



# UNCLAIMED ROYALTIES: BEST PRACTICE RECOMMENDATIONS FOR THE MECHANICAL LICENSING COLLECTIVE

A REPORT OF THE REGISTER OF COPYRIGHTS

JULY 2021





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ORRIN G. HATCH-BOB GOODLATTE MUSIC MODERNIZATION ACT  
Public Law No. 115-264, title I, § 102, 132 Stat. 3676, 3722–23 (Oct. 11, 2018)

(f) UNCLAIMED ROYALTIES STUDY AND RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 2 years after the date on which the Register of Copyrights initially designates the mechanical licensing collective under section 115(d)(3)(B)(i) of title 17, United States Code, as added by subsection (a)(4), the Register, in consultation with the Comptroller General of the United States, and after soliciting and reviewing comments and relevant information from music industry participants and other interested parties, shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that recommends best practices that the collective may implement in order to—

- (A) identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective;
- (B) encourage musical work copyright owners to claim the royalties of those owners; and
- (C) reduce the incidence of unclaimed royalties.

(2) CONSIDERATION OF RECOMMENDATIONS.—The mechanical licensing collective shall carefully consider, and give substantial weight to, the recommendations submitted by the Register of Copyrights under paragraph (1) when establishing the procedures of the collective with respect to the—

- (A) identification and location of musical work copyright owners; and
- (B) distribution of unclaimed royalties.

#### ACKNOWLEDGEMENTS

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Shira Perlmutter  
Register of Copyrights and Director  
U.S. Copyright Office

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## EXECUTIVE SUMMARY

Passage of the Orrin G. Hatch—Bob Goodlatte Music Modernization Act (“MMA”) in 2018 substantially modified the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. § 115. It did so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021, which is administered by a mechanical licensing collective (“MLC”) designated by the Copyright Office (“Office”). Digital music providers (“DMPs”) are able to obtain the new compulsory blanket license to make digital phonorecord deliveries of musical works, including in the form of permanent downloads, limited downloads, or interactive streams, subject to compliance with various requirements, including reporting obligations.

The MLC is tasked with a number of important duties under the statute. These duties include receiving and processing reports of usage from DMPs, collecting and distributing royalties associated with those uses, engaging in efforts to identify the musical works embodied in sound recordings reflected in DMP reports and to identify and locate the copyright owners of such musical works (and shares of such works), creating and maintaining a public musical works database, and establishing a publicly accessible online system through which copyright owners can claim ownership of musical works (and shares of such works). In addition, the statute provides that the MLC must hold, for a minimum period, royalties associated with reported uses of sound recordings embodying musical works for which the copyright owners of such musical works (or shares of such works) have not been identified or located. During the holding period, it is expected that the MLC will engage in further efforts to match DMP usage to musical works and their owners and that copyright owners will engage in efforts to claim unmatched usage of their works through the MLC’s online claiming system. At the end of the statutory minimum holding period, accrued royalties for musical works (and shares) that remain unmatched become eligible for distribution by relative market share to copyright owners identified in the MLC’s records, at which point they become “unclaimed accrued royalties.”

In enacting the MMA, Congress requested that the Office produce a report recommending best practices that the MLC may implement in order to identify and locate musical work copyright owners with unclaimed accrued royalties held by the MLC, encourage musical work copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties. The statute requires the MLC to carefully consider, and give substantial weight to, the Office’s recommendations when establishing procedures related to these issues.

The MMA represents a new era for music licensing, providing an opportunity for increased transparency to musical work copyright owners and songwriters regarding the compulsory licensing of their works. The establishment of the MLC as a central

collective to administer the new blanket license, along with other changes—such as expanded DMP reporting requirements, the creation of a public musical works database, and the ability to search through and claim unmatched usage—provide a strong foundation for working toward the overall goal of reducing the incidence of unclaimed royalties. Stakeholders have made it clear, however, that this is no small task and that achieving such a goal will take hard work on the part of the MLC.

The Office developed the best practice recommendations in this report after careful consideration of the views and suggestions made by a wide variety of stakeholders from across the music ecosystem. In issuing these recommendations, the Office is not evaluating the MLC’s performance to date or suggesting that the MLC is not already engaging or planning to engage in certain activities. Rather, reflecting the broad diversity of opinions and perspectives expressed by commenters, the Office’s recommendations are meant to be comprehensive and range from high-level conceptual notions to detailed suggestions (particularly those relating to holding and distributing unclaimed accrued royalties). Broadly, the MLC should undertake significant measures, as reasonable and appropriate, to work toward reducing the incidence of unclaimed royalties, including by doing the utmost to maximize outreach and transparency. While the Office’s recommendations do not lend themselves to succinct descriptions because of their scope, the Office provides the following high-level summary:

- Education and Outreach. In recognition of the music industry’s broad and diverse spectrum of songwriters and copyright owners, the MLC should engage to the broadest extent reasonably practicable in conducting its education and outreach activities. Among other things, the MLC should publicize the existence of the MMA, the MLC, the blanket license, and the public musical works database, the ability to claim ownership of unmatched works (and shares), and the procedures by which copyright owners may identify themselves and provide relevant information to the MLC. Among other things, the MLC should participate in music industry conferences and other events (both large and small), host its own events both in person and online, arrange speaking engagements for specific groups, create and disseminate user-friendly written materials and tutorials, widely and creatively advertise through multiple communication channels, and engage in partnerships. Education and outreach activities should be tailored to the target audience and continually evaluated for effectiveness. In particular, the MLC should employ dedicated, persistent outreach to historically underserved groups.
- Usability. The public musical works database, the MLC’s online system for claiming and other purposes (also referred to as the “portal”), and any other public-facing MLC systems or services should be simple, accessible, well-organized, and user-friendly, with flexible and robust tools, features, and functionality. These systems should be made available across a variety of

devices and platforms to maximize user accessibility, and should avoid a one-size-fits-all approach in order to meet the varying levels of users' needs. Both the database and portal should have powerful searching, sorting, and filtering features to make it easy and efficient for users to quickly locate information. Users should be able to engage with the MLC through the portal to the broadest extent reasonably practicable, and the portal should have a sophisticated suite of user-friendly tools for users to easily digest and manage the administration of their works under section 115. The portal should enable users to, among other things, easily and efficiently register with the MLC, provide information, review and interact with the data about their works held by the MLC, identify, flag, and address potential errors and other issues, flag and manage disputes and resolve data conflicts, and claim unmatched usage. Users should also be able to provide information, claim, and take certain other actions through bulk mechanisms. To give songwriters a voice regarding the information about themselves and their works maintained by the MLC, songwriters represented by publishers, administrators, or others should be able to sign up with the MLC to gain appropriate access to the portal. The MLC should continue to seek feedback from stakeholders so that the portal, the public musical works database, and any other systems (*e.g.*, including other mechanisms for providing information to the MLC) are developed and refined to meet the varying levels of users' needs.

- **Data Quality.** The MLC should take reasonable steps to ensure that its data is of the highest possible quality, meaning, among other things, that it is as complete, accurate, up-to-date, and de-conflicted as possible, and is obtained from authoritative sources. Toward this end, the MLC should have mechanisms in place to help review, verify, and quality-check information, and recognize problems like conflicts, inconsistencies, inaccuracies, and potential fraud. The MLC should provide user-friendly mechanisms to enable copyright owners, regardless of size or sophistication, to identify, review, verify, and take appropriate actions (*e.g.*, flagging potential issues, making corrections, engaging in data conflict resolution, etc.) with respect to the MLC-held data for their works, including any related matches the MLC has made. Standard unique identifiers should be employed to the broadest extent reasonably appropriate, including in the MLC's registration and claiming processes, matching processes, and general data maintenance activities. Third-party sources of data beyond DMP reporting and musical work copyright owner registration and claiming should be utilized to the broadest extent reasonably appropriate. The MLC should also work to ensure that its data is in sync with the data held and submitted by the authoritative sources of the data.
- **Matching Practices.** The MLC should employ both automated and manual matching processes that rely on standard unique identifiers. Automated processes should be top-notch, including in terms of the algorithms and other

technologies employed as well as the manner in which calibration, quality assurance testing and review, and validation are performed. Confidence levels should be carefully tuned and regularly reviewed and adjusted. The MLC should engage in manual matching activities to a substantial degree using dedicated and sufficiently funded resources, including an adequately sized and well-trained staff. The MLC should have the capacity to deploy a broad array of manual activities, including online and offline research, individual lookups in public and private third-party databases, and leveraging its membership and network of industry partners (including by sharing real-time lists of unmatched works (and shares)). With respect to locating identified copyright owners, the MLC should, among other things, share real-time lists of such owners as widely as reasonably possible, engage in social media crowdsourcing, explore third-party partnerships, and engage private investigators. Usage that remains unmatched after initial efforts should be made subject to further efforts that are repeated for as long as the associated royalties are held by the MLC.

- **Holding and Distributing Unclaimed Accrued Royalties.** The MLC should adopt transparent, practical, and equitable policies, practices, and procedures, especially with respect to holding and distributing unclaimed royalties. Unclaimed royalties should be held for longer than the statutory minimum periods where appropriate, and the length of the extended holding periods should be tied to whether specific criteria have been satisfied (*e.g.*, attainment of reasonable match rates and engagement metrics, exhaustion of reasonable outreach and matching efforts, etc.). The first distribution of unclaimed royalties should not occur for at least five years from the date that the ability to claim in the portal is made available to the public, with complete and full functionality and populated with all unmatched usage from periods prior to 2021. After five years, the MLC should apply relevant criteria to determine whether the first distribution should be further deferred. The MLC should recognize different categories of unclaimed royalties subject to different holding periods, policies, and criteria based on particular circumstances (*e.g.*, unclaimed royalties associated with works (or shares) for which the copyright owner has been identified but not located should be held until the owner is found). Any market-share-based distribution of unclaimed royalties must be transparent and equitable, and the MLC should, among other things, have its market share calculations verified by an independent third-party accountant or auditor. The statutorily required advance notice of any pending distribution of unclaimed royalties should be publicized as widely as reasonably possible using multiple forms, methods, and channels of education and outreach, and should contain detailed information that is written in plain language.
- **Measuring Success.** The MLC should closely monitor and track a wide variety of metrics and continually review and analyze them both to evaluate its level of

success and relative effectiveness over time in reducing the incidence of unclaimed royalties and to identify areas for improvement going forward. Such metrics should include, for example, various measurements and breakdowns of engagement levels and match rates.

- Transparency. The MLC should be transparent about its activities and should continue to engage regularly with stakeholders. Toward this end, among other things, the MLC should make relevant material publicly available on its website, including: (1) full and complete copies of policies, practices, and procedures (*e.g.*, those concerning holding and distributing royalties, data quality, and matching activities) accompanied by clear layperson's explanations as well as discussions of its decision-making processes; (2) detailed information about the amount and nature of the royalties it is holding (updated regularly) and about both pending and past distributions of unclaimed accrued royalties; and (3) a wide variety of metrics about its level of success (*e.g.*, various measurements and breakdowns of engagement levels and match rates). Metrics information should be updated monthly and be able to be reviewed and analyzed in a well-organized, user-friendly, and accessible manner through an interactive webpage that allows users to search, sort, break down, and export the data.

The Office recognizes that the MLC does not act in a vacuum, and its ultimate success will depend upon the cooperation of others in the music industry—including not only publishers, administrators, and songwriters, but also DMPs, artists, producers, record labels, distributors, and aggregators—working toward generating, maintaining, and passing on the best possible data. It will also depend on the industry as a whole contributing to the MLC's education and outreach efforts to help ensure that all creators and licensors of musical works know about the MMA, the MLC, the blanket license, and their associated rights and responsibilities. By coming together, the industry can put the MLC in the best possible position to succeed in reducing the incidence of unclaimed royalties.

## I. INTRODUCTION, STUDY HISTORY, AND BACKGROUND

### A. Overview of the MMA and the MLC's Duties

#### 1. Introduction to the MMA and Study Background

On October 11, 2018, the president signed into law the Orrin G. Hatch—Bob Goodlatte Music Modernization Act (“MMA”) which, among other things, substantially modified the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. § 115.<sup>1</sup> Prior to the MMA, digital music providers (“DMPs”) obtained a section 115 compulsory license on a song-by-song basis, by serving a notice of intention to obtain a compulsory license (“NOI”) on the copyright owner (or, if the public records of the Copyright Office (“Office”) did not identify the musical work copyright owner’s name and address, filing the NOI with the Office).<sup>2</sup> The rise of large streaming platforms offering tens of millions of tracks highlighted the impracticalities and inefficiencies of licensing on a song-by-song basis to make digital phonorecord deliveries (“DPDs”) of musical works under the pre-MMA system.<sup>3</sup>

The MMA changed the section 115 compulsory license by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the “license availability date”), administered by a mechanical licensing collective (“MLC”) designated by the Office. DMPs are now able to obtain the new compulsory blanket license to make DPDs of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as “covered activity” where such activity qualifies for a compulsory license), subject to

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<sup>1</sup> Orrin G. Hatch—Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, tit. I, 132 Stat. 3676 (2018) (codified in part in 17 U.S.C. § 115).

<sup>2</sup> See 17 U.S.C. § 115(b)(1) (2017).

<sup>3</sup> See *Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees*, at 3 (2018), [https://www.copyright.gov/legislation/mma\\_conference\\_report.pdf](https://www.copyright.gov/legislation/mma_conference_report.pdf) (“CONF. REP.”) (“The Committee has regularly heard from various parties in the music industry that the existing music licensing system does not functionally work to meet the needs of the digital music economy where commercial services strive to have available to their customers as much music as possible. Song-by-song licensing negotiations increase the transaction costs to the extent that only a limited amount of music would be worth engaging in such licensing discussions, depriving artists of revenue for less popular works and encouraging piracy of such works by customers looking for such music.”); U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 107, 110 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> (“MUSIC MARKETPLACE REPORT”).

compliance with various requirements, including reporting obligations.<sup>4</sup> For example, DMPs using the blanket license are required to file a notice of license with the MLC, pay royalties, and provide reports of usage for all covered activities to the MLC on a monthly basis.<sup>5</sup> The MLC collects those royalties and distributes them to musical work copyright owners in accordance with the DMPs' usage reports and the ownership and other information contained in the MLC's records.<sup>6</sup>

As discussed below, for those works for which royalties have accrued but the copyright owner is unknown or not located (*i.e.*, the works are "unmatched"<sup>7</sup>), the MLC will hold such royalties for a designated minimum time period. In general, the MLC must hold accrued royalties for "a period of not less than 3 years after the date on which the funds were received by the [MLC]."<sup>8</sup> At the end of the statutory minimum holding period, accrued royalties for musical works (and shares) that remain unmatched become eligible for distribution by relative market share "to copyright owners identified in the records of the collective," at which point they become "unclaimed accrued royalties."<sup>9</sup>

The MMA directed the Office to conduct a public study, in consultation with the Government Accountability Office, and recommend best practices that the MLC may implement to:

- identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective;

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<sup>4</sup> DMPs may continue to engage in those activities solely through voluntary, or direct, licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee under the statute, subject to separate reporting obligations. As permitted under the MMA, the Office designated a digital licensee coordinator ("DLC") to represent licensees in proceedings before the Copyright Royalty Judges and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. § 115(d)(5)(B); Designation of Music Licensing Collective and Digital Licensee Coordinator, 84 Fed. Reg. 32,274, 32,295 (July 8, 2019); *see also* 17 U.S.C. § 115(d)(3)(D)(i)(IV), (d)(5)(C).

<sup>5</sup> 17 U.S.C. § 115(d)(2)(A), (d)(4), (e)(7).

<sup>6</sup> *Id.* § 115(d)(3)(G)(i)(II).

<sup>7</sup> *Id.* § 115(e)(35) ("The term 'unmatched', as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located."); *see also id.* § 115(e)(17) ("The term 'matched', as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has been identified and located.").

<sup>8</sup> *Id.* § 115(d)(3)(H)(i); *see also* CONF. REP. at 11 ("For unmatched works, the collective must wait for the prescribed holding period of three years before making such distribution. This is intended to give the collective time to actively search for the copyright owner.").

<sup>9</sup> 17 U.S.C. § 115(d)(3)(J)(i), (e)(34).

- encourage musical work copyright owners to claim royalties; and
- reduce the incidence of unclaimed royalties.<sup>10</sup>

The statute requires the MLC to “carefully consider, and give substantial weight to, the recommendations submitted by the Register of Copyrights . . . when establishing the procedures of the collective with respect to the . . . identification and location of musical work copyright owners” and “distribution of unclaimed royalties.”<sup>11</sup>

To initiate the study, the Office held an all-day educational symposium to facilitate public understanding and discussion of relevant issues.<sup>12</sup> On June 2, 2020, the Office published a notice of inquiry in the Federal Register announcing the study and soliciting public input.<sup>13</sup> In response, the Office received fifteen initial comments and ten reply comments from a broad spectrum of interested parties, including creators and copyright owners, DMPs, the MLC, the DLC, music interest groups, and individual members of the public.<sup>14</sup> The Office also commissioned a report about matching and royalty distribution practices of various collective management organizations (“CMOs”) around

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<sup>10</sup> Pub. L. No. 115-264, tit. I, § 102(f)(1), 132 Stat. at 3722.

