U.S. COPYRIGHT OFFICE
WASHINGTON, D.C.

Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator	)	Docket No. 2020-7

COMMENTS OF DIGITAL LICENSEE COORDINATOR, INC.
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

June 8, 2020

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I. INTRODUCTION

Digital Licensee Coordinator, Inc. ("DLC") thanks the Copyright Office (the "Office") for the opportunity to submit comments in this rulemaking proceeding under the Hatch-Goodlatte Music Modernization Act ("MMA") on Treatment of Confidential Information by the Mechanical Licensing Collective (the "Proposed Rule").[1] The Office's approach to these confidentiality rules appropriately has sought to strike a balance between the transparency of MLC operations, and the protection of "confidential, private, proprietary, or privileged information" mandated by the MMA.[2]

Although the basic framework of the Proposed Rule is sound, there are several areas where the Office must do more to protect sensitive commercial information from improper disclosure and use. In the addendum to these comments, DLC has provided a complete set of suggested changes to the Proposed Rule, as discussed in the sections below.

II. THE PROPOSED RULE

A. Defining "Confidential Information"

The Office's rule proposes that "Confidential Information" be generally defined to encompass two broad categories of information: (1) "sensitive financial or business information, including information relating to financial or business terms that could be used for commercial advantage, trade secrets" and (2) "sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth (other than year)."[3] The rule further provides, as specific examples, the following categories of information: (3) "usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties"; (4) "sensitive data shared between the MLC and DLC regarding any significant nonblanket licensee"; (5) "sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the MLC"; and (6) "information submitted by a third party that is reasonably designated as confidential by the party submitting the information, subject to the other provisions of this section."[4]

The Proposed Rule, in turn, *excludes* from the definition several categories of information: (1) "Documents or information that are public or may be made public by law or regulation," including information contained in (a) notices of license (except for any information regarding voluntary licenses and individual download licenses, which we understand is to be maintained confidentially[5]) and nonblanket activity, (b) the MLC's online database, and (c) information made

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[1] 85 Fed. Reg. 22518 (Apr. 22, 2020).

[2] 17 U.S.C. § 512(d)(12)(C).

[3] Proposed Rule, § 210.33(b)(3).

[4] Proposed Rule, § 210.33(b)(3).

[5] The preamble to the proposed rule includes a confusing passage relating to the addendum to notices of license, stating that "*the definition of confidentiality* in this proposed rule *excludes* any

publicly available by MLC or DLC in proceedings before the Copyright Office or Copyright Royalty Judges; (2) "Documents or information that may be made public by law or that at the time of delivery to the MLC or DLC is public knowledge, or is subsequently disclosed by the party to whom the information would otherwise be considered confidential"; (3) "Top level, compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner"; and (4) "Documents or information created by a party with respect to usage of such documents or information by that originating party."[6]

B. Disclosure And Use Of Confidential Information

The Proposed Rule defines those people who may receive Confidential Information both within and outside the MLC and DLC, and what they may do with that information.

Under the Proposed Rule, the MLC may share information with (1) MLC employees, subject to a written confidentiality agreement; (2) "[a]gents, consultants, vendors, and independent contractors only when necessary to carry out their duties during the ordinary course of their work for the MLC and subject to an appropriate written confidentiality agreement"; (3) "Non-DLC members on the MLC board of directors or committees[,] [who] may receive Confidential Information from the MLC, only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the MLC, and subject to an appropriate written confidentiality agreement."[7] These individuals may use Confidential Information only for "determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto[.]"[8]

The Proposed Rule, in turn, specifies that DLC's "employees, agents, consultants, vendors, and independent contractors" may receive Confidential Information from the MLC, "only when necessary to carry out their duties during the ordinary course of their work for the DLC and subject to an appropriate written confidentiality agreement."[9] In turn, it provides that "[r]epresentatives of the DLC who serve on the board of directors or committees of the MLC may receive Confidential Information from the MLC," and share it with a range of other individuals (including employees of DLC members), but only "to the extent necessary for such persons to know such information" and "when necessary" for the DLC to carry out its duties.[10] The rule also specifies

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addendum to general notices of license that provides a description of any applicable voluntary license or individual download license." 85 Fed. Reg. at 22562 n.39. We believe that the Office intended to say, consistent with the text of the Proposed Rule, that the "*exception* to the definition of confidentiality" excludes the voluntary license and individual download license information delivered with the notice of license.

