

**Benjamin K. Semel**Direct Tel: 212-326-0131  
bsemel@pryorcashman.com

June 23, 2020

**Via email**

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

**Re: Docket No. 2020-5**  
**Summary of The MLC's participation in ex parte call concerning audio links**

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

This letter summarizes the participation of the Mechanical Licensing Collective (the "MLC") in the June 19, 2020 call ("June 19 Call") between the Copyright Office and numerous other participants concerning the above-referenced proceeding.

The persons participating in the June 19 Call for the MLC were Kris Ahrend (CEO), Richard Thompson (CIO), Abel Sayago (DSP Technical Lead), Alisa Coleman (Chair of the Board of Directors), Danielle Aguirre (nonvoting Board member) and Benjamin Semel (Counsel).

The other participants on the call are listed in Exhibit A hereto.

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The following summarizes the MLC's substantive participation in the call. The MLC began the call by noting that:

- There appears to be consensus on the importance and value of audio access to reduce the incidence of unclaimed accrued royalties, and the MLC believes that the issue to focus on now should be how, not whether, audio access will be made available;
- The MLC's position is that the Office should issue an interim rule requiring the reporting of audio links that provide access to portal users. The regulation could also include provisions directing the DLC and MLC to assess and report to the USCO within a short period of time (perhaps 90 or 120 days) on any recommended procedures to effectuate the rule or implementation framework;
- Multiple digital music providers ("DMPs") have implemented audio access for claiming portals in the past when motivated (in connection with settlements), and the MLC is confident that any necessary details for implementation can be addressed.

In response to a question on the MLC's position on reporting of URLs vs DMP identifiers, the MLC explained that, as noted in its June 15<sup>th</sup> letter (at pages 5-6), the URL is the preferred data because it provides complete information for access, but an identifier could be acceptable if instructions were also provided to convert the identifiers into links to provide access to portal users. The MLC notes that a unique DMP identifier is already reported under the DDEX DSRF standard.<sup>1</sup> The important piece of the reporting is not merely a unique DMP identifier, but rather the additional information that allows the identifier to be turned into a link to obtain audio access for portal users.

In response to a question about potential licensing hurdles, the MLC reiterated that it does not intend to host audio or copy sound recordings onto its servers, but intended a system where users could follow links on the MLC portal to access audio streamed by the DMP. The MLC noted again that claiming portals have been implemented before by multiple DMPs, showing that licensing concerns can be addressed to implement claiming portals. The MLC assured that it does not dismiss licensing concerns, but noted that the Office's regulations routinely place obligations on parties that require them to engineer solutions for compliance

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<sup>1</sup> The "DspResourceId" field in the DSRF standard reports the DMP's proprietary identifier for the sound recording.

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(noting as one example, the Office's proposed regulations requiring the MLC to provide response files to DMPs, although the precise format and choreography of that process has yet to be designed).<sup>2</sup> The MLC also notes that the DLC stated on the call that no DMP has indicated that obstacles to providing portal users with no-cost audio access are insurmountable. Identifying any licensing issues and solutions should thus be one of the issues that the DLC and MLC are directed to address as part of the implementation framework. In response to a claim that the MLC's expected use for audio access was unclear, the MLC disagreed and emphasized that working out each step in operational implementation does not mean that the use case is unclear. Rather, the intended use is straightforward: a registered and logged-in MLC portal user will be able to view entries listing DMP uses of musical works in covered activities, and the portal user should be able to click on links to hear audio of the respective uses, in order to assist with identification of the musical work being used.

In response to DLC statements that audio links may change and there may be engineering steps required to provide audio access, the MLC noted that all projects have engineering steps that must be solved. The MLC further notes that, insofar as there is a stable DMP identifier for each sound recording which can be resolved into audio access (which is something the DLC has indicated exists and can be reported by each DMP), the question of impermanent links is something of a red herring. Whatever process is used to resolve the stable DMP identifier into the audio access is the relevant process, a process that by definition must continue to work despite whatever link changes might also occur.

The MLC stressed again the consensus on the importance of audio, as has become clear in the rulemaking, and the fact that no one on the call indicated that there were problems with providing audio access that could not be solved. The MLC then reiterated its position that it was critical for this reporting to be included in this rulemaking, which can also lay out a framework for the DLC and MLC to collaborate and report back to the Copyright Office on any additional procedures appropriate for implementing audio access. The MLC underscored the comments of others on the call that this rulemaking is a unique opportunity to move this vital issue forward. The MLC expressed that the time constraints should be seen less as an

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<sup>2</sup> The MLC also noted more generally that the fact that compliance with a regulation might involve engineering work or even licensing work is not a basis for rejecting the regulation. The routine operation of laws and regulations requires parties to take steps for compliance. The Office proposes requiring numerous tasks that the MLC simply could not execute without negotiating and entering into licenses (e.g., for data on musical works and software to match and process royalties) and undertaking intensive engineering builds. Yet the MLC could not credibly complain that such requirements may not be contemplated until every step for compliance has been secured.

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obstacle than an opportunity, as they are what will move the process forward. If audio access is left off of the comprehensive rulemaking that the Office is undertaking now, this window of opportunity will be missed.

In response to DLC complaints that it would be unreasonable to place DMPs at risk of default under the blanket license if necessary details of implementation were not finalized, the MLC expressed that it would not object to the regulations providing that failure to provide the audio access reporting would not operate as a default under the blanket license if necessary details for implementation under the framework were still outstanding.

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

Sincerely yours,



Benjamin K. Semel

# EXHIBIT A

## Attendees for 6/19/2020 *Ex Parte* Call Regarding Audio Links

### U.S. Copyright Office

Regan Smith  
Anna Chauvet  
Jason Sloan

Terry Hart  
Cassandra Sciortino

### Recording Industry Association of America

Susan Chertkof

### Songwriters of North America

Lauren Hancock  
Michelle Lewis  
Abby North  
Zoe Keating

### Music Artists Coalition

Susan Genco

### Nashville Songwriters Association International

Bart Herbison

### MLC Unclaimed Royalties Oversight Committee

Phil Cialdella  
Kay Hanley  
Michael Eames

Frank Liwall  
Dan Navarro

### DLC

Garrett Levin  
Kevin Goldberg  
Sy Damle  
Peter Durning  
Alan Jennings  
Nick Williamson  
Chris Bly  
Jen Rosen

Seth Goldstein  
Jeff Wallace  
Alex Winck  
Cynthia Greer  
David Ring  
Dan Mackta  
Daniel Susla  
Lisa Selden

### MLC

Kris Ahrend  
Richard Thompson  
Abel Sayago  
Alisa Coleman

Danielle Aguirre  
Ben Semel