<sup>11</sup> Pub. L. No. 115-264, tit. I, § 102(f)(2), 132 Stat. at 3723; *see* S. REP. NO. 115-339, at 15 (2018); CONF. REP. at 12.

<sup>12</sup> Unclaimed Royalties Study: Announcement of Public Symposium, 84 Fed. Reg. 58,176 (Oct. 30, 2019); U.S. Copyright Office, *Unclaimed Royalties Study Kickoff Symposium*, <https://www.copyright.gov/policy/unclaimed-royalties/symposium/>. The Federal Register notice announcing the symposium is included in Appendix A, and a list of those who participated is included in Appendix B. A transcript of the symposium is available at <https://www.copyright.gov/policy/unclaimed-royalties/transcript.pdf>.

<sup>13</sup> Unclaimed Royalties Study: Notice of Inquiry, 85 Fed. Reg. 33,735 (June 2, 2020). This notice is included in Appendix A.

<sup>14</sup> Comments received in response to the notice of inquiry are available at <https://www.regulations.gov/document/COLC-2020-0007-0001/comment>. A list of the parties who responded to the notice of inquiry is included in Appendix B. This report also cites certain *ex parte* communications conducted during rulemakings to implement various provisions of the MMA. Guidelines for such *ex parte* communications, along with records of such communications, are available at <https://www.copyright.gov/rulemaking/mma-implementation/ex-partecommunications.html>. References to party comments and *ex parte* communications are by party name (abbreviated where appropriate) followed by “Initial Comments,” “Reply Comments,” or “*Ex Parte Letter*,” as appropriate.

the world.<sup>15</sup> On March 25 and 26, 2021, the Office conducted virtual public roundtables via Zoom, holding six sessions with almost sixty panelists.<sup>16</sup>

## 2. The MLC’s Duties

The MLC is responsible for, among other things, “[c]ollect[ing] and distribut[ing] royalties” for covered activities, “[e]ngag[ing] in efforts to identify musical works (and shares of such works) embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works (and shares of such works),” “[m]aintain[ing] [a] musical works database,” and “[a]dminister[ing] a process by which copyright owners can claim ownership of musical works (and shares of such works).”<sup>17</sup> These and other MLC duties are discussed in more detail below.

### a) The Public Musical Works Database

The MMA requires the MLC to establish and maintain a public database “containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works (and shares thereof) and the sound recordings in which the musical works are embodied.”<sup>18</sup> The database must “be made available to members of the public in a searchable, online format, free of charge,” and its contents must also be made available “in a bulk, machine-readable format, through a widely available software application,” to certain

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<sup>15</sup> SUSAN BUTLER, COLLECTIVE RIGHTS MANAGEMENT PRACTICES AROUND THE WORLD: A SURVEY OF CMO PRACTICES TO REDUCE THE OCCURRENCE OF UNCLAIMED ROYALTIES IN MUSICAL WORKS (2020), <https://www.copyright.gov/policy/unclaimed-royalties/cmo-full-report.pdf> (“CMO REPORT”). “CMOs collectively license the use of rights they manage and collect and distribute royalties generated by various licensed uses.” U.S. Copyright Office, *Unclaimed Royalties Study: Acronym Glossary 2 (Acronym Glossary)*. The Office’s Acronym Glossary is included in Appendix C. CMOs include PROs, mechanical rights societies, music licensing companies (*i.e.*, neighboring rights societies), and other collective licensors. *Id.*

<sup>16</sup> See Unclaimed Royalties Study: Notice of Public Roundtables, 86 Fed. Reg. 8,655 (Feb. 8, 2021). The Federal Register notice announcing the roundtables is included in Appendix A, and a list of those who participated is included in Appendix B. Transcripts of the Office’s roundtables and symposium are cited as “Roundtable Tr.” or “Symposium Tr.” followed by the page(s), line number(s), date, party name, and affiliation (if any), as appropriate. Certain roundtable participants who wished to share additional information during the event, but were unable to do so, submitted supplemental comments. References to these comments are by party name followed by “Supplemental Roundtable Comments.” The Supplemental Roundtable Comments and transcripts of the roundtables are available at <https://www.copyright.gov/policy/unclaimed-royalties/>.

<sup>17</sup> 17 U.S.C. § 115(d)(3)(C)(i)(II)–(V).

<sup>18</sup> *Id.* § 115(d)(3)(E), (e)(20).

parties, including blanket licensees and the Office, free of charge, and to “[a]ny other person or entity for a fee not to exceed the marginal cost to the [MLC] of providing the database to such person or entity.”<sup>19</sup> The Office’s regulations require that the MLC provide access “in a searchable, real-time, online format, free of charge,” including bulk access via application programming interfaces (“APIs”) no later than December 31, 2021.<sup>20</sup> As discussed below, the statute requires the public musical works database to include various types of information, depending upon whether a musical work has been matched to a copyright owner.<sup>21</sup> The MLC launched the public musical works database in January 2021.<sup>22</sup>

The MMA’s legislative history highlights the purpose of the public database—providing access to musical works’ ownership information and promoting transparency across the music industry<sup>23</sup>—and distinguishes it from past attempts to control and/or own industry data.<sup>24</sup> The legislative history stresses the importance of the database, stating that “the failure of the music industry to develop and maintain a master database has led to significant litigation and underpaid royalties for decades.”<sup>25</sup> It also states that

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<sup>19</sup> *Id.* § 115(d)(3)(E)(v).

<sup>20</sup> 37 C.F.R. § 210.32(a)(1)(i)–(ii).

<sup>21</sup> 17 U.S.C. § 115(d)(3)(E)(ii)–(iii).

<sup>22</sup> MLC, *The Mechanical Licensing Collective Begins Full Operations as Envisioned by The Music Modernization Act of 2018* (Jan. 1, 2021), <https://themlc.com/press/mechanical-licensing-collective-begins-full-operations-envisioned-music-modernization-act>.

<sup>23</sup> See 164 CONG. REC. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Sen. Hatch) (“I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill’s oversight and transparency provisions.”); 164 CONG. REC. S501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Coons) (“This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace[.]”); 164 CONG. REC. H3522, 3541 (daily ed. Apr. 25, 2018) (statement of Rep. Chabot); 164 CONG. REC. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Torres).

<sup>24</sup> CONF. REP. at 6 (“Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.”); *id.* (noting that the Global Repertoire Database project, an EU-initiated attempt to create a comprehensive and authoritative database for ownership and administration of musical works, “ended without success due to cost and data ownership issues”).

<sup>25</sup> S. REP. NO. 115–339, at 8; H.R. REP. NO. 115–651, at 7–8 (2018); CONF. REP. at 6–7; *see also* 164 CONG. REC. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Torres) (“Information regarding music owed royalties would be easily accessible through the database created by the Music Modernization Act. This transparency will surely improve the working relationship between creators and music platforms and aid the music industry’s innovation process.”).

“there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.”<sup>26</sup>

The statute requires the public musical works database to include certain information about musical works and the sound recordings in which they are embodied,<sup>27</sup> and the Office’s regulations add to those requirements by creating “a floor of required information that users can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.”<sup>28</sup> Among other fields, the MLC must include (some to the extent reasonably available to the MLC):

- The MLC’s standard identifier for the musical work;
- The title of the musical work and any alternative or parenthetical titles;
- The international standard musical work code (“ISWC”);<sup>29</sup>
- The name(s) of the copyright owner(s) and songwriter(s);
- International Standard Name Identifiers (“ISNIIs”) and/or Interested Parties Information (“IPIs”) for each musical work copyright owner, and, if different, songwriter, and administrator;
- The name of the sound recording;
- The international standard recording code (“ISRC”); and
- The unique identifier(s) assigned by the blanket licensee.<sup>30</sup>

### **b) The Portal**

The MLC is statutorily mandated to “maintain a publicly accessible online facility with contact information for the collective that lists unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work).”<sup>31</sup> To satisfy this requirement, as part of the MLC’s existing portal through which users can currently register works and interact

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<sup>26</sup> S. REP. NO. 115-339, at 9; H.R. REP. NO. 115-651, at 8; CONF. REP. at 7.

<sup>27</sup> 17 U.S.C. § 115(d)(3)(E)(ii)–(iii).

<sup>28</sup> The Public Musical Works Database and Transparency of the Mechanical Licensing Collective, 85 Fed. Reg. 86,803, 86,807 (Dec. 31, 2020); 37 C.F.R. § 210.31(b)(1)–(2), (c)(1)–(2).

<sup>29</sup> ISWCs and other unique identifiers are discussed below.

<sup>30</sup> 17 U.S.C. § 115(d)(3)(E)(ii)–(iii); 37 C.F.R. § 210.31(b)(1)–(2), (c)(1)–(2).

<sup>31</sup> 17 U.S.C. § 115(d)(3)(J)(iii)(I).

with the MLC, the MLC is developing a claiming portal with information regarding unmatched works.<sup>32</sup> Unlike the public database, the MLC currently limits portal access to music publishers, administrators, CMOs, and unrepresented songwriters who register with and become members of the MLC.<sup>33</sup> Registration involves setting up a user account with certain contact information and creating a member profile,<sup>34</sup> after which the MLC verifies the user’s account information.<sup>35</sup> Registered members can then use the portal to “register, edit and review . . . musical works data; create and submit registrations for any new musical works; manage and update . . . contact information, banking details and tax forms and invite other users to set-up their own user accounts under [that user’s] MLC Member profile.”<sup>36</sup> Registration is required to receive mechanical royalties from the MLC.<sup>37</sup>

### c) Education and Outreach

The MMA directs the MLC to “engage in diligent, good-faith efforts to publicize, throughout the music industry . . . the existence of the collective and the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works) held by the collective” and “the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties.”<sup>38</sup> The MLC is further required to “participate in music industry conferences and events for the purpose of publicizing the [aforementioned] matters,” as appropriate.<sup>39</sup> In designating the entity currently serving as the MLC, the Office encouraged it to “work with the Office, the DLC, and other stakeholders to ensure that rightsholders are adequately informed about the new licensing framework and the MLC’s functions,” and stated that its education and outreach efforts “should include clear benchmarks that measure [the MLC’s] outreach effectiveness so that it can modify and adapt its strategies and tactics to best serve the entire songwriter community.”<sup>40</sup>

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<sup>32</sup> See Roundtable Tr. at 186:06–13 (Mar. 25, 2021) (Bogan, MLC).

<sup>33</sup> MLC, *Frequently Asked Questions: Connect to Collect*, <https://themlc.com/faqs/categories/connect-collect>; MLC, *Connect to Collect*, <https://themlc.com/connect-collect>; MLC, *How It Works: The MLC Process*, <https://themlc.com/how-it-works> (last visited June 25, 2021).

<sup>34</sup> MLC, *Play Your Part*, <https://themlc.com/play-your-part> (last visited June 25, 2021).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *id.*

<sup>38</sup> 17 U.S.C. § 115(d)(3)(J)(iii)(II)(aa)–(bb).

<sup>39</sup> *Id.* § 115(d)(3)(J)(iii)(III).

<sup>40</sup> 84 Fed. Reg. at 32,292 (internal quotations omitted).

The MMA also contemplates a role for education and outreach by the DLC and the Office.<sup>41</sup> The MMA directs the DLC to “make reasonable, good-faith efforts to assist the [MLC] in the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of such works) by encouraging [DMPs] to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties, including by” “posting contact information for the [MLC] at reasonably prominent locations on [DMP] websites and applications” and “conducting in-person outreach activities with songwriters.”<sup>42</sup>

The Office is directed to “engage in public outreach and educational activities” regarding the amendments made by the MMA and the responsibilities of the MLC.<sup>43</sup> These activities include “educating songwriters and other interested parties” about the processes by which “a copyright owner may claim ownership of musical works (and shares of such works)” and “royalties for works for which the owner is not identified or located shall be equitably distributed to known copyright owners.”<sup>44</sup> Since the MMA’s enactment in 2018, the Office has conducted more than fifty outreach events, published nine handouts, prepared six online tutorials, and hosted an educational symposium.<sup>45</sup> The Office has also developed a new educational webpage for musicians generally, which includes music-related copyright basics and information on the MMA.<sup>46</sup>

#### d) Collecting and Distributing Royalties

Under the MMA, “[u]pon receiving reports of usage and payments of royalties from [DMPs] for covered activities, the [MLC] shall,” among other things, “engage in efforts to” “identify the musical works embodied in sound recordings reflected in such reports, and the copyright owners of such musical works (and shares thereof),” “confirm uses of musical works subject to voluntary licenses and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be

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<sup>41</sup> 17 U.S.C. § 115(d)(5)(C)(iii); Pub. L. No. 115-264, tit. I, § 102(e), 132 Stat. at 3722.

<sup>42</sup> 17 U.S.C. § 115(d)(5)(C)(iii).

<sup>43</sup> Pub. L. No. 115-264, tit. I, § 102(e), 132 Stat. at 3722.

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Copyright Office, *Music Modernization Act Events*, <https://www.copyright.gov/music-modernization/events/> (last visited June 25, 2021); U.S. Copyright Office, *MMA Educational Materials*, <https://www.copyright.gov/music-modernization/educational-materials> (last visited June 25, 2021); U.S. Copyright Office, *Unclaimed Royalties Study Kickoff Symposium*, <https://www.copyright.gov/policy/unclaimed-royalties/symposium/> (last visited June 25, 2021).

<sup>46</sup> U.S. Copyright Office, *What Musicians Should Know about Copyright*, <https://www.copyright.gov/engage/musicians> (last visited June 25, 2021).

due under the blanket license,” and “confirm proper payment of royalties due.”<sup>47</sup> The MLC is then required to “distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective.”<sup>48</sup> This further requires the MLC to “locate the copyright owners of such works (and shares thereof).”<sup>49</sup> Any “royalties that cannot be distributed due to” “an inability to identify or locate a copyright owner of a musical work (or share thereof)” or “a pending dispute before the dispute resolution committee of the [MLC],” must be “deposit[ed] into an interest-bearing account.”<sup>50</sup> The Office’s regulations require the MLC to provide royalty statements to copyright owners, and prescribe the content, format, and delivery of such statements and related distribution payments.<sup>51</sup>

### **3. Holding and Distributing Unclaimed Accrued Royalties**

#### **a) Holding Royalties for Unmatched Works**

As noted above, the MLC is required to “hold accrued royalties associated with particular musical works (and shares of works) that remain unmatched for a period of not less than 3 years after the date on which the funds were received by the [MLC], or not less than 3 years after the date on which the funds were accrued by a [DMP] that subsequently transferred such funds to the [MLC] pursuant to [the limitation on liability for unlicensed uses made before January 1, 2021, described in section 115(d)](10)(B), whichever period expires sooner.”<sup>52</sup> During the holding period, the MLC must engage in further matching efforts to identify and locate copyright owners of musical works embodied in reported sound recordings.<sup>53</sup> The MLC is required to hold royalties for unmatched works (and shares) in an interest-bearing account.<sup>54</sup>

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<sup>47</sup> 17 U.S.C. § 115(d)(3)(G)(i)(I); *see also id.* § 115(d)(3)(C)(i)(II)–(III), (d)(3)(E)(i), (e)(6)(A)(vii).

<sup>48</sup> *Id.* § 115(d)(3)(G)(i)(II); *see also id.* § 115(d)(3)(C)(i)(II).

<sup>49</sup> *Id.* § 115(d)(3)(E)(i); *see also id.* § 115(d)(3)(C)(i)(II)–(III), (e)(6)(A)(vii), (e)(17).

<sup>50</sup> *Id.* § 115(d)(3)(G)(i)(III).

<sup>51</sup> 37 C.F.R. § 210.29.

<sup>52</sup> 17 U.S.C. § 115(d)(3)(H)(i).

<sup>53</sup> *See id.* § 115(d)(3)(G)–(I), (d)(3)(C)(i)(III), (d)(3)(E)(i), (e)(6)(A)(vii); S. REP. NO. 115-339, at 13; H.R. REP. NO. 115-651, at 13; CONF. REP. at 11 (“For unmatched works, the collective must wait for the prescribed holding period of three years before making such distribution. This is intended to give the collective time to actively search for the copyright owner.”).

<sup>54</sup> 17 U.S.C. § 115(d)(3)(H)(ii).

### b) Distributing Unclaimed Accrued Royalties

At the end of the statutory minimum holding period, accrued royalties for musical works (and shares) that remain unmatched, along with a proportionate share of accrued interest, become eligible for distribution by relative market share “to copyright owners identified in the records of the collective,” at which point they become “unclaimed accrued royalties.”<sup>55</sup> Under the statute, “[t]he first such distribution shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such distribution to take place during each calendar year thereafter,” meaning that the first such distribution cannot occur until 2023 at the earliest, after which there must be at least one distribution of unclaimed royalties each calendar year.<sup>56</sup> The MLC must “engage in diligent, good-faith efforts to publicize, throughout the music industry . . . any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made.”<sup>57</sup>

When the MLC makes such a distribution, the statute requires that “[c]opyright owners’ payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in reports of usage provided by [DMPs] for covered activities for the periods in question, including, in addition to usage data provided to the [MLC], usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities, to the extent such information is available to the [MLC].”<sup>58</sup> The statute further provides that “[c]opyright owners that receive a distribution of unclaimed accrued royalties and accrued interest shall pay or credit a portion to songwriters (or the authorized agents of songwriters) on whose behalf the copyright owners license or administer musical works for covered activities, in accordance with applicable contractual terms, but notwithstanding any agreement to the contrary,” “such payments and credits to songwriters shall be allocated in proportion to reported usage of individual musical works by [DMPs] during the reporting periods covered by the distribution from the [MLC]” and “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner attributable to usage of musical works (or shares of works) of that songwriter.”<sup>59</sup> The MMA also requires the MLC’s board of directors to

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<sup>55</sup> *Id.* § 115(d)(3)(J)(i), (e)(34).

