

**Before the  
UNITED STATES COPYRIGHT OFFICE  
Washington, D.C.**

**In the Matter of:**

**Music Modernization Act Implementing  
Regulations for the Blanket License for  
Digital Uses and Mechanical Licensing  
Collective**

**November 8, 2019**

**Docket No. 2019-5**

**Comments of the Recording Academy**

**Introduction**

The Recording Academy appreciates the opportunity to submit comments regarding implementation of the Music Modernization Act (MMA). One of the key features of the MMA was the establishment of a publicly searchable database of musical works. Although the database sanctioned by the Music Modernization Act is fundamental to the proper functioning of the Mechanical Licensing Collective (MLC) and the blanket mechanical license, its utility will stretch far beyond just the MLC. The MMA anticipates the broad potential of the database by requiring that the database collect a variety of data points related to each musical work and sound recording. Because the database must be publicly accessible, once it is established it will quickly be adopted by stakeholders as an authoritative source for data regarding musical works and sound recordings, both in the United States and around the world. In addition to being used by the MLC and digital service providers, the database could likely be used for various purposes by record labels, publishers, performing rights organizations, and by other metadata companies and software developers. Thus, while the database's primary, statutory purpose is to facilitate accurate payments from digital music providers to songwriters and owners of musical works through the MLC, it will impact other transactions and payments as well for all the music creators who were involved in the creation of the recording.

The Recording Academy ("Academy"), known for its GRAMMY Awards, is the only music trade association that represents all music professionals. It represents only individuals and has no company or corporate members; accordingly, the Academy's comments will focus primarily on the need to ensure that the database is populated with

the best possible data to benefit the entire music ecosystem. In particular, the Academy will focus on the following subjects of inquiry: Data Collection and Delivery Efforts; Musical Works Database Information; and Musical Works Database Usability, Interoperability, and Usage Restrictions. Finally, the Academy will also offer comments regarding Additional MLC Oversight.

### **Data Collection and Delivery Efforts**

The Copyright Office specifically invites comments regarding the statutory requirement that digital music providers and copyright owners of musical works must each collect and provide information regarding sound recordings to the MLC for the database. The Academy believes it is appropriate for the Copyright Office to promulgate regulations establishing standards and expectations to ensure that these requirements are fulfilled.

With regard to both the digital music provider and the musical work copyright owner, the Copyright Office should recognize the importance of ensuring that data is carefully sourced. The sound recording copyright owner (usually a record label or artist) should be considered the preeminent source of information related to the sound recording. Digital music providers should be directed to consult directly with sound recording copyright owners to obtain the best possible data. They should not rely solely on third-party databases that may have flawed or incomplete information.

The data provided for the database must be authoritative, reliable, and accurate. The best way to ensure that the best data is available for every track is to encourage data collection at the point of origin. That means collecting data in the studio when the track is being created. The Academy, through its Producers & Engineers Wing, has spent years encouraging and establishing best practices so that information regarding the songwriters, featured artists, session musicians, backing vocalists, producers, and engineers is captured and recorded at the very beginning of the recording process.

Capturing data in the studio when the track is created is critical, as it represents the best opportunity to secure the most accurate data. As music creators begin to understand the importance of this data to their own livelihoods and the ability to track and record accurate payments, there will need to be a change in culture so that capturing data in the studio becomes standard practice. Several plug-ins are now available as part of digital audio workstations that facilitate such collection. Once data is collected as thoroughly as possible in the studio using recognizable standards, that data can then flow along with the finished track to the sound recording copyright owner (often a record label), then to the digital music provider or musical work copyright owner, and ultimately to the MLC itself.

As part of its public relations campaign regarding implementation of the MMA and establishment of the MLC, the Copyright Office should encourage the adoption of in-studio data collection, recognizing that the studio is early in the data chain and the optimal opportunity to secure the most accurate data. This effort is complimentary to the

Copyright Office's statutory obligation to educate songwriters and other musical work copyright owners about the need to register their works and claim unmatched royalties. The Copyright Office should also consider conducting a workshop on data collection to help elevate the awareness of best practices. Spreading best practices for in-studio data collection will improve overall data for sound recordings, resulting in fewer unmatched works and reducing the incidence of unclaimed royalties.

