U.S. COPYRIGHT OFFICE
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Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts and Reports of Usage and Payment	)	Docket No. 2020-5

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

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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 Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment (the "Proposed Rule").[1] At the outset, DLC commends the Office for its thoughtful, careful, and thorough consideration of many highly complex issues that are posed by this rulemaking.

Given that the Proposed Rule largely succeeds in fusing the MMA's statutory design with what is reasonable and practical from an industry perspective, DLC's comments and suggestions for improvement are relatively few in number.

While DLC understands the Office's inclination to issue the Proposed Rule on an interim basis, we believe that the Office should take the approach of finalizing these rules now, while inviting industry participants to submit concerns to the Office after the rule is finalized. DLC supports finalization of the rule because it is critical that digital music providers ("DMPs"), significant nonblanket licensees, and other participants have clarity and certainty about the regulatory regime as they begin to build systems to accommodate that regime. Should the Office choose to issue interim rules, however, it should, in any final rule, provide a lengthy transition period to allow for accommodation of any rule changes.

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. NOTICES OF LICENSE AND NONBLANKET ACTIVITY

A. Overview

The Proposed Rule requires the inclusion of more information than DLC proposed in notices of licenses—most notably, (1) a list of the licensee's specific configurations and service types, (2) a signed certification of the notice's accuracy, and (3) a duty to amend the notice within 45 days of a change in the information required in the notice.[2] DLC does not challenge these aspects of the Proposed Rule, subject to the points of clarification discussed below.

B. Submission of Notices Prior to License Availability Date [Section 210.24(g)]

The Proposed Rule should be amended to authorize the submission of notices of license at least 30 days *before* the license availability date. In order to lay the groundwork for an orderly processing of the notices (and avoid overwhelming the MLC with the simultaneous submission of notices from every licensee on the license availability date), the Proposed Rule should clarify that notices provided to the MLC before the license availability date shall be considered timely

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

[2] 85 Fed. Reg. at 22520-21; *id.* at 22537. As applicable, these comments apply both to notices of license and notices of nonblanket activity.

submitted. The rule should also make clear that, when the notice is submitted prior to the license availability date, the blanket license will be effective as of the license availability date.

C. No Immediate Termination of License If Notice Is Rejected Under Transitional Provision [Sections 210.24(g) and 210.25(g)]

The MMA provides that the blanket license "shall, without any interruption in license authority enjoyed by such [DMP], be automatically substituted for and supersede any existing compulsory license" held by that provider.[3] The Proposed Rule clarifies in a transitional provision that, notwithstanding this "automatic rollover" provision, DMPs must still serve notices of license on the MLC.[4]

The Office should make clear that, in the context of this transitional provision, the rejection of such a notice of license based on any challenge the MLC may make to the adequacy of the notice will not immediately terminate the blanket license during the notice and cure period or any follow-on litigation challenging the MLC's final decision to reject the notice of license, provided the blanket licensee meets the blanket license's other required terms.[5] That clarification will ensure that the rule is consistent with the MMA's mandate that the blanket license be extended to existing DMPs upon the license availability date "*without interruption in license authority*."[6] Absent this change, the rule would conflict with that clear direction in the statute.[7]

D. Harmless Error and Amendments [Sections 210.24(e) and 210.25(e)]

The Proposed Rule should be amended to clarify that the harmless error rule applies to failures in the timeliness of amendments. Failures to update the notice of license within 45 days could have potentially serious consequences even if those failures were trivial. A DMP should not have its license put at risk because, for example, it adopts a new "trade or consumer-facing brand name" or other "specific offering" on its website without timely including it on an amendment to its notice of license.[8]

Although the Office acknowledged that the harmless error provision should apply to failures in the timeliness of amendments,[9] the text of the Proposed Rule does not unambiguously

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[3] 17 U.S.C. § 115(d)(9)(A).

[4] Proposed Rule, Section 210.24(g).

[5] The MMA provides a 30-day period "to cure any deficiency and submit an amended notice of license" to the MLC. *See* 17 U.S.C. § 115(d)(2)(A)(iv). The MMA also allows licensees to challenge the MLC's rejection of a notice of license in federal court. *See id.* § 115(d)(2)(A)(v).

[6] *Id.* § 115(d)(9)(A) (emphasis added).

[7] *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.").

[8] *See* Proposed Rule, Sections 210.24(b)(1) and 210.25(b)(1).

[9] 85 Fed. Reg. 22521.

carry out that intent. It states: "Errors in the *submission or content* of a notice of license that do not materially affect the adequacy of the information required . . . shall be deemed harmless, and shall not render the notice invalid" or subject to rejection or termination.[10] This language can be improved by stating expressly that failures to amend or untimely amendments do not put the license at risk where the impact is immaterial.

E. Elimination of "Noninteractive Streams" from List of Configurations [Sections 210.24(b)(5)(iv) and 210.25(b)(5)(iv)]

The Proposed Rule should be amended to remove "noninteractive streams" from the list of digital phonorecords delivery configurations required to be identified in the notice of license.[11] The industry practice and customs for decades have acknowledged that noninteractive streaming does not require a mechanical license, and this rulemaking should not include any language that could call that industry practice into question. Indeed, DLC is unaware of any noninteractive streaming service that obtains mechanical licenses.

This industry understanding is reflected in the text of the MMA itself, which lists exemplary "covered activities" as including "permanent download[s]," "limited download[s]," and "interactive stream[s]," but does not reference noninteractive streams.[12] The same is true of the definition of "digital phonorecord delivery."[13] Thus, including noninteractive streaming services as a standard configuration for covered activities under a Section 115 license is (at best) inconsistent with industry realities, and (at worst) an incorrect implication that for those providers, a Section 115 license is required.

F. Elimination of "Discounted, But Not Free-To-The-User" from List of Service Types [Sections 210.24(b)(5)(v) and 210.25(b)(5)(v)]

The Proposed Rule should be amended to remove the category "Discounted, but not free-to-the-user, services" from the list of service types.[14] A "discounted service" is not actually a "service type." It refers to a particular pricing level *for* a service type. This information is not needed by the MLC as part of the notice of license. The other service types listed in the Proposed Rule at least bear some relation to the "offerings" in 37 C.F.R. Part 385, Subpart C, and so might be appropriate for the MLC to understand in setting up a new DMP in its systems. But the existence of particular discounts only relates to one of the underlying inputs in royalty calculations

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[10] Proposed Rule, Sections 210.24(e) (emphasis added) and 210.25(e).

[11] Proposed Rule, Sections 210.24(b)(5)(iv)(D) and 210.25(b)(5)(iv)(D).

[12] 17 U.S.C. § 115(e)(7).

[13] 17 U.S.C. § 115(e)(10). Moreover, that definition also makes clear that a "digital phonorecord delivery *does not result* from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt[.]" *Id.* (emphasis added).

[14] *See* Proposed Rule, Sections 210.24(b)(5)(v)(D) and 210.25(b)(5)(v)(D).

for subscription services, and would not be something that is reported to the MLC in reports of usage in any event.[15]

G. Information Regarding Voluntary Licenses That Have Retroactive Effective Dates [Sections 210.24(f)]

Proposed Rule, Section 210.24(f) states that "[t]o the extent commercially reasonable," a digital music provider must submit updated information about voluntary licenses "at least 30 calendar days before delivering a report of usage covering a period where such license is in effect."[16] DLC believes this provision should be eliminated from the Proposed Rule, as it is likely to cause confusion given industry realities.

It is common for voluntary licenses to cover past period terms. For instance, a voluntary license entered into in 2022 could cover a period dating back to 2020.[17] But the language of Section 210.24(f) suggests that even if the information about such a license were submitted to the MLC promptly after execution of the deal, it would not be timely because it would not have been submitted "30 calendar days before . . . a period where such license is in effect." The most straightforward solution here is to eliminate the last sentence of Section 210.24(f). DMPs have a natural incentive to inform the MLC of its voluntary licenses promptly, because the existence of those voluntary deals would affect the amount owed to the MLC for the blanket license.

III. DATA COLLECTION AND DELIVERY EFFORTS

DLC agrees with the Proposed Rule's general approach to the requirements for data collection and delivery efforts,[18] subject to a few amendments.

A. Unaltered Data [Sections 210.27(e)(2), (h)(3) and 210.28(e)(2)]

The Proposed Rule strikes a compromise between the positions of the MLC and DLC on regarding unaltered data; it generally does not require DMPs to report unaltered metadata, except under certain conditions. However, the Proposed Rule's provisions on this point would benefit from the following further clarifications and revisions.

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[15] *See* 37 C.F.R. § 385.22(b) ("A Family Plan shall be treated as 1.5 subscribers per month, prorated in the case of a Family Plan Subscription in effect for only part of a calendar month. A Student Plan shall be treated as 0.50 subscribers per month, prorated in the case of a Student Plan End User who subscribed for only part of a calendar month.").

[16] Proposed Rule, Section 210.24(f).

[17] If the royalty terms are different than the statutory rate, there could be a reconciliation that occurs directly between the publisher and the DMP, not involving the MLC.

[18] 85 Fed. Reg. 22521; *see also id.* at 22524.

1. Clarification Regarding Blank Fields

One ambiguity arising from the Proposed Rule is whether "unaltered data" encompasses data fields that are blank when first received by a DMP. It is not uncommon for DMPs to fill in empty data fields when the relevant information is known to them. Properly understood, that action is not "alteration" of a data field, but supplementation—and it is done by DMPs voluntarily, rather than being required of them. And in light of the overall goals of the MMA—matching works, gathering *useful* information, and reducing unnecessary administrative burdens—there is no reason to treat blank data fields as "unaltered information" and effectively require that DMPs who voluntarily fill in the blanks must still report the original empty metadata to the MLC. The Office should clarify—in at least the preamble to the final rule—that when a DMP chooses to add data to an otherwise blank field, there is no requirement to pass on the empty original data field to the MLC.[19]

2. Exception for Changes in National or International Reporting or Data Standards

The Proposed Rule requires DMPs to provide unaltered data "[i]f the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the particular blanket licensee, and either the unaltered version or both versions [of the data at issue] are required to be reported under such standard or format."[20]

This exception should be eliminated from the Proposed Rule. After analysis of an extended rulemaking record, the Office concluded that it would be inappropriate to require the reporting of unaltered metadata for all fields. Allowing the MLC to unilaterally adopt an international standard that requires the reporting of unaltered metadata effectively delegates any future determination about the wisdom of adopting such a requirement to a standards-setting body. Instead, if the appropriate standards-setting body adopts a change in standard that conflicts with the Office's rules, the proper approach is for the MLC or some other party to return to the Office to seek an update to the rules. (Relatedly, as we discuss below, the DLC has concerns about the lack of limitations on the MLC's ability to dictate new reporting standards, under Section 210.27(h)(3) of the Proposed Rule.)