[6] Proposed Rule, Section 210.33(b)(2)(i)-(iv).

[7] Proposed Rule, Section 210.33(c)(1).

[8] Proposed Rule, Section 210.33(c)(1).

[9] Proposed Rule, Section 210.33(c)(2)(i).

[10] Proposed Rule, Section 210.33(c)(2)(ii)-(iii).

that the DLC may not use any Confidential Information for any purpose "other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto."[11]

C. Confidentiality Agreements

The Proposed Rule conditions receipt of Confidential Information on the signing of "an appropriate written confidentiality agreement." In the notice of inquiry process, DLC urged the Office to adopt a rule permitting organization-to-organization confidentiality obligations with respect to DLC representatives serving on the MLC board and committees.[12] In the Proposed Rule, the Office rejected that proposal out of concern that such an arrangement would not be enforceable, especially to the extent that DLC representatives share information with employees of DLC member companies.[13] As an analogy, the Office observed that protective orders in litigation are often signed by employees in their personal capacities.[14] It sought input on the question of how to enforce nondisclosure obligations where DLC representatives are not permitted to sign confidentiality agreements in their personal capacities.[15]

The Proposed Rule also provides that the confidentiality regulations adopted by the Office will serve as both a floor and a ceiling: "[t]he use of confidentiality agreements by the MLC and DLC shall not permit broader use or disclosure of Confidential Information than permitted under this section," and "may not impose additional restrictions relating to the use or disclosure of Confidential Information, beyond those imposed by this provision, as a condition for participation on a board or committee."[16]

D. Other Provisions

The Proposed Rule also specifies how the MLC and DLC should safeguard confidential information[17] and how written confidentiality agreements should be maintained.[18]

III. CHANGES TO THE PROPOSED RULE

DLC has several concerns and points of clarification regarding the Proposed Rule.

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[11] Proposed Rule, Section 210.33(c)(2).

[12] DLC NOI Comments at 23; DLC NOI Reply Comments at 28.

[13] 85 Fed. Reg. at 22566.

[14] 85 Fed. Reg. at 22566.

[15] 85 Fed. Reg. at 22566.

[16] Proposed Rule, Section 210.33(g).

[17] Proposed Rule, Section 210.33(e).

[18] Proposed Rule, Section 210.33(f).

A. The Rule Should Impose Restrictions On Copyright Owners' Use Of Sensitive Royalty Calculation Information Received From The MLC

In discussing the scope of the definition of Confidential Information, the preamble to the Proposed Rule takes a position with respect to information sent to copyright owners on statements of account that DLC believes is incorrect as a matter of law.

As DLC explained during the notice of inquiry stage of the rulemaking, statements of account delivered to copyright owners contain highly sensitive information—including service revenues, subscriber counts, and amounts paid to performing rights organizations.[19] This information plainly falls within the definition of Confidential Information in the Proposed Rule—it is "sensitive financial or business information."[20] Among other things, this information is competitively sensitive between digital music providers, in that it provides extremely granular detail about each digital music provider's operations and performance.

In the NPRM, the Office nevertheless concludes, quoting a 2014 rulemaking, that "'once the statements of account have been delivered to . . . copyright owners, there should be *no restrictions* on the copyright owners' ability to use the statements or disclose their contents.'"[21] This conclusion contradicts the clear text of the MMA, which requires the Office to adopt regulations to "*ensure* that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective . . . *is not improperly disclosed or used*."[22] If the Office places *no* restrictions on copyright owners' use of the sensitive digital music provider information they receive from the MLC on statements of account, the Office will have failed to comply with this unambiguous congressional direction.[23]

The Office also intimates that adopting the DLC's proposal would be contrary to the goals of "transparency and accuracy in reporting payments to copyright owners."[24] Nothing could be further from the truth. Copyright owners are entitled to know how their royalties have been calculated, as they do today. Consistent with this understanding, the MLC has proposed in separate rulemaking that it be required to share royalty calculation details with copyright owners.[25] DLC supports that rule. More generally, DLC expects that the MMA will improve the level of transparency for copyright owners by ensuring that they receive uniform statements from the

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[19] DLC Ex Parte Letter #2 at 5-6.

