

October 19, 2026

By Email

Emily Chapuis
General Counsel and
Associate Register of Copyrights
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

Re: Oversight of the Mechanical Licensing Collective

Dear Ms. Chapuis,

I am writing on behalf of the Digital Licensee Coordinator to formally ask the Copyright Office to immediately exercise direct oversight and supervision of the Mechanical Licensing Collective under 17 U.S.C. § 115(d)(12), as the MLC confronts a budget shortfall that threatens to exhaust its operating funds before year-end.¹

As we explained in our September 4, 2026, letter to the MLC, on which the office was copied, and in our September 8 call with Office staff, the MLC likely knew by the end of 2025 (if not sooner) that its 2026 costs would exceed its budget and yet did not notify us about that issue until August of this year. In our letter, we suggested that the MLC could cover its deficit by trimming other costs, and that if it refused to do so, its sole option was to use unmatched royalties to fill the gap. We explained that bank financing – an option the MLC was considering – was not appropriate because that would generate unnecessary costs and give the MLC the power to unilaterally increase its budget. Finally, we invited the Copyright Office to intervene, to ensure the MLC was acting in accordance with the law and the interests of the stakeholders who deserve a well-functioning Section 115 statutory license.²

The Office does not need a full rulemaking to act. Section 115(d)(12) of the Copyright Act vests the Office with the ability to oversee the MLC's administration of the compulsory license and Congress expressly contemplated that the Office would intervene in

¹ Pandora Media, LLC, did not participate in the review, consideration, or approval of the contents of this letter, other than review of this footnote, and does not join or take a position on the views expressed herein.

² We have not yet received a response to our letter, nor do we know how the MLC plans to proceed.

circumstances like these.³ In fact, the House Judiciary Committee’s report on the MMA recognized the Register’s “broad regulatory authority under paragraph (12) of subsection (d)” and explained that the “Office is expected to use its best judgement in determining the appropriate steps” to take depending on the circumstances.⁴ This is not a controversial view of the statute.⁵ As the MLC itself has explained to a federal court, the MLC “functions *subordinately* to the Copyright Office and Library of Congress and is subject to their *direction, supervision, authority, and surveillance in all areas.*”⁶

The Office should promptly intervene because the MLC is attempting to give itself the power to determine, on its own, whether its “total collective costs” are “reasonable.” Whether the MLC’s spending is “reasonable” is a legal decision at the very core of MMA. As the Copyright Office explained in its redesignation decision, “[n]othing in the statute gives the MLC authority to interpret the Copyright Act or MMA.”⁷ Because the MLC is funded by assessments that DSPs must pay – even if they choose not to use the statutory license at all – the MMA includes a specific procedure to ensure the MLC’s total expenditures are reasonable, namely, the administrative assessment process.⁸ Under that process, it is the responsibility of the Copyright Royalty Judges – not the MLC – to set the administrative assessment at “an amount that is calculated to defray the reasonable collective total costs.”⁹ If the MLC concludes it will need more funding than the current administrative assessment allows, it can ask DSPs to make a voluntary contribution, or it can commence a new administrative assessment proceeding.¹⁰

³ 17 U.S.C. 115(d)(12) (“The Register of Copyrights *may conduct such proceedings* and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection”) (emphasis added).

⁴ See H.R. Rep. No. 115-651, at 5–6, 14 (2018) (accompanying H.R. 5447, 115th Cong).

⁵ As the Office is aware, it is also standard throughout the world for local copyright authorities to closely supervise collective management organizations.

⁶ See Memorandum of Law in Opposition to Pandora Media LLC’s Motion for Summary Judgment at 34, *Mechanical Licensing Collective v. Pandora Media, LLC*, No. 3:24-cv-00168 (M.D. Tenn. Mar. 5, 2026), ECF No. 153 (emphasis added) (“As detailed above, The MLC is subject to pervasive potential and actual oversight by the Register and the Librarian that is more than sufficient to ensure that it functions subordinately to the Copyright Office and the Library of Congress and is subject to their direction, supervision, authority, and surveillance in all areas.”); see also MLC Bylaws section 4.1 (“[t]he Board of Directors . . . shall manage the business and affairs of the Collective subject to the oversight of the Register of Copyrights under the general supervision of the Librarian of Congress.”) (available at <https://www.themlc.com/hubfs/files/2020-05/Bylaws%20of%20The%20MLC.pdf> (last visited Oct. 19, 2026)).

⁷ *Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator*, Docket No. 2024-1, 91 Fed. Reg. 33,208, 33,221 (June 3, 2026).

⁸ 17 U.S.C. § 115(d)(7)(D) (“Determination of administrative assessment”).

⁹ See *Id.* § 115(d)(7)(D)(i), (ii)(II). Under the current administrative assessment – the product of a settlement reached in 2023 – the administrative assessment automatically increases by the lesser of the rate of inflation or 3% every year.

¹⁰ *Id.* §§ 115(d)(7)(B), (D)(iv).

The MLC, however, has decided to ignore this process and simply spend more than has been assessed, in effect raising its own assessment without any review or oversight. That is plainly contrary to the letter and spirit of the MMA.

