

**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**

December 20, 2019

Docket No. 2019-5

Reply Comments of the Recording Academy

Introduction

The Recording Academy appreciates the opportunity to submit reply comments regarding implementation of the Music Modernization Act (MMA) and regulations for the new blanket license and the Mechanical Licensing Collective (MLC). In its original comments, the Recording Academy (“Academy”) focused specifically on Data Collection and Delivery Efforts; Musical Works Database Information; Musical Works Database Usability, Interoperability, and Usage Restrictions; and Additional MLC Oversight. In these reply comments, the Academy will highlight other submitted comments that affirm our views and respond to a few comments that the Academy believes would be counterproductive to the Copyright Office’s work.

Musical Works Database Information

The Recording Academy’s initial comments discussed at length the importance of the producer credit that the MMA requires to be collected for every sound recording. In particular, we noted that because the term is undefined it could lead to confusion. The MLC itself misstates the meaning of producer in its comments, illustrating our concern. In a footnote, the MLC states that “it is the MLC’s understanding that the use of the term “producer” in this context should mean the record label or individual or entity that commissioned the sound recording, and does not refer to an individual studio producer.”¹ However, the opposite is actually true. The statute indicates this by requiring the inclusion of both “sound recording owner” and “producer” as two distinctly different

¹ MLC Comments in Docket No. 2019-5 at 13 (Nov. 8, 2019).

data categories. Helpfully, the RIAA affirms the Recording Academy's understanding of the intent of the statute:

Similarly, the term "producer," as used in the statute, may be somewhat confusing to DMPs, music publishers and/or the public. In Europe (and other parts of the world), the term "producer" is typically used to refer to the sound recording copyright owner. In the MMA, the term producer is used to refer to the person who oversees all aspects of the recording project. To ensure a shared understanding of what that term means in this context and to avoid mistakes in the MLC database, the regulations should include the following definition, adapted from the Recording Academy's Producers and Engineers Wing: "Producer means the primary person(s) contracted by and accountable to the content owner for the task of delivering the recording as a finished product." See https://www.grammy.com/sites/com/files/producer_definitions_final_03_01_2019.pdf.²

The MLC's mistake regarding the term "producer" reinforces the need for the Copyright Office to define the term correctly.

Musical Works Database

As stated in our original comments, the Recording Academy believes that the database should be comprehensive and as accessible and easy to use as possible. However, the MIC Coalition used its comments to promote a tangential legislative agenda, the Transparency in Music Licensing and Ownership Act.³ This legislation is ostensibly intended to make it easier to license musical works for public performance. In reality, it gives licensees leverage against songwriters by threatening to strip them of their right to remedies for infringement of their work. Appropriately, this bill received little support in the 115th Congress and notably was not included in the Music Modernization Act, a consensus package that was approved unanimously in Congress. It has also not been reintroduced in the 116th Congress. It is irrelevant to the Copyright Office's work in implementing the MMA and implementing regulations for the blanket license and Mechanical Licensing Collective.

Additional MLC Oversight

In addition, the Recording Academy encouraged the Copyright Office to make oversight of the MLC a priority, particularly with regard to establishing processes and procedures for board governance. The Music Artists Coalition (MAC) echoes our concerns in its comments. MAC notes that the MLC has not yet published term lengths for members of the board, the process for electing a member to the board, or the process for filling a vacant seat on the board. MAC also discusses the need to ensure that the Unclaimed Royalties Oversight Committee adequately represents the interests

² RIAA Comments in Docket No. 2019-5 at 11 (Nov. 8, 2019).

³ See MIC Coalition Comments in Docket No. 2019-5 at 5 (Nov. 8, 2019).

of independent publishers, not just major publishers.⁴ The Academy agrees. In addition, MAC suggests that representatives of songwriters (presumably managers, agents, or lawyers) should be able to fill board seats reserved for songwriters.⁵ Although well-intentioned, this suggestion is likely not permissible under the statute. The MMA's inclusion of direct songwriter representation on the board was a significant achievement for the community and songwriters stand ready to fulfill this responsibility.

Unclaimed Royalties

In the Notice of Inquiry, the Copyright Office stated that it will defer promulgation of rules regarding distribution of unclaimed accrued royalties until its policy study of the issue, mandated by the MMA, is complete. Nevertheless, several commenters chose to weigh in on unclaimed royalties without waiting for the commencement of the study, demonstrating the extreme importance of this topic, especially to the songwriting community. The MLC must ensure that all royalties are matched and distributed to the songwriters that earned them.

The Academy intends to engage fully in the Unclaimed Royalties Study, as evidenced by the Academy's participation in the Kickoff Symposium held on December 6. But given the attention this issue has already received in the NOI process, it's important to restate a key point that the Academy presented in its comments regarding the designation of the MLC.⁶ Under the MMA, the MLC has the discretion to delay the initial distribution of unclaimed royalties beyond January 2023, the earliest date when such a distribution can occur. Accordingly, the Copyright Office should work with the MLC to consider delaying the distribution of unclaimed royalties if such a delay would result in a measurable increase in the match rate, in accordance with the discretion provided under the statute.

Such forbearance is not without precedent. SoundExchange elected to hold on to unmatched royalties for years beyond the required date for distribution because of its strong commitment to ensuring that royalties be paid to the correct artists.⁷ The MLC should demonstrate that same level of commitment by holding on to unclaimed royalties beyond January 2023 if a delay is necessary to ensure that royalties are matched to the appropriate songwriters to the greatest extent possible.

Thank you for your continued consideration of our views. The Recording Academy appreciates the ongoing work of the Copyright Office on implementation of the Music Modernization Act and will continue to engage in this process on behalf of its membership.

⁴ See Music Artists Coalition Comments in Docket No. 2018-11 at 2 (Nov. 8, 2019).

⁵ *Id.*

⁶ See Recording Academy Comments in Docket No. 2018-11 at 3 (April 22, 2019).

⁷ Glenn Peoples, *SoundExchange Finally Releases Old, Unclaimed Royalties*, Billboard (Jan. 31, 2014), <https://www.billboard.com/articles/business/5893782/soundexchange-finally-releases-old-unclaimed-royalties>.

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