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April 4, 2022

Via email

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

Re: Summary of MLC ex parte call with Copyright Office on March 30, 2022

Dear Ms. Wilson,

This letter summarizes the March 30, 2022 call (“March 30 Call”) between the Mechanical Licensing Collective (the “MLC”) and representatives of the Copyright Office (the “Office”). The MLC thanks the Office for its time and attention in meeting with the MLC.

The persons participating in the March 30 Call for the MLC were Kris Ahrend (CEO), Kristen Johns (Chief Legal Officer), Rick Marshall (Assistant General Counsel), Richard Thompson (Chief Information Officer), Ellen Truley (Chief Marketing Officer), and outside counsel Benjamin Semel.

On behalf of the Office, Suzanne Wilson, Jason Sloan, John Riley and Shireen Nasir participated in the call.

The following summarizes the discussion:

There was a discussion of the proposals of some DSPs, as laid out in the March 14, 2022 ex parte letter of the DLC (the “DLC Letter”), for the Office to consider the issue of amending 37 C.F.R. §210.27 (“§210.27”) to add provisions concerning the MLC’s processing of annual reports of usage (“ARoUs”).

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The MLC first addressed the proposal to add an accelerated 45-day deadline for the MLC to deliver ARoU response files to DSPs. The DLC Letter stated that “many blanket licensees” adjust royalty pool and usage data, and that the response file “is critical to allow those services to accurately pay their voluntary license partners as well as the MLC.” The MLC explained that only two DSPs have approached the MLC seeking an accelerated response file for their ARoU, and the MLC’s understanding is that this issue is extremely confined and does not affect blanket licensees at large. The MLC confirmed that there has been no request by any DSP for accelerated processing of an ARoU response file due to having a different fiscal year.

As the DLC Letter notes, this particular need relates to DSP voluntary license administration. The MLC explained that it was notified by the two DSPs of their voluntary license administration concerns around ARoUs, and that the MLC explained to those DSPs that it cannot accelerate ARoU processing or response files to alleviate such concerns. The MLC’s resources are fully dedicated to critical path statutory functions, and—even if it were feasible to accelerate ARoU processing or response files on the proposed timeline—the MLC cannot remove resources and delay such core functions as monthly royalty distributions and processing the substantial historical unmatched royalties in order to assist with these voluntary license administration concerns.¹

The MLC explained that ARoU processing is not at all the same as monthly processing and requires substantial time and work to design and execute. This type of complex processing—which involves data comparison and integration across thousands of usage reporting files from over forty DSPs containing billions of data points—is a very significant task, and this is the first year that it is being done under the blanket license. This project involves requirements gathering, design, implementation, testing, production, and processing. The MLC has begun this project, but it will take a number of additional months and cannot reasonably be accelerated. For these

¹ The MLC also noted its concern that this request—which is in essence a request to expend substantial MLC resources on a particular discrete task (namely, accelerating the ARoU processing timeline) to assist two DSPs with voluntary license administration—could trigger the 17 U.S.C. 115(d)(3)(C)(iii) requirement that the MLC “charge reasonable fees for such services.” The MLC is concerned that the necessary extra MLC expenditures would ultimately be borne through a higher administrative assessment, which would amount to forcing all other DSPs to subsidize the voluntary license administration costs of two DSPs, which the MLC understands is the precise outcome that Section 115(d)(3)(C)(iii) was enacted to prevent. The MLC also reiterated that it did not have the resources to complete an accelerated timetable even if an additional reasonable fee was paid.

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reasons, the MLC does not agree with the proposed adoption of a new subsection 8 to §210.27(k), as discussed in the DLC Letter.

The MLC stated that it intends to provide response files to DSPs in connection with ARoUs. However, the MLC explained that the ARoU process can be extremely complicated depending on the scope of adjustments, and the MLC does not know the scope of the adjustments at this time. Estimating the process depends heavily on review and analysis of the DSP ARoU input files, and the MLC has not yet received a valid input file from one of the two DSPs at issue at this time. The MLC explained that it is not in a position to guarantee at this time a particular turnaround time for response files, particularly before examining the ARoUs from the more than 40 DSPs who are expected to submit them. However, the MLC will approach the project with the diligence and professionalism that it has shown in every aspect of its operations.

The MLC also clarified that it can provide invoices in connection with ARoUs, although as with response files, cannot guarantee a particular turnaround time before receiving and reviewing the various ARoUs. With respect to the DLC Letter statement of a DSP need for an accelerated MLC invoice to make payment, the MLC notes that DSPs are able to calculate their own royalty pools, and indeed many DSPs choose to calculate their royalty pools each month and pay that amount, which the MLC then verifies as part of processing.²

There was also a discussion as to whether an adjournment of the ARoU deadline this year, in light of the pending CRB *Phonorecords III* (Remand) determination, would be appropriate. The MLC noted its uncertainty regarding the timing of the CRB decision, and the problem of tethering ARoUs, which may involve substantial additional royalty payments, to an event that does not have a clear deadline. The MLC also noted that the suggestion in the DLC Letter that extending the ARoU deadline for other DSPs would allow the MLC to complete the accelerated processing for the two DSPs requesting it is not accurate. As noted above, the ARoU processing design and implementation needs to be completed before any ARoUs can be processed.

² For these reasons, the MLC does not agree with the proposed changes to §210.27(f)(4) or (g)(3) (or the alternative language proposed for (k)(1)) discussed in the DLC Letter. The MLC will continue to work with DSPs on timing and coordination, as it has done since its inception, but does not see a reason to change DSP royalty payment deadlines, or to add additional language concerning estimates. Subsection (k)(3)(ii) already provides that, “[a]s appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section,” and (d)(2)(i) provides a procedure for using estimates that is supported by an explanation of the reason and basis for the estimate.

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The MLC reiterated its commitment to assisting all stakeholders, including DSPs, but again highlighting the delayed timing on the DSP request for an accelerated timeline, and its inability to shift resources without delaying critical path royalty distribution work for its other stakeholders. To this end, the MLC also noted that during the rulemaking process, when the Office contemplated an interim status for the rule at issue, the DLC called for a “lengthy transition period” in the event of substantive changes to the interim rule, and the Office agreed that, “if any significant changes prove necessary, the Office intends, as the DLC requests, to provide adequate and appropriate transition periods.” The MLC’s understanding is thus that the interim status of the rule is not intended to enable new and onerous substantive requirements to be added without meaningful notice, comment and transition, as the DLC Letter now seems to propose. Rather, the MLC believes it would be essential to allow for public comment before considering a rule that would force the MLC to take resources from statutory functions and delay royalty processing and distribution to copyright owners and songwriters, and incur additional expense to be borne by all DSPs through the assessment process.

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

Sincerely yours,



Benjamin K. Semel