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December 3, 2020

Via E-Mail

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

**Re: Docket No. 2020-8
Summary of ex parte call regarding Public Musical Works Database and
Transparency of the Mechanical Licensing Collective (the “Proceeding”)**

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

This letter summarizes the December 1, 2020 call (“December 1 Call”) between the Mechanical Licensing Collective (the “MLC”) and representatives of the Copyright Office (the “Office”) with respect to the Proceeding. The MLC thanks the Office for its time and attention in meeting with the MLC concerning the Proceeding.

The persons participating in the December 1 Call for the MLC were Kris Ahrend (CEO), Richard Thompson (CIO), Ilene Weintraub (CFO), Alisa Coleman (Chair of the Board of Directors), Bart Herbison (Board member), Danielle Aguirre (Board member), and counsel Benjamin Semel and Frank Scibilia.

On behalf of the Office, Regan Smith, Anna Chauvet, Jason Sloan, Terrence Hart and Cassandra Sciortino participated in the call.

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The following summarizes the discussion:

1. ***Bulk Access.*** The Office asked how the MLC will be providing bulk access to the musical works database prior to the date on which the MLC will be providing bulk access through an API. The MLC stated that it would be providing access through Secure File Transfer Protocol (SFTP) on a weekly basis. Access is expected to be available by January 2021. The MLC stated that it will be conducting a webinar tentatively scheduled for December 15, 2020 that will provide further information concerning such bulk access. There was a discussion of the Office's proposed deadline for providing API access. The MLC explained its position that December 31, 2021 is the appropriate and prudent deadline, to allow time to conduct proper consultation with stakeholders throughout the industry regarding their requirements, gather their feedback, and then design, test and implement, so as to provide the most useful API. The MLC indicated that it will aim to implement API access sooner in 2021 where that is reasonably practical, but the deadline should be set to allow for an orderly process for industry collaboration and design. The MLC also explained that its priority in the first half of 2021 is to pay rightsowners, and it would not be prudent to divert resources and attention from that priority during that period in order to meet an API deadline, when regular bulk access will be available to the public through SFTP, fulfilling the statutory mandate. There was a discussion of the language in the proposed rule that bulk access be available in "real-time." The MLC explained that, insofar as that may be read to conflict with the planned implementation of bulk access, with SFTP access available until an API is developed and implemented, the MLC respectfully requests that the language be changed to match the statutory language (see 17 U.S.C. 115(d)(3)(E)(v)) and remove the words "real-time." The statute does not require that bulk, machine-readable access be provided in "real-time," and the MLC will be providing bulk access through SFTP and later in 2021 through API, which the MLC believes more than adequately fulfills the statute's mandate, the goal of transparency and the needs of stakeholders. The MLC therefore respectfully requests that the second sentence of the Office's proposed rule at 210.32(a)(1)(i) be amended as follows:

In addition, the mechanical licensing collective shall make the musical works database available to members of the public in a bulk, ~~real-time~~, machine-readable format through a process for bulk data management widely adopted among music rights administrators . . .

210.32(a)(1)(ii) should also be amended as follows:

Starting December 31, 2021, the mechanical licensing collective shall also make the musical works database available ~~at least~~ in a bulk, real-time, machine-

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readable format to those persons or entities identified in ~~under this~~ paragraph (a)(1) through an application programming interfaces (APIs).

2. ***Marginal Cost.*** There was a discussion of the statutory requirement that the MLC make bulk access of the database available free of charge to several categories of entities, and then also to any member of the public “for a fee not to exceed the marginal cost to the [MLC] of providing the database to such person or entity.” (17 U.S.C. 115(d)(3)(E)(v)) The MLC noted that it does not read the marginal cost fee discussed in the statute as authorizing fees to recoup the overhead costs of design and maintenance of the SFTP or API. Rather, marginal cost would be set at an amount estimated to recoup the actual cost of provision of the bulk data to the particular person or entity requesting it. These include technology costs and human costs. The MLC is currently estimating for SFTP bulk access approximate standard fees of \$100 fee to cover one-time setup and a single copy of the database, and a monthly standard fee of \$25 which offers access to all weekly copies. The MLC stressed that these expected fees may change, as it has no precedent for this access and the costs that will be associated with it. The MLC confirmed that it intends to charge the same fee to all members of the public (who are not entitled to free access) for SFTP access. The MLC also explained that it expects API access would be under a different fee structure and amounts than SFTP access, since the marginal costs will be different.