[20] Proposed Rule, Section 210.33(b)(2).

[21] 85 Fed. Reg. at 22561 (quoting 79 Fed. Reg., 56190, 56206 (Sept. 18, 2014) (emphasis added)).

[22] 17 U.S.C. § 115(d)(12)(C) (emphasis added).

[23] *See, e.g.*, *Orion Reserves Ltd. P'ship v. Salazar*, 553 F.3d 697, 703 (D.C. Cir. 2009) ("[A] regulation contrary to a statute is void.").

[24] 85 Fed. Reg. at 22651.

[25] *See* Comments of the MLC on the Notice of Proposed Rulemaking on the Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective (Docket No. 2020-6) at ii.

MLC, rather than disparate statements of account from each individual licensee. DLC's only point is that the statute requires this sensitive data to be used only to provide transparency into how mechanical royalties have been calculated and paid—and should not be used for other, unrelated purposes.

DLC accordingly proposes two changes to the Proposed Rule. First, the Office should include a specific category of "Confidential Information" for sensitive data provided by digital music providers related to royalty calculations. Second, DLC proposes a provision governing the disclosure of Confidential Information to copyright owners in statements of account,[26] requiring their access to that information only pursuant to a written confidentiality agreement with the MLC that is enforceable by the licensee. This is similar to what the DLC had proposed in its notice of inquiry reply comments.[27]

B. The Rule Should Restrict MLC And DLC Board And Committee Access To Only Confidential Information Generated By The MLC And DLC Themselves

As noted, the Proposed Rule gives DLC and MLC board members the ability to access Confidential Information, upon a determination that it is "necessary to carry out their duties for the MLC."[28] Notably, neither the DLC nor the MLC proposed to give board and committee members access to such information in their notice of inquiry comments. The MLC's proposal specifically "prevent[ed] any member of its board of directors or any member of its committees from accessing or reviewing any confidential or sensitive data belonging to a particular musical work copyright owner," though it allowed sharing of aggregated or anonymized data.[29] Similarly, DLC's proposal specifically prohibited sharing of "Confidential Information with members of the Board of Directors or any committee, including the unclaimed royalties oversight committee and the dispute resolution committee of the mechanical licensing collective, or any publishers or songwriters."[30]

The Office's rationale for this departure from the DLC and MLC's proposals appears to be rooted in a misunderstanding of DLC's position. In its notice of inquiry comments, DLC addressed the ability of DLC members of the MLC board and MLC committees to share information *about MLC operations* with its membership, and with appropriate personnel within DLC member companies. Accordingly, DLC proposed a specific set of rules with respect to what it had called "MLC Confidential Information"—that is, *information created by the Mechanical Licensing Collective* that the MLC itself might regard as sensitive, such as decisions regarding the MLC's

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[26] *See generally* 85 Fed. Reg. 22549 (Apr. 22, 2020) (notice of proposed rulemaking relating to reporting and distribution of royalties to copyright owners).

[27] DLC NOI Reply Comments at A-21. As part of this change, the Office would necessarily have to cabin the ability of the MLC to share this sensitive data with copyright owners that have declined to adhere to these reasonable confidentiality restrictions.

[28] *See, e.g.*, Proposed Rule, Section 210.33(c)(1)(iii).

[29] MLC NOI Initial Comments at A-24.

