

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

)  
Transparency of the Mechanical Licensing )  
Collective and Its Database of Musical )  
Works Information )  
\_\_\_\_\_ )

Docket No. 2020-8

**COMMENTS OF DIGITAL LICENSEE COORDINATOR, INC.  
IN RESPONSE TO NOTIFICATION OF INQUIRY**

**June 8, 2020**

Sarang Vijay Damle  
R. Peter Durning, Jr.  
LATHAM & WATKINS LLP

*Counsel for Digital Licensee  
Coordinator, Inc.*

Digital Licensee Coordinator, Inc. (“DLC”) thanks the Copyright Office (the “Office”) for the opportunity to submit comments in response to this Notification of Inquiry regarding the Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information (the “NOI”).<sup>1</sup> As the NOI correctly notes, “[f]ostering increased transparency is an animating theme” and “key aspect” of the Hatch-Goodlatte Music Modernization Act (the “MMA”).<sup>2</sup> Indeed, the critical role of transparency in creating efficient licensing markets—and the need for substantial improvements in this area—has been recognized by the Office even in the years before the MMA made it a statutory imperative.<sup>3</sup>

In light of these important goals, DLC believes it is essential for the Office to promulgate rules that go beyond the minimum statutory requirements and structural features of the mechanical licensing collective (the “MLC”) that favor disclosure by the MLC of information regarding the MLC’s operations.<sup>4</sup> DLC therefore agrees with the NOI that “additive” regulation would be appropriate and not premature.<sup>5</sup> The NOI addresses transparency on two fronts: the MLC’s operations, and its database of musical works.

## I. TRANSPARENCY REGARDING MLC’S OPERATIONS

DLC underscores that the MMA requires the MLC to be a fully transparent collective rights organization, and that the MLC is—at core—a *regulated* entity operated for the public benefit, not a private commercial concern.<sup>6</sup>

As the Office notes, in crafting the MMA, Congress put in place a series of measures to ensure that the MLC operates in an open and transparent manner.<sup>7</sup> In addition to the general requirement to “ensure that the policies and practices of the collective are transparent and accountable,”<sup>8</sup> the MLC’s very structure is based on a principle of transparency. The composition

---

<sup>1</sup> 85 Fed. Reg. 22568 (Apr. 22, 2020).

<sup>2</sup> 85 Fed. Reg. at 22569.

<sup>3</sup> 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 creation of a musical works database by a central “GMRO” that would include performing rights information).

<sup>4</sup> 85 Fed. Reg. at 22570-71 (noting, *inter alia*, requirements that bylaws, policies and practices be publicly available and “accountable,” that the MLC is subject to various audits, and that the MLC must establish an ombudsman to “timely redress” publisher inquiries and complaints).

<sup>5</sup> 85 Fed. Reg. at 22570.

<sup>6</sup> See DLC’s Initial Comments in Docket No. 2019–5 at 22-23.

<sup>7</sup> 85 Fed. Reg. at 22570.

<sup>8</sup> 17 U.S.C. § 115(d)(3)(D)(ix)(I)(aa).

of the MLC’s board is meant to ensure broad representation of songwriters, music publishers, and digital licensees.<sup>9</sup> The legislative history highlights Congress’s expectation that the MLC board operate in the public interest: “[T]he Register is expected to allow the public to submit comments on whether the individuals and their affiliations meet the criteria specified in the legislation; make some effort of its own as it deems appropriate to verify that the individuals and their affiliations actually meet the criteria specified in the legislation; and allow the public to submit comments on whether they support such individuals being appointed for these positions.”<sup>10</sup> The three statutorily mandated MLC committees—the unclaimed royalties oversight committee, the dispute resolution committee, and the operations advisory committee—have strict membership requirements that similarly ensure broad representation.<sup>11</sup> Again, Congress emphasized that, “[g]iven their importance, the three committees established by the collective must operate in a transparent manner to the greatest extent possible in order to avoid unnecessary litigation as well as to gain the trust of the entire music community.”<sup>12</sup>

