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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
Summary of *ex parte* discussion at June 19, 2020 meeting regarding
provision of audio links to MLC

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

As you know, I represent Songwriters of North America (“SONA”) in connection with various pending rulemakings under the Music Modernization Act. This letter summarizes the *ex parte* discussion on June 19, 2020 between the Copyright Office and interested parties on the provision of audio links to the Music Licensing Collective (“MLC”) in connection with monthly usage reports and for purposes of identifying unmatched works, which was conducted remotely at a Webex meeting (“June 19th meeting”). In addition to representatives from the U.S. Copyright Office and SONA, the meeting was attended by representatives of the Recording Industry Association of America (“RIAA”), Music Artists Coalition (“MAC”), Nashville Songwriters Association International (“NSAI”), MLC Unclaimed Royalties Oversight Committee (“UROC”), Digital Licensee Coordinator (“DLC”), and the MLC. A full list of representatives in attendance for each organization can be found in Appendix A of this letter.

The June 19th meeting followed a Notice of Proposed Rulemaking (“NPRM”) by the Copyright Office wherein the Office commended the MLC for proposing the inclusion of audio links in its online claiming portal, but the Office declined to regulate the issue in the NPRM in favor of encouraging the MLC and DLC to resolve the matter between the two organizations.¹

¹ See Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment, 85 Fed. Reg. 22518, at 22530-31 (April 22, 2020).

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In a joint submission of comments in response to the NPRM, SONA and MAC endorsed the provision of audio links by digital music providers (“DMPs”) to the MLC, where they could be used to help identify musical works embodied in particular sound recordings, stating that these “recordings could serve as an important practical tool to identify and claim unmatched musical works...[and] the metadata contained in an audio link may provide...the ability to employ ‘fingerprinting’ technology to compare unidentified audio files to known sound recordings[, which] would augment and improve matching and claiming efforts.”² Further, SONA and MAC encouraged the Copyright Office to adopt a rule requiring DMPs to provide such links even if DMPs are not able to make the audio files immediately available by the MLC’s January 1, 2021 license availability date.³

Before the June 19th meeting, the Copyright Office asked the MLC and DLC to provide answers to supplementary questions on this issue, and the meeting initiated with a discussion of the answers provided, specifically the disagreement between the MLC and DLC on the preference of the use of URLs or DMP identifiers in connection with the audio links. Speaking on behalf of the MLC, Benjamin Semel supported the use of URLs as the MLC would like to receive this information in a manner that can be made available to others. The MLC believes that this method would be a better way to access the audio. Mr. Semel stated that the MLC was not opposed to the use of unique identifiers that could be converted into a URL, as long as there was coordination on how to convert this information.

Evident from the discussion at the June 19th meeting—and the supplementary answers provided in the letters—is the lack of agreement on how to coordinate the operationalization of these links within in the MLC claiming portal. DiMA CEO Garrett Levin underscored that these outstanding questions include not only how such data will be reported, but also how it will be used. Representatives of the DLC went on to describe changes that would need to occur in the DMP ecosystem in order to achieve this outcome. Further, DLC members reemphasized during the meeting the sentiment from the DLC’s supplemental answers that the term “audio links” is still not clearly defined for this rulemaking proceeding.⁴ Without such parameters, DLC representatives stressed that it is difficult for DMPs to follow through with designing a system for these audio links. Some of these issues that appear to remain unresolved after the meeting include the length of the audio clips and distinctions of how information can be received from various platforms in a user-friendly manner.

A concern raised as an impediment to operationalizing the use of these audio links consistently reiterated by the DLC in the June 19th meeting is the issue of obtaining license authority to use the sound recording contained in the audio links. Lisa Selden of Spotify underscored the point from the DLC’s supplementary answers that if the MLC were to have an

² See 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, Docket No. 2020-0005, at 7-8 (May 22, 2020).

³ *Id.*

⁴ See further DLC’s Response to the Copyright Office’s June 8, 2020 Letter at 2 (June 15, 2020).

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embedded player for the audio files, streaming services would need to negotiate with labels and Performance Rights Organizations (PROs) to allow for this expansion.

RIAA Senior Vice President of Legal and Regulatory Affairs Susan Chertkof indicated that she would need to consult with her members before taking a position on this issue. However, MAC board member Susan Genco noted that, from her experiences in the recording industry, labels could see the benefit from this work. Also of note for this issue, it seems that all parties are in agreement that the MLC server would not host these audio clips, but rather provide a mechanism to direct users back to the streaming platforms.

Speaking on behalf of the UROC, Phil Cialdella of Atlas Music Publishing emphasized that the ultimate goal of these proceedings was to bring greater transparency to the digital mechanical licensing system. UROC members—and songwriters—Kay Hanley and Dan Navarro seconded this point. SONA member Abby North also supported this point and explained that the information contained in the claiming portal—specifically the ability to match the International Standard Recording Code (“ISRC”) to the International Standard Musical Work Code (“ISWC”)—will be a tremendous aid in assisting self-published songwriters compare their streaming royalties from sound recordings against mechanical rights royalty payments to ensure accuracy.

During the meeting, Mr. Levin reminded the participants that DMPs face heavy repercussions—the loss of their blanket license—for non-compliance. Ms. Smith indicated that an interim rule is likely the best way to address the issue of audio links from a regulatory position and that there was potential to include a transitional period. For instance, if DMP identifiers were used initially, that could be reexamined in a later rulemaking proceeding. On behalf of the MLC, Kris Ahrend stressed the importance of a regulatory framework for this issue, emphasizing that it was not a question of collaboration amongst the parties, rather the desire to see a commitment beyond that collaboration.

Moving forward, the Copyright Office encouraged the MLC and DLC to find a compromise on these topics, particularly through continued work with the MLC’s Operations Advisory Committee (“OAC”).

SONA appreciates the Copyright Office’s continued diligence in seeking a transparent and workable MLC blanket license regime. SONA is thankful for the opportunity to participate in these discussions and remains available to provide further input if requested.

Sincerely,



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Appendix A: Meeting Attendees

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