



Copyright Office

[Docket No. 2024-1]

Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notification of inquiry.

SUMMARY: The U.S. Copyright Office is issuing a notification of inquiry, as required by the Music Modernization Act, regarding whether the existing designations of the mechanical licensing collective and digital licensee coordinator should be continued.

DATES: Initial submissions by the currently designated mechanical licensing collective and digital licensee coordinator must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written initial public comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written reply public comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 150 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply submissions of the currently designated mechanical licensing collective and digital licensee coordinator must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All public comments in response to this notice are therefore to be submitted

electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/mma-designations/2024>. If electronic submission of comments is not feasible due to lack of access to a computer or the internet, please contact the Office using the contact information below for special instructions. Initial and reply submissions by the currently designated mechanical licensing collective and digital licensee coordinator should be made by email to the Copyright Office’s Assistant to the General Counsel.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at mefi@copyright.gov or telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”)¹ created a statutory blanket mechanical license for the reproduction and distribution of nondramatic musical works by digital music providers (“DMPs”) in the form of digital phonorecord deliveries, including permanent downloads, limited downloads, and interactive streams (the “blanket license”), and eliminated the song-by-song “notice of intention” process for such uses.

The MMA directed the Copyright Office (“Office”) to designate a mechanical licensing collective (“MLC”) to administer the blanket license² and a digital licensee coordinator (“DLC”) to represent DMPs in matters related to the administration of the blanket license. However, if the Office is unable to identify an entity that meets the statutory qualifications to serve as the DLC, it may decline to designate one.³ As discussed further below, the Office made its initial MLC and DLC designations in July

¹ Public Law 115-264, 132 Stat. 3676 (2018).

² 17 U.S.C. 115(d)(3)(B); *see also id.* at 115(e)(15).

³ *Id.* at 115(d)(3)(D)(i)(IV), (d)(5).

2019.⁴ At that time, it designated the entity “Digital Licensee Coordinator, Inc.” as the DLC and the entity “Mechanical Licensing Collective” as the MLC.⁵ The Office is required to review these designations every five years, with the first review to begin in January 2024.⁶ This notice initiates the review process.

A. The MLC’s Designation Criteria

The MMA provides that an entity wishing to be designated as the MLC must: (1) be a single nonprofit entity, not owned by any other entity, created by copyright owners to carry out its statutory responsibilities;⁷ (2) be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years”;⁸ and (3) possess the administrative and technological capabilities necessary to carry out a wide array of responsibilities associated with administering the blanket license.⁹ If no entity meets these statutory criteria, the Office must designate an entity as the MLC that most nearly fits them.¹⁰

While the first criterion regarding nonprofit status is straightforward, the second and third criteria require more explanation. As part of the initial MLC designation proceeding, the Office had to address the correct construction and application of the

⁴ 37 CFR 210.23; 84 FR 32274, 32296 (July 8, 2019).

⁵ 37 CFR 210.23; 84 FR at 32292, 32296. In this notice, the currently designated digital licensing coordinator will be designated as the “Digital Licensing Coordinator” and the statutory digital licensing coordinator will be designated in lowercase or by using the abbreviated term, “the DLC.” Similarly, the currently designated mechanical licensing collective will be designated via capitalization (the “Mechanical Licensing Collective”) and the statutory mechanical licensing collective will be designated in lowercase or by using the abbreviated term, “the MLC.”

⁶ 17 U.S.C. 115(d)(3)(B)(ii) (noting that the review occurs “every 5 years, beginning with the fifth full calendar year to commence after the initial designation”); *id.* at 115(d)(5)(B)(ii) (same).

⁷ *Id.* at 115(d)(3)(A)(i).

⁸ *Id.* at 115(d)(3)(A)(ii).

⁹ *Id.* at 115(d)(3)(A)(iii); *see also id.* at 115(d)(3)(C)(i)–(iii) (enumerating thirteen functions, in addition to the ability to administer voluntary licenses).