Should the Office adopt this exception, it should clarify a few points. *First*, DLC understands that some international standards distinguish between optional and mandatory reporting fields. The language of the Proposed Rule—covering data "required to be reported" under the rules of the applicable standard—appears to contemplate only mandatory reporting fields, not optional ones, but DLC would appreciate the Office's confirmation of that point.

Second, international standards such as DDEX are not static; they exist in distinct, periodically updated versions. It therefore could be the case that the MLC "has adopted" *one*

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[19] Proposed Rule, Sections 210.27(e)(2) and 210.28(e)(2).

[20] Proposed Rule, Sections 210.27(e)(2)(i) and 210.28(e)(2)(i).

version of an international standard, and although that standard "is being used by the particular blanket licensee," the licensee is operating under a *different version* of that standard. The Proposed Rule does not make room for this nuance, which could lead to practical problems if the MLC adopts a version of the standard that is not the same as and not in alignment with the version around which the licensee's technology is designed to operate. Accordingly, the Proposed Rule should be revised to clarify that this condition applies only where the MLC and the licensee are aligned on the same "standard and version"—not merely the same standard.

Third, the Office should make clear that any change by the MLC to a new standard that requires maintenance of unaltered metadata would be subject to the transition period in Proposed Rule Section 210.27(h)(3), as extended to one year, per the discussion in Section IV.B. below. In other words, the Office should make clear that this kind of change would be a "significant change" within the meaning of that provision.

Lastly, the Office has asked for comments on a "fourth scenario" for requiring the maintenance of unaltered data (*i.e.*, "Where the unaltered version or both versions are/were commonly reported in the industry by a majority of DMPs of comparable size and sophistication to the particular DMP either currently or prior to the license availability date").[21] In this context, one size emphatically does not fit all, and although the Office's formulation of the question laudably attempts to do justice to that principle, a test that turns on providers' relative "size and sophistication" is not workable. Simply put, the fourth scenario embeds too many questions, to which the answers are too subjective, for useful and operable regulation to take hold.[22]

3. Data Periodically Reported Before the License Availability Date

The Proposed Rule also requires unaltered data where "[e]ither the unaltered version or both versions were periodically reported by the particular blanket licensee prior to the license availability date."[23] This requirement is undesirable because it freezes reporting practices in amber and leaves insufficient flexibility for new best practices to replace the old. Taken literally, this language would prohibit the DMP from actually *improving* the data it receives if it gains the ability to do so in the future, by fixing issues that it discovers itself. This requirement will also be impractical to implement since the services will—in 2030, 2040, and beyond—have to track or

[21] 85 Fed. Reg. at 22525.

[22] Those questions include: how to measure a provider's (1) size and (2) sophistication (including technical agility); (3) how to measure its size and sophistication *relative to others*; (4) which other providers have the same size and sophistication as the provider at issue; (5) if some providers have the same size but not the same sophistication (or vice-versa), which is the relevant majority for purposes of this scenario; (6) how to measure whether certain data was "commonly reported"; and (7) what data types did the relevant majority in fact "commonly report"?

[23] Proposed Rule, Sections 210.27(e)(2)(iii) and 210.28(e)(2)(iii).

recall what its metadata practices were in the year 2020.[24] Accordingly, this requirement should be removed from the Proposed Rule.

B. Requirement Satisfied By Using Record Label Metadata [Section 210.26(b)]

The Proposed Rule includes certain standards for satisfaction of the requirement that digital music providers make "good-faith, commercially reasonable efforts to obtain" information regarding sound recordings embodying a musical work.[25] DLC asks the Office to clarify that when a record label or distributor delivers metadata via a data feed (such as DDEX), a digital music provider can satisfy the "good-faith, commercially reasonable efforts" standard by relying on that data feed, and is not obligated to manually incorporate additional data that it may happen to receive through other means, such as through emails. Requiring DMPs to manually incorporate such data would be inefficient and time-consuming.

C. The SoundExchange Option [Section 210.26(b)(3)]

The Proposed Rule states that a DMP can meet its obligation to engage in "good-faith, commercially reasonable efforts to obtain" required information by arranging for the MLC "to receive [that] information from an authoritative source," such as SoundExchange, under certain conditions.[26] For simplicity, this comment refers to that way of fulfilling the data collection obligation as the "SoundExchange Option."

In general, DLC appreciates the Office's decision to create this option for DMPs to satisfy their data collection obligations. As the Office explained, it will be "efficient for the MLC to have access to an aggregated, regularly updated, and verified feed of the applicable data sourced directly from copyright owners."[27] And, as the Office predicts, "access to such a database can be expected to provide the MLC with more authoritative sound recording ownership data than it may otherwise get from individual DMPs engaging in separate efforts to coax additional information from entities that are under no obligation to provide it."[28] Indeed, DLC agrees with the Office: "SoundExchange's database appears to be a reasonable analog for the data DMPs might otherwise obtain from sound recording copyright owners and licensors through the collection efforts mandated by section 115(d)(4)(B)," that "SoundExchange appears to receive largely the same

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[24] The language of the requirement is also unduly broad as to time. The requirement applies to any unaltered data type "periodically reported by the particular blanket licensee *prior to* the license availability date"—at any time—even if the digital music provider has ceased periodically reporting that unaltered data type by the time of the license availability date. *See* Proposed Rule, Section 210.27(e)(2)(iii). Nor is there any forward-looking time limit to sunset the obligation to provide unaltered data types that are no longer widely used or useful.

[25] Proposed Rule, Section 210.26(b).

[26] Proposed Rule, Section 210.26(b)(2), (b)(3).

[27] 85 Fed. Reg. at 22524.

[28] 85 Fed. Reg. at 22524.

record label and distributor data feeds that the DMPs receive," and that SoundExchange's database "appears to be robust."[29]

The formulation of the Office's actual proposed rule, however, leaves an important ambiguity. The Proposed Rule states that a DMP "may satisfy its obligations under 17 U.S.C. 115(d)(4)(B) *with respect to a particular sound recording*" by arranging for access to the SoundExchange or some other comparable database.[30] DLC does not understand the Office to have intended DMPs to affirmatively engage in a track-by-track assessment of whether a particular sound recording is or is not in the SoundExchange database, but rather that the Office intended the provision to more *generally* satisfy the DMPs' section 115(d)(4)(B) obligations. Similarly, under the Proposed Rule, the SoundExchange Option is subject to a limited exception where a DMP does not "know such source to lack such information for the relevant sound recording."[31] In context, we understand the Office to have intended to adopt an "actual" knowledge standard for this provision.

To remove any ambiguity about the Office's intent, however, DLC proposes deletion of the words "with respect to a particular sound recording" and to alter the phrase "such digital music provider does not know such source to lack such information for the relevant sound recording" to read "such digital music provider does not <u>have actual knowledge that</u> such source lacks such information for <u>a sound recording or set of sound recordings</u>." At a minimum, DLC would welcome the addition of a clear and direct statement in the preamble to the final rule that DMPs' use of the SoundExchange Option does not involve and is not contingent on any affirmative efforts on their part to match their libraries against the database of SoundExchange or other equivalent resource.

To the extent the Office in fact *did* intend the SoundExchange Option to only apply on a track-by-track basis, and to impose a lesser knowledge standard than actual knowledge, we ask the Office to reconsider its decision, as imposing such an obligation to query that database for every track would effectively eliminate the viability of that option for DMPs given the volume of sound recordings at issue. This is also contrary to the Office's conclusion elsewhere in the Proposed Rule that the *MLC* is responsible for engaging in such matching and data curation efforts.[32]

D. PRO Information [Section 210.26(c)]

The Proposed Rule rejects DLC's request to require copyright owners to provide the MLC with available information related to the performing rights organizations ("PROs") through which

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[29] 85 Fed. Reg. at 22524.

[30] Proposed Rule, Section 210.26(b)(3) (emphasis added).

[31] Proposed Rule, Section 210.26(b)(3).

[32] 85 Fed. Reg. at 22524 ("[W]hile it is important for DMPs to genuinely and fruitfully engage in appropriate collection and reporting efforts, the primary tasks of matching and data curation are assigned to the MLC, and the DMPs must fully fund the MLC's undertaking of these critical tasks.").

the relevant works' public performance rights are licensed, concluding that such information categorically cannot fall within the statutory requirement for "information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied."[33]

We ask the Office to reconsider this conclusion.[34] As the Office has recognized, the lack of a central, reliable database for PRO rights information is a significant impediment to the efficiency of the music marketplace.[35] The relevant statutory language does not prevent regulation that could ameliorate that impediment. Rather, it requires musical work copyright owners to engage in commercially reasonable efforts to deliver "information *regarding* the names of the sound recordings in which that copyright owner's musical works . . . *are embodied*."[36] That is easily broad enough to encompass the authority to require musical works copyright owners to provide PRO information to the MLC; the PROs also use the names of sound recordings for matching. In addition, the relevant provision defining the scope of the musical works database specifies that it is to contain "information relating to musical works" generally, rather than information about *mechanical* rights specifically.[37] Moreover, the Office's general rulemaking authority in 17 U.S.C. § 115(d)(12) to "adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection," should be able to supply whatever residual authority is needed. The Office therefore can and should exercise its regulatory authority to create much-needed transparency of PRO rights information.

IV. REPORTS OF USAGE AND PAYMENT

The DLC appreciates the Proposed Rule's adoption of the industry-standard back-and-forth protocol for reporting, invoices, response files, and payments, which is crucial to the ability of DMPs—particularly those with voluntary licenses—to efficiently operate under the blanket license.[38] The Proposed Rule also correctly weighs the burden and benefit of certain kinds of information that would be onerous to report, but would not substantially assist the MLC's performance of its statutory duties.

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[33] 85 Fed. Reg. at 22526.

[34] 85 Fed. Reg. at 22526.

[35] *See, e.g.*, U.S. Copyright Office, *Copyright and the Music Marketplace* 8 (Feb. 2015), *available at* https://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf ("The Office believes that accurate, comprehensive, and accessible data, and increased transparency, are essential to a better functioning music licensing system."); *id.* at 190-94 (proposing creating of a musical works database by a central "GMRO" that included performing rights information).

[36] 17 U.S.C. § 115(d)(2)(E)(iv) (emphasis added).

[37] 17 U.S.C. § 115(d)(3)(E).

[38] 85 Fed. Reg. at 22528.

DLC asks the Office to make the following important changes to the Proposed Rule to improve the functioning of the usage reporting and royalty payment system.

