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January 29, 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 January 24, 2020 call (“January 24 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 January 24 Call for the MLC were Alisa Coleman (Chair of the Board of Directors), Danielle Aguirre (nonvoting Board member), Kris Ahrend (CEO) and counsel Benjamin Semel, Frank Scibilia and Mona Simonian.

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

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The following summarizes the discussion:

- The MLC discussed its concerns regarding the timing for completion of rulemaking, indicating that (1) rulemaking concerning usage reporting under the blanket license was a clear timing priority, with the MLC hoping to have such rules in place in Q2 of this year, since the parameters of these rules may impact the MLC's ongoing systems developments; (2) the MLC did not object to rulemaking concerning unclaimed royalties reporting/transfer being done together, or in parallel, with blanket license usage reporting, provided that it does not materially delay rulemaking on blanket license usage reporting; (3) rulemaking concerning the musical works database, which could include matters of interoperability and data collection/delivery efforts, is a subsequent timing priority; (4) rulemaking concerning notices (of license and nonblanket activity) is a subsequent timing priority, and the MLC hopes to begin onboarding DSPs before the license availability date, and thus to have these rules in place by the end of Q3 of this year.
- The MLC emphasized the importance of receiving comprehensive metadata in usage reporting from DMPs, as discussed in its public comments. The MLC discussed that there is no adequate substitute for comprehensive metadata in usage reporting from each DMP, since musical works can only be matched to DMP uses where there is sufficient data to fully identify the uses, regardless of how much data has been supplied by copyright owners concerning the ownership of the musical works. The MLC also noted that there is no articulated burden to the DMPs to provide the requested metadata in usage reporting as the data already exists, while eliminating the reporting of such data would reduce transparency, increase transaction costs and increase the incidence of unclaimed royalties.
- The MLC reiterated a point made in its comments, as well as the comments of numerous others, on the importance of requiring that all data identifying sound recordings and underlying musical works must be reported by DMPs to the MLC unaltered from the form in which it was received from sound recording licensors. The MLC noted that, no matter how much data is provided by copyright owners on the ownership of musical works, if data identifying the uses is altered by DMPs, then the MLC's ability to match those uses to the proper works will be compromised.
- The MLC discussed the importance of receiving the DMP usage reporting field that provides a link to access the audio of the use, particularly to assist with reducing the incidence of unmatched works and ownership disputes, as the audio itself is the

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authoritative evidence of what the DMP streamed in the case of ambiguous, inaccurate or disputed metadata. The MLC noted that audio links are plainly available and have been provided by DMPs in connection with unclaimed royalties settlements in the past, further noting that the only public comment objecting to this field (from the DLC) does not articulate why providing such a useful field would be burdensome, let alone inappropriate.

- The MLC discussed the importance of receiving the DMP usage reporting field that identifies the DMP's server fixation date. The MLC noted that this is a data field that DMPs already have, is currently reported by DMPs, and can be critical for identifying the appropriate copyright owner to be paid in cases involving statutory terminations (under Section 203 or 304 of the Copyright Act).
- The MLC clarified its position that a blanket licensee need not identify works that are subject to voluntary licenses only on a work-by-work basis. Rather, the MLC expects that works covered by voluntary licenses could be identified either on a work-by-work basis or by identifying the voluntary licensors (along with details on any catalog exclusions).
- The MLC explained, as discussed in its reply comments, its position that the rules should allow for the MLC to agree to alternative reporting and payment procedures, so as to enable a process whereby DMPs could submit usage reporting at an earlier date and receive invoices from the MLC on royalties dues under the blanket license prior to payment. The MLC stressed that the statute places the obligation on the DMPs to pay the full royalties due within 20 days from the end of the month in question, with no right to receive advance invoices. Thus, there should be no regulatory requirement that the MLC provide invoices in advance of payment, but that invoicing is appropriate only by a process that the MLC implements (and may need to revise after evaluation) in its discretion.
- The MLC discussed the importance of the MMA's statutory requirement that DMPs use commercially-reasonable efforts to obtain information on the sound recordings that they use and the musical works underlying those sound recordings. While authoritative musical work ownership data for the MLC's musical works database would come from copyright owners, the matching process depends on information coming from the DMPs in order to match the works with the DMP's uses. The MLC stressed that, particularly because of the existence of the compulsory license, there are many situations where

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musical work copyright owners are given no notification that their songs have been used in a sound recording. The MLC discussed that the DMPs are closer to the source of these uses, often have more information than is available to musical work copyright owners, and moreover currently require substantial data from sound recording licensors, underscoring that it is commercially reasonable for them to similarly require the data itemized in the statute and discussed in the MLC's comments.

- The MLC discussed whether certain information that it requested in connection with Notices of License or Nonblanket Activity (together, "Notices") should still be required in connection with Notices if the same information is also required to be a part of monthly usage reporting. The MLC indicated the value of also having such information reported with Notices, both in order to set up systems and DMP accounts, and also to troubleshoot any problems with eligibility for the blanket license as early as possible.
- With respect to confidentiality, the MLC discussed that it already operates with a presumption of strict confidentiality for proprietary or competitive data, that it is committed to maintaining robust security to protect confidential user data, and that it contractually requires vendors to maintain robust security to protect confidential information handled for the MLC. The MLC noted that it intends to provide users who submit confidential data to the MLC an ability to voluntarily "opt in" to share that data for general use by its primary royalty processing vendor, the Harry Fox Agency, and emphasized that MLC users will not be required to opt in to any such sharing in order for the MLC to fully process and pay all royalties due to them under the blanket license.
- The MLC also discussed its objection to the DLC's proposal in its reply comments to have the regulations permit DLC appointees to the MLC board or committees to receive confidential information without such individuals agreeing to maintain confidentiality, and to further permit such individuals to share confidential information with their companies and other employees at their companies without such other persons or entities being authorized by the MLC or even agreeing to maintain confidentiality. The MLC also discussed the importance of not limiting the scope of confidential and sensitive data that can be protected, given the breadth of confidential information that may be involved in the MLC's operations.
- The MLC also discussed its hopes that additional members of the DMP industry become involved in the DLC and in the MLC's implementation planning, and noted the MLC's

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efforts to reach out directly as well as encourage the DLC to reach out to the DMP industry.

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