¹⁰ *Id.* at 115(d)(3)(B)(iii).

statute’s endorsement criterion. The Office sought public input on this issue.¹¹ After considering the relevant comments and evaluating the statute, it concluded that the statute’s endorsement criterion “mandates that the entity designated as the MLC be endorsed and supported by musical work copyright owners that together earned the largest aggregate percentage (among MLC candidates) of total royalties from the use of their musical works in covered activities in the U.S. during the statutory three-year period.”¹² It further concluded that “the endorsement criterion is a plurality requirement based on market share, measured by applicable licensing revenue.”¹³

The third MLC designation criterion addresses the administrative and technological capabilities associated with carrying out its statutory responsibilities. Those responsibilities are executed by the MLC’s board of directors and task-specific committees. The MMA provides that the MLC’s board will consist of 14 voting members and 3 nonvoting members.¹⁴ It also requires the MLC’s board to establish three committees: an operations advisory committee; an unclaimed royalties oversight committee; and a dispute resolution committee.¹⁵

The MLC’s responsibilities under the MMA include the following tasks:

- Offering and administering blanket licenses;
- Collecting and distributing royalties from DMPs for covered activities;

¹¹ 83 FR 65747, 65753 (Dec. 21, 2018).

¹² 84 FR at 32282.

¹³ *Id.* For a full discussion of the Office’s conclusions regarding how the endorsement criterion is applied, interested parties should review that portion of the initial designation determination. *Id.* at 32280–86.

¹⁴ For the statutory requirements regarding the board described in this paragraph, *see* 17 U.S.C. 115(d)(3)(D)(i).

¹⁵ *Id.* at 115(d)(3)(D)(iv). Further discussion of the MLC’s board and committees can be found in the Office’s initial designation notice. 83 FR at 65748–50.

- Identifying musical works embodied in sound recordings and identifying and locating copyright owners of such musical works;¹⁶
- Establishing and maintaining a musical works database relevant to licensing activities under the MMA;
- Administering a process by which copyright owners can claim ownership of musical works;
- Investing in relevant resources, and arranging for services of outside vendors and others to support the MLC’s activities; and
- Maintaining records of its activities and engaging in and responding to audits.¹⁷

B. The DLC’s Designation Criteria, Authorities, and Functions

Similar to the MLC, the DLC must be a single nonprofit entity that is endorsed by and enjoys substantial support from DMPs, and must possess the administrative and technological capabilities necessary to carry out its responsibilities.¹⁸ Unlike the MLC, in the event the Office is unable to identify an entity that fulfills the criteria for the DLC, it may decline to designate one.¹⁹

The statute authorizes the DLC to perform the following functions: (1) establishing a governance structure, criteria for membership, and any dues to be paid by its members; (2) engaging in activities related to the administrative assessment, including participating in administrative assessment proceedings before the Copyright Royalty Judges and engaging in efforts to enforce DMPs’ notice and payment obligations related to the assessment; (3) gathering and providing documentation for use in proceedings

¹⁶ The statute also mentions “and shares of such works” when referring to musical works. *See, e.g.*, 17 U.S.C. 115(d)(3)(C)(i)(III). For brevity’s sake, this notice will omit references to such shares.

¹⁷ *Id.* at 115(d)(3)(C)(i)(I)–(V), (VII), (XII); *see also id.* at 115(d)(3)(C)(i), (iii) (identifying the MLC’s additional statutory authorities and functions).

¹⁸ *Id.* at 115(d)(3)(C)(i)–(iii) (enumerating thirteen functions, in addition to the ability to administer voluntary licenses); *see also id.* at 115(d)(3)(B)(iii).

¹⁹ *Id.* at 115(d)(5)(B)(iii).

before the Copyright Royalty Judges to set the statutory mechanical license's rates and terms; (4) initiating and participating in proceedings before the Copyright Office with respect to the blanket license; (5) maintaining records of its activities; and (6) assisting in publicizing the MLC's existence and functions to copyright owners.²⁰

Further, under the MMA, the DLC is required to "make reasonable, good-faith efforts" to assist the MLC in its efforts to locate and identify copyright owners of unmatched musical works by encouraging DMPs to publicize the MLC's existence and the ability of copyright owners to claim unclaimed accrued royalties, including by posting contact information for the collective at reasonably prominent locations on DMP websites and applications and conducting in-person outreach activities with songwriters.²¹