<sup>56</sup> *Id.* § 115(d)(3)(J)(i)(I); *see also* 85 Fed. Reg. at 33,738.

<sup>57</sup> 17 U.S.C. § 115(d)(3)(J)(iii)(II)(dd).

<sup>58</sup> *Id.* § 115 (d)(3)(J)(i)(II).

<sup>59</sup> *Id.* § 115(d)(3)(J)(iv).

establish and appoint an unclaimed royalties oversight committee (“UROC”),<sup>60</sup> which is tasked with “establish[ing] policies and procedures for the distribution of unclaimed accrued royalties and accrued interest . . . , including the provision of usage data to copyright owners to allocate payments and credits to songwriters . . . , subject to the approval of the board of directors of the [MLC].”<sup>61</sup>

#### **4. Reporting and Transfer of Royalties to the MLC for Historical Unmatched Uses**

The MMA includes a “transition period” for the period following the new law’s enactment in October 2018, and before the blanket license became available on January 1, 2021.<sup>62</sup> During this transition period, anyone seeking to obtain a compulsory license to make DPDs had to continue to do so on a song-by-song basis by serving NOIs on copyright owners “if the identity and location of the musical work copyright owner is known,” and paying them applicable royalties accompanied by statements of account.<sup>63</sup> If the musical work copyright owner was unknown, a DMP could no longer file an NOI with the Office, but instead could rely on a limitation on liability that required the DMP to “continue[ ] to search for the musical work copyright owner” using good-faith, commercially reasonable efforts and bulk electronic matching processes.<sup>64</sup> The DMP had to either account for and pay accrued royalties to the relevant musical work copyright owner(s) when found or, if they were not found before the end of the transition period, account for and transfer the royalties to the MLC at that time.<sup>65</sup>

On January 11, 2021, the Office published a final rule addressing DMPs’ obligations to transfer and report accrued royalties for unmatched musical works (or shares) to the MLC for purposes of eligibility for the limitation on liability for prior unlicensed uses under the MMA.<sup>66</sup> The rule addresses the content and formats for submission of cumulative statements of account and provides for the MLC to receive metadata, including through supplemental reporting, to enable it to match past uses so it can

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<sup>60</sup> *Id.* § 115(d)(3)(D)(v).

<sup>61</sup> *Id.* § 115(d)(3)(J)(ii).

<sup>62</sup> H.R. REP. NO. 115-651, at 10; S. REP. NO. 115-339, at 10.

<sup>63</sup> 17 U.S.C. § 115(b)(2)(A), (c)(2)(I); *see* H.R. REP. NO. 115-651, at 4; S. REP. NO. 115-339, at 3.

<sup>64</sup> 17 U.S.C. § 115(b)(2)(A), (d)(9)(D)(i), (d)(10)(A)–(B); *see* H.R. REP. NO. 115-651, at 4, 10; S. REP. NO. 115-339, at 3, 10, 22.

<sup>65</sup> 17 U.S.C. § 115(d)(10)(B); *see* H.R. REP. NO. 115-651, at 4, 10; S. REP. NO. 115-339, at 3, 10.

<sup>66</sup> Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective, 86 Fed. Reg. 2176 (Jan. 11, 2021).

distribute royalties to the matched copyright owners.<sup>67</sup> It also adopts a mechanism for DMPs to rely upon royalty input estimations and make subsequent adjustments once inputs are finalized.<sup>68</sup> This includes allowing DMPs to employ good-faith estimates in calculating total accrued royalties, subject to subsequent adjustments, to reflect the potential effect of pre-existing private agreements upon the DMP's reporting obligations.<sup>69</sup> The rule also allows relevant copyright owners to notify the MLC of a good-faith dispute over reliance on such an agreement and establishes a process for the MLC to invoice and hold the disputed royalties once it is otherwise ready to distribute the funds.<sup>70</sup>

According to the MLC, twenty DMPs submitted reporting and transferred a total of \$424,384,787 in royalties in connection with eligibility for the MMA's limitation on liability.<sup>71</sup>

## B. Music Data Landscape

### 1. Types of Music Data

Data is used throughout the music industry to help identify musical works, sound recordings, and their owners and creators, including as information is passed through the digital supply chain.<sup>72</sup> Both descriptive information (*e.g.*, titles, songwriters, featured artists) and standard unique identifiers (sets of numbers or letters, or a combination of both, that uniquely identify something) are used for such purposes.<sup>73</sup> Correspondingly, the MMA and the Office's implementation regulations require certain standard unique identifiers and descriptive information to be included in the public musical works database, DMPs' reports of usage to the MLC, and the MLC's royalty statements to copyright owners.<sup>74</sup>

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<sup>67</sup> 86 Fed. Reg. at 2182–83; 37 C.F.R. § 210.10(c).

<sup>68</sup> 86 Fed. Reg. at 2185, 2195–97; 37 C.F.R. § 210.10(c)(5), (d)(2), (k).

<sup>69</sup> 86 Fed. Reg. at 2188, 2195–97; 37 C.F.R. § 210.10(c)(5)(i).

<sup>70</sup> 86 Fed. Reg. at 2185, 2197–98; 37 C.F.R. § 210.10(c)(5)(iii)(B).

<sup>71</sup> Press Release, MLC, The Mechanical Licensing Collective Receives \$424 Million in Historical Unmatched Royalties from Digital Service Providers (Feb. 16, 2021), <https://themlc.com/press/mechanical-licensing-collective-receives-424-million-historical-unmatched-royalties-digital>.

<sup>72</sup> See MUSIC MARKETPLACE REPORT at 59–62.

<sup>73</sup> See *id.*

<sup>74</sup> 37 C.F.R. §§ 210.27, 210.29, 210.31.

As previously noted by the Office, “[o]ne of the initial considerations regarding management of reliable and up-to-date copyright information for musical works and sound recording copyrights is the use of standard identifiers.”<sup>75</sup> For example, the music industry employs a variety of identifiers recognized by the International Organization for Standardization (“ISO”), an international standard-setting body.<sup>76</sup> According to the MMA’s legislative history, “[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of unmatched works.”<sup>77</sup>

The ISO established two key identifiers for the identification of the works themselves: the ISWC for musical works, and the ISRC for sound recordings.<sup>78</sup> The ISWC represents a unique, permanent, and internationally recognized reference number to identify musical works.<sup>79</sup> The standard was developed by the International Confederation of Societies of Authors and Composers (“CISAC”).<sup>80</sup> During this study, while some concerns were expressed about delays in assigning ISWCs<sup>81</sup> and the possibility of multiple ISWCs being assigned to one composition,<sup>82</sup> commenters generally encouraged their use.<sup>83</sup> The Office is aware of CISAC’s recent announcement regarding a new ISWC

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<sup>75</sup> MUSIC MARKETPLACE REPORT at 59.

<sup>76</sup> *Id.*

<sup>77</sup> CONF. REP. at 7.

<sup>78</sup> MUSIC MARKETPLACE REPORT at 59; *see also Acronym Glossary* at 4–5.

<sup>79</sup> MUSIC MARKETPLACE REPORT at 59.

<sup>80</sup> *Id.*; *see also Acronym Glossary* at 1, 5. According to CISAC, it is a worldwide organization of authors’ societies, representing more than 4 million creators from all geographic areas and all artistic repertoires (musical compositions, audiovisual, dramatic, literary, and visual works). CISAC, *About*, <https://www.cisac.org/about> (last visited June 25, 2021); *see also Acronym Glossary* at 1. CISAC launched the Common Information System (“CIS”), which uses a variety of international standard identifiers for musical works (ISWC), audiovisual works (ISAN) and rights holders (IPL, ISNI), several tools and databases (CIS-Net, IPI System, AV Index, Agreements, etc.) and a set of standardized formats (CWR, AVR, UP, CRD) for information exchange. *See id.* at 1.

<sup>81</sup> SoundExchange Initial Comments at 13 (“[W]e understand that ISWCs often are not assigned to new musical works until well after recordings of those works have been commercialized.”); Symposium Tr. at 211:12–20 (Dec. 6, 2019) (Nauman, CrossBorderWorks).

<sup>82</sup> Symposium Tr. at 219:06–220:04 (Dec. 6, 2019) (Boissonneault, SOCAN/Dataclef; Arrow, UMPG) (explaining the possibility of duplicate ISWCs for one composition with multiple songwriters where one publisher does not have complete songwriter information, resulting in the assignment of two ISWCs to one composition); *see also* Symposium Tr. at 222:09–11 (Dec. 6, 2019) (Raso, HFA).

<sup>83</sup> *See, e.g.*, SONA Reply Comments at 10 (suggesting that among other fields, the MLC allow users to conduct searches in the public database by ISWC); MAC Initial Comments at 2

system aimed to “improve the accuracy, speed and efficiency of societies’ work in tracking creators’ works and paying royalties.”<sup>84</sup>

The ISRC was created as a unique, permanent, and internationally recognized reference number for the identification of sound and music video recordings.<sup>85</sup> ISRCs are assigned at the track—rather than album—level.<sup>86</sup> The ISO appointed the International Federation of the Phonographic Industry (“IFPI”) as the international ISRC agency.<sup>87</sup> IFPI in turn designates national and regional agencies to manage the issuance of ISRCs within a specific country or region.<sup>88</sup> The ISRC managing agency in the United States is the Recording Industry Association of America (“RIAA”).<sup>89</sup>

The ISO has adopted two other codes to identify the individuals or entities associated with particular works: IPI and ISNI.<sup>90</sup> The IPI code allows a musical work to be associated with the various parties that are involved in its creation, marketing, and administration, including natural persons or legal entities.<sup>91</sup> The IPI System is an international registry used by CISAC and the Bureau International des Sociétés Gérant

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(suggesting that among other fields, the MLC’s portal should include ISWCs); SoundExchange Initial Comments at 13 (“Although the ISRC and ISWC systems are not perfect, they are what the music industry uses in commerce. Furthermore, these systems are strengthened when relied on consistently.”); *see also* CISAC & BIEM Initial Comments at 1 (“Standards such as DDEX define the details required from DMPs. However, these standards can be significantly improved by making use of creators’ names and ISWCs mandatory whenever possible.”); MLC Reply Comments at 7 (“The MLC fully supports expanded use of ISWC codes wherever possible, and as early as possible in the process, so that they can accompany the first reportings of usage.”).

<sup>84</sup> See Press Release, CISAC, New Improved Music Identifier Will Help Creators in the All-Important Digital Market (Sept. 24, 2020), <https://www.cisac.org/Newsroom/news-releases/new-improved-music-identifier-will-help-creators-all-important-digital>; *see also* Roundtable Tr. at 381:22–382:04 (Mar. 26, 2021) (Evers, CIAM) (“[T]here is a very interesting tool available from CISAC, and I hope you know about them. This is the ISWC allocation service, which would guarantee the publishers in 24 hours to get an ISWC, and this would solve the biggest problem, matching the ISRC to the ISWC.”); MLC Reply Comments at 8 (“Increasing the speed with which ISWCs are assigned would benefit this process, and the MLC hopes that CISAC’s initiative can assist in this regard and drive expanded use of ISWCs.”).

<sup>85</sup> MUSIC MARKETPLACE REPORT at 60.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*; *Acronym Glossary* at 3.

<sup>89</sup> MUSIC MARKETPLACE REPORT at 60; *Acronym Glossary* at 4, 6.

<sup>90</sup> MUSIC MARKETPLACE REPORT at 61.

<sup>91</sup> *Id.*; *Acronym Glossary* at 1, 4.

les Droits d’Enregistrement et de Reproduction Mécanique (“BIEM”) societies, and is administered by a Swiss copyright society, SUISA.<sup>92</sup> The IPI System “contains the names of all the owners or holders of rights in both of copyright protected works and public domain works, as notified to the IPI Centre.”<sup>93</sup>

The ISNI is akin to the IPI, but while the IPI scheme is limited to musical works, ISNIs are designed to be global identifiers for creators of all types of copyrighted works, including authors, songwriters, recording artists, and publishers.<sup>94</sup> The ISNI International Agency was founded in 2010 to develop the standard, with the goal of eventually replacing existing, disparate identification standards, including the IPI.<sup>95</sup>

The music industry also employs identifiers not associated with the ISO, including Universal Product Codes (“UPCs”).<sup>96</sup> In the music context, a UPC is a set of numbers, along with a corresponding barcode, that identifies a finished music product.<sup>97</sup> A different UPC is usually necessary for each product or version of a product to distinguish among, for example, albums, digital singles, or remixed versions of sound recordings.<sup>98</sup>

Lastly, another type of identifier used in the music industry is a unique code assigned to tracks by DMPs.<sup>99</sup> The Office’s regulations require a DMP to include its unique DMP-assigned identifiers in reports of usage to the MLC, “including unique identifier(s) that

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<sup>92</sup> *Acronym Glossary* at 4. BIEM describes itself as an international organization representing mechanical rights societies that negotiates licensing agreements with IFPI, assists in technical collaboration between its member societies to solve problems that arise between individual members, and contributes to the defense and development of copyright protection in the domain of mechanical rights. *See FAQs, BIEM,* [https://www.biem.org/index.php?option=com\\_k2&view=item&layout=item&id=20&Itemid=442&lang=en](https://www.biem.org/index.php?option=com_k2&view=item&layout=item&id=20&Itemid=442&lang=en); *see also Acronym Glossary* at 1.

<sup>93</sup> CISAC, *IPI*, <https://www.cisac.org/services/information-services/pi> (last visited June 25, 2021).

<sup>94</sup> MUSIC MARKETPLACE REPORT at 61.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 62.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *See e.g., DLC Ex Parte Letter* at 1 (July 8, 2020) (“[U]nique DMP identifiers . . . for the largest services, can be used to listen to a particular track on the DMP’s consumer facing service.”); *DLC Ex Parte Letter* at 3 n.6 (June 23, 2020) (describing how Pandora’s unique track identifier can be used to find sound recording audio).

can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so.”<sup>100</sup>

## 2. Data Flow

The flow of the music data supply chain is complex. Data is constantly generated and updated by numerous parties, can change hands frequently, and can be fed through different streams to different entities, and the data for musical works and sound recordings may flow separately and may not be linked to each other.<sup>101</sup> According to commenters, these and other intricacies can lead to inaccurate or incomplete data in the chain, which can result in certain challenges, such as unclaimed royalties.<sup>102</sup>

At a fundamental level, the lifecycle of a track starts with a musical work.<sup>103</sup> After it is recorded, the sound recording copyright owners and licensors (e.g., labels, distributors, and aggregators) at some point deliver sound recording data to DMPs licensing such recordings.<sup>104</sup> This data may also include limited information about the underlying musical works.<sup>105</sup> DMPs then use this data within their systems, for example, to display information publicly to users and to generate reporting.<sup>106</sup> Prior to the availability of the

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<sup>100</sup> 37 C.F.R. § 210.27(e)(1)(i)(C).

<sup>101</sup> See Vickie Nauman, *US Market Data Flow for a Song* (2019), <https://www.copyright.gov/policy/unclaimed-royalties/nauman-handout.pdf>.

<sup>102</sup> See Symposium Tr. at 47:22–48:12 (Dec. 6, 2019) (Thompson, MLC); Symposium Tr. at 200:16–200:22, 201:01–02 (Dec. 6, 2019) (Arrow, UMPG) (“The inputs are the information delivered by the record labels to the DSP with the sound recording data, the information delivered by publishers to either the DSP or the service handling the administration on behalf of the service, explaining what they control and how to pay them. . . . [A]nd then the output being the royalties ultimately paid out.”); Symposium Tr. at 191:04–07 (Dec. 6, 2019) (Nauman, CrossBorderWorks).

<sup>103</sup> See Vickie Nauman, *US Market Data Flow for a Song* (2019), <https://www.copyright.gov/policy/unclaimed-royalties/nauman-handout.pdf>.

<sup>104</sup> See *id.*

<sup>105</sup> Alliance for Recorded Music (“ARM”) Notices of License Comments at 7, U.S. Copyright Office Dkt. No. 2020-5, <https://www.regulations.gov/comment/COLC-2020-0005-0008> (Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment) (“All of the major record companies provide regular metadata feeds to DMPs that include all relevant sound recording metadata and may in some cases include a limited amount of musical work metadata, which is provided only where known to the record company with confidence and at a time that makes it practicable to communicate.”); see also Vickie Nauman, *US Market Data Flow for a Song* (2019), <https://www.copyright.gov/policy/unclaimed-royalties/nauman-handout.pdf>.