### **Musical Works Database Information**

One of the pieces of information that the MMA requires to be collected for each sound recording is the producer. This inclusion is an important recognition of the contribution of music producers, audio engineers, and other studio professionals in the creation of sound recordings. The role of studio professionals in the creation of music is often overlooked and misunderstood. A music producer establishes and guides the overall creative direction of a sound recording, similar to the role a film director plays in creating a motion picture. From Sir George Martin and the Beatles to Jimmy Jam, Terry Lewis and Janet Jackson to Jack Antonoff and Taylor Swift, producers have left an indelible mark on the sound of the artists they collaborate with. The MMA gives producers their due by including the producer as a mandatory field in the database and also through title III of the Act, the Allocation for Music Producers Act.

Although "producer" is enumerated in the statute for inclusion in the database, the term is left undefined. This could lead to unintended confusion. For example, a label executive or other business representative may be labeled as an "executive producer" on a sound recording even though they had no creative role in the project. The Academy's own GRAMMY awards criteria for who qualifies as a music producer is a helpful guideline in this regard.<sup>1</sup> When promulgating regulations, the Copyright Office should clarify the definition of producer to align with the definition found in title III, and clarify that a producer is someone who was part of the creative process that created a sound recording. The subject matter experts at the Academy's Producers & Engineers Wing invites the Office to seek its input as it considers this component.

In addition, the Copyright Office should also require the inclusion of the following critical reference data fields: duration of the track, version title of the track, and release year of the track. These additional fields will help distinguish between songs that have been recorded and released under different titles or by different artists multiple times. For example, singer-songwriters Lyle Lovett and Robert Earl Keen famously started their careers by writing songs together as students at Texas A&M University. Their first and most notable collaboration has been recorded multiple times by each artist separately and jointly under various titles: "The Front Porch Song," "This Old Porch," "The Front Porch Song (Live)," "This Old Porch (Live)" and more. Without inclusion of these additional fields to distinguish the various versions of the song that have been recorded over the years, the data could be flawed.

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<sup>1</sup> [https://www.grammy.com/sites/com/files/producer\\_definitions\\_final\\_03\\_01\\_2019.pdf](https://www.grammy.com/sites/com/files/producer_definitions_final_03_01_2019.pdf)

## **Musical Works Database Usability, Interoperability, and Usage Restrictions**

The musical works database should be as accessible and easy to use as possible. Data should be provided in an industry standard format, such as DDEX. Indeed, the Academy is encouraged that the MLC has become a member of DDEX. The MMA also stipulates that the MLC “shall make the database available in a bulk, machine-readable format, through a widely available software application...” Consistent with this mandate, ensuring that the database has a user-friendly API and “machine-to-machine” accessibility is important to its practical usability.

## **Additional MLC Oversight**

The Recording Academy is encouraged by its early and positive interactions with members of the MLC Board and Committees. As the MLC matures in operation, the Academy encourages the Copyright Office to continue to provide oversight to the new collective. As an oversight entity, the Copyright Office can play a pivotal role in dispensing appropriate guidance to the MLC, while also helping the collective abide by regulations delineated in, and achieve certain goals set forth by, the MMA.

First and foremost, the Copyright Office should articulate clear standards for the MLC board regarding board operations and governance, including appointments and succession. For “grey” areas not clearly defined by statute—such as board selection and vacancies—it will ultimately be up to the Copyright Office to provide appropriate guidance. To that end, the Copyright Office should work with the MLC and other stakeholders on establishing procedures for the appointment of board and committee members. At a minimum, the Copyright Office should ensure that vacancies and appointments are done in a transparent process with external input. The Recording Academy further recommends that the Copyright Office ensures that the MLC seeks candidates who reflect the full diversity of the songwriting community. Full representation necessitates the inclusion of an array of musical backgrounds, genres and regions, in addition to gender and racial diversity, and the Academy stands ready to consult with the MLC and the Copyright Office on appropriate candidates.

The Academy further believes that it is appropriate for the Copyright Office to consult with the MLC in the drafting of its bylaws, and provide necessary input to ensure that the bylaws clearly outline the collective’s operations. The Copyright Office should also require the MLC to publish its bylaws prior to commencing operations—public bylaws are key to establishing trust, and will help assuage any outstanding concerns amongst songwriters about the MLC’s operations.

Thank you for your consideration. The Recording Academy looks forward to continuing to work with the Copyright Office to effectuate implementation of the Music Modernization Act.

Respectfully Submitted,

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