The DLC also appoints a representative to act as a nonvoting member of the MLC's board and DMP representatives to the MLC's operations advisory committee.²²

II. Regulatory Background

A. Initial Designation

For the initial MLC and DLC designations, the Office published a notice in the *Federal Register* soliciting proposals from parties who wished to be designated as those entities, and requested information from those parties regarding governance, administrative and technological capabilities to perform the MMA's required functions, and indicia of endorsement and support.²³ The Office also requested public comments on the parties' proposals.²⁴

²⁰ *Id.* at 115(d)(5)(C)(i). The "administrative assessment" is the fee paid by digital music providers for the MLC's costs in establishing, maintaining, and operating the MLC to fulfill its statutory functions, excluding any added costs related to providing services under voluntary licenses. *Id.* at 115(d)(7)(D), (e)(3), (e)(6).

²¹ *Id.* at 115(d)(5)(C)(i)(VII), (d)(5)(C)(iii).

²² *Id.* at 115(d)(3)(D)(iv)(II), (i)(IV).

²³ 83 FR 65747.

²⁴ *Id.*

The Office received one proposal for designation as the DLC and two proposals for designation as the MLC. It received over 600 public comments responding to the proposals and held several *ex parte* meetings addressing them.²⁵ After considering these comments and the statutory designation criteria, the Office concluded that the entity “Digital Licensee Coordinator, Inc.,” incorporated in Delaware on March 20, 2019, “me[t] each of the statutory criteria required of the digital licensee coordinator,” and would be designated as the DLC.²⁶ With respect to the MLC, the Office concluded that, while both candidates to become the MLC “[met] the statutory criteria to be a nonprofit created to carry out its statutory responsibilities,” the Mechanical Licensing Collective “made a better showing as to its prospective administrative and technological capabilities” and was the only candidate that met the statute’s “endorsement” criteria.²⁷ Therefore, it designated the entity “Mechanical Licensing Collective,” incorporated in Delaware on March 5, 2019, as the MLC.²⁸

B. The Periodic Designation Review Process

The MMA requires the Office to periodically evaluate whether the existing MLC and DLC designations should be continued or, if either designation is not continued, whether a different entity should be designated instead.²⁹ The Office commences this process by publication of a notice in the *Federal Register* by the end of January in the relevant year.

For the instant review of the MLC and DLC designations, the Office is first soliciting information from the currently designated entities regarding their past

²⁵ U.S. Copyright Office, *Ex Parte Communications*, <https://www.copyright.gov/rulemaking/mma-designations/ex-parte-communications.html> (last visited Jan. 24, 2024) (hosting *ex parte* meeting summary letters related to the Office’s initial designations).

²⁶ 37 CFR 210.23; 84 FR at 32292, 32296.

²⁷ 84 FR at 32276, 32296.

²⁸ 37 CFR 210.23; 84 FR at 32296.

²⁹ 17 U.S.C. 115(d)(3)(B)(ii); *id.* at 115(d)(5)(B)(ii).

performance and capabilities, as well as future plans. The responses from the Mechanical Licensing Collective and the Digital Licensing Coordinator will be available for public review. The Office encourages public comments concerning whether the existing MLC and DLC designations should be continued, or different entities should be designated. Once the public has submitted comments, the currently designated entities will be given an opportunity to respond. After the time for submissions from the Mechanical Licensing Collective, Digital Licensee Coordinator, and the public have expired, the Office may also utilize informal meetings to address discrete issues prior to issuing a determination. Any such meetings will occur after written comments have been submitted and will follow the Office's *ex parte* meeting guidelines.³⁰

After evaluating the record in this proceeding, the Office will determine whether the current MLC and DLC designations should be continued. If it concludes that a designation should be continued, it will publish its determination in the *Federal Register*, ending this proceeding.³¹ If the Office decides that either designation should not be continued, it will solicit proposals for designation in the *Federal Register*. If the Office ultimately designates a new MLC or DLC, it will provide the reasons for such a designation and the designation's effective date.³² Further, if it designates a new MLC, it will "adopt regulations to govern the transfer of licenses, funds, records, data, and administrative responsibilities from the existing mechanical licensing collective to the new entity."³³

III. Request for Information from the Current Designees

³⁰ 37 CFR 205.24. Instructions on how to request an *ex parte* meeting are available on the Office's website at <https://www.copyright.gov/ex-parte-meetings/>.