A. Simplified Reporting Format [Section 210.27(h)(1)]

The Proposed Rule allows the MLC to adopt multiple alternative data standards and reporting formats, but requires that at least one "is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations."[39]

DLC, which represents both large and small digital music providers, does not believe a distinction based on the size or "sophistication" of a licensee is necessary or advisable in this context. The standard reporting formats used in the industry (such as DDEX DSR format) are fairly simple already,[40] and a wide range of licensees use them without difficulty. If the MLC adopts an even more simplified format, then all licensees, regardless of size or sophistication, should be eligible to use it.

B. Changes in Reporting Format and Transition Period [Section 210.27(h)(3)]

Section 210.27(h)(3) grants the MLC the power to modify requirements for the reports of use, including by requiring DMPs to adopt a "modifi[cation] by [a] standard-setting organization."[41] DLC has three discrete concerns about this provision.

First, DLC is concerned that this provision could be used to override the Office's determinations about the appropriate content of the reports of usage.[42] This might happen, for instance, if the MLC adopts a standard that requires reporting of data that the Office has concluded in this rulemaking should *not* be required to be reported. That result would be contrary the Office's decision not to delegate to the MLC the power to expand reporting requirements outside the rulemaking process—and is wholly unnecessary in light of the highly detailed and specific reporting requirements already set out by Section 210.27(e). It would also improperly delegate authority to DDEX (or another standard-setting body), which has no statutory duties under the MMA. We ask the Office to make clear that this provision cannot be used to impose requirements that are inconsistent with the Office's rules.

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[39] Proposed Rule, Section 210.27(h)(1).

[40] The DSR format is a flat-file format that is designed to be used by a wide range of music services. *See generally* https://kb.ddex.net/display/3mil/ Implementing+Sales+and+Usage+Reporting.

[41] Proposed Rule, Section 210.27(h)(3).

[42] Specifically, the Office concluded that it "is not inclined to provide the MLC with additional substantive information from DMPs in connection with their reports of usage." 85 Fed. Reg. at 22529.

Second, the rule provides the MLC with unfettered authority to modify format and payment requirements "at any time."[43] DLC believes there need to be procedural guardrails on the MLC's ability to make changes unilaterally. Specifically, the Proposed Rule should clarify that the MLC cannot impose new requirements under Section 210.27(h) except after a thorough and good-faith consultation with the Operations Advisory Committee established by the MMA, with due consideration to the technological and cost burdens that would result, and the proportionality of those burdens to any expected benefits.

Third, the rule provides a transition period of six months for any significant change to format or delivery requirements. That period should be increased to one year. It would be challenging for a licensee to adjust to new requirements that may come into force as a result of a change in the MLC's adopted standard and version. It takes time for digital music services to confirm that their technology complies with new industry standards (and versions of those standards) and new regulatory requirements. New obligations that may result from future changes in standards are unknowable in their specifics, but could prove challenging to implement. Even somewhat predictable changes (such as the addition of new fields) would require DMPs to implement flow-through changes to all of their internal system pipelines. As DLC has already witnessed in the run-up to the license availability date, to implement new data fields and protocols on a platform-wide basis, a DMP needs significant, cross-functional engineering resources. Even for relatively large DMPs, such resources cannot remain on standby, and activating them for new initiatives (*e.g.*, identifying business units, defining areas of ownership and collaboration, setting a schedule and process for implementation) is itself a time-intensive endeavor. Especially in light of the great diversity in DMPs—and in the state of their respective technologies as well as their abilities to modify their technological and operational protocols—it is not realistic to set the required transition time at anything less than one year.

C. Payment Information for Voluntary and Individual Download Licenses [Section 210.27(c)(4), (d)(1)]

In the monthly usage reports, the Proposed Rule requires DMPs to include "a detailed statement" of "royalty payment and accounting information" "[f]or each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period[.]"[44] In the case of a blanket licensee that does not receive an invoice, the regulation specifies that this information includes "a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license . . . . including but not limited to the number of payable units . . . *whether pursuant to a blanket license, voluntary license, or individual download license*."[45] Similarly, in the case of a blanket licensee that receives an invoice, the information includes "all information necessary for the mechanical licensing collective to compute . . . the royalties payable under the blanket license . . .

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[43] Proposed Rule, Section 210.27(h)(3).

[44] Proposed Rule, Sections 210.27(c)(4), (d)(1), and 210.28(c)(4), (d)(1).

[45] Proposed Rule, Sections 210.27(d)(1)(i) (emphasis added).

including but not limited to the number of payable units . . . *whether pursuant to a blanket license, voluntary license, or individual download license*."[46]

DLC does not understand this language to require reporting of any royalty payment or accounting information for uses under voluntary licenses and individual download licenses, but only *usage* information for those uses.[47] Those payments are made without the involvement of the MLC, so there is no reason to include them in reports to the MLC. Moreover, as a practical matter, some DMPs cannot perform a royalty calculation for voluntary licenses until the relevant streams from the usage reports are matched—which the MLC must do in the first instance. Accordingly, we ask the Office to confirm in the preamble to the final rule that accounting information that must be reported is only that which is necessary to calculate royalties "under the blanket license."

D. Invoices and Response Files [Section 210.27(g), (h)(1), (h)(2)]

Invoices and response files are critically important to licensees and their accounting processes, and the Proposed Rule leaves open some practical and operational questions on those topics.[48] On four points, DLC believes some changes to the Proposed Rule will be necessary.

First, DLC asks the Office to adopt a 35-day, rather than 40-day deadline for the MLC to deliver an invoice, in the instance when the service has delivered usage reporting within the 15-day period contemplated by the Proposed Rule. Leaving companies with only five calendar days to receive the invoice and process a payment to the MLC is simply not enough time, particularly if the invoice is received on a Thursday or a Friday (leaving only 3 business days to process the invoice). At the same time, DLC believes that giving the MLC at least 20 days to engage in matching and processing will be sufficient, and in line with current industry practices.

Second, the Proposed Rule does not include a mechanism by which a DMP can acquire an invoice if it does *not* submit its usage report within 15 days of the applicable reporting period.[49] This information will be necessary for all DMPs, regardless of whether the invoice is a prerequisite for payment of royalties, as it provides confirmation from the MLC of the amount of royalties it believes were owed in that period. The Proposed Rule should be amended to confirm that a DMP is entitled not only to a response file within that time frame, but also to an invoice if requested—

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[46] Proposed Rule, Sections 210.27(d)(1)(ii) (emphasis added).

[47] The Proposed Rule's limitation to "uses in covered activities" (and its requirement for minimal reporting of voluntary and individual download license information) already indicate that nonblanket payment and accounting information need not be reported, but a more express statement on this point would be beneficial. *See* Proposed Rule, Section 210.27(c)(4), (5); *see also* 17 U.S.C. § 115(e)(7) (defining "covered activity" as "making a digital phonorecords delivery of a musical work . . . where such activity qualifies for a compulsory license under this section").

[48] One such question is how a licensee can make a one-time request for response files, given that the operational need for a response file is unlikely to change from month to month. We understand from our initial conversations with the MLC that it plans to provide such a mechanism.

[49] *See generally* Proposed Rule, Section 210.27(g)(1)-(2).

even if the DMP did not meet the requirements that would make it "entitled to receive an invoice" at an earlier time.[50]

Third, the Proposed Rule should require the MLC to provide DMPs with confirmation of receipt of usage reporting and receipt of DMP's payment of any invoice under Section 210.27(h)(1)-(2). Regularizing such confirmations will improve recordkeeping practices.

Fourth, the Proposed Rule should provide further specification and detail regarding the content required to be included in response files. Currently, the Proposed Rule provides that a response file must "contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to DMPs by applicable third-party administrators . . . and shall include the results of [the MLC's process for separating blanket-license payments from voluntary-license payments] . . . on a track-by-track and ownership-share basis[.]"[51] DLC believes a "minimum floor" approach—spelling out the specific types of data and information to be provided—may be necessary to ensure the regular and prompt receipt of necessary accounting information.[52] As the Office notes in the NPRM, the fields typically reported in a response file include "such information as song title, vendor-assigned song code, composer(s), publisher name, publisher split, vendor-assigned publisher number, publisher/license status, and royalties per track."[53] In addition, those fields typically also include "top publisher," "original publisher," "admin publisher" and "effective per play rate" and "time adjusted plays." Consistent with the level of detail in the records of use provision,[54] DLC believes the Proposed Rule should be amended to require these fields to be included in any response file provided by the MLC.

E. Reports of Adjustment [Section 210.27(k)(3)]

The Proposed Rule requires reports of adjustment to include "the monetary amount of an adjustment" and "detailed step-by-step accounting sufficient to allow the MLC" to know how the licensee calculated the adjustment.[55] Although DMPs must provide *inputs* to the MLC, it is typically the MLC, not the providers, that will use those inputs to perform a "step-by-step accounting" and determine the "monetary amount[s]" due to be paid.[56] Accordingly, DMPs'

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[50] Proposed Rule, Section 210.27(g)(1), (g)(2)(iii) (where a digital music provider has furnished its report within 15 days of the reporting period, the MLC "shall deliver such invoice to the blanket licensee no later than 40 calendar days after the end of the applicable monthly reporting period").

[51] Proposed Rule, Section 210.27(g)(vi).

[52] Using these or other categories to set a floor of required data would be consistent with the Proposed Rule's approach regarding providers' reporting obligations to the MLC. *See* Proposed Rule, Section 210.27(e) (detailing minimum required information).

[53] 85 Fed. 22528 & n.128.

[54] *See* Proposed Rule, Sections 210.27(e)(1) and 210.28(e)(1).

[55] Proposed Rule, Section 210.27(k)(3)(ii). No equivalent provision exists for significant nonblanket licensees. *See id.* Section 210.28(*i*)(3).

[56] *See generally* 17 U.S.C. § 115(d)(3)(G)(i)(I).

obligation should be changed from reporting the adjusted "monetary amount" to reporting only adjustments in any relevant inputs that are otherwise required in the monthly usage reports.

In addition, the obligation to provide the MLC with a "step-by-step accounting" should be removed because in many cases, it will not apply. The Proposed Rule's provisions on reports of adjustment are designed primarily to true up prior distributions by "replac[ing] estimated inputs with finally determined figures."[57] In that paradigmatic case, the DMP's task ends with the replacement; any subsequent "accounting" is a task for the MLC, which bears responsibility for calculating both the original and the adjusted distributions due under the blanket license.[58] To the extent the MLC needs further information, the Proposed Rule's existing requirement that the DMP provide "a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends" is sufficient.[59]

F. Refunds After Adjustment [Section 210.27(k)(5)]

The Proposed Rule provides that "[i]n the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account."[60] DLC believes that as an alternative to a credit or offset, DMPs should be permitted to request a refund for overpayment, which the MLC would be required to pay within a reasonable time. The Proposed Rule should be amended to include that refund option.

