

**Benjamin K. Semel**Direct Tel: 212-326-0131  
bsemel@pryorcashman.com

February 26, 2020

**Via email**

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

**Re: Docket No. 2019-0005**  
**Summary of ex parte call regarding Music Modernization Act Implementing**  
**Regulations for the Blanket License for Digital Uses and Mechanical Licensing**  
**Collective**

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

This letter summarizes the February 21, 2020 call (“February 21 Call”) between the Mechanical Licensing Collective (the “MLC”) and representatives of the Copyright Office. The MLC thanks the Copyright Office for its time and attention in meeting with the MLC concerning the above-referenced rulemaking proceeding.

The persons participating in the February 21 Call for the MLC were Alisa Coleman (Chair of the Board of Directors), Danielle Aguirre (nonvoting Board member), Kris Ahrend (CEO), Richard Thompson (CIO) and counsel Benjamin Semel, Frank Scibilia and Mona Simonian.

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 2

On behalf of the Copyright Office, Regan Smith, Anna Chauvet, Jason Sloan, John Riley and Terry Hart participated in the call.

The following summarizes the discussion, and attached are several slides that were presented on the call in response to slides presented by the DLC in its February 11, 2020 ex parte meeting:

#### Advance invoicing

The MLC has been talking with digital music providers (“DMPs”) to work out the voluntary process to allow a DMP to receive an invoice in advance of its deadline to pay blanket license royalties, in the event that the DMP has voluntary licenses to be carved out of the blanket license royalty pool. However, there is no right to advance invoicing under the MMA, and the DLC’s proposal—that a DMP can provide usage reporting whenever it wants and the MLC must return an invoice in 15 days—is unreasonable. There must be consistency and predictability in the schedule, and the MLC must be able to plan staffing and resources. DMPs have never been able to provide usage reporting whenever they want, but under the current rules must make royalty payments *to copyright owners* within 20 days, which generally requires them to provide usage reporting to a vendor in 10 days or less. The process that the MLC will implement will require DMPs to submit usage reporting by a date certain each month (such as 10 days after the end of the month). DMPs that meet this deadline will be able to receive an invoice for royalties due under the blanket license in advance of the deadline for payment. But the specific deadlines and process for early reporting and invoicing must be tested out and possibly adjusted after the license availability date.

It was noted that any voluntary invoicing process will be predicated on the MLC receiving an advance definition of the voluntary license repertoire, as setting these up can be very complicated and time-consuming. The CISAC Licensing Rules Repertoire Definition at <https://members.cisac.org/CisacPortal/consulterDocument.do?id=37929> was noted as an example of standing repertoire definitions. It was noted, as discussed in reply comments (at pp. 3-4), that for each voluntary license, the MLC would need identification of the relevant offerings, the start and end dates of the license, and the works covered by the license, identified by one of the following methods: (1) an identification of covered catalogs, using appropriate unique party identifiers (including any excluded catalogs/artists/works) or (2) an identification of all works covered by the license, using appropriate unique work identifiers.

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 3

With respect to a response file, the MLC intends to provide a response file to each DMP that summarizes the results of royalty processing, but the MMA does not require any particular response file and the rule that the DLC proposes is not clear, vaguely calling for a response file with “the results of the [royalty processing] process,” which may lead to confusion. (DLC Reply Comments, page A-9) Further, the DLC proposal that the MLC identify the “royalties owed by [the DMP] for voluntary licenses” is not appropriate. (*Id.*) Determining amounts owed under voluntary licenses requires analyzing the terms of the voluntary licenses, and the MLC will not even know such terms unless the DMP chooses to use the MLC to administer the voluntary licenses, and any such administration is strictly voluntary for both sides under the MMA and not a subject for regulation. Further collaboration needs to occur, including with more DMPs, to determine what kind of response file choreography and data is appropriate. In this regard, it was noted that the five DMPs on the DLC are generally not representative of the technological needs and capabilities of the other DMPs in the market, and it would be useful for the DLC to have additional DMP interests represented in this process. Together with the invoicing process, the MLC feels strongly that this should be addressed, if at all by rulemaking, in a subsequent rulemaking proceeding after the MLC has been able to work with more DMPs and test out procedures in a live environment after the license availability date. The MLC is implementing an unprecedented system on an unprecedented time frame, and these processes simply require some time to design optimally, and attempting to fix them before design can finish will hamper the MLC’s ability to get the best results.