³¹ 17 U.S.C. 115(d)(3)(B)(ii)(I); *see also id.* at 115(d)(5)(B)(ii).

³² *Id.* at 115(d)(3)(B)(ii)(I); *see also id.* at 115(d)(5)(B)(ii).

³³ *Id.* at 115(d)(3)(B)(ii)(II).

The Copyright Office seeks information to assist its review of the existing MLC and DLC designations and whether they should be continued. The questions in this notification of inquiry are intended to focus the current designees' submissions on the statutory designation criteria and certain areas of interest to the Office. The parties also may provide additional information they wish the Office to consider in deciding whether to continue the current designations.

A. Mechanical Licensing Collective-Directed Inquiries

The Office requests the following information from the Mechanical Licensing Collective, organized by the criteria categories below.

1. Nonprofit status.

The MLC must be a nonprofit entity, not owned by any other entity, that is created by copyright owners to carry out its statutory responsibilities. The Office requests proof that the Mechanical Licensing Collective continues to meet this criterion.

2. Indicia of Endorsement and Support.

The MLC must be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.”³⁴ The Office requests information from the Mechanical Licensing Collective regarding whether it continues to satisfy the endorsement criterion.

3. Administrative and Technological Capabilities.

The MLC must have the administrative and technological capabilities to perform its statutorily required functions.³⁵ The Office requests a detailed description explaining how the Mechanical Licensing Collective has the administrative and technological

³⁴ *Id.* at 115(d)(3)(A)(ii).

³⁵ *Id.* at 115(d)(3)(A)(iii).

capabilities to perform its required functions. It asks that the response address the following subjects:

i. Progress Implementing the Recommendations in the Office’s “Unclaimed Royalties” Report.

The Office requests an update on the Mechanical Licensing Collective’s efforts to implement recommendations contained in the Office’s report “Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective,”³⁶ including what recommendations have been implemented to date, what efforts are in progress, its plans to implement recommendations in the future, and a discussion of any recommendations it is not planning to implement, including the reasons for such decision(s).

ii. Ownership Identification, Matching, and Claiming Process and Maintenance of Musical Works Database.

The Office requests information about the Mechanical Licensing Collective’s ability to identify musical works embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works, including the following:

(a) Please describe how the Mechanical Licensing Collective has worked to improve automated and manual matching since the blanket license became available and plans to further enhance such matching over the next 5 years, including with respect to the matching of reported sound recordings to musical works as well as the matching of those musical works to identified and located copyright owners;

(b) Please identify the Mechanical Licensing Collective’s target goals or estimates, including any relevant industry benchmarks, for matching reported sound recordings to musical works and identifying and locating copyright owners

³⁶ U.S. Copyright Office, *Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective* (2021) (“Unclaimed Royalties Report”), <https://www.copyright.gov/policy/unclaimed-royalties/unclaimed-royalties-final-report.pdf>.

over the next five years, as expressed in terms of (1) a match rate (*i.e.*, the total amount of royalties matched to musical works registered in the Mechanical Licensing Collective’s database, compared to the total royalties reported by DMPs); and (2) a distribution rate (*i.e.*, the total amount of royalties matched and paid to the Mechanical Licensing Collective’s members, compared to the total royalties reported by DMPs);

(c) Please explain how the Mechanical Licensing Collective: (1) is using quantifiable measurements to monitor its match rate confidence; and (2) tunes confidence levels without using numerical metrics;³⁷

(d) Please address whether the Mechanical Licensing Collective has identified any notable trends or patterns in reported usage that it has been unable to match through its efforts to date. If it has identified such trends or patterns, please describe what targeted efforts have been undertaken to date, and are planned to take place over the next 5 years, to attempt to address these trends or patterns;

