the Copyright Office “tentatively decline[d]” the DLC’s suggestion to offer regulatory language regarding the interaction of these preexisting agreements and limitation on liability obligations, but noted it remained open to dialogue further on this issue.⁶ Indeed, the Office has since held several *ex parte* meetings on this issue. Through these discussions, and as disclosed on the Office’s website, the Office has learned additional detail regarding the operation of these agreements, has heard from additional representatives of DMPs and music publishers, and has met with a variety of songwriter groups. Notably, the Office has been informed that in many cases, publishers participating in such agreements did distribute a portion of royalties received through these agreements to their respective songwriters, although the Office certainly appreciates that songwriter groups are concerned about ensuring that songwriters receive appropriate payment for uses of their creative works on music streaming services.

On September 30, 2020, Senator Lindsey Graham, Chairman of the Senate Committee on the Judiciary, sent a letter to the Copyright Office voicing a concern over parties’ continued disputes regarding this issue.⁷ This letter noted that “[s]ince the intent of the MMA was to provide legal certainty for past, present, and future usage, it is critical that this issue be resolved in a manner that protects copyright owner interests while ensuring that songwriters are paid their splits and services are not burdened with double payments.”⁸ Chairman Graham urged the Office, in the case that parties are unable to address this dispute on their own, “to bring [these parties] together in order to prevent a return to the inefficient litigation that featured prominently in the prior licensing regime.”⁹

Pursuant to Chairman Graham’s request and to progress this rulemaking, the Copyright Office invites commenters who addressed this topic to a joint *ex parte* teleconference concerning the issues raised by the comments with respect to this aspect of the rulemaking. DiMA and NMPA may invite individual members of their respective organizations who have participated in individual meetings with the Office or otherwise may be interested in this subject; similarly the Office has endeavored to include each songwriting group who has signaled interest in this subject.

In connection with this invitation, the Office will be issuing a supplemental NPRM that notices additional language for consideration and discussion, were the Office to promulgate regulatory language to address these DMP concerns. The Office encourages all interested parties to review this notice, and to submit written comments if they are interested.

⁴ *Id.* (citing DLC Initial Comment at 18).

⁵ *Id.* at 43,523–24 (citing MLC Reply Comment at 27–30).

⁶ *Id.* at 43,523.

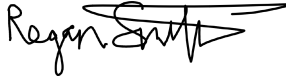
⁷ Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020), <https://www.copyright.gov/rulemaking/mma-transition-reporting/mma-payment-dispute-letter.pdf>.

⁸ *Id.*

⁹ *Id.*

Please email me at regans@copyright.gov and Jason Sloan at jslo@copyright.gov by **no later than November 4, 2020, at 11:59 p.m. Eastern Time** with your availability to participate in a teleconference on this issue on November 9, 10, or 13, 2020. The Copyright Office will be in touch to confirm a time that is most amenable to commenters.

Sincerely,

A handwritten signature in black ink that reads "Regan A. Smith". The signature is stylized, with a long horizontal stroke extending from the end of the name.

Regan A. Smith
*General Counsel and
Associate Register of Copyright
U.S. Copyright Office*