<sup>106</sup> DLC NOI Reply Comments at 9–10, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0026> (Music Modernization Act

MMA's blanket license, in order to report and pay royalties, DMPs (either themselves or through a vendor such as Harry Fox Agency ("HFA") or Music Reports), engaged in efforts to match their uses of sound recordings to the underlying musical works and their owners.<sup>107</sup> To do this, matching was generally conducted against data from musical work copyright owners' records.<sup>108</sup>

From this experience, commenters pointed to various data issues that can arise. For example, the information from labels reported through DMPs (or their vendors) is not necessarily consistent. In response to DMP requests, labels sometimes provide different data about the same sound recordings to different DMPs.<sup>109</sup> In turn, DMPs may alter certain information for purposes of normalization, clean up, and display.<sup>110</sup> The potential for data gaps and need to reconcile information coming from the musical works side was also discussed.<sup>111</sup> For example, Music Reports explained that if "you've

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Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective).

<sup>107</sup> See Symposium Tr. at 196:21–197:06 (Dec. 6, 2019) (Colitre, Music Reports); Symposium Tr. at 195:10–22, 230:12–231:16 (Dec. 6, 2019) (Rosenbaum, Google).

<sup>108</sup> See Symposium Tr. at 197:13–198:21 (Dec. 6, 2019) (Colitre, Music Reports).

<sup>109</sup> Am. Ass'n of Indep. Music & RIAA NOI Reply Comments at 2, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0028> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective) ("[M]ember labels vary the metadata they send the different DMPs in order to meet the services' idiosyncratic display requirements."); see also Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment, 85 Fed. Reg. 22,518, 22,523 (Apr. 22, 2020).

<sup>110</sup> DLC NOI Reply Comments at 9–10, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0026> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective); DLC *Ex Parte* Letter Presentation at 15 (Feb. 14, 2020) (discussing "Hello (Radio Edit)" example; explaining that a DMP may receive information from different sources listing a band name in various fashions such as "Cure," "The Cure," and "Cure, The" which would be reconciled into "The Cure" for display on the service's platform); see also 85 Fed. Reg. at 58,127–28. Music Reports similarly points out that "a row of sound recording metadata provided by one DMP in relation to a discrete sound recording may differ from the row of metadata a second DMP provides in relation to the same sound recording, with additional or different data fields." Music Reports NOI Initial Comments at 3, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0015> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective). After conducting a rulemaking, the Office issued regulations limiting the ability of DMPs to report altered information to the MLC. 37 C.F.R. § 210.27(e)(2).

<sup>111</sup> See Symposium Tr. at 199:04–19 (Dec. 6, 2019) (Colitre, Music Reports).

got a band with four members who equally contribute to the writing of a song, and they each decide to have their own music publishing administrator,” “[y]ou’re going to receive four different sets of data, if you’re lucky enough to get flows of data from those publishing administrators. And they’re going to come in different formats, at different times, with different artifacts and different problems, and you’re going to have to reconcile those four shares and recognize that they’re talking about the same musical composition. Compile them into a whole that hopefully equals 100 percent ownership, and then store that record for the process of matching to sound recordings that come through the ecosystem.”<sup>112</sup> Another example mentioned was late finalization of splits, perhaps decided close to or after the release date of a track,<sup>113</sup> though Universal Music Publishing Group (“UMPG”) relayed that “in most cases we do have the split information, so that is a minority of cases.”<sup>114</sup> It was also noted that an ISWC and/or other musical work data may not yet be available at the time when the recording is released.<sup>115</sup>

Commenters also discussed the democratization of the record store in the online environment, and the explosion in volume of available tracks. Google stated that technology “brought down the floodgates for creators,” as now “[e]veryone gets a chance to be put on the digital shelf for sale.”<sup>116</sup> As one commenter observed, “we have a major trend that’s happening in the music industry, which is individual creators in their bedrooms, people without labels, people without publishers, people who are, you know, in every corner of the world who have the freedom to upload their music.”<sup>117</sup>

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<sup>112</sup> Symposium Tr. at 199:07–200:01 (Dec. 6, 2019) (Colitre, Music Reports).

<sup>113</sup> See Symposium Tr. at 157:20–158:13, 158:15–160:03 (Dec. 6, 2019) (Delicata) (explaining how split decisions are made at the end of the songwriting process, right before the label releases the song, causing miscommunication between the songwriters, who simply agree to their manager’s proposed percentage split assuming everyone is being communicated to and in a rush to get the producer agreements signed in splits); see also Symposium Tr. at 100:21–101:06 (Dec. 6, 2019) (Simson) (“I get involved in a lot of disputes, where songs come out and they haven’t even agreed on splits. And if you’re a publisher, or you’re a record label and you’ve been asked to pay out splits and the splits add up to 175 percent, you basically put the money on hold and say, come back to me when you’ve figured out 100 percent, so that’s a big problem.”).

<sup>114</sup> Symposium Tr. at 211:06–08 (Dec. 6, 2019) (Arrow, UMPG).

<sup>115</sup> See Symposium Tr. at 208:19–209:13 (Dec. 6, 2019) (Rosenbaum, Google); Symposium Tr. at 158:19–160:03, 167:19–20 (Dec. 6, 2019) (Delicata).

<sup>116</sup> Symposium Tr. at 193:05–06, 194:01–02 (Dec. 6, 2019) (Rosenbaum, Google).

<sup>117</sup> Symposium Tr. at 259:07–12 (Dec. 6, 2019) (Nauman, CrossBorderWorks); see also Symposium Tr. at 142:09–16 (Dec. 6, 2019) (Delicata) (“The streaming services, I think, have made it a great time, in a lot of ways, to be an artist, in the sense that while money isn’t the same, you can be in your basement when you’re 17 years old, and being totally creative, and you can get your music out there to anybody, which is something that I think is really powerful, and technology has

Distributors and aggregators such as TuneRegistry,<sup>118</sup> Distrokid, CD Baby, and TuneCore have enabled creators to place their music on DMPs' platforms without the need for a record label or publisher.<sup>119</sup> This has coincided with a notable increase in the volume of music being released. According to Music Reports, in "maybe 1995, we were releasing probably 10,000 sound recordings commercially per year, and [now] we're releasing about 60,000 per day."<sup>120</sup> Music Reports further explained that "[m]ost of those are coming through indie sources, and even when they're not indie, there's a lot of indie producers, songwriters affiliated with major releases."<sup>121</sup> Google commented that this influx of music being released "came with a ton of complications because you have this massive scale of music now entering the ecosystem, and . . . [an] increasing number of fragmentations of rightsownerships and writers on each composition," in addition to "creators that were entering the ecosystem [that] were not aware of what metadata was, . . . [and] didn't know that they needed to provide that information in order to get paid or to get licensed."<sup>122</sup>

### 3. Existing Music Databases

In addition to the new musical works database maintained by the MLC, other music databases also exist.

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given us a great ability to do that."); Nat'l Ass'n Of Indep. Songwriters ("NOIS") NOI Initial Comments at 2, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0016> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective).

<sup>118</sup> See Symposium Tr. at 307:07–15 (Dec. 6, 2019) (Bogan, TuneRegistry) (describing TuneRegistry as an "easy-to-use, affordable, low entry-point way of making sure that if you write a song in your bedroom, and you're going to put it up on Spotify, that you can still make sure you're collecting your mechanical royalties and your performance royalties without getting a publisher who is going to do that for you").

<sup>119</sup> NOIS NOI Initial Comments at 2, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0016> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective); see Marti Cuevas Initial Comments at 1 ("[A]s the industry morphed to digital, and digital exploded moving to a mostly streaming environment, so did the accessibility of digital distribution. Basically digital distribution is now available to any person with a computer. It is not restricted, as in days past, to individuals steeped in music business industry standards and practices, who have knowledge of copyright and the obligations upon copyright users.").

<sup>120</sup> Roundtable Tr. at 66:01–03 (Mar. 25, 2021) (Shanley, Music Reports) (emphasis added).

<sup>121</sup> Roundtable Tr. at 66:04–07 (Mar. 25, 2021) (Shanley, Music Reports).

<sup>122</sup> Symposium Tr. at 193:10–15, 194:05–09 (Dec. 6, 2019) (Rosenbaum, Google).

For example, SoundExchange, the collective designated by the Copyright Royalty Judges to collect and distribute digital performance royalties for sound recordings under the section 114 statutory license, “has worked for years and spent many millions of dollars to develop its repertoire database,” which it describes as “an authoritative repository of information identifying approximately 30 million sound recordings, all of which was sourced directly from the copyright owners of the recordings.”<sup>123</sup> The database “collects about 50 fields of information on each recording in the database, and includes [ISRCs] for all of those recordings.”<sup>124</sup> SoundExchange “receives electronic data feeds directly from record companies and distributors that together cover more than 100 rights owners,” which “covers almost all commercially-significant U.S. recordings, and a large number of foreign-origin recordings as well.”<sup>125</sup> SoundExchange appears to receive largely the same data feeds as DMPs<sup>126</sup> and then “dedup[licates] and deconflicts the data.”<sup>127</sup> Since July 22, 2020, SoundExchange has been designated as the authoritative source of ISRC data in the United States.<sup>128</sup>

Performing rights organizations (“PROs”) are responsible for licensing public performance rights of musical works for affiliated songwriters and publishers and collecting and distributing royalties from those licenses.<sup>129</sup> The U.S. PROs (ASCAP, BMI, SESAC, and Global Music Rights (“GMR”)) have databases consisting of the metadata associated with the compositions in their repertoires, which are available for the public to search through their respective websites.<sup>130</sup> In December 2020, ASCAP and BMI

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<sup>123</sup> SoundExchange NOI Initial Comments at 2, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0008> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective).

<sup>124</sup> *Id.* at 3.

<sup>125</sup> *Id.*

<sup>126</sup> See, e.g., Universal Music Grp. & RIAA *Ex Parte* Letter at 2 (Dec. 6, 2019) (“SoundExchange gets the same data feeds as the DMPs. . . . SoundExchange receives data from approximately 3400 labels, including certain independent distributors (e.g., CDBaby).”).

<sup>127</sup> *Id.* (“SoundExchange gets the same data feeds as the DMPs . . . but then it dedupes and deconflicts the data.”); Sony Music Entm’t & RIAA *Ex Parte* Letter at 2 (Dec. 9, 2019).

<sup>128</sup> SoundExchange *Ex Parte* Letter at 1 (July 24, 2019); SoundExchange *Ex Parte* Letter at 2 (Sept. 1, 2020); ARM *Ex Parte* Letter at 2 (July 27, 2020) (citing RIAA, RIAA Designates SoundExchange as Authoritative Source of ISRC Data in the United States (July 22, 2020), <https://www.riaa.com/riaa-designates-soundexchange-as-authoritative-source-of-isrc-data-in-the-united-states/>); see also SoundExchange Initial Comments at 5–6.

<sup>129</sup> Acronym Glossary at 6.

<sup>130</sup> MUSIC MARKETPLACE REPORT at 64; GMR, Search Catalog, <https://globalmusicrights.com/search> (last visited June 25, 2021).

announced the debut of “Songview,” which they describe as “a comprehensive data platform that provides music users with an authoritative view of copyright ownership and administration shares” (in particular, owner contact information) “in the vast majority of music licensed in the United States,” and displays “detailed, aggregated and reconciled ownership data for performing rights for more than 20 million musical works in their combined repertoires, including a breakdown of shares by ASCAP and BMI.”<sup>131</sup>

CISAC manages CIS-Net, a global network of CMO databases.<sup>132</sup> According to the CMO Report, CIS-Net “essentially provides a portal to access at least 23 separate ‘nodes’ or separate databases of works and work-related information, which are populated with data from more than 70 CISAC-member societies that contribute information from their domestic works databases and from more than 45 societies that contribute information about international (sub-published) repertoires (access restricted).”<sup>133</sup>

Other examples include private commercial music databases, such as those managed by HFA and Music Reports.<sup>134</sup>

#### 4. Data Sharing

The Office provides a general summary of certain data sharing approaches in light of commenters’ suggestions.

Digital Data Exchange (“DDEX”) is an international standard setting organization that develops standards for the exchange of data and information across the music ecosystem.<sup>135</sup> DDEX “specif[ies] standard formats that contain . . . data,” “create[s] standard choreographies around those messages” (e.g., “a [digital service provider] sending a license request message to a rightowner and a rightowner sending a license grant message back”), and standardizes “the methods . . . by which those messages actually get transmitted.”<sup>136</sup> DDEX messages make use of certain ISO standards,

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<sup>131</sup> Press Release, ASCAP, ASCAP and BMI Launch SONGVIEW, a Comprehensive Data Resource for Music Users (Dec. 21, 2020), <https://www.ascap.com/press/2020/12/12-21-Songview>.

<sup>132</sup> *Acronym Glossary* at 1; CISAC & BIEM Initial Comments at 2.

<sup>133</sup> CMO REPORT at 7–8.

<sup>134</sup> See MUSIC MARKETPLACE REPORT at 64; HFA, *Songfile Search*, <https://secure.harryfox.com/songfile/termsofuse/publictermsofuse.do>; Music Reports, *Songdex*, <https://www.songdex.com/> (last visited June 25, 2021).

<sup>135</sup> Symposium Tr. at 61:10–16 (Dec. 6, 2019) (Isherwood, DDEX); *Acronym Glossary* at 2.

<sup>136</sup> Symposium Tr. at 61:17–63:16 (Dec. 6, 2019) (Isherwood, DDEX).

including ISRC and ISWC.<sup>137</sup> According to DDEX, “[t]here are currently eight families of DDEX standards that can be implemented to improve efficiency and aid the automated exchange of information along the global digital music value chain,” and users “do not have to be a member of DDEX to implement the standards.”<sup>138</sup> The MLC previously advised that it “has joined the data standards setting organization, DDEX, and is actively working with that organization concerning the appropriate data standards for the MLC.”<sup>139</sup>

The Common Works Registration (“CWR”) is a standard data exchange format developed by CISAC with publishers, with its primary use being to register works with collecting societies.<sup>140</sup> Recently, however, the CWR has been expanded and is used in other types of exchanges (e.g., publishers to DMPs).<sup>141</sup> CWR employs data standards that have been developed for CISAC’s CIS project (discussed above).<sup>142</sup>

Through its Music Data Exchange (“MDX”), SoundExchange “works to source musical works repertoire data directly from musical works rights owners and match that information to the relevant sound recordings.”<sup>143</sup> SoundExchange explained that “MDX is a platform that both publishers and record companies can use to more accurately declare and record metadata and rights information about musical works,” which it developed “in close cooperation with a working group formed by music publishers and record companies.”<sup>144</sup> MDX provides a central database of metadata and publisher rights and claiming capabilities, and “incorporates automated data feeds using the

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<sup>137</sup> DDEX, *Communication of Identifiers in DDEX Messages*, <https://kb.ddex.net/display/HBK/Communication+of+Identifiers+in+DDEX+Messages> (last visited, June 25, 2021).

<sup>138</sup> DDEX, *Standards*, <https://ddex.net/standards> (last visited June 25, 2021).

<sup>139</sup> MLC NOI Initial Comments at 20, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0011> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective).

<sup>140</sup> *Acronym Glossary* at 2; see Symposium Tr. at 76:11–14 (Dec. 6, 2019) (Allain, WIPO).

<sup>141</sup> *Acronym Glossary* at 2.

<sup>142</sup> *Id.* at 1–2.

<sup>143</sup> SoundExchange Initial Comments at 9.

<sup>144</sup> *Id.*; see Symposium Tr. at 91:19–92:04 (Dec. 6, 2019) (Hughes, RIAA) (“[T]he platform is to deal with the fact that, that we need a centralized process, where labels can request publishing data and publishers can respond and they can link up and you can find out, where to get a license and get a license in place, before the product goes into the market. That’s really what MDX is . . . designed to do.”).

DDEX MWN ('Musical Works Notification') protocol.<sup>145</sup> According to SoundExchange, MDX is widely used with "all major record labels and music publishers using the site" and "300 labels and 500 publishers registered."<sup>146</sup>

## II. GAO CONSULTATION AND UNCLAIMED PROPERTY OUTSIDE THE MUSIC INDUSTRY

As mandated by the MMA,<sup>147</sup> the Office consulted with the U.S. Government Accountability Office ("GAO") in conducting this study. GAO provided the Office with previously prepared reports pertaining to unclaimed property outside the context of the music industry that it believed might be helpful.<sup>148</sup> In one of these reports, GAO discussed its survey of all fifty states and the District of Columbia regarding strategies for locating owners of unclaimed retirement savings, explaining that:

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<sup>145</sup> SoundExchange Initial Comments at 9; *Acronym Glossary* at 5; *see Symposium Tr.* at 93:17–94:13 (Dec. 6, 2019) (Hughes, RIAA) (discussing how MDX generally works).

<sup>146</sup> *Symposium Tr.* at 268:11–13 (Dec. 6, 2019) (Lieberman, SoundExchange); *see also Symposium Tr.* at 279:17–280:06 (Dec. 6, 2019) (Gress, Sony Music Entm't) (expressing positive feedback about MDX from a label perspective); *Symposium Tr.* at 281:04–11 (Dec. 6, 2019) (Arrow, UMPG) (expressing positive feedback about MDX from a publisher perspective).