[30] DLC NOI Reply Comments at A-20.

personnel and technological standards.[31] To be clear, however, this aspect of the DLC's proposal did not give DLC members the ability to gain access to any confidential information obtained from digital music providers, significant nonblanket licensees, copyright owners, or other parties. In discussing the DLC's position, the NPRM unfortunately conflates these different types of confidential information.[32]

This issue can be solved with some modest fixes to the Proposed Rule. First and foremost, people serving on the MLC and DLC boards and committees, employees of DLC member companies, and others authorized by the MLC should not be given access to the broad category of Confidential Information. There is no sound reason why it would ever be necessary for these individuals to gain access to company-specific confidential information from digital music providers, significant nonblanket licensees, or individual copyright owners. At most, members of MLC and DLC boards and committees should be given access only to aggregated and anonymized data—a category of information that the Proposed Rule already excludes from the definition of Confidential Information. Moreover, the competitive and other harms of allowing even the possibility of such access to company-specific confidential data are acute; once a board member learns competitively sensitive information for purposes of board service, it is far too easy to make use of that same information for another, improper purpose.

Second, the final rule needs to address in some manner the confidentiality of information that the MLC and DLC themselves generate as part of their own operations,[33] while maintaining the ability for DLC members to get and share information related to MLC operations.[34] Specifically, the Office should create a special set of rules for this subset of confidential information (*i.e.*, "MLC Internal Information" and "DLC Internal Information"). DLC has made suggested revisions to the Proposed Rule that would implement that concept.[35]

In establishing these rules, it is important for the Office to keep in mind that the kind of information that the MLC and DLC will generate themselves will be central to fulfilling the duties of board and committee members; those members will need access to potentially sensitive information about MLC or DLC operations to vote on or advise MLC or DLC management. That

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[31] DLC NOI Reply Comments at 27-28, A-22 to A-23; DLC Ex Parte #2, at 4, 6.

[32] *See* 85 Fed. Reg. at 22563-64.

[33] The MMA's mandate requires the Register to "ensure that confidential, private, proprietary, or privileged information *contained in the records of the mechanical licensing collective and digital licensee coordinator* is not improperly disclosed or used." 17 U.S.C. § 115(d)(12)(C) (emphasis added). That mandate readily encompasses information generated by the MLC and DLC itself.

[34] In its notice of proposed rulemaking, the Office correctly "acknowledge[d] that in developing operations policies for the MLC, DLC representatives may need to rely on the expertise of individuals within the DLC." 85 Fed. Reg. at 22564.

[35] With these changes, it is unnecessary for the rule to carve out the ability for the DLC and MLC to gain access to their own generated confidential information, *see* Proposed Rule Section 210.33(b)(2)(iv), as the treatment of DLC Internal Information and MLC Internal Information would be addressed in paragraph (c) of the Proposed Rule.

category of self-generated information, however, is clearly not information specific to a particular digital music provider or licensee. At the same time, the MLC and DLC internal information is less likely to create a risk that the Office expressed concern about—of "confidential information from being misused by competitors for commercial advantage."[36] While some of this information (*e.g.*, personnel actions or vendor negotiations) may be confidential from the perspective of the MLC and DLC, that information is less likely to give board members, or their employers, a commercial advantage over their copyright-owner or digital-music-provider competitors.

C. The Rule Should Eliminate The Specific Provision Related To Information Submitted In Proceedings Before The Copyright Office Or The Copyright Royalty Board

As noted, the Proposed Rule excludes from the definition of "Confidential Information" any information "made publicly available by the MLC or DLC in proceedings before the Copyright Office or Copyright Royalty Judges."[37]

As an initial matter, if this provision is meant to only cover material that the DLC and MLC have voluntarily (and with appropriate authority) filed in a CRB or Copyright Office docket publicly and without any restrictions, the provision is unnecessary, because by definition such material is not confidential. In any event, DLC believes this provision should be deleted, as it will lead to considerable confusion. Filings in CRB proceedings are governed by comprehensive protective orders, and those orders should determine whether material is or is not confidential.[38] With respect to comments submitted to the Copyright Office, there may be scenarios where such information should be maintained confidentially,[39] and any rules specific to such Copyright Office proceedings should likewise govern confidentiality.

