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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 The MLC's March 12, 2024 Ex Parte Meeting with the Copyright Office Concerning Docket No. 2022-5, *Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act*

Dear Ms. Wilson,

This letter summarizes the March 12, 2024 videoconference (“March 12 Meeting”) 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 12 Meeting for The MLC were Kristen Johns (Chief Legal Officer), Rick Marshall (Assistant General Counsel) and outside counsel Benjamin Semel. On behalf of the Office, Jason Sloan, John Riley and Jalyce Mangum participated in the meeting.

The following summarizes the discussion:

There was discussion concerning establishing a default payee for royalty distributions. The MLC reiterated its support for a provision clarifying that it should distribute royalties for a musical work to the current payee registered in its database, consistent with the authority set forth in the MMA. The MLC further noted that any exception to this default rule should, at a minimum, require that The MLC received actual notice and adequate substantiating documentation by the party disputing the rights of the current payee, sufficiently in advance of the snapshot for the

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distribution when such change would go into effect. Such notice and documentation would be expected to be provided pursuant to The MLC's published dispute policy procedures.

There was discussion concerning facilitation of payee changes outside of the statutory terminations context. The MLC reiterated the need for flexibility to incorporate evolving industry practices into processes to effectuate the various types of transfers and payee changes that occur in the normal course of business for rightsholders. The MLC explained that such flexibility has enabled it to meet the needs of its diverse membership efficiently and effectively.

There was related discussion concerning potential regulations related to corrective adjustments in situations where The MLC distributed royalties in error to an incorrect party. The MLC emphasized that a distribution to the current payee identified in the public database, or otherwise in reasonable reliance on third-party information, should not be considered an MLC distribution error. There was discussion about corrective adjustments where The MLC does not implement noticed payee changes within reasonable timeframes. The MLC stated that it expected that it could implement corrective adjustments where limited to those situations where a change was properly noticed and substantiated sufficiently in advance of the snapshot(s) on which the distribution(s) at issue were based.

There was discussion concerning disclosure of amounts on hold to pre- and post-termination copyright owners involved in termination disputes. The MLC stated that, at the outset of a dispute, it can provide summary-level information to both the pre- and post-termination copyright owners. The information will identify the approximate amount of royalties to be distributed to a work in the first distribution occurring after the hold is requested and will be based upon information in the monthly reports of usage that The MLC received and processed at the time of the request. Regarding updates to such disclosures, The MLC explained its preference that the Office refrain from regulating this process until The MLC has time to scope and develop a workable, systematic way to provide this information at both the outset of termination disputes and on an ongoing basis. The MLC will be available to provide an update to the Office later this year on development and capacities in this area, and is confident that this question can be effectively and transparently addressed without regulation at this time. If the Office instead determines that the final rule at this time must establish a rigid frequency, The MLC reiterates that generating such disclosures is a manual process that is not scalable, so any requirement to provide updates should be limited to where a disclosure has been affirmatively requested and should not be more frequently than quarterly, to limit the burden and diversion of resources from critical path activities.

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The MLC also reiterated its strong objection to any proposal to require disclosure to any third parties concerning amounts on hold for reasons other than termination, which would likely amount to a requirement that The MLC disclose confidential royalty information to improper parties in many situations. The MLC stressed that it is committed to transparency, and it has not had concerns with complaints from its members around such disclosures in the context of disputes or holds, and strongly believes that this is not an area where regulation is needed.

The MLC discussed widespread concerns about burdens on songwriters from a retroactive adjustment process around termination disputes. The MLC reiterated the concern, which it has heard from numerous parties, that such processes would generally require a songwriter to pay back royalties to their pre-termination publisher, which the pre-termination publisher would remit to The MLC, so that The MLC could redistribute them to the post-termination publisher, who would then distribute the royalties back to the songwriter. The process would likely result in songwriters having to come up with funds to pay back royalties distributed to them years earlier by a pre-termination publisher, and then wait several months or more to get replacement royalties from a post-termination publisher.

The MLC discussed the alternative approach to retroactive adjustment described in its February 13, 2024 *ex parte* meeting with the Office, and how this approach could avoid the burdens and concerns associated with clawing back royalties from songwriters.

There was discussion concerning how The MLC will distribute royalties consistent with the Office's guidance that the Exception does not apply to the Blanket License. The Office asked The MLC to estimate the amount of time it will take to (1) begin distributing royalties held in suspense pending resolution of this rulemaking; (2) begin the process for retroactively adjusting and distributing royalties that The MLC paid to pre-termination copyright owners for post-termination periods under its prior statutory termination policy; and (3) begin the regular distribution of royalties from periods after the effective date of the final rule.

The amount of time it will take The MLC to begin distributing these royalties will depend on the substance of Office's final rule.