G. Late Fee for Adjustments [Section 210.27(k)]

In its prior comments, the DLC asked the Office to clarify in its rules that making adjustments to estimates after final figures are determined does not subject DMPs to any late fees. The Office declined to do so, on the ground that "[a]ny applicable late fees are governed by the CRJs, and any clarification should come from them."[61]

Although the CRJs set the *amount* of the late fee, the Office is responsible for establishing *due dates* for adjusted payments.[62] It is those due dates that establish whether or not a late fee is owed. Thus, another way for the Office to resolve this issue is by making clear that adjustments to estimates are due either before (as permitted under the Proposed Rule) or with the annual report of adjustment or, if not finally determined by then, promptly after the estimated amount is finally determined. If adjustments are made within these deadlines, then no late fee would be required.

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[57] 85 Fed. Reg. 22527.

[58] *See* 17 U.S.C. § 115(d)(3)(C)(i)(II), (d)(3)(G), (d)(3)(J).

[59] Proposed Rule, Section 210.27(k)(3)(ii).

[60] Proposed Rule, Section 210.27(k)(5).

[61] 85 Fed. Reg. at 22530.

[62] *See generally* Proposed Rule, Sections 210.27(k) and 210.28(f).

The Proposed Rule should be amended to clarify the due date for the payment of adjusted royalty amounts.

H. Server Fixation Date [Section 210.27(m)(2)]

The Proposed Rule attempts to compromise on the MLC's request for "server fixation date" information, which the MLC contends is necessary to determine how to distribute payments for works that have undergone a termination of transfer pursuant to Sections 203 and 304(c) of the 1976 Copyright Act. The proposed compromise aligns with the following three categories of works:

I. For works licensed prior to the license availability date, the Proposed Rule imposes no new obligations on DMPs (for these works, the MLC must rely on notices of intention).[63]

II. For works that are on a service as of the license availability date (but are not licensed at that time), the Proposed Rule requires each DMP to "take a snapshot of its sound recording database or otherwise make an archive as it exists immediately prior to the effective date of its blanket license."[64]

III. For works "first licensed or obtained for use" after the license availability date, the Proposed Rule requires the licensee to retain records of at least one of the following:

- The "date on which the sound recording is first reproduced by the blanket licensee on its server;"
- The "date on which the blanket licensee first obtains the sound recording;" and/or
- The "date of the grant first authorizing the blanket licensee's use of the sound recording."[65]

Notwithstanding the Office's thoughtful approach to this complicated issue, significant open issues remain. With respect to "Category II" works, the Proposed Rule's approach is unworkable in two respects. *First*, the number of data fields and volume of data contained in the snapshot or archive is likely to be enormous—unduly burdensome and impractical both for the DMPs to produce and for the MLC to use. *Second*, even if certain data fields are removed from the snapshot or archive (so that only the information the MLC needs is preserved and transferred), the process of creating the snapshot or archive will still involve so much data that it cannot be completed in a single day.

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[63] 85 Fed. Reg. at 22532.

[64] 85 Fed. Reg. at 22533; Proposed Rule, Section 210.27(m)(2)(ii) ("[The licensee must retain a] record of all sound recordings embodying musical works in its database or similar electronic system as of immediately prior to the effective date of its blanket license.").

[65] Proposed Rule, Section 210.27(m)(2)(i).

As a result, works that are added to the service while the snapshotting or archiving process is underway may not ultimately be captured in the archive.

To resolve these practical difficulties, the Proposed Rule should be amended to limit the required data fields for the snapshot or archive to those that the MLC reasonably requires to fulfill its statutory duties (and that each DMP has reasonably available).[66] It should also be amended to require that the snapshot or archive be based not on the database "as it exists immediately prior to the license availability date," but as it exists at a time "reasonably approximate" to the license availability date.

With respect to "Category III" works, DLC believes the Office's flexible approach is the right one, but the Proposed Rule's list of three alternative types of records will likely need adjustment or augmentation to match industry and operational realities. There may be some DMPs for which none of the records in Category III's list is regularly retained in the ordinary course of business. Even where providers do record these data types, complications can arise. For instance, in the case of recordings that are released overseas before they are released into the United States, it is unclear what date should be selected as the "date on which the sound recording is first reproduced by the blanket licensee on its server." What if the server is in the United States but the work is only authorized for performance abroad? What if the work is on a foreign server, but only authorized for streaming into the United States months after the date it was first loaded onto that server? The point here is not to try to catalog and solve all the issues that might arise, as that would be impossible. Instead, in DLC's view, the most efficient path forward would be to allow for a fourth flexible catch-all option, allowing the reporting of a date that, in the DMP's assessment, provides a reasonable estimate of the date that the sound recording was first distributed within the United States on its service. The Proposed Rule should be amended to include that option.

That said, there is another option with respect to these "Category III" works that the Office should consider. We understand that the goal of collecting the "server fixation date" is to determine when a particular sound recording is made available on a particular service. But with respect to recordings added to a DMP's service after license availability date, the MLC will already be able to determine that date, without any additional information from the DMP, *based on when the recording appears for the first time in a monthly report of usage*. Indeed, it should be trivial for the MLC to determine, based on incoming usage reports, when a song is added to a service. That is a far more direct solution to the MLC's issue, and does not require the DMPs to maintain any additional information.

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[66] DLC believes that the required data types for this archive should be limited to the minimum requirements for monthly reporting of sound recording usage. *See* Proposed Rule, Section 210.27(e)(1)(A)-(D). Specifically, these are the sound recording names; featured artists; unique identifier(s) assigned by the blanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the blanket licensee's public facing service; and playing time. Additional information—reportable "if practicable" and/or regarding the musical work embodied in the relevant sound recording—does not appear to be necessary for purposes of this snapshot.

I. Excuse from Default Due to Errors of the MLC or Its Information Technology Systems [Sections 210.27(h)(6) and 210.28(g)(3)]

The Proposed Rule protects against license termination and late fees where a usage report or royalty payment is not timely delivered due to "the fault of [the MLC] or an error, outage, disruption or other issue with any of [the MLC]'s applicable information technology systems," and where the licensee takes certain additional steps.[67] Specifically, the DMP must "attempt[] to contact [the MLC] about the problem within 2 business days . . . provide[] a sworn statement detailing the encountered problem to the Copyright Office within 5 business days . . . and deliver[] the report of usage and/or related royalty payment to [the MLC] within 5 business days after receiving written notice . . . that the problem is resolved[.]"[68]

However, the Proposed Rule does not address a scenario where the *licensee does not know about the failure*, which may very well be the case for flaws in the computer systems of the MLC or its vendors. Licensees should not be held to a strict 2- or 5-day deadline to rectify problems of which they are not immediately aware. To avoid this potential problem, the Proposed Rule should be amended to adopt a version of the "discovery rule" commonly used in civil litigation. Under this approach, none of the additional steps a licensee must take (*i.e.*, contacting the MLC and informing the Copyright Office) is triggered until the licensee knows or reasonably should know of the failure in the MLC's systems (or its vendors' systems). And, as a further precaution, the Proposed Rule should also be amended to require the MLC to provide each DMP with some form of "confirmation of receipt" after a usage report is submitted.

Moreover, in circumstances where the MLC and the licensee have a good-faith dispute about when the licensee knew or reasonably should have known of the failure, the protections against termination and late fees should remain as long as the licensee complies with the required additional steps within a reasonable time.

J. Certification [Sections 210.27(*i*)(5), (j)(2) and 210.28(h)(5)]

The Proposed Rule requires licensees to provide a certification statement (from a "duly authorized officer") with each monthly usage report, and provides two alternative model statements that will fulfill this requirement.[69] For blanket licensees, the second model statement is:

> I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this

[67] Proposed Rule, Sections 210.27(h)(6) and 210.28(g)(3).

[68] Proposed Rule, Sections 210.27(h)(6) and 210.28(g)(3).

[69] Proposed Rule, Sections 210.27(*i*)(5) and 210.28(h)(5).

> monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly reports of usage that accurately reflect, in all material respects, the blanket licensee's usage of musical works, **the statutory royalties applicable thereto,** and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

Although DMPs are responsible for reporting usage, it is the MLC that generally bears responsibility for applying and calculating the statutory royalties associated with that usage. Licensees should not be required to obtain an "internal controls" opinion regarding the MLC's processes.[70] Thus, the Proposed Rule should be amended to clarify that the certification only covers the statutory royalties applicable thereto "(only if the blanket licensee chose to include a calculation of such royalties)."

A similar problem exists with respect to annual reports for blanket licensees. The Proposed Rule requires an annual report of usage to include a certification from a CPA "[t]hat the processes used by or on behalf of the blanket licensee, *including calculation of statutory royalties*, generated annual reports" that "present[] fairly, in all material respects, the blanket licensee's usage of the copyright owner's musical works under blanket license during the period covered by the annual report of usage, [*and] the statutory royalties applicable thereto*[.]"[71] In making that certification, the CPA must also attest to having conducted an examination of "data relevant to the calculation of statutory royalties."[72] Again, these references should be qualified so that they apply only when the blanket licensee chooses to include such calculations, and should therefore only cover calculation of statutory royalties if applicable.

In addition, the second model certification for significant nonblanket licensees incorrectly assumes that such licensees engage in a CPA certification process.[73] Neither the statute nor the proposed rule require such a process, and so that aspect of the certification should be eliminated.

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[70] The Proposed Rule appears to have been adapted from existing regulations regarding nonblanket licenses on this point. *See* 37 C.F.R. § 210.16(f)(v) (containing the same model certifications).

[71] Proposed Rule, Section 210.27(j)(2)(ii)(A)(*1*), (j)(2)(iv) (emphasis added).

[72] Proposed Rule, Section 210.27(j)(2)(ii)(B).

[73] Proposed Rule, Section 210.28(h)(5)(ii).

Lastly, there are inconsistencies in the regulatory text's description of the accountant's certifications.[74] After consulting with the auditor for one of the DLC member companies, we have proposed changes that use more consistent language throughout and are in better alignment with the relevant accounting standards and practices. Those changes are reflected in the regulatory text below.

K. Documentation and Records of Use [Section 210.27(m)]

The Proposed Rule requires each licensee to "keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in [each] report of usage," followed by a specific list of items that are required to be maintained. This information must be maintained for a period "of at least five years from the date of delivery of a report of usage" to the MLC, and to grant the MLC "reasonable access to these records upon reasonable request."[75] These documentation requirements are significantly more extensive than DLC proposed in its comments.