D. Other Technical Fixes

DLC has proposed several other self-explanatory technical fixes to the Proposed Rule. For instance, there were duplicative references to providing "persons otherwise authorized by the MLC" with access to Confidential Information. DLC also suggests a fix to the description of the DLC's responsibilities in Proposed Rule, Section 210.33(c)(2). The DLC has no responsibility for

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[36] 85 Fed. Reg. at 22564.

[37] Proposed Rule, Section 210.33(b)(2)(i)(B).

[38] See Protective Order, Docket No. 6263, *In re Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective* (Aug. 1, 2019), at https://app.crb.gov/case/viewDocument/6263.

[39] We note that the Office does not have established guidelines for the submission of confidential information in rulemaking proceedings. *Compare* U.S. Patent and Trademark Office, Manual of Patent Examining Procedures, § 724.02 (describing manner of submitting trade secret, proprietary, and/or protective order materials). It may be worthwhile for the Office to establish such procedures, so that parties can provide the Office with valuable information that they may otherwise be unwilling to provide.

"royalty calculation, collection, matching, and distribution," as the Proposed Rule appeared to suggest. Instead, the statute specifies a different set of duties for DLC, including enforcement of obligations to pay the administrative assessment that funds the MLC's operations.[40]

IV. SUBJECTS OF INQUIRY

The Office sought additional public comment on several specific subjects.

1. Should the proposed rule further limit access to confidential material by MLC board and committee members? What about access to confidential material by employees at companies of MLC and DLC board members?

As addressed above and set forth in the proposed revisions below, the Office should essentially prohibit confidential information (except for the narrow categories of MLC and DLC internal information) from being shared with MLC and DLC board and committee members, or employees of DLC member companies.

2. In addition to a ''Confidential Information'' designation, should the regulations provide for a ''Highly Confidential Information'' designation to provide an additional layer of protection for certain documents and information that only the employees, or employees, agents, and vendors of the MLC, may access (i.e., not members of the board or committees of either the MLC or DLC)? If so, should the proposed rule specify which types of information and documents should be eligible for the ''Highly Confidential Information'' designation, or provide the MLC with flexibility to establish such policies, and how would that designation relate to permitted use of such material?

DLC believes it unnecessary to create an additional category of "highly" confidential information, although the Office's instinct here is correct, in that (as explained above) information produced by digital music providers and significant nonblanket licensees is far more sensitive than information generated by the MLC and DLC themselves. DLC's proposed revisions, as discussed, treat those categories distinctly.

3. Should the Office's regulations address instances of inadvertent disclosure? If so, how?

DLC believes that instances of inadvertent disclosure can be addressed on a case-by-case basis, with the relevant party or (if necessary) an appropriate tribunal deciding the extent to which a disclosure was inadvertent, and the effect thereof.

4. If DLC representatives are not permitted to sign confidentiality agreements in their personal capacities, should the Office's regulations address the penalty for disclosure? If so, how? The Office welcomes suggestions of preferable alternative solutions that would balance the interests identified above to allow DLC representatives to participate on the MLC committees without creating disincentives to protect confidential information, or present issues should a DLC representative end employment with a DLC member company.

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[40] 17 U.S.C. § 115(d)(5)(C).

As noted above, while MLC and DLC board and committee members will need access to the kind of internal information that the MLC and DLC will generate (related to procurement, personnel, or operations) to fulfill their responsibilities, providing them with access to that information is unlikely to lead to the competitive harms that the Office has highlighted in the NPRM. And, as noted, there appears to be consensus that members of the MLC and DLC boards and committees should be prohibited from accessing any other kinds of Confidential Information, such as individual licensee or voluntary license information. The less-sensitive nature of this internal MLC and DLC information diminishes to a substantial degree the rationale for imposing potential *personal* liability as a condition for board and committee membership.[41]