The MLC is also required to issue an annual report covering a broad range of topics: “the operational and licensing practices of the collective”; “how royalties are collected and distributed”; “budgeting and expenditures”; “the collective total costs for the preceding calendar year”; “the projected annual mechanical licensing collective budget”; “aggregated royalty receipts and payments”; “expenses that are more than 10 percent of the annual mechanical licensing collective budget”; and “the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works).”<sup>13</sup> Congress explained that although the MMA “does not specify in great detail the form of such report,” it expected that the MLC “will create reports similar to that of other collectives,” but with “more substantive information.”<sup>14</sup>

In addition to the annual reports, the MLC is required to engage an auditor to assess the books, records and operations of the collective, and prepare a report addressing the “implementation and efficacy of procedures” “for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties”; “to guard against fraud, abuse, waste, and the unreasonable use of funds”; and “to protect against the confidentiality of financial, proprietary, and other sensitive data.”<sup>15</sup> Significantly, that report must be provided both to the Register of Copyrights and to the public.<sup>16</sup>

---

<sup>9</sup> 17 U.S.C. § 115(d)(3)(D)(i).

<sup>10</sup> H.R. Rep. No 115-641, at 5 (2018).

<sup>11</sup> 17 U.S.C. § 115(d)(3)(D)(iv)-(vi).

<sup>12</sup> H.R. Rep. No 115-641, at 5 (2018).

<sup>13</sup> 17 U.S.C. § 115(d)(3)(D)(vii)(I)(aa)-(hh).

<sup>14</sup> H.R. Rep. No 115-641, at 9 (2018).

<sup>15</sup> 17 U.S.C. § 115(d)(3)(D)(ix)(II).

<sup>16</sup> 17 U.S.C. § 115(d)(3)(D)(ix)(III).

These transparency requirements are critical to ensuring that all industry participants—songwriters, publishers, licensees, and the Copyright Office itself—can confirm that the MLC is operating effectively and in the best interests of the industry. But, as the Office acknowledges, the bare minimum requirements of the statute need regulatory explication and supplementation.<sup>17</sup> The DLC, on behalf of the licensee community, has a particular interest.

One of the key mechanisms for ensuring that transparency is by ensuring that the annual report satisfies not just the letter of the statutory requirements but their spirit. As part of the settlement of the proceeding to establish the administrative assessment, the MLC committed itself to a series of transparency requirements, including in its annual report. In the DLC's view, the information set forth in the MLC's annual reports should include, comprehensively and in plain English, the information required by the statute (operational and licensing practices, means of collecting and distributing royalties, and matching efforts) and the additional information suggested by the NOI: details regarding the MLC's vendors, and its board membership selection and succession criteria.<sup>18</sup>

At the same time, in adopting these transparency requirements, the Office should understand and make clear that any given metric read in isolation does not necessarily provide a complete picture of the mechanical royalty system's effectiveness. Ultimately, the goal of the MMA is to maximize the mechanical royalties that are paid to copyright holders in as efficient a manner as possible. That goal can only be achieved through a series of efforts—not just matching musical works to sound recordings, but registering copyright owners, capturing musical work metadata from those copyright owners, and efficiently delivering royalties and statements of account to the right owners. For that reason, no one metric—whether match rates or any other—will give a complete picture into the effectiveness of the mechanical licensing system.

The main challenge in selecting appropriate measurements of success today is that there is not a clear baseline: the blanket licensing regime for mechanical rights established by the MMA is a radical departure from the existing song-by-song, licensee-by-licensee regime. With some more experience under the new regime, the industry will be able to better see any shortcomings, and will be better able to assess which metrics are appropriate to demonstrate the health of the mechanical licensing system.

## **II. TRANSPARENCY REGARDING THE MLC'S DATABASE**

### **A. PRO Information and Data Provenance**

With respect to the MLC's database, DLC submits that the Office should reconsider its decision not to require information to be included—if available—regarding (1) performing rights

---

<sup>17</sup> 86 Fed. Reg. at 22569.

<sup>18</sup> *See, e.g.*, 17 U.S.C. § 115(d)(3)(D)(ix)(I)(aa), (d)(3)(D)(ii)(II), (d)(3)(J); 85 Fed. Reg. at 22572.

organization (“PRO”) affiliation and (2) data provenance (*i.e.*, labeling of information sourced from third parties).<sup>19</sup>

As discussed in more detail in DLC’s comments to the usage reporting and royalty payment NPRM,<sup>20</sup> PRO affiliation is a crucial aspect of music licensing, and its practical importance is on par with information relating to the ownership or control of a musical work—which, as the NOI notes, must be included in the database “[b]y statute[.]”<sup>21</sup> Notably, the inclusion of this information would benefit not only licensees, but also licensors who wish to grant access to their music through direct deals, many of which cover the full suite of mechanical rights, public performance rights, and lyric rights.