DLC has significant concerns about these provisions. *First*, as explained in earlier comments, DLC believes that the provision regarding retention of "[r]ecords and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units," Proposed Rule, Section 210.27(m)(1)(i), is unnecessary because these are not relevant to the "information set forth in [a] report of usage."[76] In addition, the Copyright Royalty Board ("CRB") has issued regulations related to recordkeeping of a narrower set of uses that do not affect royalties—promotional and free trial uses—after an extensive ratesetting proceeding, pursuant to its separate authority to issue recordkeeping requirements.[77] Rather than dividing responsibility for establishing recordkeeping rules for these closely related categories of uses between the Copyright Office and the CRB, it would be far more appropriate for the CRB to address any need to retain an expanded universe of non-royalty-related information, in the context of the next ratemaking proceeding.

Second, Proposed Rule, Section 210.27(m)(1)(v), requiring records and documents regarding whether and how any royalty floor is established, is redundant of the other provisions, particularly paragraph (m)(1)(vi), which already requires retention of all information needed to support royalty calculations, including the various inputs into royalty floors. Royalty floors are

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[74] *Compare, e.g.*, Proposed Rule, Section 210.27(j)(2)(ii)(A)(1) ("processes . . . generated annual reports of usage") *with* (j)(2)(ii)(C) ("processes . . . were designed and operated effectively to generate").

[75] Proposed Rule, Section 210.27(m)(1).

[76] DLC Notice of Inquiry Reply Comments at 18-19.

[77] *See* Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III) 84 Fed. Reg. 1918, 1955-56, 1962 (Feb. 5, 2019); *see also* 37 C.F.R. § 385.4; 17 U.S.C. § 803(c)(3).

calculated based on the kind of service at issue and the number of subscribers, both of which must be captured under paragraph (m)(1)(vi).

Third, given the significant documentation and record-keeping requirements that the Proposed Rule would impose, a stricter limitation on the MLC's right of "reasonable access" is necessary. Indeed, under the MMA, the MLC may audit a licensee "not more frequently than once in any 3-calendar-year period" and "*may not audit records for any . . . 3-year verification period more than once*."[78] The Proposed Rule does not identify any difference between the MLC's "reasonable access to records," as the rule puts it, and the "audit [of] records" provided for in the MMA. And indeed, much of the specific information identified in Section 210.27(m)(1) is precisely the kind of information that would be obtained as a matter of course during an audit. As a result, absent some clear limitation on the MLC's ability to access these records, the Proposed Rule will almost certainly lead to "back door audits" that exceed the carefully crafted statutory limits the MLC's audit rights.

For that reason, the Office's rules must maintain a clear distinction between the MLC's audit rights, on the one hand, and its ability to access a DMP's records of use, on the other. DLC proposes doing this in two ways.

First, the records that may be accessed by the MLC should be limited to specific categories of information: information related to promotional uses (in Section 210.27(m)(1)(ii)), information about the DMP's activities or offerings (in Section 210.27(m)(1)(iii)), and information related to the server fixation date (in Section 210.27(m)(2)). This information should be enough for the MLC to understand the nature of the service and its offerings, and obtain access to information to which it is entitled under the applicable CRB rate regulations. The remainder of the information—all of the information related to usage and royalty calculation—should be accessible to the MLC only in the context of an audit of the DMP. In particular, in no circumstances should the MLC be given full access to "records or documents that may be appropriately examined pursuant to an audit"; giving it access to that information would, by definition, result in a back door audit.[79]

Second, since the MMA limits audits both in their frequency and their scope, similar limits should apply to the MLC's access to documentation and records of use. DLC therefore proposes that the MLC's access be limited in frequency to once per 12-month period, and limited in scope to no more than two months (in the aggregate) of records. Allowing for more frequent or broader access would be unduly burdensome on DMPs, especially given the volume of information now required to be kept within the records of use. (That said, our proposed amendments to the rule also make clear that a DMP can voluntarily provide any information from their records of use to the MLC.)

May 22, 2020

Respectfully submitted,

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[78] 17 U.S.C. § 115(d)(4)(D)(i)(I) (emphasis added).

[79] Proposed Rule, Section 210.27(m)(1)(vii), (m)(4).

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ADDENDUM

PROPOSED REVISIONS

§ 210.24 Notices of blanket license.

(a) *General.* This section prescribes rules under which a digital music provider completes and submits a notice of license to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(2)(A) for purposes of obtaining a statutory blanket license.

(b) *Form and content.* A notice of license shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider is engaging, or seeks to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the digital music provider where an individual responsible for managing the blanket license can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the digital music provider's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the digital music provider's eligibility for a blanket license and to provide reasonable notice to the mechanical licensing collective, copyright owners, and songwriters of the manner in which the digital music provider is engaging, or seeks to engage, in any covered activity pursuant to the blanket license. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the digital music provider has a good-faith belief, informed by review of relevant law and regulations, that it:

(A) Satisfies all requirements to be eligible for a blanket license, including that it satisfies the eligibility criteria to be considered a digital music provider pursuant to 17 U.S.C. 115(e)(8); and

(B) Is, or will be before the date of initial use of musical works pursuant to the blanket license, able to comply with all payments, terms, and responsibilities associated with the blanket license.

(ii) A statement that where the digital music provider seeks or expects to engage in any activity identified in its notice of license, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the digital music provider's service(s), or expected service(s), and the manner in which it uses, or seeks to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the digital music provider is, or seeks to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

~~(D) Noninteractive streams.~~

(D) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the digital music provider offers, or seeks to offer, as part of its covered activities (the digital music provider may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

~~(D) Discounted, but not free-to-the-user, services.~~

(D) Free-to-the-user services.

(E) Other applicable services, accompanied by a brief description.

(vi) Any other information the digital music provider wishes to provide.

(6) The date, or expected date, of initial use of musical works pursuant to the blanket license.

(7) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(8) 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 that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). This description should be provided as an addendum to the rest of the notice of license to help preserve any confidentiality it may be entitled to under regulations adopted by the Copyright Office. Such description shall be sufficient if it includes at least the following information:

(i) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, through which musical works are, or are expected to be, used pursuant to any such voluntary license or individual download license. If such a license pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(ii) The start and end dates.

(iii) The musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for the musical work copyright owner or for an administrator or other representative who has entered into an applicable license on behalf of the relevant copyright owner.

(iv) A satisfactory identification of any applicable catalog exclusions.

(v) At the digital music provider's option, and in lieu of providing the information listed in paragraph (b)(8)(iv) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(c) *Certification and signature.* The notice of license shall be signed by an appropriate duly authorized officer or representative of the digital music provider. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of license to the mechanical licensing collective on behalf of the digital music provider and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Except as provided by 17 U.S.C. 115(d)(9)(A), to obtain a blanket license, a digital music provider must submit a notice of license to the mechanical licensing collective. Notices of license shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of license. Upon submitting a notice of license to the mechanical licensing collective, a digital music provider shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt. The mechanical licensing collective shall send any rejection of a notice of license to both the street address and email address provided in the notice.

(e) *Harmless errors.* Failures to make a timely amendment to a notice of license or errors in the submission or content of a notice of license that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license. This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A digital music provider may submit an amended notice of license to cure any deficiency in a rejected notice pursuant to 17 U.S.C. 115(d)(2)(A). A digital music provider operating under a blanket license must submit a new notice of license within 45 calendar days after any of the information required by paragraphs (b)(1) through (6) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of license submitted by a digital music provider. Where the information required by paragraph (b)(8) of this section has changed, instead of submitting an amended notice of license, the digital music provider must promptly deliver updated information to the mechanical licensing collective in an alternative manner reasonably determined by the collective. ~~To the extent commercially reasonable, the digital music provider must deliver such updated information at least 30 calendar days before delivering a report of usage covering a period where such license is in effect.~~

(g) *Transition to blanket licenses.* Where a digital music provider obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and seeks to continue operating under the blanket license, a notice of license must be submitted to the mechanical licensing collective within 45 calendar days after the license availability date. In such cases, the blanket license shall continue to be effective as of the license availability date, rather than the date on which the notice is submitted to the collective. A digital music provider operating under this paragraph shall be entitled to submit a notice of license to the mechanical licensing collective at least 30 calendar days before the license availability date, which shall also be effective as of the license availability date. In the event of any rejection of a notice of license submitted under this paragraph, the blanket license shall be and remain effective with respect to the digital music provider until a reasonable time after the conclusion of any proceedings under 17 U.S.C. 115(d)(2)(A)(iv)-(v), provided

that such digital music provider satisfies the terms and conditions of the blanket license set forth in 17 U.S.C. 115(c) during that time.

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a digital music provider that is not required by this section, which the digital music provider may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all blanket licenses that, subject to any applicable confidentiality rules established by the Copyright Office, includes:

(1) All information contained in each notice of license, including amended and rejected notices;

(2) Contact information for all blanket licensees;

(3) The effective dates of all blanket licenses;

(4) For any amended or rejected notice, a clear indication of its amended or rejected status and its relationship to other relevant notices;

(5) For any rejected notice, the collective's reason(s) for rejecting it; and

(6) For any terminated blanket license, a clear indication of its terminated status, the date of termination, and the collective's reason(s) for terminating it.

§ 210.25 Notices of nonblanket activity.

(a) *General.* This section prescribes rules under which a significant nonblanket licensee completes and submits a notice of nonblanket activity to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(b) *Form and content.* A notice of nonblanket activity shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. A post office box or

similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the significant nonblanket licensee where an individual responsible for managing licenses associated with covered activities can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the significant nonblanket licensee's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the licensee's qualifications as a significant nonblanket licensee and to provide reasonable notice to the mechanical licensing collective, digital licensee coordinator, copyright owners, and songwriters of the manner in which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the significant nonblanket licensee has a good-faith belief, informed by review of relevant law and regulations, that it satisfies all requirements to qualify as a significant nonblanket licensee under 17 U.S.C. 115(e)(31).

(ii) A statement that where the significant nonblanket licensee expects to engage in any activity identified in its notice of nonblanket activity, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the significant nonblanket licensee's service(s), or expected service(s), and the manner in which it uses, or expects to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the significant nonblanket licensee is, or expects to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

~~(D) Noninteractive streams.~~

(D) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the significant nonblanket licensee offers, or expects to offer, as part of its covered

activities (the significant nonblanket licensee may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

~~(D) Discounted, but not free-to-the-user services.~~

(D) Free-to-the-user services.

(E) Other applicable services, accompanied by a brief description.

(vi) Any other information the significant nonblanket licensee wishes to provide.

(6) Acknowledgement of whether the significant nonblanket licensee is operating under one or more individual download licenses.

(7) The date of initial use of musical works pursuant to any covered activity.