(e) Please describe any efforts the Mechanical Licensing Collective has undertaken to enhance database and claiming portal functionality, including with respect to searching the database, sorting and filtering queries, and sharing and exporting results, as well as specific plans to develop additional functionality over the next five years;

(f) Please describe any plans the Mechanical Licensing Collective’s has to address disputes and overclaims (or overlapping claims) via a module within its portal;

³⁷ See The Mechanical Licensing Collective, *2022 Annual Report 9* (2022), <https://www.themlc.com/hubfs/The%20MLC%202022%20Annual%20Report.pdf> (stating that the Mechanical Licensing Collective “does not use numerical metrics to monitor match rate confidence”); Designation Proposal of Mechanical Licensing Collective at 40, Docket No. 2018-11 (Mar. 21, 2019) (“Mechanical Licensing Collective Initial Designation Proposal”), <https://www.regulations.gov/comment/COLC-2018-0011-0012> (“Tuning the confidence levels of a matching system is critical to proper functioning.”).

(g) Please describe the Mechanical Licensing Collective’s efforts to develop portal access (or a unique portal), or equivalent database functionalities, for songwriters who are not self-administered (*e.g.*, those represented by a publisher, administrator, or collective management organization) to permit them to access, provide, or correct information about themselves and their works maintained by the MLC, including the ability for such songwriters to flag data issues with their publisher or other representative, to provide data directly to the MLC, and to have permissions-based access to view information such as stream counts and revenue associated with their musical works;³⁸

(h) Please describe how the Mechanical Licensing Collective is “maintain[ing] at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time,” the length of such “regular intervals,” and how it has determined “the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database”;³⁹

(i) The Mechanical Licensing Collective stated that it would employ application program interfaces (“APIs”) “to allow for bulk submission and updating of rights data” and to otherwise support data exchange.⁴⁰ Please describe how the Mechanical Licensing Collective has employed systems with APIs to support data

³⁸ See Unclaimed Royalties Report at 49–51; The Mechanical Licensing Collective, *Welcome to The MLC's Public Work Search*, <https://portal.themlc.com/search#work> (last visited Jan. 24, 2024) (“Songwriters, Composers & Lyricists: . . . The MLC is working on additional ways to help you flag and report data errors to your publisher or administrator. We hope to launch those later this year.”).

³⁹ 37 CFR 210.31(f).

⁴⁰ Mechanical Licensing Collective Initial Designation Proposal at 37, 47.

exchange to date⁴¹ and its plans to implement any additional such systems over the next five years.

iii. Collection and Distribution of Royalties, Including Unclaimed Accrued Royalties.

The Office requests information about the Mechanical Licensing Collective's royalty distributions, including the following topics:

(a) In its initial designation proposal, the Mechanical Licensing Collective stated that it “does not intend to ever distribute the entirety of unclaimed royalties simultaneously [and] intends to implement policies allowing use of that discretion to retain unclaimed accrued royalties and continue matching efforts in situations where there is reasonable evidence that this will result in material increases in matching success.”⁴² Please address whether the Mechanical Licensing Collective continues to hold these views;

(b) Please provide information regarding: (1) any steps that the Mechanical Licensing Collective is taking to protect against the incidence of fraudulent ownership claims and frivolous ownership disputes; and (2) whether these steps have been successful; and

(c) Please provide information addressing whether and to what extent the Mechanical Licensing Collective is working with DMPs, distributors, aggregators, or others to protect against streaming fraud and the status of such efforts, including their success or failure.

iv. Investment in Resources and Vendor Engagement.

⁴¹ See The Mechanical Licensing Collective, *Data Programs*, <https://www.themlc.com/data/programs#public-search-api> (last visited Jan. 24, 2024) (referencing the beta launch of Mechanical Licensing Collective's Public Search API).

⁴² Mechanical Licensing Collective Initial Designation Proposal at 52–53.