### Usage reporting

#### *General reporting versus audits*

The lack of transparency in current royalty pool calculations was discussed, and the need for the MLC to have adequate reporting to allow it to carry out its duty to administer and enforce the terms of the blanket license. The regulations require that pool reporting *to copyright owners* be, *inter alia*, “sufficient to allow the copyright owner to assess the manner in which the licensee determined the royalty owed and the accuracy of the royalty calculations,” (37 CFR 210(c)(2)) which the MLC believes requires the type of detail that it has requested, and that the DLC’s proposal for reporting does not meet this standard. Notably, the MLC does not merely step into the shoes of the copyright owner in terms of reporting, but is the entity that must provide reporting to copyright owners that meets requirements. The MLC does not even step into the shoes of commercial vendors, but rather has the role of a licensor *and* a vendor who *also* has statutory duty to oversee and enforce the terms of a nationwide blanket license. The importance of detailed reporting is essential to allowing the MLC, as designated by the Register of

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 4

Copyrights, to properly discharge its statutory mandate to protect the rights of the songwriters and publishers whose works are licensed by the MLC under the MMA.

There was discussion of the need for offerings to be reported separately, and that offerings with different consumer price points are different offerings to be reported separately. The regulations specifically require that royalties be calculated separately with respect to each offering (37 C.F.R. 385.21(b)). It was noted that this is not a burden for the DMPs because they currently report offerings separately, with much more granular detail, in territories outside of the United States. Rightsholders have a right to understand how their royalties are calculated, and the narrow information that the DLC wishes to provide to the MLC is insufficient for even the MLC, let alone for the rightsholders to whom the MLC will report, to understand the royalty calculations.

It was discussed that the DLC's proposal for audits to be the sole mechanism for MLC oversight is unreasonable. Firstly, audits are simply not an efficient mechanism for general oversight. Audits of a DMP happen no more than once every three years under the MMA, and can take years to complete, which could lead to having to adjust monthly payments that flow through to potentially hundreds of thousands of payees five years or more after the fact. It was noted that the provision of the MMA that sets out statutory functions for the MLC lists participation in audits (17 U.S.C. 115(d)(3)(C)(i)(XII)) in a separate section from enforcement of the license (17 U.S.C. 115(d)(3)(C)(i)(VII)) and administration of the license (17 U.S.C. 115(d)(3)(C)(i)(I) and (II)), and that retroactive audits serve a different purpose than ongoing oversight. Moreover, the DLC's proposal to use exclusively audits to discharge the statutory oversight and enforcement function effectively calls upon the MLC to audit every DMP every three years, and the MLC would require a significant budget increase to fund that level of auditing. Instead, analysis of detailed general reporting is far less costly and can be used to identify which DMPs should and should not be audited. Indeed, it may not be in the interests of all DMPs to resist detailed general reporting—which is not burdensome but is currently provided in connection with direct deals and foreign territories—and instead call for constant audits of all DMPs. It was discussed that the information requested by the MLC for general reporting is far less detailed than what would be examined in an audit. As an example, whereas the MLC requests reporting on the amount of discounts taken from service revenue, an audit would examine underlying paperwork, accounting entries and receipts to verify if such amounts were properly reported. The audit is a substantially more burdensome and costly inquiry than the general reporting that the MLC requests.

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 5

With respect to the DLC proposal to shorten the DMP data retention period from five years to three years, it was discussed that the three-year audit period look back does not mean that documents dated more than three years earlier are not relevant to audits. Audits of revenues (or other relevant data points) from a given calendar year frequently involve examination of documents that are from earlier than that calendar year, and so it would not be appropriate to shorten the document retention period.