3. ***Public Access.*** The MLC began providing members with access to the MLC Portal at the end of September. Several thousand members have completed the onboarding process and thousands more have received invitations via e-mail to complete the onboarding process. The MLC stated that it is working on launching the public search window on the website that will allow members of the public to search the musical works database in January. The MLC also anticipates launching the bulk data program to members of the public in January.

4. ***Searchable Fields.*** The Office asked which fields in the database will be searchable. In the initial version, the searchable fields are planned to be: (a) Work Title; (b) Work MLC Song Code; (c) ISWC; (d) Writer Name; (e) Writer IPI name number; (f) Publisher Name; (g) Publisher IPI name number; and (h) MLC Publisher Number. The MLC anticipates that additional searchable fields may be added in the future.

5. ***“Commonly Used to Assist.”*** The Office’s proposed rule provides that the database is to include “other non-confidential information commonly used to assist in associating sound recordings with musical works.” (§210.31(b)(2)(x); (c)(2)(x).) The MLC stated in its public comments that it believes that this language is somewhat vague, and could lead to questions or disputes concerning whether a particular category or type of information is

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“commonly used to assist in associating sound recordings with musical works” and thus should be included in the database. The MLC therefore suggested that this language be clarified to make the inclusion of such other unspecified sound recording information permissive, by revising it to read “other non-confidential information that the MLC reasonably believes would be useful to assist in associating sound recordings with musical works.” The MLC clarified that its proposed additional language, “the MLC reasonably believes would,” is not meant to modify the statutory language, but rather make clear, since the Office did not appear to be intending to enumerate the fields in this category, that the MLC can operate under its reasonable judgment as to which fields fit into the category. If the Office objects to the MLC using its reasonable judgment to determine what fields fit into this category, the MLC respectfully requests that the Office enumerate the fields that fit into the category in the rule.

6. ***Foreign CMOs as Copyright Owners.*** The MLC reiterated that foreign CMOs would be treated the same as all rightsholders. If a CMO is an owner or administrator of US copyright rights, it will be treated as such, and in a non-discriminatory manner as compared to other US copyright owners or administrators.

7. ***Anonymous or Pseudonymous Songwriters.*** The proposed regulation affords the MLC a degree of discretion in having songwriter information listed anonymously or pseudonymously. The MLC does not intend to handle this issue any differently than other rights organizations throughout the world. If the copyright owner or administrator requests that the writer be identified as “anonymous” or by a pseudonym, it can do so when it submits the musical work information to the MLC. The MLC will also consider subsequent requests by an owner or administrator to change the name to “anonymous” or to a pseudonym. The MLC expressed its position that the rule should not be changed to make it mandatory for the MLC to change songwriter names in the musical works database at the request of any particular party, because such may not always be appropriate. Songwriter information is at root factual information about musical works, and while the MLC intends to act in a manner consistent with the practices of other rights organizations, it is also responsible for maintaining an accurate musical works database, and must be afforded the ability to fulfill that function.

8. ***Data Provenance and Conflicts.*** The MLC stated that its initial dataset was sourced from HFA and, with the launch of the MLC Portal, copyright owners now have ability to update that data and provide new registrations directly to the MLC via the Portal. The MLC will use reasonable efforts, working with copyright owners as needed, to resolve any data conflicts, including those with respect to non-share work fields.

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9. ***DMP Name and DPID.*** The MLC confirmed that it will include in the database DMP names and DPID information where it receives it. However, it expressed the importance of flexibility in precisely how such information is provided online to ensure coherent displays and a quality user experience.

