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EX PARTE MEETING WITH THE UNITED STATES COPYIIGHT OFFICE

Docket Number 2020-12

Re: Summary of the December 10, 2020 Ex-Parte Meeting Between the United States Copyright Office and the following independent, US-based music creator organizations: the Songwriters Guild of America, Inc., the Society of Composers & Lyricists, and Music Creators North America, Inc.

On Thursday, December 10, 2020, an ex parte teleconference call was conducted by the United States Copyright Office (USCO) with the Songwriters Guild of America, Inc. (SGA), the Society of Composers & Lyricists (SCL), and Music Creators North America, Inc. (MCNA). The meeting (Meeting) took place at the request of those named, independent music creator organizations (IMCOs). Attending for SGA were outside counsel Charles J. Sanders, and outside legislative consultant Marla Grossman of the American Continental Group (ACG). Attending for SCL was SCL President and MCNA Co-Chair Ashley Irwin. Attending for MCNA was President Eddie Schwartz and Co-Chair Greg Johnston. The meeting was chaired on behalf of the USCO delegation by its General Counsel, Regan Smith.

The IMCOs began by thanking the USCO for scheduling the Meeting in order to enable them to expand upon the points made in their most recent Comments dated November 25, 2020 concerning the Supplemental Proposed Rulemaking re 2020-12.¹

The issue stressed most prominently in the Meeting by the IMCOs regards their firm belief that the Music Modernization Act (MMA) explicitly requires Digital Music Providers (DMPs) to turn over to the MLC *all* unmatched royalties accrued from the date of each DMP's inception, as well as all usage reports,² without exception.³ Any claims for refunds, credits or offsets as a result of private negotiated agreements with music

¹ <https://beta.regulations.gov/comment/COLC-2020-0011-0016>

² Usage reports for all works are necessary to assist auditors in identifying, among other things, unmatched royalties belonging and payable to songwriters and entities that were co-owners of songs that were allegedly the subject of a private settlements and releases, but who were not parties to such agreements.

³ As discussed at the meeting, the DMP's claim to a "GAAP" exception is demonstrably unsound, as explained in detail in the SGA/SCL/MCNA Comments dated November 25, 2020, and in other recent comments from music creator and copyright groups.

publishers should be made by the DMPs after delivery to the MLC of such royalties, with full and transparent details concerning the exact nature of such claims made public.⁴

The IMCOs also repeated their findings to the USCO that their organizations have not been able to confirm that any music creators received statements indicating that music publishers shared with them a portion of accrued, unmatched royalties such publishers received from a DMP pursuant to a private negotiated agreement, and on what basis or formula such payment by the publisher to the music creator was purportedly made. The IMCOs further requested that the USCO seek information concerning the matter of such alleged payments by music publishers to songwriters and composers, including but not limited to aggregate amounts distributed by each publisher and distribution methodologies utilized, as soon as possible and insofar as it is able.

The IMCOs next clarified with the USCO its understanding that music creators would not be charged fees to gain access to the MLC database for purposes including but not limited to checking to ensure that the data therein pertaining to their compositions is complete and correct. The USCO agreed that this reflected its own understanding, and that such gratis access for a music creator to his or her own works would not be considered to be “bulk” access to the database for which a fee might be authorized under the MMA as referenced in the ex parte letter of the MLC to the USCO dated December 3, 2020 concerning Docket number 2020-8.⁵

Finally, the IMCOs expressed their considerable concern over the issue of transparency as it relates to the operations of the MLC board, especially in regard to the lack of communication from the songwriter/composer representatives who comprise just four of the fourteen board seats. It was noted that not a single, specific public comment by such songwriter representatives concerning the disposition of the hundreds of millions of dollars in accrued, unmatched royalties has been made, nor has any comment been forthcoming on any other issue of import to the music creator community from those representatives. The IMCOs reiterated their belief that such silence may be a result of non-disclosure agreements signed by board members, creating an opaque shroud over MLC board activities (potentially including dissent) that is exactly the opposite of the transparency that Congress expected and intended in enacting the MMA.⁶

In the past, the IMCOs noted, they have requested that the USCO adopt rules concerning the mandatory inclusion in the MLC Annual Report of a separate section consisting of a statement by songwriter board members detailing the specific successes and challenges of protecting the rights and interests of the music creators they represent. That request was repeated once again in the Meeting.

