



United States Copyright Office

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*Re: Docket No. 2020-5
Music Modernization Act Reports of Usage – Audio Links*

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 is providing you with the opportunity to provide written responses to the questions below and to participate in a joint *ex parte* teleconference concerning the reporting of sound recording audio links and their use in the matching process.

The Office issued its NPRM following a notification of inquiry that revealed sharp disagreement between the mechanical licensing collective (“MLC”) and digital licensee coordinator (“DLC”) regarding whether it is necessary for the Office to prescribe regulations requiring the provision of

¹ 85 Fed. Reg. 22,518 (Apr. 22, 2020).

audio links in connection with every usage reported by digital music providers (“DMPs”) in monthly reports of usage.² The proposed rule would require DMPs, to the extent existing, to provide unique identifiers (“DMP identifiers”) that can be input into a service’s consumer-facing search feature to locate and listen to each recording associated with a reported use, but would not require DMPs to provide clickable URLs for each reported use.³ In the NPRM, the Office said:

[W]hile the [MLC’s] planned inclusion of audio links [in the public claiming portal] is commendable, the record to date does not establish that the method by which the MLC receives audio links should be a regulatory issue, rather than an operational matter potentially resolved by MLC and DLC members, including through the MLC’s operations advisory committee. . . . The Office declines at this time to propose a rule including audio links in monthly reporting, but encourages the parties, including individual DLC members, to further collaborate upon a solution for the MLC portal to include access to specific tracks (or portions thereof) when necessary, without cost to songwriters or copyright owners. The Office hopes that this matter can be resolved after the parties confer further, but remains open to adjusting this aspect of the proposed rule if developments indicate it is necessary.⁴

Despite the Office’s encouragement, it does not appear that the issue was resolved. In response to the NPRM, the MLC continues to assert that audio links are necessary to be included in each monthly report of usage.⁵ NSAI, SONA & MAC, and the MLC Unclaimed Royalties Oversight Committee also filed comments regarding the importance of audio links in identifying unmatched works.⁶ The DLC’s comments do not address this issue whatsoever. ARM states that links should not be required in reports of usage, but does not object to them being provided and used in connection with the MLC’s claiming portal, subject to certain conditions.⁷

To progress this rulemaking, the Office now requests that the MLC and DLC provide responses to the below questions. In addition, the Office requests that the MLC and DLC provide an update on their progress negotiating a non-regulatory operational solution to enable the MLC to include audio links in the public claiming portal, and to identify with specificity any obstacles to resolution.

Questions for the MLC:

1. The MLC’s comments, along with others, suggests that the utility of audio links primarily rests in identifying unmatched works in a public claiming portal, but the MLC requests that links for all sound recordings be included in each monthly report. Why does the

² See *id.* at 22,530–31.

³ *Id.*

⁴ *Id.* at 22,531.

⁵ MLC Comments at 39–40.

⁶ NSAI Comments at 4–5; SONA & MAC Comments at 7–8; MLC Unclaimed Royalties Oversight Committee Comments at 2–5.

⁷ ARM Comments at 3.

MLC need links for every reported monthly use if the wide majority of sound recordings will be automatically matched to musical works? Are there more tailored methods the MLC could use to accomplish its goal of having links in the portal, such as issuing subsequent requests to DMPs to provide links limited to unmatched works, or, in appropriate cases, obtaining a recording from a single source when the identity of the sound recording is not in dispute (*e.g.*, through a confirmed ISRC) but information identifying the musical work or its copyright owner(s) are incomplete? What are the different burdens to the MLC associated with various approaches, in terms of time and expense?

2. How does the MLC anticipate the claiming portal will operate where the same unmatched sound recording exists across multiple services (*e.g.*, where the recording has been identified and matched to a musical work, but a copyright owner of the musical work (or a share thereof) has not been identified and located). Will there be a single entry in the claiming portal or will there be a separate entry for each DMP that reported usage of that work, each linking to each different service?
3. As noted in the NPRM, the Office understands the dispute to center around whether monthly reports of usage must include clickable URLs, or if DMPs may instead provide a DMP identifier, where in either scenario (at least where DMPs have such identifiers) the MLC will receive access to the sound recording actually played by the DMP. The MLC is invited to clarify if it has a different understanding. If DMPs are required to provide the MLC with a no-cost subscription suitable for the MLC and public users of the claiming portal to obtain appropriate⁸ access to unmatched tracks using these DMP identifiers, is this sufficient for the MLC's purposes? If not, please explain why not.
4. Some commenters, including the MLC's own Unclaimed Royalties Oversight Committee, have noted other potential applications for using audio links to assist in the MLC's matching efforts beyond inclusion in the public claiming portal, such as by "employ[ing] 'fingerprinting' technology to compare unidentified audio files to known sound recordings"⁹ and "allowing the ability to match based on lyrics, melody, harmonic elements, [and] rhythmic patterns."¹⁰ Does the MLC have plans to use audio links outside of the claiming portal to engage in these or other matching techniques? If so, when would the MLC expect to be able to begin using links in these ways? What are the operational differences to the MLC between using direct URLs and DMP identifiers for such purposes?

Questions for the DLC:

1. Describe the estimated burden that individual DLC members anticipate they will incur, in terms of time and expense, to provide the MLC with audio links: (a) via monthly reports of usage for all reported sound recordings; (b) in response to requests from the MLC for

⁸ *I.e.*, limited and protected. See ARM Comments at 3 (wanting to ensure that the database does not "become a free online jukebox that competes with DMPs").

⁹ See SONA & MAC Comments at 7–8.

¹⁰ See MLC Unclaimed Royalties Oversight Committee Comments at 4.

unmatched works for the public's use through the MLC's claiming portal; and (c) via any other method(s) the DLC wishes to propose. If the DLC can estimate such information for non-member DMPs, please do so.

2. Is there any difference in burden between providing links to full tracks versus only linking to shorter clips (*e.g.*, of 30 seconds)?
3. Although previously confirmed for some of its members,¹¹ please confirm whether all DLC members employ DMP identifiers for sound recordings on their services. For those that do not, please identify the service and any anticipated operational issues or transition considerations related to implementing the use of these identifiers. To the extent available, the Office is also interested in information related to similar practices with respect to non-member DMPs.
4. If the DLC believes that DMPs will not be able to provide audio links in reports of usage as of the license availability date, how long of a transition period is needed? If the DLC believes there are other methods of providing audio links that may require a transition period, what are they and how long of a transition period is needed for them?
5. How often does a link for a given recording change?

Please provide your responses **no later than June 15, 2020, at 11:59 p.m. Eastern Time**. Responses should be delivered via email to me at regans@copyright.gov and Jason Sloan at jslo@copyright.gov. In your email, please include your availability to participate in a teleconference on this issue on June 19 or 22, 2020. The Office will be in touch to confirm a time that is most amenable to the commenters.

While the Office's questions focus on operational information concerning the parties who would either directly provide or receive this information, *i.e.*, the MLC and DLC (representing DMPs), the Office is also providing an opportunity for the other parties who commented on the issue of audio links to participate in the teleconference or provide supplemental information, following the same instructions, as copied on this letter.

Sincerely,



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

¹¹ The DLC previously stated that Amazon, Apple, Google, Pandora, and Spotify employ such identifiers. *DLC Ex Parte Letter #2* at 3 (Feb. 24, 2020).

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