Thus, DLC continues to believe that this kind of personal exposure should not be a condition on board or committee service either for the MLC or DLC. An alternative approach is not only possible but is actually being implemented by DLC. DLC has adopted a confidentiality policy, attached as Exhibit 1, that operates as between the DLC *member company* and DLC itself. That confidentiality restriction can be enforced against the DLC member company itself, per the terms of that agreement. This approach also comes with an overwhelming benefit: it allows the individual DLC representatives to share information and consult as needed within their companies, without the cumbersome process of requiring each person that is so consulted to first sign a confidentiality agreement with DLC. By contrast, the approach taken by the Proposed Rule is impracticable—it requires any person within a DLC member company who must be consulted on a particular issue relevant to MLC operations to sign a written confidentiality agreement with the MLC, exposing himself or herself to potential personal liability. For these reasons, DLC proposes that the regulations enshrine this "company-to-MLC" or "company-to-DLC" approach with respect to service on MLC and DLC boards and committees, as set forth in its proposed revisions to the Proposed Rule.

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Respectfully submitted,

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[41] 85 Fed. Reg. at 22566 (reasoning that "ensuring that such confidential information is not improperly disclosed or misused may seem to necessitate employees of DLC member companies signing nondisclosure agreements in their personal capacities").

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ADDENDUM

PROPOSED REVISIONS

§ 210.33 Treatment of confidential and other sensitive information.

(a) *General*. This section prescribes the rules under which the mechanical licensing collective (MLC) and digital licensee coordinator (DLC) shall ensure that confidential, private, proprietary, or privileged information received by the MLC or DLC or contained in their records is not improperly disclosed or used, in accordance with 17 U.S.C. 115(d)(12)(C), including with respect to actions of the board of directors, committee members, and personnel of the MLC or DLC.

(b) *Definitions*. For purposes of this section:

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 115.

(2) "Confidential Information" includes sensitive financial or business information, including information relating to financial or business terms that could be used for commercial advantage, trade secrets, or sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth (other than year). Confidential Information specifically includes any sensitive data provided by digital music providers related to royalty calculations (including, but not limited to, service revenues, subscriber counts, and performing rights organization fee information), usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties, sensitive data shared between the MLC and DLC regarding any significant nonblanket licensee, and sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the MLC. "Confidential Information" also includes information submitted by a third party that is reasonably designated as confidential by the party submitting the information, subject to the other provisions of this section. "Confidential Information" does not include:

(i) Documents or information that are public or may be made public by law or regulation, including but not limited to information made publicly available through:

(A) Notices of license, excluding any addendum that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license.

(B) Notices of nonblanket activity, the MLC's online database, and information disclosable through the MLC bylaws, annual report, audit report, or the MLC's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii),(vii), and (ix). ~~Confidential Information also excludes information made publicly available by the MLC or DLC pursuant to participation in proceedings before the Copyright Office or Copyright Royalty Judges, including proceedings to redesignate the MLC or DLC.~~

(ii) Documents or information that may be made public by law or that at the time of delivery to the MLC or DLC is public knowledge, or is subsequently disclosed by the party to whom the

information would otherwise be considered confidential. The party seeking information from the MLC or DLC based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(iii) Top level, compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.

(3) "MLC Internal Information" means Confidential Information created by the mechanical licensing collective, such as personnel, procurement, or technology information, but does not include any Confidential Information from a copyright owner, digital music provider, or significant nonblanket licensee.

(4) "DLC Internal Information" means Confidential Information created by the digital licensee coordinator, such as personnel, procurement, or technology information, but does not include any Confidential Information from a copyright owner, digital music provider, or significant nonblanket licensee.

~~(iv) Documents or information created by a party with respect to usage of such documents or information by that originating party.~~

(c) *Disclosure and Use of Confidential Information by the MLC and DLC.* (1) The MLC, including its employees, agents, consultants, vendors, independent contractors, and non-DLC members of the MLC board of directors or committees, shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto, in performing their duties during the ordinary course of their work for the MLC. Access and use of Confidential Information by the MLC shall be further limited as follows:

(i) Employees of the MLC may receive Confidential Information, subject to an appropriate written confidentiality agreement.

(ii) Agents, consultants, vendors, and independent contractors of the MLC may receive Confidential Information, only when necessary to carry out their duties during the ordinary course of their work for the MLC and subject to an appropriate written confidentiality agreement.

