

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

In the Matter of:

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

May 22, 2020

Docket No. 2020-5

Comments of the Recording Academy

Introduction

The Recording Academy (Academy) appreciates the opportunity to submit comments regarding the U.S. Copyright Office’s Notice of Proposed Rulemaking (NPRM) for Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment as part of the implementation of the Music Modernization Act (MMA). The NPRM strikes an appropriate balance to a number of complex and technical questions, and throughout the rulemaking process the Office was inclusive of stakeholders’ comments, input, and ideas—including comments and reply comments submitted by the Academy in 2019.

As the only music trade association that represents all music creators, including those involved in the creation of musical works and sound recordings, the Academy has been keenly involved in the formation of the Mechanical Licensing Collective (MLC) to ensure that the rights of all music makers are reflected in any final rule, operational policy, or bylaw governing the MLC. As such, the Academy’s comments will focus primarily on areas of the NPRM that deal with data, data collection, and related obligations of the copyright owner. Additionally, the Academy will opine on the utility of the proposed rules on data in matching unmatched royalties.

Data Collection and Delivery Efforts: Data Standards

The Academy supports the efforts of the Office to ensure that the data for the MLC are authoritative, reliable, and accurate, and appreciates that the NPRM incorporates the Academy’s recommendation to use sound recording data as the most accurate and reliable source. The NPRM also outlines a balanced process requiring the

Digital Music Providers (DMPs) to use as close to the most authoritative source as possible for sound recordings, and has identified SoundExchange as a potential source—the Academy has no issue with such a process.

Regarding data standards, the Academy continues to support the use of data that is accessible, easy to use by all parties, and which the MLC is adequately equipped to receive, process, and manage. It remains clear that DDEX is the most widely recognized standard—in further support of DDEX, the MLC has hired senior staff familiar with DDEX and is already working “closely with DDEX to design interface(s) to access the data that will be included in the public database¹.”

Data Collection and Delivery Efforts: Efforts by Copyright Owners

The Academy agrees with the Office’s assessment that adopting a “one-size-fits-all approach” for all musical copyright owners is not practical, and appreciates the consideration the Office shows for independent and self-published songwriters who could be vulnerable to overly burdensome requirements and regulations. The proposal to adopt a minimal floor requirement is a fair approach, and strikes a proper balance to avoid instituting an undue burden for independent and self-published songwriters. However, post-implementation, the Office should monitor the approach to ensure that it does not become overly burdensome in practice, and should be prepared to revisit the rule if needed.

The Academy stands ready to assist the Office in educating all songwriters of these requirements, as well as best practices for monitoring the MLC database and reporting missing or inaccurate information.

Sound Recording and Musical Work Information

The NPRM adequately outlines the information required to be reported for purposes of identifying each sound recording embodying a musical work. The Office’s proposed tiers of information for sound recordings is an accurate interpretation of the statute, identifies a simple and standardized process for the DMPs to follow, and will help improve matching and minimize instances of unclaimed royalties. The tiered approach is also flexible to allow for adoption of additional information as they become more widely used in the future (such as International Standard Name Identifier).

Additionally, the Academy appreciates and concurs with the Office’s proposal to include certain additional data fields that will prove beneficial in the matching efforts. A track’s playing time, version, release date, and other identifiable information help to more precisely match works and are not unduly burdensome to report. With respect to the Office’s invitation to comment on further qualifying “release date” as “release year,”

¹ <https://www.musicbusinessworldwide.com/mlc-hires-richard-thompson-as-chief-information-officer-and-selects-partners-to-develop-data-portal/>

the Academy believes that “release year” has sufficient utility and is more practically available than a full DD/MM/YYYY requirement.

The Academy also agrees with the Office’s proposal on how to define the term producer to adhere to the statutory requirements, and to minimize any confusion amongst stakeholders. As proposed, the Recording Academy’s Producers & Engineers Wing definition of producer² will ensure that the data collected and reported most accurately reflects the person contracted by the content owner for delivering the sound recording as a finished product. The Academy applauds the Office’s inclusion of the definition in the NPRM.

Lastly, the Academy agrees that requiring performance rights organization information is not relevant data, and supports the NPRM from excluding reporting on such information.

Server Fixation Date and Termination

The Academy appreciates the in-depth discussion between the MLC, the DLC and the Office on the issue of server fixation date, however the Academy has some concerns about the applicability to termination rights. At a minimum, the Academy believes that including such a substantive interpretation of the termination right will first require further examination by the Office. The legal relevancy needs to be more thoughtfully explored and adequately justified beyond the technical reasoning featured in the NPRM and the MLC proposal. Otherwise, the Office is risking misinterpreting existing statute and wrongly jeopardizing the rights of many songwriters and copyright owners. Additionally, while the Academy has full confidence in the MLC and the dispute resolutions committee, the Office should strive to minimize future disputes over termination rights prior to these disputes being brought to the MLC.

Adequacy of Information for Distributing Unclaimed Royalties

Lastly, with respect to the Office’s inquiry on whether the NPRM provides adequate (or excessive) information to the MLC for the purposes of calculating market share for distributing unclaimed royalties, the Academy believes that the proposed rule will improve matching efforts, and remains optimistic that market share will be adequately calculated. Unclaimed royalties remain a paramount concern for the Academy, and it is the Academy’s hope that the proposed rule, and subsequent implementation by the MLC, will result in minimal instances of unmatched works.

The Academy looks forward to continuing to work with the Office in its study on unclaimed royalties to ensure that all songwriters are fairly represented in the proceedings and the ongoing implementation of the MMA.

Thank you for your consideration.

² https://www.grammy.com/sites/com/files/producer_definitions_final_03_01_2019.pdf

Respectfully Submitted,

Michael Lewan
Director of Government Relations

Todd Dupler
Managing Director, Advocacy & Public Policy

Daryl Friedman
Chief Industry, Government, & Member Relations Officer

Recording Academy
1200 G Street NW, Suite 950
Washington, D.C. 20005

May 22, 2020