The Office understands that the Mechanical Licensing Collective is relying on third-party vendors, including The Harry Fox Agency and ConsenSys, to support its operations and fulfill its statutory obligations.⁴³ It is also aware that the Mechanical Licensing Collective has recently announced a “Supplemental Matching Network,” consisting of Blòkur, Jaxsta, Pex, Salt and SX Works, to improve its matching efforts.⁴⁴ Please provide additional information about these relationships, including the specific functions that they perform, or have been asked to perform, the vendors’ relevant experience with clients and projects involving similar scale and type, or their industry-specific knowledge. Please provide the same information with respect to any other vendors that the Mechanical Licensing Collective uses, or has plans to use, in performing its duties.

v. *Funding.*

The statute directs the MLC to establish procedures to guard against “abuse, waste, and the unreasonable use of funds.”⁴⁵ Review of the MMA’s legislative history instructs the Office to consider the Mechanical Licensing Collective’s efficiency or, conversely, any “evidence of fraud, waste, or abuse, including the failure to follow the relevant regulations adopted by the Copyright Office” in evaluating whether the current MLC designation should be continued.⁴⁶ Accordingly the Office requests information about the Mechanical Licensing Collective’s procedures to safeguard its use of the

⁴³ The Mechanical Licensing Collective, *2022 Annual Report* 36, 41 (2022), <https://www.themlc.com/hubfs/The%20MLC%202022%20Annual%20Report.pdf>.

⁴⁴ See Kristin Robinson, *The MLC Partners With 5 Data Matching Companies to Increase Royalties Match Rate*, Billboard (Dec. 7, 2023), <https://www.billboard.com/business/publishing/the-mlc-improve-royalties-match-rate-new-data-network-1235545949/>.

⁴⁵ 17 U.S.C. 115(d)(3)(D)(ix)(II)(bb)(BB). As noted above, the DMPs fund the MLC’s operations through an administrative assessment that is established by the Copyright Royalty Judges.

⁴⁶ H.R. Rep. No. 115-651, at 6 (2018).

assessment funds against abuse, waste, and other unreasonable expenditures.⁴⁷ The Mechanical Licensing Collective should also provide information regarding whether it has become more efficient over time. It should address with specificity any expenditure categories (*e.g.*, personnel costs, information technology, professional fees, outreach, education, communication & events, insurance, rent, computer equipment & office expenses) that have significantly increased since January 2021, and a detailed explanation for the increase.

vi. Governance.

The Office seeks information related to the Mechanical Licensing Collective's governance, including:

- (a) A copy of the Mechanical Licensing Collective's current bylaws, including a summary of changes made, if any, from its initial bylaws;
- (b) A list of all the committees the Mechanical Licensing Collective has created that are not required by statute, the membership of those committees, and how it determined the membership of those committees;
- (c) Copies of all the Mechanical Licensing Collective's policies addressing its statutory duties, procedures, practices, and guidelines (*e.g.*, those governing the collection, processing, holding, and distribution of royalties, guidelines for adjustments, member registration, ownership disputes, automated and manual matching, data quality and verification, investments, conflicts of interest), but excluding policies unrelated to the MLC's statutory duties (*e.g.*, website terms of use, human resources), the location of these policies, procedures, and practices on

⁴⁷ Note that the MMA requires the MLC to retain a qualified auditor to examine its books, records, and operations and prepare a report on these topics for the MLC's board. 17 U.S.C. 115(d)(3)(D)(ix)(II). The auditor's letter to the MLC's board can be found on the Mechanical Licensing Collective's website. Letter from WithumSmith+Brown, P.C. to the Board of Directors of the Mechanical Licensing Collective (Dec. 22, 2023), [https://www.themlc.com/hubfs/Auditor%20Letter%20to%20Board%20re%20MMA%20Audit%20Provision%20\(115\(d\)\(3\)\(D\)\(ix\)\(II\)\).pdf](https://www.themlc.com/hubfs/Auditor%20Letter%20to%20Board%20re%20MMA%20Audit%20Provision%20(115(d)(3)(D)(ix)(II)).pdf).

its website if they are currently available to the public, and a summary of changes made, if any, from earlier versions of these policies, procedures, practices, and guidelines;⁴⁸

(d) The status of any policies or procedures related to the distribution of unclaimed accrued royalties and accrued interest;

(e) An explanation of how the Mechanical Licensing Collective is ensuring that:

(1) its policies, procedures, and practices are transparent and accountable;⁴⁹ and

(2) that all board and committee members have equal access to information in the Mechanical Licensing Collective’s possession;

(f) The results of the Mechanical Licensing Collective’s “Board Diversity Report” for 2021 and 2023;⁵⁰ and

⁴⁸ To the extent that any of these materials contain privileged or confidential commercial or financial information or trade secrets, it should provide two versions of such documents to the Office: one redacted copy appropriate for public viewing and an unredacted copy for the Office. *See, e.g., Five Years Later – The Music Modernization Act: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 117th Cong. 6 (2023) (responses to questions for the record of Kris Ahrend, CEO, the Mechanical Licensing Collective) (“Our financial advisors have advised that we not make public any details about specific investment solutions [of the Mechanical Licensing Collective’s investment policy]. Their reasons include security concerns and concerns that such information could be used alongside our public royalty distribution timelines to engage in market timing to the detriment of [the Mechanical Licensing Collective].”); *see also* 5 U.S.C. 552(b)(4) (exempting agencies from requiring disclosures if they involve “trade secrets and commercial or financial information obtained from a person and privileged or confidential”).

⁴⁹ *See* 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

⁵⁰ The Mechanical Licensing Collective’s bylaws require a biennial “Board Diversity Report,” that “address[es] the extent to which the Board fully and fairly represents the whole music publishing and songwriting communities, and should specifically note any actual or potential concerns or shortcomings.” It also “address[es] diversity in such areas as gender/race/ethnicity, income, musical genre, geography and expertise/experience.” The Mechanical Licensing Collective, *Bylaws of the Mechanical Licensing Collective* sec. 4.8, <https://f.hubspotusercontent40.net/hubfs/8718396/files/2020-05/Bylaws%20of%20The%20MLC.pdf> (last visited Jan. 24, 2024).

(g) How the Mechanical Licensing Collective approaches the resolution of disputes with other interested parties (*e.g.*, DMPs, songwriters, publishers, or record labels) regarding interpretation of the MMA or the Office’s regulations.⁵¹

vii. Education and Outreach.

The Office requests information regarding the Mechanical Licensing Collective’s education and outreach efforts, including how it reaches diverse audiences to “engage in diligent, good-faith efforts to publicize the collective and ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works).”⁵² The Office is also interested in how the Mechanical Licensing Collective “tailor[s] its education and outreach activities in recognition of the industry’s broad and diverse spectrum of songwriters and copyright owners, including by stakeholders’ varying levels of sophistication, geographic location, age, and music genre,” including how it “employ[s] dedicated, persistent outreach to historically underserved groups.”⁵³ The Office is further interested in how the Mechanical Licensing Collective is using data in decision-making and performance measurement, with respect to its education and outreach efforts, for example, how it is using data to evaluate its education and outreach efforts (*e.g.*, in-person outreach at events, webinars, advertising, interviews for articles and podcasts, partnerships) when considering whether to participate in an event or activity. Finally, the Office is interested in how the Mechanical Licensing Collective is using “member demographic statistics and DMP usage analytics . . . to better target its education and outreach efforts towards under-participating groups.”⁵⁴

⁵¹ The Office notes that certain stakeholders would welcome referring such questions or disputes to the Office. *See, e.g., Five Years Later – The Music Modernization Act: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 117th Cong. 37, 57–58 (2023) (statements of Garrett Levin, President and CEO, Digital Media Association and Abby North, President, North Music Group).

⁵² S. Rep. No. 115-339, at 14 (2018).

⁵³ Unclaimed Royalties Report at 29.

⁵⁴ *Id.* at 38.

The Mechanical Licensing Collective is encouraged to provide any other information that it believes is relevant to demonstrate it continues to meet the statutory designation criteria.