<sup>147</sup> Pub. L. No. 115-264, tit. I, § 102(f)(1), 132 Stat. at 3722.

<sup>148</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-88, RETIREMENT ACCOUNTS: FEDERAL ACTION NEEDED TO CLARIFY TAX TREATMENT OF UNCLAIMED 401(K) PLAN SAVINGS TRANSFERRED TO STATES (2019), <https://www.gao.gov/assets/gao-19-88.pdf> ("GAO RETIREMENT ACCOUNTS"); U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-19, WORKPLACE RETIREMENT ACCOUNTS: BETTER GUIDANCE AND INFORMATION COULD HELP PLAN PARTICIPANTS AT HOME AND ABROAD MANAGE THEIR RETIREMENT SAVINGS (2018), <https://www.gao.gov/assets/gao-18-19.pdf>; U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-73, 401(K) PLANS: GREATER PROTECTIONS NEEDED FOR FORCED TRANSFERS AND INACTIVE ACCOUNTS (2014), <https://www.gao.gov/assets/gao-15-73.pdf> ("GAO 401(K) PLANS"); U.S. GEN. ACCT. OFF., GAO/AFMD-91-38, UNCLAIMED PROPERTIES: VALUE OF FEDERAL FUNDS HELD BY THE DISTRICT OF COLUMBIA IS MINIMAL (1991), <https://www.gao.gov/assets/afmd-91-38.pdf>; U.S. GEN. ACCT. OFF., GAO/AFMD-89-44, UNCLAIMED MONEY: PROPOSALS FOR TRANSFERRING UNCLAIMED FUNDS TO STATES (1989), <https://www.gao.gov/assets/afmd-89-44.pdf>.

States responding to our survey . . . use a combination of strategies to locate owners of unclaimed savings. Some of these strategies are required by states' own unclaimed property laws which, according to materials provided by [the National Association of Unclaimed Property Administrators ("NAUPA")], are typically based on some version of the uniform laws on unclaimed property. For example, the Revised Uniform Unclaimed Property Act from 2016 would require a conforming state to, among other things, publish information about specific unclaimed properties in the newspaper, post property information on a database, and send notification letters. These are indeed among the most commonly reported strategies for locating owners that were reported by the 22 states that responded to our state survey: 17 publish information in the newspaper; 19 post information to a national database (21 post to their state's own website); and 19 use direct mailings to contact owners. One state responding to our survey described a tiered-approach whereby owner names for new transfers are uploaded to a web-based information services company nightly for a search of its databases for up-to-date contact information, which is downloaded to the state each morning. For retirement savings of any amount, the state unclaimed property office then sends a letter to any contacts for which it has a new address. For amounts that are \$25,000 or higher, an individual staff person is assigned to track down the owner, according to a state official.

Our own search of a database of U.S. newspapers identified relevant articles published in 2017 that corroborate some states' use of news media to educate the public and alert potential owners to the existence of unclaimed property. Nineteen of 22 states responding to our survey reported that they always or sometimes publicize the unclaimed property office on television, which may include newscasts, and also through a state's own educational videos posted to the internet. Through our own internet search, we found that more than half of all states have produced educational video content to inform the public about unclaimed property and the opportunity to search for and claim property.<sup>149</sup>

The same GAO report included a table containing more specific results from its survey, the relevant entries of which are reproduced below<sup>150</sup>:

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<sup>149</sup> GAO RETIREMENT ACCOUNTS at 21–22 (footnotes omitted).

<sup>150</sup> *Id.* at 48. The report also said that NAUPA "holds meetings and seminars to provide professional education opportunities to holders, and maintains an informational website." *Id.* at 6 n.14.

State Actions to Locate Owners of Unclaimed Property	State Survey Response	
	Always or Sometimes	Never
Staff identify and attempt to contact owners	17	2
Direct mailing to individuals with unclaimed property	19	3
Check the Social Security Administration's Death Master File and search for beneficiaries <sup>151</sup>	6	13
Hire a third party to search the Death Master File and search for beneficiaries	5	17
Post unclaimed property information on www.MissingMoney.com	19	3
Post unclaimed property information on your state's own searchable website	21	1
Use Lexis Nexis to search for property owners	20	2
Publicize the unclaimed property office via television	19	2
Publicize the unclaimed property office at public events (e.g., state fairs)	20	2
Advertise the unclaimed property office in the newspaper	17	3
Advertise specific properties in the newspaper	10	11

Another report provided by GAO noted that the Department of Labor's Office of Outreach, Education, and Assistance ("OEA") helps the public find information about

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<sup>151</sup> See also Jan Seedman Initial Comments at 1 ("As a last resort, use the U.S. Postal Service as a way to communicate with copyright owners. If no mailing address can be found, coordinate legally and properly with the IRS and/or Social Security in order to contact them.").

their retirement benefits and reclaim retirement savings through direct contact and research.<sup>152</sup>

Beyond the information provided by GAO, the Artist Rights Alliance (“ARA”) discussed the importance of looking “beyond just music industry outreach and communication practices into the broader universe of lost property and bank accounts, class action litigation notices, all areas where people have rights.”<sup>153</sup> ARA elaborated that:

The problem of finding potential claimants to money or rightsholders of different kinds is not unique to music royalty collection. Nor is the process of basic “know your rights” outreach and education uncommon. Class action litigation, mass claims settlement and administration, jury service, and voter registration outreach all have well-developed practices and processes to find and communicate with people who may or may not know of their rights and obligations. Other broad outreach challenges such as the US Census, Tribal registration, and enrollment, or allocation of dividend payments under the Alaska Permanent Fund, may all have relevant lessons. Undoubtedly there are even better analogues out there beyond the narrow world of music.<sup>154</sup>

ARA added that based on a “quick survey of looking around at those kinds of other disciplines,” it learned “that for . . . less well-represented actors, putting the onus on them to check a database is unlikely to be successful,” and that “a commonality . . . found in programs that are successful are kind of broad mass communications from people they recognize as credible actors telling them that this thing is for real, that somebody might, in fact, owe them money.”<sup>155</sup>

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<sup>152</sup> GAO 401(k) PLANS at 29 (“OEA has direct contact with participants through benefits advisors that field calls to answer questions related to retirement savings. To assist the public, benefits advisors determine whether a participant’s former employer is still in existence, and whether it has a new address. OEA conducts a search to determine when the employer may have filed an IRS Form 5500, looks for fiduciaries or service providers, uses an internal database to track changes recorded from previous calls, and references an informal list of mergers and acquisitions that has been developed to help reconnect individuals with their benefits. In some instances, OEA will contact a plan to see if benefits have been paid out and they encourage participants to check their own records for IRS 1099 forms that would signify a benefit distribution. OEA benefits advisors respond to requests for assistance, so participants have to know to reach out to DOL for assistance.”).

<sup>153</sup> Roundtable Tr. at 349:04–18 (Mar. 26, 2021) (Sokol, ARA).

<sup>154</sup> ARA Initial Comments at 2.

<sup>155</sup> Roundtable Tr. at 22:10–25:14 (Mar. 25, 2021) (Kalo, ARA) (providing an example from South Dakota where the Governor was involved in the public awareness campaign).

The Office appreciates GAO providing its reports and agrees with ARA that appropriate non-music-industry experiences with unclaimed property may be relevant to the development of the MLC’s practices and procedures. This information is taken into account in the Office’s specific recommendations below.

### III. BEST PRACTICES FOR THE MLC TO REDUCE THE INCIDENCE OF UNCLAIMED ACCRUED ROYALTIES

#### A. *Education and Outreach to Copyright Owners, Administrators, Songwriters, and Others*

As noted above, the MMA directs the MLC to “engage in diligent, good-faith efforts to publicize, throughout the music industry . . . the existence of the collective and the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works) held by the collective” and “the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties.”<sup>156</sup> The Office will refer to these requirements as the MLC’s “education and outreach” duties.

Overall, commenters stated that the MLC’s efforts to engage in education and outreach are essential,<sup>157</sup> with Songwriters of North America (“SONA”) saying that “educational efforts are in many ways the most important steps the MLC can take to reduce unclaimed royalties.”<sup>158</sup> SoundExchange suggested that “[p]ortals and internal policies are not enough,” and that “continued, persistent education and outreach is also critical to developing trust and a healthy working relationship with rights owners and creators.”<sup>159</sup>

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<sup>156</sup> 17 U.S.C. § 115(d)(3)(J)(iii)(II)(aa)–(bb).

<sup>157</sup> See, e.g., SoundExchange Initial Comments at 15–16 (“[F]or identifying and locating musical work copyright owners, education and outreach are likely to be essential, both for prompting musical work copyright owners to identify themselves and their repertoire and for convincing musical work copyright owners, particularly self-published songwriters, that they should accept payments from the MLC.”); Roundtable Tr. at 201:07–09 (Mar. 25, 2021) (Galdston, Music Answers) (maintaining that education on the MLC is “really essential”); Symposium Tr. at 176:03–06 (Dec. 6, 2019) (Cash) (explaining that “education is key”); Roundtable Tr. at 310:16–23 (Mar. 26, 2021) (Nix, Creative Projects Grp.).

<sup>158</sup> SONA Reply Comments at 3.

<sup>159</sup> SoundExchange Initial Comments at 10.

Given the broad and diverse spectrum of songwriters and copyright owners across musical genres, commenters agreed that education and outreach should not be a one-size-fits-all approach. As the Institute for Intellectual Property and Social Justice (“IIPSJ”) explained, people in the creative community “each have their own flow; they each have their own rhythm, and there are different ways to communicate a same message to them in a way that will resonate with them.”<sup>160</sup> For example, it was suggested that what may work in a community like Nashville may not be easily replicated in Miami or Philadelphia.<sup>161</sup> Commenters also said that artists’ ages may require different approaches, as younger songwriters may be reached more easily through “Instagram, Snapchat, [and] TikTok,”<sup>162</sup> whereas legacy songwriters may not be as “tech savvy.”<sup>163</sup>

In addition, commenters noted the existence of certain challenges when trying to educate the music community. For example, Recording Academy said that “there is a spectrum of . . . people that lean in and want to get really engaged and involved, and then [there are] people that have never been exposed to a lot of [music business] information.”<sup>164</sup> Other commenters stated that certain songwriters may not have “heard of a PRO or . . . publisher,”<sup>165</sup> know about standard unique identifiers (*e.g.*, ISWCs or ISRCs),<sup>166</sup> understand the roles of PROs versus U.S. government-designated collectives (SoundExchange and the MLC),<sup>167</sup> or know that they do not need to be signed to a record label or publishing company to participate in royalty collection and distribution systems.<sup>168</sup> While one commenter said that “writers have to be concerned about more

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<sup>160</sup> Symposium Tr. at 300:17–21 (Dec. 6, 2019) (Tignor, IIPSJ).

<sup>161</sup> See Symposium Tr. at 317:06–10 (Dec. 6, 2019) (Bloss-Baum, SoundExchange); Symposium Tr. at 318:06–10 (Dec. 6, 2019) (Dupler, Recording Academy) (“[O]ur Florida chapter is very different than our San Francisco chapter. . . . [O]ur Philadelphia chapter . . . is very different than our Nashville or our Memphis chapter.”); Symposium Tr. at 296:11–297:12 (Dec. 6, 2019) (Turnbow, NSAI) (noting that Nashville is a unique music community).

<sup>162</sup> Symposium Tr. at 177:10–11 (Dec. 6, 2019) (Delicata).

<sup>163</sup> See Symposium Tr. at 331:09–19 (Dec. 6, 2019) (Bogan, TuneRegistry); see also Roundtable Tr. at 212:06–20 (Mar. 25, 2021) (Donnelly); Roundtable Tr. at 225:01–03, 237:13–238:02 (Mar. 25, 2021) (Bloss-Baum, SoundExchange) (“TikTok is probably not going to work for some of these estates . . . where the music was made 100 years ago.”).

<sup>164</sup> Symposium Tr. at 290:11–16 (Dec. 6, 2019) (Dupler, Recording Academy).

<sup>165</sup> Roundtable Tr. at 200:02–06 (Mar. 25, 2021) (Elton, MLC).

<sup>166</sup> See Symposium Tr. at 109:01–07 (Dec. 6, 2019) (d’Avis, Open Music Initiative) (suggesting that even established songwriters might not know about the existence of unique identifiers).

<sup>167</sup> SoundExchange Initial Comments at 10–11; see also SONA Reply Comments at 11.

<sup>168</sup> Roundtable Tr. at 203:23–204:09 (Mar. 25, 2021) (Yoko, Jai Yoko Entm’t).

than just the creative process and the writing room,”<sup>169</sup> another noted that some songwriters have been reluctant to learn more about the business side of music.<sup>170</sup> SoundExchange suggested that “artists (who are often songwriters) . . . are often on the road,” “mak[ing] it difficult to get ahold of them and difficult to get their attention.”<sup>171</sup>

In addition, commenters suggested that historically underserved communities would benefit from additional targeted education and outreach efforts.<sup>172</sup> The DLC stated that “outreach to underserved communities of copyright owners will have the highest return on investment—much more than technological solutions like improved matching algorithms or data standardization.”<sup>173</sup> For its part, the MLC agreed that it would need to “focus on identifying and reaching historically underserved copyright owner groups” and noted that it “sees its mandate as an opportunity to make substantial progress on reaching underserved copyright owners through informed and targeted outreach.”<sup>174</sup> The MLC also noted that it has “hired a Head of Third-Party Partnerships, whose focus includes creating partnerships with organizations that represent historically underrepresented or underserved communities.”<sup>175</sup>

While specific types of outreach are discussed below, at a high level the Office agrees with commenters that the MLC’s efforts to engage in education and outreach are critical and that there should not be a one-size-fits-all approach. Accordingly, the Office recommends that to the greatest extent reasonably practicable, the MLC should tailor 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. In particular, the MLC should employ dedicated, persistent outreach to historically underserved groups.

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<sup>169</sup> Symposium Tr. at 298:20–22 (Dec. 6, 2019) (Turnbow, NSAI).

<sup>170</sup> Roundtable Tr. at 220:25–221:04 (Mar. 25, 2021) (Coles, 1020 MUZIK) (“They just don’t want to hear it. They don’t know about it. And even though you’re getting them money, essentially, and sometimes I’ll come right out and tell them this is what this is for, they’re just not interested.”).

<sup>171</sup> SoundExchange Initial Comments at 12.

<sup>172</sup> SGA & SCL Initial Comments at 5 (“The outreach effort must not only be global in scope, but also be specifically targeted to include those economically disadvantaged and thus hardest to reach through traditional means. This includes reasonable and creative efforts to reach members of oppressed minority groups and indigenous communities across the [U.S.], Canada and the world[.]”); Symposium Tr. at 324:03–14 (Dec. 6, 2019) (Tignor, IIPSJ); Roundtable Tr. at 280:18–281:06 (Mar. 25, 2021) (Seale).

<sup>173</sup> DLC Initial Comments at 4.

<sup>174</sup> MLC Reply Comments at 19–21.

<sup>175</sup> *Id.* at 20.

## 1. Content

As noted above, the groups to be targeted by the MLC in its education and outreach efforts may have varying levels of knowledge. Commenters suggested that the MLC's outreach include "a music primer on what is music publishing,"<sup>176</sup> the "basics of the music business" and eligibility and how to register with the MLC,<sup>177</sup> and "the nature of copyright . . . because some . . . creators don't actually understand the difference between a musical work and a sound recording copyright, let alone public performance and mechanical [rights]."<sup>178</sup> Some commenters also stressed the need to emphasize the urgency of registering with the MLC.<sup>179</sup> One suggested that audience engagement may improve by creating educational materials that are aesthetically pleasing.<sup>180</sup>

SoundExchange explained that "it will likely make sense for the MLC to undertake marketing campaigns to educate the industry about what [the MLC] does,"<sup>181</sup> further stating that "people in the internet age have been well-trained to be wary of scams" and that "an offer of statutory royalties sounds too good to be true," so when asked for "banking information to make direct deposits . . . , they are frequently suspicious."<sup>182</sup> SoundExchange suggested that the MLC's outreach "will be an exercise not only in educating stakeholders, but also in building trust,"<sup>183</sup> with multiple commenters saying that suspicions may abate after copyright owners start receiving royalty payments.<sup>184</sup>

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<sup>176</sup> Roundtable Tr. at 217:23–218:11 (Mar. 25, 2021) (Corton, Go to Eleven Entm't).

<sup>177</sup> Roundtable Tr. at 271:21–272:16 (Mar. 25, 2021) (Galdston, Music Answers).

<sup>178</sup> Symposium Tr. at 288:04–17 (Dec. 6, 2019) (Eisenberg, SoundCloud).

<sup>179</sup> See Roundtable Tr. at 202:08–13 (Mar. 25, 2021) (Corton, Go to Eleven Entm't) ("I think we're not doing a very good job, especially with DIY writers, of explaining to them how urgent and important it is for them to sign up with the MLC, and I think we need a lot more direct country messaging like you will not get paid your royalties unless you join the MLC."); SONA Reply Comments at 14.

<sup>180</sup> Symposium Tr. at 179:04–09 (Dec. 6, 2019) (Barias) (suggesting that the Office "create content that's visually appealing and stimulating, and aesthetically connects with that generation because I think that's what you have to speak to, is who they are and where they're going, and how . . . it connects with them").