(8) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(c) *Certification and signature.* The notice of nonblanket activity shall be signed by an appropriate duly authorized officer or representative of the significant nonblanket licensee. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of nonblanket activity to the mechanical licensing collective on behalf of the significant nonblanket licensee and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Notices of nonblanket activity shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of nonblanket activity. Upon submitting a notice of nonblanket activity to the mechanical licensing collective, a significant nonblanket licensee shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt.

(e) *Harmless errors.* Failures to make a timely amendment to a notice of license or errors in the submission or content of a notice of nonblanket activity that do not materially affect

the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A significant nonblanket licensee must submit a new notice of nonblanket activity with its report of usage that is next due after any of the information required by paragraphs (b)(1) through (7) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of nonblanket activity submitted by a significant nonblanket licensee.

(g) *Transition to blanket licenses.* Where a digital music provider that would otherwise qualify as a significant nonblanket licensee obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and does not seek to operate under the blanket license, if such licensee submits a valid notice of nonblanket activity within 45 calendar days after the license availability date in accordance with 17 U.S.C. 115(d)(6)(A)(i), such licensee shall not be considered to have ever operated under the statutory blanket license until such time as the licensee submits a valid notice of license pursuant to 17 U.S.C. 115(d)(2)(A).

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a significant nonblanket licensee that is not required by this section, which the significant nonblanket licensee may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all significant nonblanket licensees that, subject to any applicable confidentiality rules established by the Copyright Office, includes:

(1) All information contained in each notice of nonblanket activity, including amended notices;

(2) Contact information for all significant nonblanket licensees;

(3) The date of receipt of each notice of nonblanket activity; and

(4) For any amended notice, a clear indication of its amended status and its relationship to other relevant notices.

§ 210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.

(a) *General.* This section prescribes rules under which digital music providers and musical work copyright owners shall engage in efforts to collect and provide information to the mechanical licensing collective that may assist the collective in matching musical works to sound recordings embodying those works and identifying and locating the copyright owners of those works.

(b) *Digital music providers.* (1) Pursuant to 17 U.S.C. 115(d)(4)(B), in addition to obtaining sound recording names and featured artists and providing them in reports of usage, a digital music provider operating under a blanket license shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service(s) of such digital music provider the following information for each such sound recording embodying a musical work:

(i) The sound recording copyright owner(s), producer(s), ISRC(s), and any other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody as may be required by the Copyright Office to be included in reports of usage provided to the mechanical licensing collective by digital music providers.

(ii) With respect to the musical work embodied in such sound recording, the songwriter(s), publisher name(s), ownership share(s), ISWC(s), and any other musical work authorship or ownership information as may be required by the Copyright Office to be included in reports of usage provided to the mechanical licensing collective by digital music providers.

(2) As used in paragraph (b)(1) of this section, "good-faith, commercially reasonable efforts to obtain" shall include performing all of the following acts, subject to paragraph (b)(3) of this section:

(i) Where the digital music provider has not obtained from applicable sound recording copyright owners or other licensors of sound recordings (or their representatives) all of the information listed in paragraph (b)(1) of this section, or where any such information was obtained before [effective date of final rule] and is no longer in such form that the digital music provider can use it to comply with paragraph (b)(2)(iii) of this section, the digital music provider shall have an ongoing and continuous obligation to, at least on a quarterly basis, request in writing such information from applicable sound recording copyright owners and other licensors of sound recordings. Such requests may be directed to a representative of any such owner or licensor.

(ii) With respect to any of the information listed in paragraph (b)(1) of this section that the digital music provider has obtained from applicable sound recording copyright owners or other licensors of sound recordings (or their representatives), the digital music provider shall have an ongoing and continuous obligation to, on a periodic basis or as otherwise requested by the mechanical licensing collective, request in writing from such owners or licensors any updates to any such information. Such requests may be directed to a representative of any such owner or licensor.

(iii) Any information listed in paragraph (b)(1) of this section, including any updates to such information, provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) shall be delivered to the mechanical licensing collective in reports of usage in accordance with § 210.27(e).

(3) Notwithstanding paragraph (b)(2) of this section, a digital music provider may satisfy its obligations under 17 U.S.C. 115(d)(4)(B) ~~with respect to a particular sound recording~~ by arranging, or collectively arranging with others, for the mechanical licensing collective to receive the information listed in paragraph (b)(1) of this section from an authoritative source, such as the collective designated by the Copyright Royalty Judges to collect and distribute royalties under the statutory licenses established in 17 U.S.C. 112 and 114, provided that such digital music provider does not have actual knowledge that ~~know~~ such source ~~to~~ lacks such information for ~~the relevant~~ a sound recording or set of sound recordings. Satisfying the requirements of 17 U.S.C. 115(d)(4)(B) in this manner does not excuse a digital music provider from having to report sound recording and musical work information in accordance with § 210.27(e).

(4) A digital music provider that receives the information listed in paragraph (b)(1) of this section via an electronic data feed from a particular sound recording copyright owner or other licensor of sound recordings may rely on that electronic data feed to satisfy its obligation to "engage in good-faith, commercially reasonable efforts" as used in paragraph (b)(1) of this section.

(5) The requirements of paragraph (b) of this section are without prejudice to what a court of competent jurisdiction may determine constitutes good-faith, commercially reasonable efforts for purposes of eligibility for the limitation on liability described in 17 U.S.C. 115(d)(10).

(c) *Musical work copyright owners.* (1) Pursuant to 17 U.S.C. 115(d)(3)(E)(iv), each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(2) As used in paragraph (c)(1) of this section, "information regarding the names of the sound recordings" shall include, for each applicable sound recording:

(i) Sound recording name(s), including any alternative or parenthetical titles for the sound recording;

(ii) Featured artist(s); ~~and~~

(iii) ISRC(s); and

(iv) The performing rights societies through which performance rights in each musical work embodied in the sound recording are licensed and the shares licensed by each.

(3) As used in paragraph (c)(1) of this section, "commercially reasonable efforts to deliver" shall include:

(i) Periodically monitoring the musical works database for missing and inaccurate sound recording information relating to applicable musical works; and

(ii) After finding any of the information listed in paragraph (c)(2) of this section to be missing or inaccurate as to any applicable musical work, promptly delivering complete and correct sound recording information to the mechanical licensing collective, by any means reasonably available to the copyright owner, if the information is known to or otherwise within the possession, custody, or control of the copyright owner.

§ 210.27 Reports of usage and payment for blanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage and payment of royalties for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a digital music provider operating under a blanket license pursuant to 17 U.S.C. 115(d). A blanket licensee shall report and pay royalties to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A), and this section. A blanket licensee shall also report to the mechanical licensing collective on an annual basis in accordance with 17 U.S.C. 115(c)(2)(I) and this section. A blanket licensee may make adjustments to its reports of usage and royalty payments in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage,* unless otherwise specified, refers to all reports of usage required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by significant nonblanket licensees under 17 U.S.C. 115(d)(6)(A)(ii) and § 210.28.

(2) A *monthly report of usage* is a report of usage accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I) and 17 U.S.C. 115(d)(4)(A), and required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license.

(3) An *annual report of usage* is a statement of account identified in 17 U.S.C. 115(c)(2)(I), and required to be delivered by a blanket licensee annually to the mechanical licensing collective under the blanket license.

(4) A *report of adjustment* is a report delivered by a blanket licensee to the mechanical licensing collective under the blanket license adjusting one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a "Monthly Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For any voluntary license or individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(6) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section:

(i) The total royalty payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total royalty payable broken down by each applicable activity or offering including as may be defined in part 385 of this title; and

(ii) The amount of late fees, if applicable, included in the payment associated with the monthly report of usage.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) *Calculations.* (i) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(ii) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the

mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of such royalties under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(2) *Estimates.* (i) Where computation of the royalties payable by the blanket licensee under the blanket license depends on an input that is unable to be finally determined at the time the report of usage is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the blanket licensee's control (*e.g.*, as applicable, the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the blanket licensee. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. Any payment required as a result of such an adjustment shall be due either no later than the annual report of usage, or if the amount has not yet been finally determined by that date, promptly after the estimated amount is finally determined.

(ii) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, and the blanket licensee is dependent upon the mechanical licensing collective to confirm usage subject to applicable voluntary licenses and individual download licenses, the blanket licensee shall compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for such non-blanket usage to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after the mechanical licensing collective confirms such amount to be deducted and notifies the blanket licensee under paragraph (g)(2) of this section. Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the blanket licensee shall not provide an estimate of or deduct such amount in the information delivered to the mechanical licensing collective under paragraph (d)(1)(ii) of this section.

(3) *Good faith.* All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the blanket licensee at the time the report of usage is

delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the blanket licensee's public-facing service;

(D) Playing time; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B), and to the extent practicable:

(1) Sound recording copyright owner(s);

(2) Producer(s);

(3) ISRC(s);

(4) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(i) Catalog number(s);

(ii) UPC(s); and

(iii) Unique identifier(s) assigned by any distributor;

(5) Version(s);

(6) Release date(s);

(7) Album title(s);

(8) Label name(s);

(9) Distributor(s); and

(10) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B), and to the extent practicable:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(1) Songwriter(s);

(2) Publisher(s) with applicable U.S. rights;

(3) Musical work copyright owner(s);

(4) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(5) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent or subsidiary of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Subject to paragraph (e)(3) of this section, where any of the information called for by paragraph (e)(1) of this section is acquired by the blanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the blanket licensee revises, re-titles, or otherwise edits or modifies the information (which, for avoidance of doubt, does not include the act

of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), it shall be sufficient for the blanket licensee to report either the originally acquired version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, unless ~~one or more of~~ the following scenario~~s~~ appli~~es~~~~y~~, in which case either the unaltered version or both versions must be reported:

~~(i) If the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the particular blanket licensee, and either the unaltered version or both versions are required to be reported under such standard or format.~~

(i) Either the unaltered version or both versions are reported by the particular blanket licensee pursuant to any voluntary license or individual download license.

~~(iii) Either the unaltered version or both versions were periodically reported by the particular blanket licensee prior to the license availability date.~~

(3) Notwithstanding paragraph (e)(2) of this section, a blanket licensee shall not be able to satisfy its obligations under paragraph (e)(1) of this section by reporting a modified version of any information belonging to a category of information that was not periodically revised, re-titled, or otherwise edited or modified by the particular blanket licensee prior to the license availability date, and in no case shall a modified version of any unique identifier (including but not limited to ISRC and ISWC), playing time, or release date be sufficient to satisfy a blanket licensee's obligations under paragraph (e)(1) of this section; provided that the act of filling in or supplementing empty or blank data fields shall not constitute a revising, re-titling, or other editing or modification for these purposes.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: DDEX Party Identifier (DPID), LabelName, and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(5) As used in paragraph (e) of this section, it is *practicable* to provide the enumerated information if:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) Where the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the particular blanket licensee, it belongs to a category of information required to be reported under such standard or format;

(iii) It belongs to a category of information that is reported by the particular blanket licensee pursuant to any voluntary license or individual download license; or

(iv) It belongs to a category of information that was periodically reported by the particular blanket licensee prior to the license availability date.