B. Digital Licensee Coordinator-Directed Inquiries

The Office requests the following information from the Digital Licensee Coordinator relevant to determining whether its existing designation should be continued:

1. Nonprofit Status.

The Office requests proof that Digital Licensee Coordinator is a nonprofit entity, not owned by any other entity, that is created to carry out its statutory responsibilities.⁵⁵

2. Indicia of Endorsement and Support.

The Office requests information from the Digital Licensee Coordinator regarding whether it continues to be “endorsed by and enjoy[] substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.”⁵⁶

3. Administrative Capabilities and Governance.

The DLC must have the administrative capabilities to perform its statutory functions.⁵⁷ The Office requests a detailed description of the Digital Licensee Coordinator’s administrative capabilities and its performance of the following functions:

i. Governance.

The Office requests a copy of the Digital Licensee Coordinator’s current bylaws, including a summary of changes made, if any, from its initial bylaws. To the extent not addressed by its bylaws, the Office also requests a summary of its governance structure,

⁵⁵ 17 U.S.C. 115(d)(5)(A)(i).

⁵⁶ *Id.* at 115(d)(5)(A)(ii).

⁵⁷ *Id.* at 115(d)(5)(A)(iii).

criteria for membership, and dues paid by its members. Lastly, the Office requests a list of the Digital Licensee Coordinator's current members, and a description of its efforts to grow its membership to other DMPs, and any challenges related to such efforts.

ii. Notice and Payment Obligations.

The Office requests information addressing the Digital Licensee Coordinator's efforts to enforce notice and payment obligations with respect to the administrative assessment, including: (1) how it is coordinating such efforts with the Mechanical Licensing Collective; and (2) the extent to which it is disclosing information to, and receiving information from, the Mechanical Licensing Collective on this topic.

iii. Participation in proceedings before the Copyright Office and Copyright Royalty Judges.

The Office requests a summary of the Digital Licensee Coordinator's participation in Office or Copyright Royalty Judge proceedings, including: (1) participating in proceedings before the Copyright Royalty Judges to establish the administrative assessment; (2) gathering and providing documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under the mechanical license; and (3) participating in proceedings before the Office with respect to activities regarding the blanket license.⁵⁸

iv. Maintaining records of the Digital Licensee Coordinator's activities.

The Office requests a description of how the Digital Licensee Coordinator is maintaining records of its activities, including efforts to ensure that confidential, private, proprietary, or privileged information contained in its records is not improperly disclosed or used.⁵⁹

v. Assistance with Publicity for Unclaimed Royalties.

⁵⁸ *Id.* at 115(d)(5)(C)(i)(III)–(V).

⁵⁹ *Id.* at 115(d)(5)(C)(i)(VI), (d)(12)(C).

The MMA directs the DLC to “make reasonable, good-faith efforts to assist the mechanical licensing collective . . . by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties.”⁶⁰ The Office requests a detailed description of the steps that the Digital Licensee Coordinator has taken to fulfill this requirement, including whether all its members have posted the MLC’s contact information in a prominent location on their websites and applications.⁶¹ The Office also requests a summary of the Digital Licensee Coordinator’s in-person outreach activities with songwriters.⁶²

The Digital Licensee Coordinator is encouraged to provide any other information that it believes is relevant to demonstrate it continues to meet the statutory designation criteria.

IV. Public Participation

Interested members of the public are encouraged to comment on the topics addressed in the designees’ submissions or raised by the Office in this notification of inquiry.⁶³ Commenters may also address any topics relevant to this periodic review of the MLC and DLC designations. Without prejudice to its review of the current designations, the Office hopes that this proceeding will serve as an opportunity for any songwriter, publisher, or DMP who wishes to express concerns, satisfaction, or priorities with respect to the administration of the MMA’s blanket licensing regime to do so, and that any designated MLC or DLC will use that feedback to continually improve its services.

Dated: January 25, 2024.

Suzanne V. Wilson,

⁶⁰ *See id.* at 115(d)(5)(C)(iii).

⁶¹ *Id.* at 115(d)(5)(C)(iii)(I).

⁶² *Id.* at 115(d)(5)(C)(iii)(II).

⁶³ Submissions by the Mechanical Licensing Collective and Digital Licensee Coordinator will be found on the Office’s website at <https://www.copyright.gov/rulemaking/mma-designations/2024> approximately sixty days after the publication of this Notification of Inquiry.

General Counsel and

Associate Register of Copyrights.

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