If the final rule directs The MLC to distribute royalties for a terminated work to the current payee registered in The MLC database, regardless of when corresponding usage occurred, The MLC expects to be able to develop the process for distributing royalties associated with all three of the above categories within 90 days and begin distributing royalties in the first distribution that relies on the first snapshot taken after that development is complete. This estimated timeframe

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accounts for basic code development, testing phases, and the general integration of new processes into The MLC's end-to-end overlapping distribution cycle process. This estimate also recognizes that, particularly regarding the distribution of royalties from periods after the effective date, the rule as currently proposed requires The MLC to operationalize nuanced practices and processes including requirements that must be met before implementing a change, requirements for confirming receipt of appropriate notice of a change, and timelines for implementing a change (among others). Regarding retroactive adjustments involving royalties already distributed, the MLC notes that the timeline for distribution of royalties will also depend on how quickly it can recover the royalties at issue from pre-termination owners.¹

If the final rule directs The MLC to distribute royalties to a pre-termination owner and/or a post-termination owner, depending on when corresponding usage occurred, regardless of which party is the current payee registered in The MLC database, The MLC expects to be able to develop the process for distributing royalties associated with all three of the above categories within six months and begin distributing royalties in the first distribution that relies on the first snapshot taken after that development is complete. This estimated timeframe accounts for the significant redevelopment required to facilitate payment based on temporal ownership.

As explained in prior comments, The MLC's systems are designed to distribute royalties to the current payee registered in The MLC database. When The MLC began building its systems around this industry norm (and the authority set forth in the MMA), it recognized statutory terminations as an exception, developed a policy for navigating the exception, and included related technical specifications in the initial set of developmental requirements for the infrastructure that became the foundation of the MLC's system.

At the outset of this rulemaking, the Office proposed guidance regarding the Exception that renders The MLC's existing statutory termination infrastructure obsolete. Specifications are essential to development, and The MLC recognizes that any new statutory termination infrastructure must be built based on specifications that depend on the outcome of this

¹ If the final rule includes an exception to the presumption that The MLC can distribute royalties for a terminated work to the current payee registered in its database that would require The MLC to distribute royalties from pre-termination periods to pre-termination owners based on temporal ownership, The MLC would need to separately develop that process (requiring additional time, for the same reasons described in the following paragraph) and the process might not be immediately scalable as a result.

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rulemaking. When a final rule issues, The MLC will begin building this infrastructure. However, the complexity of said development and the volume of data it will affect does not lend itself to an immediate solution.

For context, even though The MLC only has roughly 5,600 works on hold due to statutory termination claims (for which it has accumulated more than 33.6 million usage lines), if each work has just one pre-termination owner and one post-termination owner, this translates to a minimum of 10,000 payee determinations (a number that escalates with multiple shares per work and varying termination dates). It is also worth highlighting that engineering challenges extend beyond mere distribution of royalties at a summary level, which would not provide copyright owners the necessary statement details for tracking royalties at the individual work level.

Importantly, as suggested above, any new development will require The MLC to remove and/or overwrite logic that was engineered several years ago and is incorporated into many of the system's complex processes. Because The MLC depends on the system to carry out its core administrative function of distributing monthly royalties, it cannot implement such changes without thorough testing and understanding the potential impact on other core processes.

There was also a discussion concerning the treatment of royalties subject to disputes over application of the Exception to voluntary licenses, where the outcome of the dispute would decide whether the royalties are (a) payable to The MLC under the blanket license or (b) excepted from the blanket license and payable directly by the DSP under the voluntary license. The MLC can place royalties on hold in these situations pending outcome of the dispute, and such royalties on hold are treated as unmatched under the MMA and placed in interest-bearing accounts. However, The MLC stresses that under the explicit language of the MMA, interest earned in such situations *can only be for the benefit of copyright owners*. 17 U.S.C. 115(d)(3)(H) (“Accrued royalties for unmatched works... shall be maintained by the mechanical licensing collective in an interest-bearing account that earns monthly interest... *that accrues for the benefit of copyright owners entitled to payment of such accrued royalties.*”) (emphasis added). Thus, in the event that there were disputes in this context, and The MLC accrued royalties and interest pursuant to 17 U.S.C. 115(d)(3)(H), and the disputes resolved in favor of the copyright owners who were under voluntary licenses, such that the royalties on hold were to be refunded to the DSP, then either (1) the interest would remain with The MLC and accrue for the benefit of copyright owners entitled to payment of unmatched royalties, pursuant to the MMA; or (2) The MLC could potentially transmit the respective interest to the DSP *where the DSP is required by the regulations to pay such interest in full to the copyright owners (regardless of whether the voluntary licenses provide*

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for such payment). Under the MMA, such accrued interest *cannot* be transmitted to DSPs for their own benefit (or to be disposed of in their discretion), even where royalties are ultimately refunded to DSPs as associated with voluntary licenses.

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