

June 26, 2020

Via email: achau@copyright.gov, jslo@copyright.gov

Regan Smith
General Counsel and Associate Register of Copyrights
Anna Chauvet
Associate General Counsel
Jason Sloan
Assistant General Counsel
U.S. Copyright Office
101 Independence Ave. SE
Washington, DC 20559-6000

RE: Docket No. 2020-05
Music Modernization Act Reports of Usage – Server Fixation Date and Termination

Dear Ms. Smith, Ms. Chauvet, and Mr. Sloan:

This letter summarizes the Music Artists Coalition's (MAC) participation in the Monday, June 22nd *ex parte* discussion on the topic of server fixation date and termination.

Attendees:

U.S. Copyright Office

Regan Smith
Anna Chauvet
Jason Sloan

John Riley
Terry Hart
Cassandra Sciortino

MLC

Kris Ahrend
Richard Thompson
Ellen Truley
Alisa Coleman
Bart Herbison

Danielle Aguirre
Ben Semel
Frank Scibilia
Abel Sayago
Maurice Russel

DLC

Garrett Levin
Sy Damle
Sarah Rosenbaum

Music Artists Coalition

Susan Genco
Ned Waters

Peermusic

Timothy A. Cohan

Recording Academy

Todd Dupler

Songwriters Guild of America

Rick Carnes

Charles J. Sanders

Songwriters of North America

Lauren Hancock

Jacqueline Charlesworth

Dina LaPolt

Michele Lewis

Jack Kugell

Adam Gorgoni

Cameron Berkowitz

During the discussion, MAC reiterated several points initially put forth in its joint submission¹ with the Songwriters of North America (SONA). Most prominently, MAC reiterated that the Mechanical Licensing Collective's (MLC) must maintain its status as a neutral database and all parties need to be certain that the inclusion of the "server fixation" date in the database must not have any substantive impact on songwriter termination rights under the Copyright Act. MAC underscored that if the inclusion of this datapoint was utilized to undermine or influence the termination rights granted to songwriters under the Copyright Act, or the benefits of these rights, it would have extreme negative ramifications for songwriters.

Speaking on behalf of MAC, Susan Genco, MAC board member, further stated that the MLC should not seek an opinion, and the Copyright Office should not proffer substantive interpretations on this point that might have long-term effect on licensing. MAC agrees that adding the explicit language "Neither the collection nor maintenance of records under paragraph (m)(2), nor the records themselves, shall be (i) interpreted or construed to alter, limit, or diminish in any way the ability of an author or any other person entitled to exercise rights of termination under section 203 or 304 of title 17 from fully exercising or benefiting from such rights; or (ii) interpreted or construed as determinative of the date of the license grant with respect to works as it pertains to sections 203 and 304 of title 17," to the proposed rule would address MAC's concerns regarding future interpretation. Please note that this draft language differs from that proposed in the initial joint submission from MAC and SONA and reflects issues brought forward during the June 22nd discussion.

MAC agreed with SONA's statement that the Copyright Office should reject the MLC's proposal that the date of fixation of each particular sound recording on the server should be treated as an individual license grant, lest this ruling be pointed to in a future court decision on the subject.

¹ [COMMENTS OF SONGWRITERS OF NORTH AMERICA \(SONA\) AND MUSIC ARTISTS COALITION \(MAC\) IN RESPONSE TO NPRM REGARDING MMA NOTICES OF LICENSE, NOTICES OF NONBLANKET ACTIVITY, DATA COLLECTION AND DELIVERY EFFORTS, AND REPORTS OF USAGE AND PAYMENT](#)

During the discussion, MAC also questioned the operational reasoning for MLC gathering the server fixation data as MLC will ultimately rely on the parties to resolve disputes. After all, Letters of Direction universally supply an operative date.

As the rulemaking process moves forward, MAC hopes that that the Copyright Office will exercise caution and be diligent in ensuring that no actions taken by the MLC will directly or indirectly adversely impact songwriters' rights to terminate transfers of their copyright interests on compositions.

Finally, MAC would like to thank the Copyright Office for their time and consideration on this complicated but deeply important topic. This organization is grateful for the chance to participate in these discussions and looks forward to providing any additional input the Office might require as final determinations are made.

Sincerely,
Susan Genco
MAC Board of Directors