⁴ Moreover, the USCO also expressed agreement with the IMCOs that the ex parte summary submitted to the USCO by the MLC and DLC concerning their conference call with the USCO of December 7, 2020 had not addressed the accrued unmatched royalties payment issues, nor had any conclusions or agreements been reached in that regard by the parties.

⁵ <https://www.copyright.gov/rulemaking/mma-implementation/ex-parte/mechanical-licensing-collective-11.pdf>

⁶ The IMCOs once again also noted the inexplicable silence of the members of the MLC Unclaimed Royalties Oversight Committee concerning the current debate over payments due from the DMPs. See, SGA/SCL/MCNA Comments on Docket No. 2019-6 dated August 31, 2020 at 4-5.

Of equal concern, the IMCOs called to the attention of the USCO the following statement purporting to address the filling of open songwriter board seats, as set forth in the MLC ex parte letter dated December 3, 2020:

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.

The IMCOs informed the USCO that it believes the MLC plan for announcement of board vacancies and opportunities for service is not adequate for a quasi-governmental organization expected to conduct itself in the most transparent manner possible. Groups and individuals should be able to sign up with the MLC for immediate, electronic notification of board vacancies, opportunities and other notices of import so that all interested parties have access to the same information at the same time. That is especially important, it was noted, in light of the following circumstances:

1. That in addition to the very limited number of seats on the board allocated to songwriters and composers, the MLC by-laws as currently written ensure that the process of candidate selection is designed to limit the possibility of service only to those music creators acceptable to the music publishers that make up the vast majority of the board;
2. That at the time the MMA was being drafted, enormous pressure was applied (including threats of professional retaliation) by persons openly or apparently representing music publisher interests, to those who were advocating for greater songwriter and composer protections under the legislation-- such as an MLC board equally balanced between knowledgeable and proactive music creators on the one hand and music publishers on the other. The obvious purpose of this pressure was to stifle such advocacy efforts. This general information was reported in the press;
3. That those same music publisher representatives remain affiliated with the MLC board and appear to be in positions of influence or authority over outreach and candidate selection concerning open songwriter and composer board seats and elections.

The IMCOs were very pleased to be informed by the USCO that they will have the opportunity at round table discussions in the near future to reintroduce discussion and proposals for necessary legislative adjustments to the MMA. Those amendments

suggested for serious consideration will certainly include requests from the independent US and global music creator community that Congress act to balance the MLC board equally between music creators and music publishers.

As was pointed out at the close of the Meeting, experience is rapidly proving that such shared authority is the only way to establish a realistic chance for the rights and interests of songwriters and composers to be adequately protected. The issue of confidential, private negotiated agreements, for example, is just one of several matters already demonstrating the inherent conflicts of interests that will be faced by the MLC on a daily basis. It is abundantly clear to the IMCOs that the only way to address and remedy such conflicts are through a balanced board negotiating fair and intelligent compromises on a level playing field. There was no valid reason that such a system was not implemented in the first place, and no reason why it cannot be adopted by Congress now simply by adding six songwriter/composer board seats to comprise a board of twenty well informed, honest and fair-minded members of our two communities.

The Meeting concluded with thanks and appreciation expressed by the IMCOs to the USCO for devoting its valuable time and energies to addressing these issues of great import to the US and global music creator community.

Sincerely,



Charles J. Sanders
Outside Counsel
Songwriters Guild of America

cc: Regan Smith, General Counsel, The United States Copyright Office
John Riley, Counsel, The United States Copyright Office
All IMCO Participants