*Unaltered metadata from sound recording licensors*

There was a discussion of the need for DMPs to report data that DMPs receive from sound recording licensors in an unaltered form. Changes that DMPs make to the sound recording artist or title should not be seen as “fixing” or “cleaning” metadata but rather as altering or polluting the metadata. The DMPs do not have the same method for altering metadata, and their alterations significantly increase the difficulty of matching. There was a discussion of the DLC’s example of changing the sound recording licensor’s metadata for the “Radio Edit” version of the song “Hello,” so that the song title becomes “Hello (Radio Edit).” It was noted that the MLC’s musical works database will have the musical work title “Hello.” Whereas the unaltered sound recording licensor’s 5-character title “Hello” will be a direct match to the MLC’s musical works database title, the 18-character “Hello (Radio Edit)” is much less of a match in the eyes of an automated string comparison algorithm. Similarly, the MLC does not see merit in the DLC’s argument that each DMP should be allowed to alter metadata such as to remove characters that they deem “illegal” (and there is no standard or consensus on what is an illegal character) as this will only hamper matching efforts.

There was a discussion of the fact that that ISRC codes are incapable by themselves of carrying the load of sound recording identification and matching, and a SoundExchange data feed on sound recording metadata is not a substitute for DMP reporting. There is no single, global database that matches all ISRC codes with other metadata fields, and there are incorrect ISRC codes in use, including through reuse and piracy, with no authoritative voice that can take a DMP’s ISRC listing and identify with certainty what sound recording, let alone musical work, was actually streamed to the user. ISRC codes are just one of multiple metadata fields that must be used to identify sound recordings and match them to musical works.

It was further discussed that the DLC proposal to allow DMPs to alter sound recording metadata, only to then have the MLC engage in an entirely incidental matching effort to match DMP reporting against a SoundExchange data feed in order to attempt to recapture the original

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 6

sound recording metadata that the DMPs altered, was an unworkable and wildly inefficient proposal.

It was discussed that if DMPs did not want to include the unaltered metadata in the respective reporting fields where they currently report the altered metadata, then the reporting standard can be changed to accommodate the additional fields, which the MLC expects would involve adding “Unaltered Title,” “Unaltered Subtitle” and “Unaltered Display Artist Name” fields.

#### Audio file link

With respect to the DLC claim that the “Service Track ID” field is a substitute for an audio link, it was noted first that the DLC has not confirmed that this is true for all DMPs. As noted above, the five DMPs that are a part of the DLC are not representative of the rest of the DMP market in technological means, and there is no indication that the DLC has confirmed this fact with any other DMPs. Further, requiring songwriters to spend thousands of dollars a year to have a subscription with every DMP in order to check the audio behind unclaimed works will have a substantial negative impact on the ability to minimize the unclaimed pools, and will likely increase the number of works that wind up in dispute. The audio link could be the critical tool in making progress on some of the most intractable unclaimed work instances, and the MLC and its users should not be deprived of a simple field that no DMP has shown to be burdensome and which has been implemented by multiple DMPs in the past as part of unmatched works settlements.

#### Server Fixation Date

It was discussed that Server Fixation Date is currently a mandatory field that is reported on the License Request Form from HFA, and that there is no factual basis for the notion that reporting this field, which can be critical for paying the appropriate publisher or songwriter after a statutory termination, is remotely burdensome. The importance of the Server Fixation Date was also discussed in the context of administering statutory terminations. One data point that the MLC needs in order to determine whether to pay the pre-termination owner or the post-termination owner is the date on which the license was issued to the DMP to use the work. Generally speaking, if the license was issued before the termination date, the pre-termination owner is paid. Otherwise, the post-termination owner is paid. In the compulsory license regime, this is not always a straightforward question. Whereas the prior system of sending an individually dated Notice of Intent for each work provided a license date, the blanket license regime has no analogue paperwork. Rather, DMPs can add works under the blanket license with

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 7

no additional notice. In this context, the date that the work was fixed on the DMP's server—which is the initial reproduction of the work under the blanket license—is the most accurate date for the beginning of the license for that work. Nor are usage reports a substitute for this metadata. First, works may not be reported until well after they are fixed on the DMP's server, but it is the reproduction on the server, which is itself a use under the blanket license, that is most accurately the beginning of the license. Also, monthly reporting will not handle issues arising before the license availability date, or intra-month issues, and requires the MLC to comb through usage reporting to arrive at an estimate (that will almost by definition not be fully accurate) of a data point that DMPs have and currently transmit to vendors.