(f) *Content of annual reports of usage.* An annual report of usage, covering the full fiscal year of the blanket licensee, shall be clearly and prominently identified as an "Annual Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(1) The fiscal year covered by the annual report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) The following information, cumulative for the applicable annual reporting period, for each month for each applicable activity or offering including as may be defined in part 385 of this title, and broken down by month and by each such applicable activity or offering:

(i) The total royalty payable by the blanket licensee under the blanket license, computed in accordance with the requirements of this section and part 385 of this title.

(ii) The total sum paid to the mechanical licensing collective under the blanket license, including the amount of any adjustment delivered contemporaneously with the annual report of usage.

(iii) The total adjustment(s) made by any report of adjustment adjusting any monthly report of usage covered by the applicable annual reporting period, including any adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section.

(iv) The total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used, whether pursuant to a blanket license, voluntary license, or individual download license.

(v) To the extent applicable to the calculation of royalties owed by the blanket licensee under the blanket license:

(A) Total service provider revenue, as may be defined in part 385 of this title.

(B) Total costs of content, as may be defined in part 385 of this title.

(C) Total deductions of performance royalties, as may be defined in and permitted by part 385 of this title.

(D) Total subscribers, as may be defined in part 385 of this title.

(5) The amount of late fees, if applicable, included in any payment associated with the annual report of usage.

(g) *Processing and timing.* (1) Each monthly report of usage and related royalty payment must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period. Where a monthly report of usage satisfying the requirements of 17 U.S.C. 115 and this section is delivered to the mechanical licensing collective no later than 15 calendar days after the end of the applicable monthly reporting period, the blanket licensee shall be entitled to receive an invoice from the mechanical licensing collective setting forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title.

(2) After receiving a monthly report of usage, the mechanical licensing collective shall engage in the following actions, among any other actions required of it:

(i) The mechanical licensing collective shall engage in efforts to identify the musical works embodied in sound recordings reflected in such report, and the copyright owners of such musical works (and shares thereof).

(ii) The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download

licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license.

(iii) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to confirm proper payment of the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(iv) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(v) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver such invoice to the blanket licensee no later than ~~40~~35 calendar days after the end of the applicable monthly reporting period.

(vi) The mechanical licensing collective shall deliver a response file to the blanket licensee if requested by the blanket licensee. Digital music providers shall be entitled to response files based on a one-time request for response files to be provided for all future reporting periods without having to renew that request on a monthly basis. Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee contemporaneously with such invoice. Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file and invoice to the blanket licensee no later than 70 calendar days after the end of the applicable monthly reporting period. In all cases, the response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators, and shall include the results of the process described in paragraphs (g)(2)(i) through (iv) of this section on a track-by-track and ownership-share basis, with updates to reflect any new results from the previous month. Response files shall include the following minimum information: song title, vendor-assigned song code, composer(s), publisher name, publisher split, vendor-assigned publisher number, publisher/license status, royalties per track,

top publisher, original publisher, admin publisher, effective per play rate, and time adjusted plays.

(3) Each annual report of usage and, if any, related royalty payment must be delivered to the mechanical licensing collective no later than the 20th day of the sixth month following the end of the fiscal year covered by the annual report of usage.

(4) The required timing for any report of adjustment and, if any, related royalty payment shall be as follows:

(i) Where a report of adjustment adjusting a monthly report of usage is not combined with an annual report of usage, as described in paragraph (k)(1) of this section, a report of adjustment adjusting a monthly report of usage must be delivered to the mechanical licensing collective after delivery of the monthly report of usage being adjusted and before delivery of the annual report of usage for the annual period covering such monthly report of usage.

(ii) A report of adjustment adjusting an annual report of usage must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same annual report of usage at different points in time, a separate 6-month period runs for each such triggering event.

(h) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards ~~and the potential for different degrees of sophistication among blanket licensees~~. ~~The mechanical licensing collective must offer at least two options, where one is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations.~~ Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting ~~more than two~~ multiple reporting or data standards or formats from which DMPs shall have an equal opportunity to choose. The mechanical licensing collective shall provide digital music providers with written confirmations of receipt of reports of usage.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A report of usage and its related royalty payment may be delivered together or separately, but if delivered separately, the

payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of usage to the payment. The mechanical licensing collective shall provide digital music providers with written confirmations of receipt of payment.

(3) The mechanical licensing collective may modify the requirements it adopts under paragraphs (h)(1) and (2) of this section at any time after a thorough and good-faith consultation with its operations advisory committee, with due consideration to the technological and cost burdens that would result, and the proportionality of those burdens to any expected benefits, provided that advance notice of any such change is reflected on its website and delivered to blanket licensees using the contact information provided in each respective licensee's notice of license. A blanket licensee shall not be required to comply with any such change before the first reporting period ending at least 30 calendar days after delivery of such notice, unless such change is a significant change, in which case, compliance shall not be required before the first reporting period ending at least ~~6 months~~ one year after delivery of such notice. For purposes of this paragraph (h)(3), a *significant change* occurs as to a particular blanket licensee where the mechanical licensing collective changes any policy requiring information to be provided under particular reporting or data standards or formats being used by the blanket licensee., or where the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the blanket licensee and such standard or format is modified by the standard-setting organization. Where delivery of the notice required by this paragraph (h)(3) is attempted but unsuccessful because the contact information in the blanket licensee's notice of license is not current, the grace periods established by this paragraph (h)(3) shall begin to run from the date of attempted delivery. Nothing in this paragraph empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(4) The mechanical licensing collective shall, by no later than the license availability date, establish an appropriate process by which any blanket licensee may voluntarily make advance deposits of funds with the mechanical licensing collective against which future royalty payments may be charged.

(5) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities. An annual report of usage shall be delivered for each fiscal year during which at least one monthly report of usage was required to have been delivered. An annual report of usage does not replace any monthly report of usage.

(6) Where a blanket licensee attempts to timely deliver a report of usage and/ or related royalty payment to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any

of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the licensee knew or should have known at the time, if the blanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage and/or related royalty payment to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then the mechanical licensing collective shall act as follows:

(i) The mechanical licensing collective shall fully credit the blanket licensee for any applicable late fee paid by the blanket licensee as a result of the untimely delivery of the report of usage and/or related royalty payment.

(ii) The mechanical licensing collective shall not use the untimely delivery of the report of usage and/or related royalty payment as a basis to terminate the blanket licensee's blanket license.

(7) In the event of a good-faith dispute regarding whether a licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the collective's applicable information technology systems as set forth in paragraph (h)(6), a digital music provider that complies with the requirements of paragraph (h)(6) within a reasonable time shall receive the protections of paragraph (h)(6)(i)-(ii).

(i) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee; (2) I have examined this

monthly report of usage; and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes ~~and internal controls were suitably designed to generate,~~ generated monthly reports of usage that present fairly ~~accurately reflect,~~ in all material respects~~,~~ the blanket licensee's usage of musical works, the statutory royalties applicable thereto (only if the blanket licensee chose to include a calculation of such royalties), and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations, and (B) the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(6) A certification that the blanket licensee has, for the period covered by the monthly report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(j) *Certification of annual reports of usage*. (1) Each annual report of usage shall be accompanied by:

(i) The name of the person who is signing the annual report of usage on behalf of the blanket licensee.

(ii) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the annual report of usage.

(v) The following statement: I am duly authorized to sign this annual report of usage on behalf of the blanket licensee.

(vi) A certification that the blanket licensee has, for the period covered by the annual report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(2) Each annual report of usage shall also be certified by a licensed certified public accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (j)(2)(ii) of this section, the accountant shall certify that it has conducted an examination of the annual report of usage prepared by the blanket licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the annual report of usage conforms with the standards in paragraph (j)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular blanket licensee renders it impracticable to certify the annual report of usage as required by paragraph (j)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the blanket licensee's management:

(1) That the processes used by or on behalf of the blanket licensee, including calculation of statutory royalties (only if the blanket licensee chose to include a calculation of such royalties), generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section; and

(2) That the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (j)(2)(ii)(A) of this section, including data relevant to the calculation of statutory royalties (only if the blanket licensee chose to include a calculation of such royalties), and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the annual report of usage ~~were designed and operated effectively to~~ generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(iii) In the event a third party or third parties acting on behalf of the blanket licensee provided services related to the annual report of usage, the accountant making a certification under either paragraph (j)(2)(i) or (ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of the third party or third parties relevant to the generation of the blanket licensee's annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage, if such reliance is disclosed in the certification.

(iv) An annual report of usage conforms with the standards of this paragraph (j) if it presents fairly, in all material respects, the blanket licensee's usage of the copyright owner's musical works under blanket license during the period covered by the annual report of usage, the statutory royalties applicable thereto (only if the blanket licensee chose to include a calculation of such royalties), and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each certificate shall be signed by an individual, or in the name of a partnership or a professional corporation with two or more shareholders. The certificate number and jurisdiction are not required if the certificate is signed in the name of a partnership or a professional corporation with two or more shareholders.

(3) If the annual report of usage is delivered electronically, the blanket licensee may deliver an electronic facsimile of the original certification of the annual report of usage signed by the licensed certified public accountant. The blanket licensee shall retain the original certification of the annual report of usage signed by the licensed certified public accountant for the period identified in paragraph (m) of this section, which shall be made available to the mechanical licensing collective upon demand.

(k) *Adjustments.* (1) A blanket licensee may adjust one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, by delivering to the mechanical licensing collective a report of adjustment. A report of adjustment adjusting one or more monthly reports of usage may, but need not, be combined with the annual report of usage for the annual period covering such monthly reports of usage and related payments. In such cases, such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k) of this section.

(2) A report of adjustment, except when combined with an annual report of usage, shall be clearly and prominently identified as a "Report of Adjustment Under Compulsory Blanket License for Making and Distributing Phonorecords." A report of adjustment that is combined with an annual report of usage shall be identified in the same manner as any other annual report of usage.

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly reports of usage or annual reports of usage, including ~~the monetary amount of the adjustment and~~ a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends. ~~Such description shall include a detailed and step-by-step accounting of the calculation of the adjustment sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the adjustment and the accuracy of the adjustment.~~ As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment. A report of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account. As an alternative to a credit, a digital music provider may request a refund for an overpayment of royalties, which the mechanical licensing collective shall pay within a reasonable time.