(iii) Non-DLC members on the MLC board of directors or committees may receive ~~Confidential Information~~ MLC Internal Information from the MLC (but may not receive any other kind of Confidential Information), ~~only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the MLC, and~~ subject to an appropriate written confidentiality agreement, which may be executed by the employer of the board or committee member.

(2) The DLC, including its employees, agents, consultants, vendors, independent contractors, members of the DLC board of directors or committees, and representatives serving on the board of directors or committees of the MLC, shall not use any Confidential Information for any purpose other than duties that are made the responsibility of the DLC, including efforts to enforce notice

and payment obligations with respect to the administrative assessment, ~~determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution,~~ and activities related directly thereto, in performing their duties during the ordinary course of their work for the DLC. Access and use of Confidential Information by the DLC shall be further limited as follows:

(i) Employees, agents, consultants, vendors, and independent contractors of the DLC may receive Confidential Information ~~from the MLC~~, only when necessary to carry out their duties during the ordinary course of their work for the DLC and subject to an appropriate written confidentiality agreement.

(ii) Members of the DLC board of directors and committees may receive DLC Internal Information (but may not receive any other kind of Confidential Information), subject to an appropriate written confidentiality agreement, which may be executed by the employer of the board or committee member.

(iii) Representatives of the DLC who serve on the board of directors or committees of the MLC may receive ~~Confidential Information~~ MLC Internal Information from the MLC (but may not receive any other kind of Confidential Information), only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the DLC, and subject to an appropriate written confidentiality agreement, which may be executed by the employer of the board or committee member.

(iv) Representatives of the DLC who serve on the board of directors or committees of the MLC, and receive ~~Confidential Information~~ MLC Internal Information, may share such information with the following persons:

(A) Employees, agents, consultants, vendors, and independent contractors of the DLC, only to the extent necessary for the purpose of performing their duties during the ordinary course of their work for the DLC, ~~and persons otherwise authorized by the MLC to receive Confidential Information,~~ only to the extent necessary for such persons to know such information, subject to an appropriate written confidentiality agreement.

(B) Individuals serving on the board of directors and committees of the DLC, only to the extent necessary for such persons to know such information and only when necessary to carry out their duties for the DLC, subject to an appropriate written confidentiality agreement, which may be executed by the employer of the board or committee member.

(C) Individuals otherwise employed by members of the DLC, only to the extent necessary for such persons to know such information and only when necessary for the DLC to perform its duties, subject to an appropriate written confidentiality agreement, which may be executed by the employer of the individual.

(D) Persons otherwise authorized by the MLC to receive ~~Confidential Information~~ MLC Internal Information, only to the extent necessary for such persons to know such information and only

when necessary for the MLC to perform its duties, subject to an appropriate written confidentiality agreement.

(d) *Disclosure of Confidential Information to Non-MLC and Non-DLC Persons and Entities*. In addition to the permitted use and disclosure of Confidential Information in paragraph (c) of this section, the MLC and the DLC may disclose Confidential Information to:

(1) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(4)(D), who is authorized to act on behalf of the mechanical licensing collective with respect to verification of royalty payments by a digital music provider operating under the blanket license, subject to an appropriate written confidentiality agreement;

(2) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(3)(L), who is authorized to act on behalf of a copyright owner or group of copyright owners with respect to verification of royalty payments by the mechanical licensing collective, subject to an appropriate written confidentiality agreement; ~~and~~

(3) Attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement; and~~.~~

(4) Copyright owners, including their designated agents, whose works were used by a licensee used under the statutory license set forth in 17 U.S.C. § 115 and whose Confidential Information is being supplied, solely with respect to the information contained on a statement of account, and only to the extent necessary to receive royalty payments, and subject to an appropriate written confidentiality agreement between the mechanical licensing collective and the copyright owner, and including those employees, agents, consultants, and independent contractors of such copyright owner and their designated agents, who require access to the licensee's Confidential Information to perform duties related to the receipt of royalty payments during the ordinary course of their work, subject to an appropriate written confidentiality agreement that permits enforcement by the licensee,

(e) *Safeguarding Confidential Information*. The MLC, DLC, and any person or entity authorized to receive Confidential Information from either of those entities, must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information. The MLC and DLC shall each implement and enforce reasonable policies governing the confidentiality of their records, subject to the other provisions of this section.