#### Data collection efforts

With respect to the DLC's argument that getting data "as close to the source" as possible is best, the MLC wholeheartedly agrees. The MLC must match DMP streams to musical works owners. On the musical works ownership side, the MLC will go to the source and obtain musical works ownership data from musical works owners. The MLC has no intention of sourcing musical works ownership data from DMPs. But on the DMP stream side, there is only one place to get authoritative data on what was streamed: the DMP. Record labels cannot tell the MLC what was streamed. SoundExchange cannot tell the MLC what was streamed. Only the DMPs have the authoritative data on what was streamed, and the letter and spirit of the MMA makes clear that DMPs should be reporting anything that might be relevant to this identification and matching effort. The DMPs are unmistakably the closest to the source of streaming data. The DMPs are also closer to the sound recording licensors, with whom they are in contractual privity, which is why they must, as the Copyright Office notification of inquiry in this rulemaking indicates, be obligated to "genuinely engage in appropriate efforts to obtain [the sound recording] information both from record labels and other licensors of sound recordings." 84 Fed. R. 49966 at 49969.

#### Statements of account

It was discussed that the DLC's argument (on pages 16-17 of its Reply Comments) that DMPs are not required to pay late fees (and troublingly, that DMPs are currently not paying late fees) when they disclose late payments in an Annual Statement of Account is not supported by the regulations. The DLC cited to 37 C.F.R. 210.17(g)(4), but that provision says nothing that absolves a DMP from paying the late fees that are set forth in 37 C.F.R. 385.3, which itself contains no carve out for late payments that are listed on an annual statement, nor would such a carve out make any sense. Rather, 37 C.F.R. 210.17(c) says quite clearly that the Annual

Regan Smith, Anna Chauvet and Jason Sloan  
United States Copyright Office  
February 26, 2020  
Page 8

Statement of Account “shall include a clear statement of... [a]ny late fees, if applicable, included in any payment associated with the Annual Statement.” It was also discussed that regulations that provide for regular adjustments to monthly statements in addition to adjustments in the annual statement would be appropriate.

The MLC also indicated that it will follow up with the Copyright Office with further feedback concerning the proper means for populating the required sound recording copyright owner field in usage reporting.

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

Sincerely yours,



Benjamin K. Semel

# Re: DLC Slide 28 - Reporting in other territories

Service	Filename	Offering	Territory
[REDACTED]	Usage_2019Q3_ATG_v1.tsv	Promotion -Family	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	-Individual	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	Family	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	Individual	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	IndividualAnnual	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	Match	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	Student	Antigua and Barbuda
	Usage_2019Q3_ATG_v1.tsv	Trial	Antigua and Barbuda
[REDACTED]	Usage_2019Q3_AUS_v1.tsv	Promotion -Family	Australia
	Usage_2019Q3_AUS_v1.tsv	-Individual	Australia
	Usage_2019Q3_AUS_v1.tsv	Carrier1	Australia
	Usage_2019Q3_AUS_v1.tsv	Carrier2	Australia
	Usage_2019Q3_AUS_v1.tsv	Carrier3	Australia
	Usage_2019Q3_AUS_v1.tsv	Carrier4	Australia
	Usage_2019Q3_AUS_v1.tsv	Family	Australia
	Usage_2019Q3_AUS_v1.tsv	Individual	Australia
	Usage_2019Q3_AUS_v1.tsv	IndividualAnnual	Australia
	Usage_2019Q3_AUS_v1.tsv	Match	Australia
	Usage_2019Q3_AUS_v1.tsv	Student	Australia
	Usage_2019Q3_AUS_v1.tsv	Trial	Australia
	[REDACTED]	SE_2019_8_basic-desktop_dsr.txt	Unlimited
SE_2019_8_familyplan6_dsr.txt		Family Plan 6	Sweden
SE_2019_8_free_dsr.txt		Free	Sweden
SE_2019_8_premium_dsr.txt		Premium	Sweden
SE_2019_8_student_dsr.txt		Student	Sweden

