

**Ex Parte Meeting with the US Copyright Office  
Docket Numbers 2020-12 & 2019-6**

On Thursday September 17, an Ex Parte Videoconference was held between the U.S. Copyright Office (“USCO”) and members of the following organizations that represent songwriters and artists: the Artist Rights Alliance, the Music Artists Coalition, the Nashville Songwriters Association International, the Recording Academy, and Songwriters of North America (“Songwriter Groups”).<sup>1</sup>

The Songwriter Groups began the meeting by thanking the USCO for its extensive efforts implementing the Music Modernization Act (“MMA”) under very short deadlines and with the added burdens imposed by the COVID-19 pandemic. The participants also thanked the USCO for taking the time to convene this meeting and its dedication to a thorough, transparent, and open rulemaking process.

The Songwriter Groups addressed issues raised in the reply comments filed by the [Artist Rights Alliance in Docket 2019-6](#) on Unclaimed Royalties and discussed in more detail the [Notice of Proposed Rulemaking in Docket 2020-12](#) surrounding private agreements between some digital music providers and some music publishers and resulting comments. The Songwriter Groups participating in the meeting who did not submit written comments to the NPRM expressed their individual concerns with the impact these agreements may have on the transition of unclaimed royalties to the MLC.

For context, the Songwriter Groups described their extensive participation in the negotiations that led to the enactment of the MMA and explained that their support for the legislation was substantially influenced by the shared understanding by all stakeholders that the MMA would create a robust process to identify and collect previously unmatched royalties through the newly created Music Licensing Collective (“MLC”); use best practices to identify the songwriters that generated them; and ensure those songwriters get paid.

Specifically, the participants elaborated on how in exchange for the new blanket licensing process and immunity for prior unpaid uses of music, digital music providers would provide an ongoing accounting of music they used and participate in MLC processes, as well as pay historical accrued unmatched royalties to the MLC. In turn, the MLC would then be tasked with identifying and paying the correct royalty recipients. Songwriters would receive at least 50% of any remaining unclaimed funds that are distributed and that all songwriters could expect greater transparency in the distribution of royalties.

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<sup>1</sup> Ted Kalo and Sam Sokol participated on behalf of the Artist Rights Alliance; Jordan Bromley and Susan Genco participated on behalf of the Music Artists Coalition; Jennifer Turnbow participated on behalf of the Nashville Songwriters Association International; Todd Dupler participated on behalf of the Recording Academy; and Adam Gorgoni, Jack Kugell, Lauren Hancock, and Michelle Lewis participated on behalf of Songwriters of North America. Regan Smith chaired the meeting for the USCO.

The Songwriter Groups expressed concern that digital music providers, as indicated by their filings, are suggesting that money paid under private agreements and outside of the process established by the MMA, should count as “matching” royalties for purposes of the MMA. The real effect of such an allowance would be to siphon royalties away from songwriters before the MLC has a chance to do its work.

The Groups further expressed their concern about the unavailability of details of these agreements. The participants discussed that knowing the terms of specific agreements would be meaningful to further understanding this issue (while they might not resolve all outstanding questions) and the Songwriter Groups encouraged the USCO to continue pressing for transparency in this regard.<sup>2</sup>

Individual songwriter group representatives present in the meeting stressed the ways by-passing the MLC process would be harmful to independent and self-published songwriters—who are already under intense economic pressure and should not be deprived of the opportunity to get paid via the MLC for past usage of their work.

The USCO stated that it is actively in fact-gathering mode and grateful for this opportunity to hear directly from songwriters. Fundamentally, the USCO agreed that private agreements cannot supersede the statute.

Additionally, the USCO stated that the MMA’s limitation on liability for past unpaid uses of music is optional and observed that individual digital music providers have a choice as to whether they wish to make the payments needed to claim its protection. A digital music provider might not claim the liability protection, for example, if the payments would require a prohibitive capital outlay or if it believed they would amount to a “double payment” for the same usage of music.

The USCO and the Songwriter Groups discussed the extent of the USCO’s authority to regulate on this issue and also explored possible mechanisms to address the concern about “double payment” by a provider while ensuring that individual songwriters received all royalties they generated.

In conclusion, and as discussed during the meeting, the Songwriter Groups continue to encourage the USCO to consider the following actions as it completes the rulemaking pursuant to Docket 2020-12 and continues to consider best practices for matching unclaimed royalties pursuant to Docket 2019-6.

First, the USCO should use its authority under the MMA to facilitate as much transparency as possible regarding the terms of any privately negotiated agreements between digital music

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<sup>2</sup> NSAI is the non-voting songwriter trade association member of the Mechanical Licensing Collective board of directors. As such we do not join in the portions of this communication that address any legal or procedural issues, or related requests, surrounding USCO’s authority to demand private information in regulatory proceedings.

providers and music publishers that involve accrued, unmatched royalties. The Songwriter Groups understand that the USCO's authority may be limited in this regard, and that certain information in these agreements may be proprietary or sensitive, but at the same time it is clear that more information would be helpful to understanding these issues.

Second, the USCO should rule that payments made pursuant to private agreements are not a substitute for the transfer of accrued, unmatched royalties to the MLC. As discussed above, the proper treatment of unmatched royalties is central to the success of the MMA.

Third, the USCO should define best practices that uphold the core principle of the MMA and make clear that private agreements cannot be used to prevent the MLC from making a robust effort to ensure individual songwriters receive all royalties they have generated.

Finally, the Songwriter Groups continue to support the USCO as it works to bring transparency to this process. Our organizations stand ready to assist the Office in the necessary efforts to do the proper due diligence needed to meet the underlying principles of the MMA.

Thank you for your continued consideration of our views.

Sincerely,

Artist Rights Alliance  
Music Artists Coalition  
Nashville Songwriters Association International  
Recording Academy  
Songwriters of North America