(6) A report of adjustment adjusting an annual report of usage may only be made:

(i) In exceptional circumstances;

(ii) When making an adjustment to a previously estimated input under paragraph (d)(2)(i) of this section;

(iii) Following an audit under 17 U.S.C. 115(d)(4)(D); or

(iv) In response to a change in applicable rates or terms under part 385 of this title.

(7) A report of adjustment adjusting a monthly report of usage must be certified in the same manner as a monthly report of usage under paragraph (i) of this section. A report of adjustment adjusting an annual report of usage must be certified in the same manner as an annual report of usage under paragraph (j) of this section, except that the examination by a certified public accountant under paragraph (j)(2) of this section may be limited to the adjusted material and related recalculation of royalties payable. Where a report of adjustment is combined with an annual report of usage, its content shall be subject to the certification covering the annual report of usage with which it is combined.

(l) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation by reference of facts or information contained in other documents or records.

(m) *Documentation and records of use.* (1) Each blanket licensee shall, for a period of at least five years from the date of delivery of a report of usage to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage, including but not limited to the following:

~~(i) Records and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units.~~

(ii) Records and documents pertaining to any promotional or free trial uses that are required to be maintained under applicable provisions of part 385 of this title.

(iii) Records and documents identifying or describing each of the blanket licensee's applicable activities or offerings including as may be defined in part 385 of this title, including information sufficient to reasonably demonstrate whether the activity or offering qualifies as any particular activity or offering for which specific rates and terms have been established in part 385 of this title, and which specific rates and terms apply to such activity or offering.

(iv) Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.

~~(v) Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply.~~

(vi) Records and documents containing such other information as is necessary to reasonably support and confirm all usage and calculations (only to the extent the blanket licensee has chosen to do such calculations) contained in the report of usage, including but not limited to, as applicable, relevant information concerning subscriptions, devices and platforms, discount plans (including how eligibility was assessed), bundled offerings (including their constituent components and pricing information), and numbers of end users and subscribers (including unadjusted numbers and numbers adjusted as may be permitted by part 385 of this title).

(vii) Any other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D).

(2) Each blanket licensee shall, for the period described in paragraph (m)(3) of this section, keep and retain in its possession the following additional records and documents:

(i) With respect to each sound recording, that embodies a musical work, first licensed or obtained for use in covered activities by the blanket licensee after the effective date of its blanket license, one or more of the following dates:

(A) The date on which the sound recording is first reproduced by the blanket licensee on its server;

(B) The date on which the blanket licensee first obtains the sound recording; ~~or~~

(C) The date of the grant first authorizing the blanket licensee's use of the sound recording; or

(D) The date that, in the assessment of the digital music provider, provides a reasonable estimate of the date the sound recording was first distributed on its service within the United States.

(ii) A record, ~~of all sound recordings embodying musical works in its database or similar electronic system~~ as of a time reasonably approximate to the license availability date, of those data fields that the mechanical licensing collective reasonably requires to fulfill its statutory duties and that the digital music provider has reasonably available.~~immediately prior to the effective date of its blanket license.~~

(3) The records and documents described in paragraph (m)(2) of this section must be kept and retained for a period of at least five years from the relevant date described in paragraph (m)(2) of this section, provided that at least 90 calendar days before destroying or discarding any such records or documents the blanket licensee notifies the mechanical licensing collective in writing and provides an opportunity for the collective to claim and retrieve such records and documents. In no event shall a blanket licensee be required to keep and retain any such records or documents for more than 50 years.

(4) The mechanical licensing collective or its agent shall be entitled to make one request in a 12-month period for reasonable access to ~~all~~ records and documents described in paragraph [(m)(1)(ii)], [(m)(1)(iii)], and (m)(2), covering a maximum period of two months in the aggregate. ~~upon reasonable request,~~ The access authorized by this paragraph is subject to any applicable confidentiality rules established by the Copyright Office. Each report of usage must include clear instructions on how to request such access to such records and documents.

(n) *Voluntary agreements with mechanical licensing collective to alter process.* Subject to the provisions of 17 U.S.C. 115, a blanket licensee and the mechanical licensing collective may agree to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraphs (i) and (j) of this section may not be altered by agreement.

§ 210.28 Reports of usage for significant nonblanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works to the

mechanical licensing collective by a significant nonblanket licensee pursuant to 17 U.S.C. 115(d)(6)(A)(ii). A significant nonblanket licensee shall report to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(d)(6)(A)(ii) and this section. A significant nonblanket licensee may make adjustments to its reports of usage in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage*, unless otherwise specified, refers to all reports of usage required to be delivered by a significant nonblanket licensee to the mechanical licensing collective, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by blanket licensees under 17 U.S.C. 115(d)(4)(A) and § 210.27.

(2) A *monthly report of usage* is a report of usage identified in 17 U.S.C. 115(d)(6)(A)(ii), and required to be delivered by a significant nonblanket licensee to the mechanical licensing collective.

(3) A *report of adjustment* is a report delivered by a significant nonblanket licensee to the mechanical licensing collective adjusting one or more previously delivered monthly reports of usage.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a "Significant Nonblanket Licensee Monthly Report of Usage for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities. If the significant nonblanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the significant nonblanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For each voluntary license and individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) The mechanical royalties payable by the significant nonblanket licensee for the applicable monthly reporting period for engaging in covered activities pursuant to each applicable voluntary license and individual download license.

(2) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the significant nonblanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the significant nonblanket licensee's public-facing service;

(D) Playing time; and

(E) To the extent acquired by the significant nonblanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(1) Sound recording copyright owner(s);

(2) Producer(s);

(3) ISRC(s);

(4) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(i) Catalog number(s);

(ii) UPC(s); and

(iii) Unique identifier(s) assigned by any distributor;

(5) Version(s);

(6) Release date(s);

(7) Album title(s);

(8) Label name(s);

(9) Distributor(s); and

(10) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the significant nonblanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(1) Songwriter(s);

(2) Publisher(s) with applicable U.S. rights;

(3) Musical work copyright owner(s);

(4) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(5) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the significant nonblanket licensee, or any corporate parent or subsidiary of the significant nonblanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Subject to paragraph (e)(3) of this section, where any of the information called for by paragraph (e)(1) of this section is acquired by the significant nonblanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the significant nonblanket licensee revises, re-titles, or otherwise edits or modifies the information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), it shall be sufficient for the significant nonblanket licensee to report either the originally acquired version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, unless ~~one or more of~~ the following scenario~~s~~ appli~~es~~~~y~~, in which case either the unaltered version or both versions must be reported:

~~(i) If the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the particular significant nonblanket licensee, and either the unaltered version or both versions are required to be reported under such standard or format.~~

(ii) Either the unaltered version or both versions are reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license.

~~(iii) Either the unaltered version or both versions were periodically reported by the particular significant nonblanket licensee prior to the license availability date.~~

(3) Notwithstanding paragraph (e)(2) of this section, a significant nonblanket licensee shall not be able to satisfy its obligations under paragraph (e)(1) of this section by reporting a modified version of any information belonging to a category of

information that was not periodically revised, re-titled, or otherwise edited or modified by the particular significant nonblanket licensee prior to the license availability date, and in no case shall a modified version of any unique identifier (including but not limited to ISRC and ISWC), playing time, or release date be sufficient to satisfy a significant nonblanket licensee's obligations under paragraph (e)(1) of this section; provided that the act of filling in or supplementing empty or blank data fields shall not constitute a revising, re-titling, or other editing or modification for these purposes.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the significant nonblanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: DDEX Party Identifier (DPID), LabelName, and PLine. Where a significant nonblanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(5) As used in paragraph (e) of this section, it is *practicable* to provide the enumerated information if:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) Where the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.*, DDEX) that is being used by the particular significant nonblanket licensee, it belongs to a category of information required to be reported under such standard or format;

(iii) It belongs to a category of information that is reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license; or

(iv) It belongs to a category of information that was periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(f) *Timing.* (1) An initial report of usage must be delivered to the mechanical licensing collective contemporaneously with the significant nonblanket licensee's notice of nonblanket activity. Each subsequent monthly report of usage must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period.

(2) A report of adjustment may only be delivered to the mechanical licensing collective once annually, between the end of the significant nonblanket licensee's fiscal year and 6 months after the end of its fiscal year. Such report may only adjust one or more previously delivered monthly reports of usage from the applicable fiscal year.

(g) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in any format accepted by the mechanical licensing collective for blanket licensees under § 210.27(h). With respect to any modifications to formatting requirements that the mechanical licensing collective adopts, the mechanical licensing collective shall follow the consultation process as under § 210.27(h), and significant nonblanket licensees shall be entitled to the same advance notice and grace periods as apply to blanket licensees under § 210.27(h), except the mechanical licensing collective shall use the contact information provided in each respective significant nonblanket licensee's notice of nonblanket activity. Nothing in this paragraph empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(2) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities.

(3) Where a significant nonblanket licensee attempts to timely deliver a report of usage to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the licensee knew or should have known at the time, if the significant nonblanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). In the event of a good-faith dispute regarding whether a licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the collective's applicable information technology systems as set forth above, neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C) as long as the licensee complies with the requirements of this paragraph within a reasonable time.

(h) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a significant nonblanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the significant nonblanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee; (2) I have examined this monthly report of usage; and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have prepared or supervised the preparation of the data used by the significant nonblanket licensee and/or its agent to generate this monthly report of usage, and (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith~~, and (4) this monthly report of usage was prepared by the significant nonblanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly reports of usage that accurately reflect, in all material respects, the significant nonblanket licensee's usage of musical works and the royalties applicable thereto~~.

(i) *Adjustments.* (1) A significant nonblanket licensee may adjust one or more previously delivered monthly reports of usage by delivering to the mechanical licensing collective a report of adjustment.

(2) A report of adjustment shall be clearly and prominently identified as a "Significant Nonblanket Licensee Report of Adjustment for Making and Distributing Phonorecords."

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly report(s) of usage to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly report(s) of usage.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) A report of adjustment must be certified in the same manner as a monthly report of usage under paragraph (h) of this section.

(j) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation by reference of facts or information contained in other documents or records.

(k) *Harmless errors.* Errors in the delivery or content of a report of usage that do not materially affect the adequacy of the information required to serve the purpose of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the report invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (k) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(l) *Voluntary agreements with mechanical licensing collective to alter process.* Subject to the provisions of 17 U.S.C. 115, a significant nonblanket licensee and the mechanical licensing collective may agree to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraph (h) of this section may not be altered by agreement.