10. ***Sound Recording Disclaimer.*** The MLC agrees with the proposed rule as written, and will include in the musical works database a disclaimer stating that the database is not an authoritative source for sound recording information. The MLC believes it is unnecessary and can be misleading to further require the MLC to state in the disclaimer that the information does not come directly from record labels, and this may be confusing to the public, as sound recording information reported by DMPs will largely be the data provided by the respective record labels. In fact, the MLC requested and obtained a requirement that DMPs provide data in an unaltered form as provided to them by record labels. Such further language in the disclaimer is also unnecessary because the MLC has stated (and the proposed rule provides) that the MLC will identify the provenance of sound recording data.

11. ***Terms of Use.*** The MLC confirmed that it will have terms of use for the website, the Portal, and the bulk access to the musical works database. The current version of the website Terms of Use is accessible at <https://www.themlc.com/terms-use>. The MLC agrees with the proposed regulation as written to the extent that it permits the MLC to suspend access to users in certain circumstances. (See proposed 37 CFR 210.32(a)(2).) The MLC strongly opposes any change to the rule that would prevent the MLC from restricting access to users who have violated the terms of use, which could impede the MLC's ability to prevent fraud and abuse. The MLC stated that it will use reasonable judgment in decisions concerning restriction of access to the website in the event of violations of the terms of use.

12. ***Songwriter Access to Information.*** The Office noted that a songwriter group expressed concern that songwriters did not have access to the DQI. The MLC confirmed that everyone, including songwriters, may participate in the DQI. The MLC further discussed its intention to develop user-friendly methods for songwriters to access information about their musical works and to enable songwriters to notify their administrators of a possible issue with a work's data or registration. The MLC confirmed that the public musical works database will be viewable by the general public without any need to register for the MLC Portal. The MLC Portal is the platform for copyright owners and administrators of musical works used in covered activities, where they can register their works, claim their shares and provide the necessary information so as to receive royalty distributions.

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13. ***Vendor Access to Information.*** In response to a question from the Office, the MLC explained that its musical works database was seeded with data from its vendor HFA, but the data is being constantly updated, and will continue to be updated, including as a result of the Data Quality Initiative and through the MLC Portal. HFA, as well as the general public, will have access to the musical works data in the public database, including as modified by the MLC. The Office asked whether the unique work identifiers used by the MLC will need to be changed in the event of a change in vendors. The MLC responded that it will not need to change unique work identifiers if it changes any of its vendors, but expects to persist the identifiers, which it also makes public as part of the musical works database.

14. ***Songwriter Seats on MLC Board.*** The Office asked how the MLC intends to announce vacancies for songwriter seats on the MLC board. The MLC stated that it posts information about such vacancies on its website and uses its many channels of outreach to push information about such vacancies to the industry. The MLC also informed that it accepts through its website suggestions for candidates for board and advisory committee seats, to ensure that candidates may be considered for a seat when one becomes available. The suggestion form is available at: <https://themlc.com/get-involved>. Past vacancies have also been publicized by NSAI and other groups involved in the process, and provided to the media.

15. ***Annual Report and “Average Processing and Distribution Times.”*** There was a discussion of the requirement in proposed rule 210.33(b)(2) that the MLC’s annual report is to include “the average processing and distribution times for distributing royalties” to copyright owners. (See MLC’s Comments on NPRM on Public Musical Works Database and Transparency of the Mechanical Licensing Collective, Docket No 2020-8, at 8.) The MLC’s concern is simply that there are many different types of averages and methods of calculating averages, leaving room for misunderstanding. The MLC believes that the rule should accommodate the inclusion in the annual report of the actual the dates on which distributions were made to copyright owners during the preceding calendar year, as such information will inform copyright owners and other interest parties of the timeliness of payment. It was noted that potential solutions to the ambiguity problem would be to remove the word “average” in the clause or to state that the methodology used by the MLC to calculate typical processing and distribution times shall be left to the MLC’s discretion.

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

Sincerely yours,



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