



November 17, 2020

Dear Regan, Anna and Jason,

I appreciate the opportunity to represent the Nashville Songwriters Association International (NSAI) on November 13, 2020, during the ex parte meeting regarding docket 2020-12. In addition to myself, Jennifer Turnbow was also present on the call representing NSAI. I am pleased to present a summary of the main points NSAI hoped to amplify during that call.

1. The current proposed rule is unworkable for copyright owners for a number of reasons:
  - a. It shifts the burden of collecting unpaid royalties due to the Mechanical Licensing Collective (MLC) and the copyright owner. The statute is clear regarding the responsibility to turn over all unclaimed royalties and the corresponding data lying solely with the digital service providers (DSPs).
  - b. The proposed rule impedes the ability of copyright owners to enforce their rights in court, allowing DSPs to underpay and force copyright owners to file lawsuits to prove the underpayment, and then letting DSPs escape statutory damages and fees by simply turning over what should have been paid in the first place, while copyright owners are forced to spend money, time and resources to claim what is rightfully theirs and should have been paid without cost through the MLC.
  - c. It puts self-published songwriters and small publishers at a particular disadvantage as they may not have the resources to enforce their rights with the burden shifted and the DSPs shielded from liability.
2. NSAI believes the statute is clear as to the requirement of DSPs to turn over all unclaimed activity as well as the payments that match the activity to the MLC. Allowing the DSPs to claim the limitation on liability while turning over any less unclaimed funds than the amount that corresponds to unmatched activity would be in violation of the statute and outside the scope of Copyright Office rulemaking.

Thank you again for the opportunity to participate and provide the perspective of songwriters on this matter. Please reach out if you require any additional information.

Respectfully,

Bart Herbison  
Executive Director