



June 26, 2020

Via email

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

**Re: Docket No. 2020-5
Summary of ex parte call regarding Music Modernization Act Reports of Usage
Server Fixation Dates and Termination**

Dear Ms. Smith:

Thank you for providing me the opportunity to participate on the *ex parte* call of June 22 regarding the reporting of server fixation dates and their relationship to termination of grants of copyright under 17 U.S.C. 203 and 304(c).

I am the Chief Counsel of peermusic, and participated solely as a representative of this company. The remaining participants on the call are listed at the end of this letter.

Peermusic's contributions to the call included agreement with the threshold proposition that the regulations applicable to the provision of data to the MLC by the DMPs should not affect the exercise of United States termination rights. I expressed the concern, however, that the MMA's elimination of individual NOIs has in fact already upset the status quo for copyright owners in this area. Previously the date of an NOI was an accepted benchmark used by parties to determine whether a given license was subject to the so-called "derivative works exception" under Sections 203 and 304(c). In the case of an otherwise undisputed termination notice, administrative personnel representing the pre-termination and post-termination copyright owners could compare this (objectively determinable) date with the effective date of termination and make their claims accordingly. With the implementation of the blanket license as of the License Availability Date, interested parties must look elsewhere for a pre-termination benchmark, inviting a category of termination dispute that did not exist prior to the enactment of the MMA.

Others on the call were resolved to the inevitability of new litigation around this issue, and expressed concern that any requirement for the provision of specific fields to assist in the determination of pre- and post-termination rightsholders would be taken as the Copyright Office's endorsement of one or more criteria in the legal determination of those rights. Peermusic did not participate in that aspect of the discussion, but we do not object to the

proposal that limiting language should be included in the regulations specifying that they are not to be construed as interpretations of the substantive law of copyright termination.

Peermusic's additional contribution to the discussion was the reiteration of the position that the relevant data points should be provided with the required monthly usage reports, as opposed to being kept on file and available on request at the respective DMPs. In particular, we are concerned that termination questions or disputes may not be ripe or arise until well after the five-year retention period specified in §210.27(m).

Thank you once again for inviting peermusic to participate in this discussion.

Sincerely,

A handwritten signature in blue ink that reads "Timothy A. Cohan". The signature is written in a cursive style with a long horizontal line extending to the right.

Timothy A. Cohan, Esq.
Chief Counsel
Peermusic

Participants on Ex Parte Call of June 22, 2020

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