<sup>181</sup> SoundExchange Initial Comments at 18.

<sup>182</sup> *Id.* at 11–12.

<sup>183</sup> *Id.* at 17; see also Roundtable Tr. at 221:24–222:01 (Mar. 25, 2021) (Yoko, Jai Yoko Entm't) ("[T]he biggest way to build trust in an industry where people don't understand it is to teach them it.").

<sup>184</sup> Roundtable Tr. at 226:16–17 (Mar. 25, 2021) (Berg, South Bay Music Grp.) ("[T]he trust is going to come when the checks start flowing."); Symposium Tr. at 333:16–18 (Dec. 6, 2019) (Dupler, Recording Academy) ("[S]eeing that [the MLC] actually works and is paying money is going to be the best way to get songwriters' trust."); Symposium Tr. at 319:22–320:05 (Dec. 6, 2019) (Bloss-

The MLC stated that “one of [its] challenges with . . . messaging is that, unlike with a PRO where every single writer should affiliate with a PRO, or with SoundExchange where every single artist should sign up with SoundExchange, it is not the case that every single songwriter will become a member of the MLC.”<sup>185</sup>

The topics suggested by commenters generally appear reasonable, and no commenter suggested otherwise. The Office thus recommends that the MLC’s education and outreach efforts cover the various topics identified by commenters and that the MLC continually solicit feedback to identify other helpful topic areas going forward. In particular, the Office recommends that the MLC focus efforts on educating the community about what it does, its processes, the complex nature of the statutory license, and the significance of registering with the MLC. The Office also recommends that educational materials be as clear as possible, engaging, and aesthetically appealing, especially when teaching the “basics.” For example, a guide to the MLC’s portal should include links to materials explaining what an ISWC is, how it is used, and where to obtain one.

## 2. Methods

Commenters proposed a number of ways that the MLC can engage with the music community as part of its education and outreach activities. For example, it was suggested that the MLC create videos, tutorials,<sup>186</sup> and webinars;<sup>187</sup> engage in marketing campaigns (including “advertising on music sites and music industry publications,” such as Billboard, Rolling Stone, Music Row Magazine, and Music Connection<sup>188</sup>); employ “a media database service . . . to penetrate the appropriate media outlets [and] a

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Baum, SoundExchange) (“[T]he success of the system was going to be based on people being educated about it and trusting . . . they have money for you, that it’s the real deal.”). *But see* Roundtable Tr. at 228:17–23 (Mar. 25, 2021) (Schwartz, CIAM) (recognizing that those songwriters who are not self-administered will not be receiving royalties from the MLC, but will be receiving royalties through their music publisher, which creates “a much more complicated narrative to draw a line between any individual creator and the MLC”).

<sup>185</sup> Roundtable Tr. at 215:02–07 (Mar. 25, 2021) (Elton, MLC).

<sup>186</sup> Roundtable Tr. at 272:18–273:14 (Mar. 25, 2021) (Yoko, Jai Yoko Entm’t); Roundtable Tr. at 227:17–228:04 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>187</sup> SONA Reply Comments at 11.

<sup>188</sup> SoundExchange Initial Comments at 18; Jan Seedman Initial Comments at 1; Roundtable Tr. at 199:19–200:02 (Mar. 25, 2021) (Elton, MLC) (“We have just begun getting into advertising. . . . Some examples of recent advertising would be in Music Row Magazine and Music Connection.”).

wire service for widespread press release distribution";<sup>189</sup> and not use non-personalized, "mass" emails in lieu of personalized messages.<sup>190</sup> SoundExchange noted that its own marketing efforts include "placing news articles concerning unclaimed funds,"<sup>191</sup> and that "employing representatives who can speak Spanish is critical in [its] efforts to reach Latin artists."<sup>192</sup> Efforts on social media were also discussed, with SONA suggesting the creation of "social media campaigns."<sup>193</sup> SoundExchange stated that "younger artists in particular are going to be answering Instagram direct messaging all the time because that's where they live,"<sup>194</sup> and others mentioned Facebook, Twitter, TikTok, and LinkedIn.<sup>195</sup>

SoundExchange stated that direct outreach is "enormously important" and should be a component of the MLC's outreach efforts,<sup>196</sup> with others echoing the importance of in-person contact in different songwriter communities.<sup>197</sup> Though not an exhaustive list, commenters identified the following in-person events as potential outreach targets: SXSW,<sup>198</sup> Music Biz, the ASCAP Experience,<sup>199</sup> the New Orleans JazzFest,

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<sup>189</sup> MLC Opening Submission—Part II at 20, U.S. Copyright Royalty Board, Dkt. No. 19-CRB-0009-AA, <https://app.crb.gov/case/viewDocument/7865> (Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective).

<sup>190</sup> Roundtable Tr. at 210:19–211:04 (Mar. 25, 2021) (Bloss-Baum, SoundExchange). *But see* MLC Opening Submission—Part II at 20, U.S. Copyright Royalty Board, Dkt. No. 19-CRB-0009-AA, <https://app.crb.gov/case/viewDocument/7865> (Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective) (suggesting use of mass emails).

<sup>191</sup> SoundExchange Initial Comments at 18.

<sup>192</sup> *Id.*

<sup>193</sup> SONA Reply Comments at 11.

<sup>194</sup> Roundtable Tr. at 237:23–238:01 (Mar. 25, 2021) (Bloss-Baum, SoundExchange).

<sup>195</sup> Roundtable Tr. at 223:01–06, 235:02–08 (Mar. 25, 2021) (Yoko, Jai Yoko Entm't); Roundtable Tr. at 234:16–23 (Mar. 25, 2021) (Corton, Go to Eleven Entm't); Symposium Tr. at 52:22–53:08 (Dec. 6, 2019) (Coleman, MLC); Symposium Tr. at 350:01–19 (Dec. 6, 2019) (Bloss-Baum, SoundExchange).

<sup>196</sup> SoundExchange Initial Comments at 12; *see also* Symposium Tr. at 334:21–335:06 (Dec. 6, 2019) (Dupler, Recording Academy); Symposium Tr. at 351:12 (Dec. 6, 2019) (Bloss-Baum, SoundExchange).

<sup>197</sup> Symposium Tr. at 334:22–335:06 (Dec. 6, 2019) (Dupler, Recording Academy) ("Be where the songwriters are, be where the music community is. Be where the representatives and the managers and the lawyers, where all of it is, whether it's South by Southwest or it's Music Biz, ASCAP Expo, all of those places and all the communities where music makers are."); Symposium Tr. at 347:14–20 (Dec. 6, 2019) (Tignor, IIPSJ).

<sup>198</sup> Roundtable Tr. at 221:09 (Mar. 25, 2021) (Bloss-Baum, SoundExchange).

<sup>199</sup> Symposium Tr. at 335:04–05 (Dec. 6, 2019) (Dupler, Recording Academy).

AMERICANAFEST,<sup>200</sup> Cochella, the Grammys, Rolling Loud, SoulFest,<sup>201</sup> Music Tectonics, and the SF Music Tech summit.<sup>202</sup>

It was also suggested that the MLC should partner with different organizations, especially those that have existing, trusted relationships with songwriters and other copyright owners, as a part of their education and outreach efforts.<sup>203</sup> The Future of Music Coalition (“FMC”) observed that “to be able to effectively communicate to the artist population you have to be able to speak in a multitude of voices. . . . [I]t can’t just be one organization; it’s got to be a whole bunch of different organizations working together in tandem.”<sup>204</sup> The International Council of Music Creators (“CIAM”) echoed that this effort “is going to take all hands on deck.”<sup>205</sup> Recording Academy stated that the “best way” for the MLC to gain songwriters’ trust “will be to partner with organizations trusted by the songwriter community.”<sup>206</sup> SONA similarly expressed “eager[ness] to continue to work with the MLC on how the collective can best engage with songwriters . . . [and] their practices of administering the blanket license.”<sup>207</sup>

Some commenters also suggested that the MLC partner with PROs for education and

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<sup>200</sup> Roundtable Tr. at 248:15–22 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>201</sup> Roundtable Tr. at 243:18–244:24 (Mar. 25, 2021) (Yoko, Jai Yoko Entm’t).

<sup>202</sup> Roundtable Tr. at 264:25–265:01 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>203</sup> See, e.g., SoundExchange Initial Comments at 17–18; Roundtable Tr. at 211:03–16 (Mar. 25, 2021) (Bloss-Baum, SoundExchange); Roundtable Tr. at 224:06–10 (Mar. 25, 2021) (Bloss-Baum, SoundExchange) (“if it’s an organization that you trust—maybe you’re a local SONA member or Grammy member or whatever organization that you might already be a part of, you’re going to trust that organization to give you information”).

<sup>204</sup> Symposium Tr. at 295:18–296:01 (Dec. 6, 2019) (Erickson, FMC).

<sup>205</sup> Roundtable Tr. at 206:07–207:07 (Mar. 25, 2021) (Schwartz, CIAM) (“literally everyone who has an interest in generating good will in the music industry, in fulfilling what they profess to want all the time, which is to work on behalf of creators, I think we’re going to have to marshal all of those different people and resources in order to get the word out to as many people as possible”).

<sup>206</sup> Recording Academy Initial Comments at 4; *see also id.* at 1–2 (suggesting it could leverage its twelve regional membership chapters or “the unparalleled platform of GRAMMY Week” to aid the MLC in its outreach activities); Roundtable Tr. at 228:10–13 (Mar. 25, 2021) (Schwartz, CIAM) (“I think songwriters and songwriter organizations have a very important role to play, and hopefully we’re already doing that.”).

<sup>207</sup> SONA Reply Comments at 3.

outreach efforts,<sup>208</sup> as well as major labels, major publishers,<sup>209</sup> Nashville Songwriters Association International (“NSAI”), Songwriters Guild of America,<sup>210</sup> Guild of Music Supervisors,<sup>211</sup> Classical Archive,<sup>212</sup> and labor unions, including the American Federation of Musicians (“AFM”) and the Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”).<sup>213</sup> Various parties suggested partnering with individuals, such as peers, celebrities, industry “ambassadors,” or other admired creators who are more likely to gain songwriters’ attention and may therefore help with educational outreach,<sup>214</sup> with one commenter saying that it is important to ensure that partners are diverse, including in age and genre.<sup>215</sup> Some commenters suggested that the MLC engage with music education programs, with the Songwriters Guild of America (“SGA”) & Society of Composers and Lyricists (“SCL”) saying that such engagement should include programs at the “high school, college and post-graduate levels.”<sup>216</sup> The MLC agreed that educating the educators will be “a valuable resource for

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<sup>208</sup> ARA Initial Comments at 3; CISAC & BIEM Reply Comments at 3–4; Jan Seedman Initial Comments at 1.

<sup>209</sup> Roundtable Tr. at 235:08–16 (Mar. 25, 2021) (Yoko, Jai Yoko Entm’t); Roundtable Tr. at 261:13–17 (Mar. 25, 2021) (Schwartz, CIAM). *But see* Roundtable Tr. at 253:01–11 (Mar. 25, 2021) (Galdston, Music Answers) (“I wouldn’t waste time asking major music corporations or their publisher affiliates to promote this. It’s just an inherent conflict of interest. . . . But, where it comes to best practice, I would say don’t go there. Go to these more independent groups that serve greater numbers of independents and find the best medium for that.”).

<sup>210</sup> Roundtable Tr. at 203:07–13 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>211</sup> Roundtable Tr. at 264:17–19 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>212</sup> Christian Castle Initial Comments at 19–20.

<sup>213</sup> Roundtable Tr. at 263:22–23 (Mar. 25, 2021) (Donnelly).

<sup>214</sup> SoundExchange Initial Comments at 18; Symposium Tr. at 178:09–12 (Dec. 6, 2019) (Barias); Symposium Tr. at 179:11–13 (Dec. 6, 2019) (Delicata); Symposium Tr. at 336:14–19 (Dec. 6, 2019) (Turnbow, NSAI); Symposium Tr. at 302:05–10 (Dec. 6, 2019) (Tignor, IIPSJ) (“[T]he most powerful way and the most effective way to outreach and bring folks in is to bring [in] . . . ‘village elders,’ although a lot of them are not elders, but it’s the people that folks are listening to.”).

<sup>215</sup> Roundtable Tr. at 236:01–05 (Mar. 25, 2021) (Yoko, Jai Yoko Entm’t) (“We should have . . . Russ speaking out for the young independents. We should have Dolly Parton speaking out for some of the older writers . . . so that way we cover all spectrums.”).

<sup>216</sup> SGA & SCL Initial Comments at 6; *see* UROC Reply Comments at 11 (“The MLC needs to be everywhere, including educating entry-level creators starting in junior high school, all music schools, and university music business programs.”); Roundtable Tr. at 265:24–266:13 (Mar. 25, 2021) (Bloss-Baum, SoundExchange) (engaging with educators would have the additional benefit of engaging with students who have an incredible energy for engaging with creators); Roundtable Tr. at 266:23–267:02 (Mar. 25, 2021) (Berg, South Bay Music Grp.) (suggesting taking

outreach.”<sup>217</sup>

Multiple commenters supported DMPs acting as partners in educating songwriters,<sup>218</sup> although the Recording Academy remarked that “some [DMPs] do not enjoy the trust of the songwriter and artist community.”<sup>219</sup> SoundCloud noted that “from an educational standpoint . . . it’s incumbent upon all of us as services and as an industry to really get to the artist community to explain exactly what the nature of copyright is.”<sup>220</sup> The DLC stated that DMPs may have “closer relationships” with songwriters than the MLC,<sup>221</sup> with another commenter noting that DMPs “have direct billing relationships with many artist/songwriter hyphenates on the sound recording side.”<sup>222</sup> The DLC further explained that its members “already engage directly with songwriters” and explained that “Spotify’s Songwriter & Publishing relations team employs 7 people in LA, Atlanta, NY and London to work directly with writers and publishers, communicating over email & phone, in person, via mail-outs & more formal masterclasses,”<sup>223</sup> and that Google “has six full time employees who primarily focus on U.S. publisher and songwriter relations and education” and “post[] resources and host[] educational programs for copyright owners.”<sup>224</sup>

Commenters also supported engaging with foreign copyright owners, suggesting CMOs and other international trade organizations.<sup>225</sup> As CISAC & BIEM explained, “[f]or non-US based musical work copyright owners, foreign CMOs are the best placed entities to provide information on the repertoires they represent, both when there are sub-

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advantage of interdisciplinary studies, including ones who have studied how to “identify social cliques in communities that can help spread correct information”).

<sup>217</sup> MLC Reply Comments at 17–18 n.8.

<sup>218</sup> Jan Seedman Initial Comments at 1 (“use some of the more popular streaming companies, such as Soundcloud, Youtube, Spotify, etc.”); SONA Reply Comments at 15 (“SONA would welcome the opportunity to work directly with the DLC to further these outreach and educational efforts for the benefit of musical work creators to ensure these efforts are engaging with songwriters.”); Roundtable Tr. at 202:24–25 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t) (“[T]he DiMA companies need to help us promote to the songwriters that are on their platforms.”).

<sup>219</sup> Recording Academy Initial Comments at 4.

<sup>220</sup> Symposium Tr. at 288:04–08 (Dec. 6, 2019) (Eisenberg, SoundCloud).

<sup>221</sup> Symposium Tr. at 55:04–06 (Dec. 6, 2019) (Levin, DLC).

<sup>222</sup> Christian Castle Initial Comments at 20.

<sup>223</sup> DLC Initial Comments at 6.

<sup>224</sup> *Id.*

<sup>225</sup> CISAC & BIEM Initial Comments at 4; SoundExchange Initial Comments at 18.

publishing contracts, and especially when no assignment is in place for the U.S.”<sup>226</sup> For its part, the MLC stated that it has already engaged with “over 150 international organizations,” and views such partnerships as “critical both for language issues and for understanding the best way to reach the people that we need to reach in their country.”<sup>227</sup>

Other partnership suggestions included online and physical music stores including Guitar Center, Sweetwater, and Sam Ash;<sup>228</sup> local government arts or cultural organizations;<sup>229</sup> and companies that create digital audio workstations (“DAWs”), such as Logic, GarageBand, or Ableton, or that create plugins for those DAWs.<sup>230</sup> Parties also suggested partnering with business managers and attorneys to connect with songwriters.<sup>231</sup> Further, the Music Library Association’s Legislative Committee suggested that librarians “could serve as important educational partners disseminating to artists the need and importance of metadata” as they “have expertise in education and outreach and are some of the most trusted people in the country.”<sup>232</sup> Others suggested that the MLC may consider hiring special investigators or “finder companies” to locate and register songwriters.<sup>233</sup>

The MLC acknowledged the number of proposed partnerships suggested by commenters, stating that it “agrees that the participation of these partners is vital to maximizing education and outreach, and is committed to collaboration to utilize . . . these resources to further the goals of minimizing the incidence of unclaimed accrued royalties,” and that it “has already connected with many of the groups identified as potential partners.”<sup>234</sup>

The Office finds commenters’ suggestions constructive on how the MLC can engage with the music community as part of its education and outreach activities, and

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<sup>226</sup> CISAC & BIEM Initial Comments at 5.