(f) *Maintenance of records*. Any written confidentiality agreements relating to the use or disclosure of Confidential Information must be maintained and stored by the relevant parties for at least the same amount of time that certain digital music providers are required to maintain records of use pursuant to 17 U.S.C. 115(d)(4)(A)(iv).

(g) *Confidentiality agreements*. The use of confidentiality agreements by the MLC and DLC shall be subject to the other provisions of this section, and shall not permit broader use or disclosure of Confidential Information than permitted under this section. The MLC and DLC may not impose additional restrictions relating to the use or disclosure of Confidential Information, beyond those imposed by this provision, as a condition for participation on a board or committee.

EXHIBIT 1
TO DLC'S COMMENTS ON MMA RULEMAKING RE: CONFIDENTIALITY

DLC Policy on Confidentiality

Purpose

The Digital Licensee Coordinator, Inc. ("DLC") has adopted this policy as part of its continuous efforts to improve the organization's stated purposes of effectuating the goals of the Music Modernization Act to provide licensing efficiency and transparency, and ensuring that the new blanket licensing system is, and remains, fair and workable for the digital music industry – both digital music providers and copyright owners.

This confidentiality policy reflects the core values that have guided this organization since its inception — the pursuit of excellence while maintaining the highest standards of integrity, transparency, consensus building, and innovation. By putting this policy into place, the DLC continues to integrate these core values into its daily activities, helping to ensure that its decision-making processes are beyond reproach. This policy is not intended to discourage participation in DLC activities. Rather, by requiring those involved in the decision-making process to protect confidential information, the policy encourages open discussion and safeguards the integrity of the DLC's mission.

Scope of Policy

This policy is enforceable against the Member Company identified below, on behalf of itself and all directors, officers, employees, consultants, and legal counsel of the Member Company, who must protect the confidential information of the DLC and other Member Companies and must not use such information for their personal benefit or to the detriment of the DLC or the other Member Companies. When Member Companies join or renew their membership in the DLC, they are affirming that they agree to this policy. The undersigned individual affirms that he or she has the full right and authorization to enter into this agreement on behalf of the Member Company.

Protection of Confidential Information

Confidential information includes, but is not limited to personnel issues; information that is proprietary to, or the intellectual property of, the DLC or the other Member Companies; unpublished data and manuscripts; draft standards and policies; deliberations; and other information that has not been authorized for disclosure, has not become public and that is obtained through a Member Company's or an individual's relationship with the DLC.

Those serving the DLC, specifically including but not limited to the undersigned individual, shall be responsible for making sure that confidential information is not disclosed to any unauthorized recipient and for making sure that confidential information is not used to the detriment of the DLC or other Member Companies, whether deliberately or through carelessness. Materials that contain confidential information shall be stored securely and shared only with those persons within the Member Companies having a need to know the same in order to serve the goals and needs of the DLC. Care shall be taken to avoid inadvertent disclosure when discussing confidential information in public places and when corresponding through electronic media such as electronic mail, telephone voice mail, fax or videoconferences. Member Companies are encouraged to have or enter into agreements as necessary with directors, officers, employees, consultants, and legal counsel sufficient to safeguard Confidential Information in the manner contemplated by this policy.

Member Companies are invited to consult with the Vice President, Legal of the DLC when questions arise regarding the application of this policy.

Member Companies agree that money damages would not be a sufficient remedy for any material breach of this Agreement and the DLC shall be entitled to specific performance in the form of termination of membership within the DLC as a remedy against a Member Company who materially breaches this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by the undersigned but shall be in addition to all other remedies available at law or in equity to the DLC and/or the Member Company whose confidential information was disclosed.

By: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____