The high value of this information far outstrips the possibility that it might not be “frugal” for the MLC to include it in the database.<sup>22</sup> The Office should give great weight to the fact that the DLC, representing the companies that are funding the MLC’s operations, is committed to working with the MLC to find a cost-effective way of incorporating PRO affiliation information into the database. As for the Office’s concern that the MLC may not be well positioned to provide that information authoritatively, DLC’s request for the database to include information regarding the provenance of its data provides the answer.<sup>23</sup> Given ongoing efforts by PROs to develop a joint musical ownership database, the time may soon come when the MLC can easily provide authoritative and definitive information regarding PRO affiliation.<sup>24</sup> Moreover, even today the Common Works Registration standard used for exchange of musical work information already includes a field for “the Performing Rights Society with which the writer is affiliated.”<sup>25</sup> However the information is received, users of the database should have the ability to consider whatever information the MLC can obtain from copyright owners, and make their own judgments as to its reliability based on the MLC’s identification of the information’s source. That is essentially the

---

<sup>19</sup> DLC agrees with the Office’s decision to require the database to include information regarding the songwriter/composer, owner of the musical work, and IPI and ISNI fields, as well as information (if received by the MLC in the ordinary course) regarding producers and terminations of transfers. *See* 85 Fed. Reg. at 22573-76.

<sup>20</sup> DLC Comments at 8-9, *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 (May 22, 2020).

<sup>21</sup> 85 Fed. Reg. at 22574.

<sup>22</sup> *See* 85 Fed. Reg. at 22576 (tentatively concluding that it may not be “prudent or frugal to require the MLC to expend resources to maintain PRO affiliations”).

<sup>23</sup> 85 Fed. Reg. at 22576.

<sup>24</sup> *See ASCAP & BMI Announce Creation Of A New Comprehensive Musical Works Database To Increase Ownership Transparency In Performing Rights Licensing* (July 26, 2017), available at <https://www.ascap.com/press/2017/07-26-ascap-bmi-database>.

<sup>25</sup> CISAC, *Common Works Registration User Manual* 18 (Apr. 4, 2019).

same approach that the NOI proposes with respect to sound recording copyright information, where the database will include three different data types and a disclaimer of authoritativeness.<sup>26</sup>

## **B. Public Access to the Musical Works Database**

The NOI's final topic of inquiry concerns public access to the musical works database. The Office's approach must be mindful of Congress's admonition that "[m]usic metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on."<sup>27</sup> To that end, the Office should ensure that neither the MLC nor its vendors are given a special competitive advantage because of their responsibility for maintaining this database.

DLC supports the Office's decision "to provide the MLC flexibility as technology develops" rather than set a prescriptive rule for real-time bulk downloads, APIs, or other specific approaches that are burdensome and may ultimately prove unnecessary.<sup>28</sup> Flexibility is also appropriate on the related issues of database abuse and restrictions on use.<sup>29</sup> At this time, both issues are too closely tied to the specific operational realities of the database to lend themselves to useful *ex ante* regulation. Accordingly, DLC reiterates its prior comment that the problem of abusive access can be adequately addressed by empowering the MLC to block efforts to bypass marginal cost recovery.<sup>30</sup>

June 8, 2020

Respectfully submitted,



---

SARANG V. DAMLE  
Latham & Watkins LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004  
(202) 637-2200  
sy.damle@lw.com

R. PETER DURNING, JR.  
Latham & Watkins LLP

---

<sup>26</sup> 85 Fed. Reg. at 22577.

<sup>27</sup> H.R. Rep. No. 115-651, at 8 (2018).

<sup>28</sup> 85 Fed. Reg. at 22578.

<sup>29</sup> See 85 Fed. at 22579.

<sup>30</sup> See 85 Fed. Reg. at 22579; DLC's Reply Comments in Docket No. 2019-5 at A-17.

355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
(213) 485-1234  
peter.durning@lw.com