<sup>227</sup> Roundtable Tr. at 216:07–13 (Mar. 25, 2021) (Elton, MLC); *see also* Symposium Tr. at 56:16–20 (Dec. 6, 2019) (Coleman, MLC).

<sup>228</sup> Roundtable Tr. at 264:23–24 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t) (Mar. 25, 2021); Roundtable Tr. at 237:02–06 (Mar. 25, 2021) (Galdston, Music Answers).

<sup>229</sup> Roundtable Tr. at 246:11–247:05 (Mar. 25, 2021) (Bloss-Baum, SoundExchange).

<sup>230</sup> Roundtable Tr. at 263:04–12 (Mar. 25, 2021) (Galdston, Music Answers); *see* Roundtable Tr. at 256:11–14 (Mar. 25, 2021) (Elton, MLC).

<sup>231</sup> SoundExchange Initial Comments at 18; Roundtable Tr. at 213:20–25 (Mar. 25, 2021) (Berg, South Bay Music Grp.).

<sup>232</sup> Music Library Ass’ns Legislative Comm. Initial Comments at 1.

<sup>233</sup> Roundtable Tr. at 255:11–17 (Mar. 25, 2021) (Donnelly).

<sup>234</sup> MLC Reply Comments at 19.

recommends that the MLC adopt the various types of stakeholder engagement identified by commenters. In particular, the Office makes the following recommendations:

- The MLC should publicize throughout the music industry the existence of the MMA, the MLC, the blanket license, and the public musical works database, the ability to claim ownership of unmatched works (and shares), and the procedures by which copyright owners may identify themselves and provide relevant information to the MLC. In particular, the MLC should advertise to the broadest extent reasonably practicable, including through official journals and other broad-reaching publications<sup>235</sup> (*i.e.*, not just music industry publications), social media campaigns, national newspapers, television, multi-state unclaimed property sites, direct mailings, and public events.<sup>236</sup>
- Written materials, videos, tutorials, and webinars should be user-friendly and accessible (in plain language), and made publicly available on the MLC's website. The MLC should solicit feedback from stakeholders to determine whether this content should be translated (and if so, into which languages) and whether additional outreach on new topics should be developed. Written materials should be downloadable and printable to further public consumption and dissemination.
- The MLC should engage in in-person outreach as suggested by commenters, as the current pandemic subsides. When selecting events in which to participate, the MLC should include events that allow creators and songwriters to directly engage with MLC representatives (*e.g.*, receive handouts, ask questions, and hear live answers).
- The MLC should partner with as many of the suggested organizations as reasonably practical in its education and outreach efforts, including but not limited to individual creators, foreign CMOs, PROs, the DLC, DMPs, distributors and aggregators, music education programs, and local government arts or cultural organizations.

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<sup>235</sup> See CMO REPORT at 14. The CMO Report also discusses CMOs “sharing lists of unidentified or partially identified works with members and others to compare and possibly match information to works in their databases.” *Id.* at 13. List sharing is discussed below in the matching practices section.

<sup>236</sup> See GAO RETIREMENT ACCOUNTS at 50–51 (Appendix III: Actions States Take to Maintain the Value of Unclaimed Property and to Locate and Protect Owners).

### 3. Evaluating Efforts

SONA suggested that the MLC “take steps to ensure that all of their communications efforts are styled in a way that songwriters are able to use their systems” when engaging in their education and outreach duties.<sup>237</sup> The Music Artists Coalition (“MAC”) suggested that the MLC should undertake “voluntary collection of demographic data to determine what populations of copyright owners are underrepresented and where additional outreach is required.”<sup>238</sup> SONA agreed with this suggestion and noted that “other organizations have used this technique to ensure their outreach is reaching all appropriate groups.”<sup>239</sup> Music Answers said that several music organizations already conduct data analytic surveys<sup>240</sup> and Go to Eleven Entertainment suggested that the MLC could potentially partner with DMPs to incorporate their usage metrics.<sup>241</sup> The MLC stated that “data analysis can provide useful indicators for how to improve and target matching and outreach processes” and that the “MLC is committed to feeding back information from its operations to better identify underrepresented copyright owners, and . . . deploying all of its outreach resources and partnerships to locate and motivate these copyright owners to register with the MLC and claim their musical works.”<sup>242</sup>

The Office recommends that the MLC continually review and evaluate the effectiveness of its education and outreach efforts over time. This feedback may come from data analysis or, as suggested by various parties, from songwriters themselves. In addition, the MLC should use member demographic statistics and DMP usage analytics, to the extent available and reasonably practicable, to better target its education and outreach efforts towards under-participating groups. The MLC should consider different mediums’ effectiveness in connecting with different creator groups and invest in those that are most effective in engaging with under-participating member demographics.

### ***B. The Public Musical Works Database, the MLC’s Portal, and Registering and Claiming Works (and Shares) with the MLC***

As noted above, the statute requires the MLC to create and maintain a free online database to publicly disclose information about musical works, their owners, and the

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<sup>237</sup> SONA Reply Comments at 17.

<sup>238</sup> MAC Initial Comments at 2.

<sup>239</sup> SONA Reply Comments at 13.

<sup>240</sup> Roundtable Tr. at 268:21–25 (Mar. 25, 2021) (Galdston, Music Answers).

<sup>241</sup> Roundtable Tr. at 269:20–270:06 (Mar. 25, 2021) (Corton, Go to Eleven Entm’t).

<sup>242</sup> MLC Reply Comments at 20.

sound recordings in which they are embodied.<sup>243</sup> Separately, the statute requires the MLC to create and maintain an “online facility” (what commenters have referred to as the “claiming portal”) listing “unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work).”<sup>244</sup> The portal is not limited to claiming, but is also more generally the mechanism for users to register and engage with the MLC.<sup>245</sup> Commenters provided a number of suggestions to improve the user experience of the public database and portal, which are discussed below.

Overall, commenters emphasized that the public musical works database and portal should be “user-friendly,”<sup>246</sup> “nimble,”<sup>247</sup> simple, and easy to understand,<sup>248</sup> with one

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<sup>243</sup> 17 U.S.C. § 115(d)(3)(E), (e)(20).

<sup>244</sup> *Id.* § 115(d)(3)(J)(iii)(I) (requiring the MLC to “maintain a publicly accessible online facility with contact information for the collective that lists unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work)”).

<sup>245</sup> See, e.g., MLC *Ex Parte* Letter at 5 (Dec. 3, 2020) (“The MLC Portal is the platform for copyright owners and administrators of musical works used in covered activities, where they can register their works, claim their shares and provide the necessary information so as to receive royalty distributions.”); MLC Initial Comments at 6 (discussing “registering with the MLC Portal and adding or verifying data” as well as “updat[ing] . . . works data through the MLC Portal”); MLC, *Play Your Part*, <https://themlc.com/play-your-part> (“Once you have created your Member profile and The MLC has verified your account information, you will be able to use The MLC Portal to register, edit and review your musical works data; create and submit registrations for any new musical works; manage and update your contact information, banking details and tax forms and invite other users to set-up their own user accounts under your MLC Member profile.”) (last visited June 25, 2021); MLC, *Blanket Royalties*, <https://themlc.com/blanket-payments> (“When statements are made available, Members will receive a notification directing them to the Royalties section of The MLC Portal where they can access their statements.”) (last visited June 25, 2021); MLC, *Royalty Income Tracking*, <https://themlc.com/royalty-income-tracking> (“Any [pre-2021] usage that remains unmatched will be made available to our Members in The MLC Portal to search, review and claim. When available, the Portal’s claiming platform will be the primary income tracking tool for publishers to search unmatched sound recording usage and claim royalties attributable to their musical works. . . . You will also be able to search and claim royalties for unmatched usage accrued on or after January 1, 2021 using The MLC Portal’s claiming platform when it becomes available.”) (last visited June 25, 2021).

<sup>246</sup> SONA Reply Comments at 10, 17 (having a “user-friendly interface” is “critical”).

<sup>247</sup> ARA Initial Comments at 3.

<sup>248</sup> Jan Seedman Initial Comments at 1; UROC Reply Comments at 10 (“The Claiming Portal needs to be clean & clear, facile and easy to understand. Assigning your claim and share to an unclaimed work needs to be easy and with minimal effort.”); Roundtable Tr. at 133:23–134:05 (Mar. 25, 2021) (Levin, Sindee Levin Music).

commenter suggesting that the portal include “detailed step by step instructions” about how to use it.<sup>249</sup> Recording Academy said that the process for registering musical works with the MLC “should be as simple and seamless as possible.”<sup>250</sup> SONA encouraged the MLC “to think of how their practices can be user-friendly for the individual songwriter,” such as recognizing that use of the phrase “song code” “has traditionally been a part of the practices of music publishers rather than songwriters, [and] a songwriter may not be familiar with that term.”<sup>251</sup> ARA suggested that the MLC “meet the end users . . . in the interfaces that they understand,” and further stated that the portal should be “really attuned to how creators are creating.”<sup>252</sup> ARA also “encourage[d] the MLC to make its processes streamlined, intuitive, and user friendly—and to ensure that individual songwriters and independent publishers have access to the same options, tools, and solutions as the major publishers.”<sup>253</sup> SONA suggested that “the MLC consider an application that rights holders can use on their smartphones, both to search for their works and claim their works,” explaining that “[a]s more musicians rely on smartphone technology in their work, having easy access to the MLC database through these devices—and not just a personal computer—will be critical.”<sup>254</sup> ARA echoed that artists are “attuned to a digitized, on-the-go mentality” and are “untethered from laptops and desktops, and everything they do, they do on their phones.”<sup>255</sup> SONA also suggested that “[i]n addition to interacting online and answering live phone calls, the MLC should offer ‘office hours’ for musical work copyright owners to schedule specific times with MLC representatives to work through database and user portal issues,” as “these services will benefit copyright owners of all levels of sophistication, and also ensure that musical work creators who may not have a good access to or proficiency with MLC systems can still claim their works to receive the royalties to which they are entitled.”<sup>256</sup>

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<sup>249</sup> Jan Seedman Initial Comments at 1; *see also* Symposium Tr. 238:13–17, 19–22 (Dec. 6, 2019) (Arrow, UMPG) (“I think somebody was pointing out on that panel that you can’t have a web portal that somebody goes into, and it’s so ridiculously complicated they get scared and run away. . . . So, it’s got to be a really good user interface, something that they can go and maybe log in, some very fundamental information.”).

<sup>250</sup> Recording Academy Initial Comments at 3.

<sup>251</sup> SONA Reply Comments at 17.

<sup>252</sup> ARA Initial Comments at 3 (“Anything encumbered with a lot of details, or anything that could make them feel that this is too academic, or too administrative because, quite frankly, a lot of them are wearing many hats, and an administrative hat is the one you like the least.”).

<sup>253</sup> ARA Reply Comments at 2.

<sup>254</sup> SONA Reply Comments at 11.

<sup>255</sup> ARA Initial Comments at 3.

<sup>256</sup> SONA Reply Comments at 8.

It was also said that having a poor user experience “could potentially lead to more problems in managing the claims and accuracy of those claims.”<sup>257</sup>

For its part, the MLC advised that it “intends to design and populate the portal in a manner that is user-friendly and efficient”<sup>258</sup> and “aims to make rollout as user-friendly and straightforward as possible.”<sup>259</sup> The MLC also agreed that the portal should be simple and clear, and include detailed instructions.<sup>260</sup> Regarding customer support, the MLC currently offers “support 12 hours a day, Monday through Friday, and eight hours on Saturday,” and help is also “accessible via chat and email and phone.”<sup>261</sup> The MLC said that it would not be a best practice to offer office hours on a one-on-one basis with the entire membership because it “simply won’t have enough support team members to do something like that.”<sup>262</sup>

While specific functionality is discussed below, at a high level the Office agrees with commenters and recommends that the user interfaces for the public database and portal should be simple, accessible, well-organized, and user-friendly, and include a glossary of terms and simple instructions. The MLC should also provide brief step-by-step tutorials to walk users through specific features and functions. Likewise, the process of registering with the MLC, and updating information with the MLC, should be as simple and straightforward as possible. To maximize user accessibility, the MLC should work to make the public database and portal available through smartphones, tablets, and other devices, including through web browsers and downloadable apps, and should ensure that the database and portal operate smoothly, efficiently, and intuitively across applicable devices and platforms. Just as the MLC needs to tailor its educational outreach and engagement with users depending on their levels of sophistication (as discussed above), the public database and portal need to meet the needs of users with varying levels of sophistication. Accordingly, the Office recommends that the MLC avoid a one-size-fits-all approach and continue to seek feedback from stakeholders so that the portal and public musical works database are developed and refined to meet the varying levels of users’ needs.<sup>263</sup>

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<sup>257</sup> Roundtable Tr. at 181:15–183:09 (Mar. 25, 2021) (Kanner, Spotify).

<sup>258</sup> MLC *Ex Parte* Letter at 3 (Aug. 21, 2020).

<sup>259</sup> MLC Reply Comments at 13 n.5.

<sup>260</sup> *Id.* (citing Jan Seedman Initial Comments at 1).

<sup>261</sup> Roundtable Tr. at 170:01–171:05 (Mar. 25, 2021) (Bogan, MLC).

<sup>262</sup> *Id.*

<sup>263</sup> See MLC Reply Comments at 13 n.5 (agreeing that “the portal should be tested by a variety of different types of potential users”) (citing Jan Seedman Initial Comments at 1); Roundtable Tr. at

The Office also recommends that the MLC continue to develop and refine initiatives to help less sophisticated users gain understanding of and access to the portal and public musical works database. For example, the MLC offers a “Music Data Organization Worksheet (MDOW), which assists copyright owners who have not yet compiled their works information electronically,” and “helps first-time registrants to understand and compile the data that they will need in order to register their works with the MLC once they have access to the portal.”<sup>264</sup> Although Recording Academy and ARA expressed concern about the MDOW being “cumbersome,”<sup>265</sup> with Recording Academy stating that it “is simply a preparatory exercise in advance of what will could be another labor-intensive, manual process to enter all of the data into the portal,”<sup>266</sup> Recording Academy also acknowledged that the MDOW “will make it easier for a songwriter or composer to register his or her works with the MLC through the portal because the songwriter will have pre-prepared all of the necessary information,” as it “forces the songwriter to think through relevant information they may not have readily on hand, such as the ISWC or royalty splits with a collaborator.”<sup>267</sup>

## 1. Finding Information

In order to optimize use of the public database and make claims through the portal as effectively as possible, users must be able to find the information they need quickly, easily, and efficiently through flexible and robust searching, sorting, and filtering features. Commenters suggested that users should be able to search, filter by data fields, toggle, and sort the results,<sup>268</sup> with multiple commenters echoing that users should be able to filter search results, including by territory of origin, language, genre, and number

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174:12–174:18 (Mar. 25, 2021) (Bogan, MLC) (advising that the MLC is “taking input” from stakeholders).

<sup>264</sup> MLC Reply Comments at 3.

<sup>265</sup> Recording Academy Initial Comments at 2; ARA Reply Comments at 2.

<sup>266</sup> Recording Academy Initial Comments at 3.

<sup>267</sup> *Id.* at 2.

<sup>268</sup> See, e.g., SONA Reply Comments at 10 (stating that users should be able to search by IPI, ISWC, ISRC, songwriter name, and title); UROC Reply Comments at 10 (stating that the portal “should have search capabilities based on (where available) song title, release year, artist name, label name, songwriter name, producer name, publisher name, song length, instrumentation”); Roundtable Tr. at 145:04–145:16 (Mar. 25, 2021) (Buchanan, Concord) (“[B]eing able to filter, to toggle, to sort the initial search results would be very helpful, especially if you’re looking at a particular writer that has [numerous works] . . . and you want to be able to go through and find a certain one very quickly or a subset of those very quickly. . . . I think being able to toggle, sort, filter would be extremely beneficial.”).

of songwriters.<sup>269</sup> The DLC said that “[t]he ability to sort or ‘tier’ unmatched works based on the amount of royalties available to be claimed, so that effort could be focused on those unclaimed works with the most royalties associated with them,” “will be particularly important in the MLC’s claiming system.”<sup>270</sup>

Other filtering suggestions included being able to filter results by data source<sup>271</sup> and being able to search for unmatched musical works.<sup>272</sup> It was also suggested that searching by songwriter name should generate all IPIs for that songwriter,<sup>273</sup> that

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<sup>269</sup> See Roundtable Tr. at 149:16–150:07 (Mar. 25, 2021) (Tayebwa, Opus Music Pub. Afr.) (“[F]or example, with territories, which territories are these writers from?”); Roundtable Tr. at 150:10–150:13 (Mar. 25, 2021) (North, SONA) (“I’m really liking this whole territory kind of filter. Territory and language filter, I think, is fantastic.”); Roundtable Tr. at 144:07–145:02 (Mar. 25, 2021) (Irwin, SCL) (“[J]ust in the way you go shopping for shoes online, you have lots of fields and lots of ways to filter things.”). Currently, the public musical works database is searchable by work title, ISWC, MLC song code, writer name, writer IPI, publisher name, publisher IPI, and MLC publisher number. MLC, *The MLC Public Work Search* <https://portal.themlc.com/search> (last visited June 25, 2021).