The MMA does provide some flexibility. Specifically, the MMA permits the MLC to use unclaimed royalties “on an interim basis” if the administrative assessment and any voluntary contributions do not cover “total collective costs” at a particular point in time.¹¹ But that provision is an interim stop gap for collection shortfalls (for example, a DSP failing to pay its share of the assessment, or an expense arriving before assessment contributions are due) or for truly unanticipated expenses, which should be rare. It is not intended to be a mechanism for the MLC to avoid the procedure spelled out in Section 115(d)(7)(D) to determine the MLC’s “reasonable collective total costs.”

Here, the source of the deficit was not an unanticipated expense, or the result of a shortfall in collections of the administrative assessment. The deficit appears to be the direct result of the MLC’s decision to commence two expensive federal court litigations more than two years ago, and to pursue inefficient litigation strategies in those cases. The MLC was almost certainly aware at the end of 2025 that the administrative assessment was going to be insufficient to cover the cost of those cases; it probably knew much sooner than that. And yet, rather than follow the procedure spelled out in the law, it simply plowed ahead – inappropriately exercising *de facto* power to determine its own “reasonable total collective costs.”

These are grave matters that fall squarely within the Copyright Office’s jurisdiction and authority to act. In its redesignation decision, the Office invited stakeholders to identify circumstances in which the MLC was acting as an arbiter of the law.¹² And, as the Office confirmed in that same decision, “[f]iscal responsibility and efficiency” are “core values in the Office’s assessment of the MLC’s past performance, especially as Congress envisioned the MLC ‘operat[ing] in a transparent and accountable manner.’”¹³ Indeed, the recent revelations may have been relevant to the Office’s decision about whether to redesignate the MLC at all.

Accordingly, the Copyright Office can and should immediately begin proceedings pursuant to Section 115(d)(12) to direct and supervise the MLC’s current expenditures and plans for

¹¹ *Id.* § 115(d)(7)(C).

¹² *Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator*, 91 Fed. Reg. at 33,221 (“To the extent that stakeholders have concerns about specific MLC practices or legal interpretations, we encourage them to bring those concerns to our attention.”).

¹³ *Id.* at 33219.

addressing its potential budget shortfall. We believe the proceedings should achieve the following immediate goals:

- 1. Ensure the MLC stays within the administrative assessment set by law.** The Office should explicitly direct the MLC to identify measures it can take now to stay within the current administrative assessment, including reducing spending on activities that do not relate to its core function. If it is impossible for the MLC to fulfill its statutory functions in this calendar year without overspending, then the Office should require the MLC to use unclaimed royalties to address the shortfall and establish a plan to replenish those royalties out of next year's assessment. That plan should be approved by the Copyright Office in consultation with both the DLC and the MLC and shared with the public. The Office should also make clear that the statute does not permit the MLC to assess "interest" in the form of a finance charge to be paid by DSPs out of the administrative assessment when the MLC reimburses those funds.¹⁴
- 2. Assess the MLC decisionmaking that led to this budget predicament.** As discussed above, the MLC had a remedy if it believed the current assessment was insufficient to cover its expected expenditures: Seek a voluntary increase in the assessment or commence an assessment proceeding. Instead, the MLC ignored that process, avoided disclosing its true fiscal circumstances, and chose to overspend and worry about the consequences later.

This has put the MLC and the statutory system in a precarious position. The Office should thus commence an immediate review of the MLC's financial and management decisions, to determine how exactly it ended up in this shortfall, when the MLC staff and board became aware that the current assessment was likely to be insufficient for its expected expenditures, and how the MLC can avoid this situation in the future.

Relatedly, the Office should conduct an inquiry into the MLC's decisionmaking process related to the commencement and prosecution of litigation, because those decisions likely caused the shortfall. The DLC raised this exact concern in the redesignation proceeding, and it has proven well-founded. The Office's inquiry should include investigating the extent to which the MLC's board exercised an oversight role, what process the MLC followed to assess the merits

¹⁴ See *Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator*, 91 Fed. Reg. at 33,227 and n.338 (explaining that interest in the MMA refers to funds earned in interest-bearing accounts, and is not to be paid "out of the administrative assessment").

of the claims it was pursuing, and whether the cases themselves, or specific tactics in the cases, have reflected an appropriate cost-benefit analysis.

- 3. Require transparent disclosure of the MLC's overspending.** The MLC's recent Annual Report misleadingly suggests that it is currently operating with a surplus.¹⁵ As we explained in our September 4 letter, we believe the MLC should promptly disclose its actual financial circumstances to the public and commit to meeting an appropriate level of transparency to the Office, the DLC, and its members going forward.

These are the steps we believe the Office should take immediately. As the Office begins its inquiry, it may discover other issues that need to be explored. As for longer term solutions, we will propose regulations in the anticipated Notice of Inquiry that would provide specific requirements for the MLC to follow before it incurs extraordinary expenses of any kind, including expenses associated with the pursuit of litigation. And, we reiterate our call for the Office to require the MLC to be subject to an overall governance review, to ensure that it is operating in accordance with the letter and spirit of the Music Modernization Act, and serving the stakeholders that depend on a well-functioning statutory license.

We would be happy to discuss further and would also welcome a joint meeting with the MLC.

Sincerely,



Colin Rushing
Vice President, Legal

Cc: Kris Ahrend
Rick Marshall

¹⁵ See MLC 2025 Annual Report, app. at 14 (published June 2026).