# Re: DLC Slide 29 - Changing Display Artist & Recording Title



## The Blueprint 3

JAY-Z

PLAY



2009 • 15 SONGS

- What We Talkin' About  
EXPLICIT JAY-Z, Luke Steele
- Thank You  
EXPLICIT JAY-Z
- D.O.A. (Death Of Auto-Tune)  
EXPLICIT JAY-Z
- Run This Town  
EXPLICIT JAY-Z, Rihanna, Kanye West
- Empire State Of Mind**  
EXPLICIT JAY-Z, Alicia Keys
- Real As It Gets  
EXPLICIT JAY-Z, Jeezy
- On To The Next One  
EXPLICIT JAY-Z, Swizz Beatz
- Off That  
EXPLICIT JAY-Z, Drake
- A Star Is Born  
EXPLICIT JAY-Z, J. Cole

Left: Spotify

Below: iTunes. Artist data moved into the title data



USD 9.99 Buy

Released 8 Sep, 2009

© 2009 S. Carter Enterprises, LLC,  
Distributed by Roc Nation



## The Blueprint 3

JAY-Z >

Songs Ratings and Reviews Related

- | ▲  | NAME  |
|----|---|
| 1. | What We Talkin' About (feat. Luke Steele)       |
| 2. | Thank You                                       |
| 3. | D.O.A. (Death of Auto-Tune)                     |
| 4. | Run This Town (feat. Rihanna & Kanye West)      |
| 5. | <b>Empire State of Mind (feat. Alicia Keys)</b> |
| 6. | Real as It Gets (feat. Young Jeezy)             |
| 7. | On to the Next One (feat. Swizz Beatz)          |
| 8. | Off That (feat. Drake)                          |
| 9. | A Star Is Born (feat. J. Cole)                  |

# Re: DLC Slide 29 - Merging Title + Version Title

- Data design 101: “Keep separate data separate”
- DDEX DSRF Standard: <https://kb.ddex.net/display/DSRFP812>

6	Title	The ReferenceTitle of the SoundRecording.	String	M	Bohemian Rhapsody
7	SubTitle	A Descriptor which is supplementary to, but not contained within, a Title.	String	O	Live Version

- To take the DLC’s example...
  - The MLC works database will contain the Title “Hello”
  - We want to match this to the sound recording title “Hello”
  - Changing the sound recording title to “Hello (Radio Edit)” makes a match much less likely

# Re: DLC Slide 29 - Current "License Request File" format

License Request Format

Field #	Field Name	Format	Length	Decimal Places	Input Option	Description	Example
1	Agreement Code	A	3	0	M		SSA
2	Manufacturer Number	A	6	0	M		M12345
3	Transaction Date	N	8	0	M		Date: 3/4/2015 Data Entered: 20150304
4	License Request Number	N	8	0	M		12345678
5	Label Name	A	60	0	O		Smith Records
6	ISRC Code	A	15	0	O		USSM19804756
7	Total Playing Time - Minutes	N	3	0	M		Duration: 2 min and 49 sec Data entered: 2
8	Total Playing Time - Seconds	N	2	0	M		Duration: 2 min and 49 sec Data entered: 49
9	Artist Name	A	200	0	M		John Smith
10	Song Title	A	200	0	M/Output		My Best Song
11	A/K/A Song Title	A	200	0	O		Best Song
12	ISWC Code	A	11	0	O		ISWC: T-034.524.680-1 Data Entered: T0345246801
13	Song Code	A	6	0	O/Output		S12345
14	Composer(s)	A	200	0	O/Output		John Smith, Jane Smith
15	Publisher Name	A	60	0	O/Output		Smith Music Publishing
16	Publisher Number	A	6	0	O/Output		P12345
17	Publisher Split	N	7	4	O/Output		Percentage: 66.667% Data Entered: 66.6670
18	Catalog Number	A	15	0	O		12345-2
19	Album Title	A	200	0	O		Early Songs
20	UPC Code	A	16	0	O		706301594728
21	Configuration Code	A	2	0	M		SR
22	License Type	A	1	0	M		G
23	Server Fixation Date	N	8	0	M		Date: 3/4/2015 Data Entered: 20150304

O = Optional  
M = Mandatory