<sup>270</sup> DLC Initial Comments at 5; see also Roundtable Tr. 181:21–25 (Mar. 25, 2021) (Kanner, Spotify) (“[P]rioritization is obviously really useful. . . . There’s so much data and so many sound recordings that are available for claiming, and that just isn’t something that is benefitting from a large scale investment from everybody if it’s not going to be worth their time to get money out of it.”).

<sup>271</sup> See Roundtable Tr. at 145:18–146:02 (Mar. 25, 2021) (Levin, Sindee Levin Music) (suggesting that users be able to filter results to include the musical works with information originating from the MLC’s vendor, HFA).

<sup>272</sup> See, e.g., Zoe Keating Initial Comments at 1 (“A database of the unmatched compositions for which there are royalties should be publicly searchable in order to effectively crowd-source and facilitate at least part of the matching process.”); MAC Initial Comments at 2 (“[T]his system should incorporate a searchable and easily identifiable process by which writers can learn if any of their compositions are subject to the unclaimed and unmatched fund.”); Roundtable Tr. at 184:04–184:12 (Mar. 25, 2021) (Buchanan, Concord) (“If there was a way that works that were unmatched entirely could be kept separate from a claiming portal whereas shares are just missing . . . that would be very helpful to see that separate from unmatched shares.”); Roundtable Tr. at 184:17–184:19 (Mar. 25, 2021) (Buchanan, Concord) (stating in response to a question of whether that information should be available as a drop down option to be able to view those works in isolation: “I think so. Or a separate list altogether, unmatched shares versus unmatched works.”); Roundtable Tr. at 185:05–185:12 (Mar. 25, 2021) (Champarnaud, SACEM) (agreeing with Concord’s suggestion).

<sup>273</sup> See Roundtable Tr. at 147:05–147:09 (Mar. 25, 2021) (Levin, Sindee Levin Music) (explaining that most songwriters have more than one IPI number); Roundtable Tr. at 146:13–146:20 (Mar. 25, 2021) (North, SONA) (same); Roundtable Tr. at 146:13–146:20 (Mar. 25, 2021) (North, SONA) (“It would be outstanding to be able to see all four, let’s say, of my IPI name numbers in one search of

searching should consider use of diacritics in light of foreign musical works,<sup>274</sup> and that upon receiving search results, users should have the ability to share,<sup>275</sup> export, and print them.<sup>276</sup>

Some commenters discussed the importance of the MLC providing real-time access to the musical works database via APIs.<sup>277</sup> As noted above, the Office's regulations require the MLC to make the public musical works database available "in a bulk, real-time, machine-readable format" "through application programming interfaces (APIs)" by December 31, 2021.<sup>278</sup> SONA said that the MLC should consult stakeholders in developing APIs to gain bulk access to the public database,<sup>279</sup> and raised whether the MLC should "creat[e] a front end" for users to gain database access through APIs.<sup>280</sup>

The Office believes that the ability to engage in flexible and robust searching, sorting, and filtering of information in the public database and portal, including the ability to further refine search results, is critical to maximizing the usability of the MLC's systems and the transparency of the data contained therein. Such functionality should help reduce the incidence of unclaimed royalties by making it as easy and efficient as possible for users to quickly locate information, and, in particular, should facilitate the claiming process by enabling users to approach data about unmatched works (and shares) in different ways to determine whether any of their works are among them. Relatedly, as discussed in the data quality section below, the Office believes that enabling users to easily identify, review, verify, and take appropriate actions with respect to the MLC-held data for their works can also help to reduce the incidence of unclaimed royalties. Having robust search, sort, and filter functionality would go far in aiding that activity. Because users do not have to register with the MLC to search and review information

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the portal. So I'd like to be able to, like, check, let's say, multiple versions of me and see that entire display.").

<sup>274</sup> See Zoe Keating Initial Comments at 1 ("[Because the MLC] will be collecting royalties on behalf of foreign songwriters and publishers," the public database should allow for and be searchable using "standardized character normalization for search and subsequent matching of diacritics, umlauts, accents etc.").

<sup>275</sup> See Roundtable Tr. at 143:25–144:05 (Mar. 25, 2021) (Kanner, Spotify).

<sup>276</sup> See Roundtable Tr. at 146:03–146:11 (Mar. 25, 2021) (Levin, Sindee Levin Music).

<sup>277</sup> See SoundExchange Initial Comments at 16; *see also* Roundtable Tr. at 148:18–149:05 (Mar. 25, 2021) (North, SONA) (noting copyright owners' interest to both download and deliver data to the MLC via APIs); Roundtable Tr. at 151:05–151:17 (Mar. 25, 2021) (Champarnaud, SACEM) (API access to the public database is "very valuable").

<sup>278</sup> 37 C.F.R. § 210.32(a)(1)(i)–(ii).

<sup>279</sup> Roundtable Tr. at 148:18–149:05 (Mar. 25, 2021) (North, SONA).

<sup>280</sup> *Id.*

regarding unmatched works (and shares) in the public database, ensuring accessibility and usability of the public database is important to help reduce the incidence of unclaimed royalties in addition to ensuring accessibility and usability of the claiming portal. Accordingly, the Office makes the following recommendations for both the public musical works database and portal:

- Searchable information regarding musical works, their owners, and the sound recordings in which they are embodied should be the same in the public database and claiming portal.<sup>281</sup>
- Users should be able to search, sort, and filter information by at least each displayed data field, and should be able to further refine search results through additional searches, sorting, and filtering. In addition to the identifying information listed in the statute and the Office's regulations, users of both the portal and public database should be able to search, sort, and filter based on other relevant attributes (whether or not displayed), including, but not limited to: when the work was first added to the database and portal; when information associated with the work was last modified; whether ownership of the work (or share) has recently changed; whether the work (or share) is matched (within the meaning of section 115(e)(17)) or unmatched (within the meaning of section 115(e)(35)), and whether the work is partially claimed (*i.e.*, where the work has at least one matched share and one unmatched share); whether an unmatched work (or share) has any associated unclaimed accrued royalties (within the meaning of section 115(e)(34)) and whether any such royalties have been noticed for distribution pursuant to section 115(d)(3)(J)(iii)(II)(dd); whether a copyright owner of an unmatched work (or share) is both unidentified and unlocated or only unlocated; and whether a work (or share) is subject to an ownership dispute. Additional attributes should also be considered, such as, to the extent available, genre, territory of origin, language, and data source.
- Search results should be sortable by relevance.
- The MLC should consider an appropriate way to organize unmatched works (and shares) based on the amount of associated royalties available to be claimed. As a fraud-prevention measure, it may not be appropriate to display exact royalty figures, but the MLC could consider various sorting or tiering approaches to strike the right balance and help signal to users which unmatched works (and shares) have more claimable royalties than others so they can focus claiming resources accordingly.

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<sup>281</sup> See MLC *Ex Parte* Letter at 3 (Aug. 21, 2020) (advising that “the musical works data made publicly-available and the musical works data made available in the MLC portal will be the same”).

- Both basic and advanced search options, including a search builder tool, should be made available, and should be flexible to accommodate a variety of search methods, for example: simple natural language and keyword searches; searching by names, words, and/or phrases, including being able to specify exact names, words, and/or phrases that must or must not be contained in the results; searching using date ranges; being able to use appropriate search operators; being able to use fuzzy language, proximity, truncated, and wildcard searches; and being able to search on any single data field or attribute, any combination of multiple data fields or attributes, or across all available data.
- Where multiple unique identifiers for a work, entity, or individual are contained in the MLC's records, searches should generate results that display all of them (*e.g.*, searches by songwriter name should generate results that include all of the IPIs the MLC has for that songwriter).
- Searching, sorting, and filtering should flexibly accommodate non-English material, non-Latin/Roman characters (*e.g.*, Arabic, Japanese, etc.), and both the use and omission of diacritics (*e.g.*, umlauts, accents, etc.).
- Users should be able to share search results with other users (*e.g.*, by email), as well as export, download, and/or print out search results, including in bulk.<sup>282</sup>
- Users should be able to save searches and individual works (and shares) (including groups of works and shares) and create related alerts so they can be tracked and monitored. Helpful work-based alerts could include automatic notifications when: any changes are made to the information associated with a saved work (or share); there are any changes in the status of a saved work (or share) (*e.g.*, changing from unmatched to matched, or changing to being in dispute or no longer being in dispute); claimable royalties become available for a saved work (or share); and unclaimed accrued royalties for a saved work (or share) are noticed for distribution pursuant to section 115(d)(3)(J)(iii)(II)(dd). A helpful search-based alert could include having a saved search automatically rerun at specified intervals with a notification to the user of any new results.
- Registered portal users should be able to seamlessly transition between the public database and the portal. For example, if a user identifies a work (or share) in the public database to claim while the user is not logged into the portal, there should be a simple mechanism through which the user can easily log in to make

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<sup>282</sup> This recommendation is not intended as a workaround for users to avoid paying the “marginal cost” for bulk access to the database through a machine-readable format. It is instead meant to assist users who do not need bulk machine-readable access to the entire database, but may wish to share, export, download, or print particular search results that may contain a large number of works.

the claim without having to navigate away and run a new search within the portal to relocate the work (or share).

The Office also recommends that the MLC consult with stakeholders as it develops APIs for providing bulk access to the public database.

## 2. Providing Information

Currently, a user “need[s] to register or update the corresponding works with The MLC using CWR or the work registration tools available in The MLC’s Portal.”<sup>283</sup> The MLC offers users three options to register or update existing or new musical works: (1) registering each work individually directly in the portal; (2) registering works in bulk by uploading them into the portal using an Excel file template, which has a 300-row maximum; or (3) sending the MLC a CWR file.<sup>284</sup>

Commenters generally agreed that CWR is an acceptable standard for providing musical works information to the MLC,<sup>285</sup> though there was recognition that not all users have access to CWR<sup>286</sup> and that being able to upload information for a few works or on a work-by-work basis may be more practical in certain instances.<sup>287</sup> To register or update works information using the bulk registration option currently offered by the MLC (*i.e.*, using the Excel template), one commenter suggested the MLC offer the option for more

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<sup>283</sup> MLC, *Data Quality Initiative (DQI)*, <https://themlc.com/data-quality-initiative-0> (last visited June 25, 2021).

<sup>284</sup> See MLC, *Play Your Part*, <https://themlc.com/play-your-part> (last visited June 25, 2021); MLC, *The MLC Portal: Bulk Upload Tutorial*, VIMEO (Mar. 9, 2021), <https://vimeo.com/521568673>.

<sup>285</sup> See Symposium Tr. at 201:03–203:17 (Dec. 6, 2019) (Arrow, UMPG) (explaining that CWR is a file format used by “the major music publishers, and some of the large independents”); Roundtable Tr. at 162:24–163:03 (Mar. 25, 2021) (Champarnaud, SACEM) (agreeing that “CWR is good” “[f]rom one CMO to another,” but that “API is even better, and manual feeding may also be necessary”); Roundtable Tr. at 162:17–21 (Mar. 25, 2021) (North, SONA) (“CWR currently is the standard,” and it “is the best and most efficient way for publishers . . . to deliver data.”); see also MLC Reply Comments at 6 (stating that “[t]he consensus format for communicating musical works information is the Common Works Registration (CWR) format,” and that it “will support the CWR format”).

<sup>286</sup> Roundtable Tr. at 161:19–25 (Mar. 25, 2021) (North, SONA) (stating that “many publishers still don’t have CWR,” and thus suggesting that the MLC also use “a spreadsheet format”); see also Symposium Tr. at 76:16–20 (Dec. 6, 2019) (Allain, WIPO) (stating that CWR is “quite a complex format”).

<sup>287</sup> Roundtable Tr. at 141:12–19 (Mar. 25, 2021) (Champarnaud, SACEM) (“As a CMO, . . . we need some bulk features on our facilities to ingest works, but it may well be also that we have an urgent mess to solve and that we need to upload only one work or several works of an album.”).

than 300 works at a time.<sup>288</sup> SONA stated that it would be helpful if users “have the combination of seeing what’s missing, claiming in a claiming portal, and then correcting what’s missing or adding what’s missing,”<sup>289</sup> and suggested that APIs could be used to transfer data to the MLC.<sup>290</sup>

The Office agrees with commenters that CWR is an acceptable standard for providing musical works information to the MLC, but recommends that the MLC continue to provide non-CWR alternatives for providing musical works information to the MLC in light of not all users having access to CWR, particularly those allowing for individual or bulk formats. For such non-CWR alternatives, the Office recommends that the MLC offer bulk options for more than 300 works at a time where reasonably possible. The MLC should also explore additional ways to best address users’ needs to easily, quickly, and efficiently provide accurate information to the MLC, including the processes for registering as well as making updates (including corrections). The Office makes the following additional recommendations with respect to providing information to the MLC:

- The MLC should have appropriate tools in place to handle letters of direction in a timely and efficient manner.<sup>291</sup>
- The MLC should be able to accept non-English data, including information using diacritics and/or non-Latin/Roman characters.
- Methods of providing information to the MLC outside of using the portal or directly sending a CWR file should be explored. For example, the MLC could provide APIs or engage in partnerships to develop additional ways for users to register and update information with the MLC through other platforms or services of their choice, which they may already use for other purposes.

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<sup>288</sup> See Roundtable Tr. at 133:16–21 (Mar. 25, 2021) (Champarnaud, SACEM).

<sup>289</sup> Roundtable Tr. at 132:06–20 (Mar. 25, 2021) (North, SONA).

<sup>290</sup> Roundtable Tr. at 148:18–149:05 (Mar. 25, 2021) (North, SONA).

<sup>291</sup> See SoundExchange Initial Comments at 17 (stating that the MLC needs to have “standardized tools in place to process Letters of Direction (‘LODs’) when catalogs are bought and sold or when writers sign new agreements with publishers,” to “ensure that rights are maintained and up-to-date”); MLC Reply Comments at 7 (stating that it “will have tools to process letters of direction” and that it “is a member of DDEX, is aware of and examining the DDEX MWN LOD format for this purpose, and hopes to incorporate the format into its tools for letters of direction where appropriate”).

### 3. Songwriter Access

The MLC currently instructs songwriters affiliated with a publisher, administrator, or CMO to review information regarding their works in the public database and notify their publishers, administrators, or CMOs of any errors or missing information so that those organizations can in turn add or update the information with the MLC.<sup>292</sup>

Relatedly, the MLC has stated that it “will only build repertoire data from copyright owners (including as received through their authorized representatives),”<sup>293</sup> and that the portal “is the platform for copyright owners and administrators of musical works used in covered activities, where they can register their works, claim their shares and provide the necessary information so as to receive royalty distributions.”<sup>294</sup>

Some commenters suggested that represented songwriters should also be able to access the portal to be able to view and interact with the data held by the MLC for their works. For example, NSAI discussed songwriters being able to view data for their works and flag any issues for their publishers or administrators to address, and the ability for a songwriter’s representative to respond to the songwriter’s flag through the portal (e.g., to confirm that a correction has been made or provide an explanation).<sup>295</sup> Others suggested that songwriters be permitted to provide missing or updated (including corrected) information about themselves and their works directly to the MLC, rather than requiring them to go through their publishers or administrators to request changes, subject to validation and vetting of the information.<sup>296</sup> SCL explained, for example, that

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<sup>292</sup> See MLC, *Play Your Part*, <https://themlc.com/play-your-part> (last visited June 25, 2021); MLC, *The MLC Public Work Search*, <https://portal.themlc.com/search> (last visited June 25, 2021).

<sup>293</sup> MLC Reply Comments at 4–5; see also MLC *Ex Parte* Letter at 2 (Aug. 21, 2020) (stating that musical works information “will be sourced from copyright owners”).

<sup>294</sup> MLC *Ex Parte* Letter at 5 (Dec. 3, 2020); see also Roundtable Tr. at 174:12–175:01 (Mar. 25, 2021) (Bogan, MLC) (stating that the MLC must “have authority in regards to the relationships of the data” and that it cannot “just be open access for anyone who believes they have some kind of entitlement to a claim”).

<sup>295</sup> See Roundtable Tr. at 410:04–411:02 (Mar. 26, 2021) (Turnbow, NSAI) (“[T]hat is a huge piece of transparency for songwriters and, honestly, the first time they’ve ever even with a public portal been able to get a look at all of this data and have an opportunity to make corrections on it.”).

<sup>296</sup> See Roundtable Tr. at 140:01–20 (Mar. 25, 2021) (North, SONA) (“If I’m a published writer, I . . . have no way to submit any kind of correction . . . So I think . . . the MLC could be the very first to create a repository for published writers to submit their data. They could go through what’s in the portal, identify what’s either missing or wrong, and have a separate writer repository where their truth lives. And then, as the MLC is able to get to validating and vetting, it could take that truth and migrate it into the production environment, and that would give writers a voice here that is missing, really, around the world.”); Roundtable Tr. at 138:01–139:03 (Mar. 25, 2021) (Irwin, SCL) (“[T]here should be some part of the portal that allows someone who can see that . . .

otherwise a “ping pong situation” may exist where data is not corrected, as “creators are not allowed to enter their own information . . . and they’re referred back to their publisher[s], . . . [which may be] administered by larger organizations, and in those situations, those larger organizations won’t necessarily talk to the creators,” and the creators may be referred “back to the original production company.”<sup>297</sup> It was also specifically suggested that represented songwriters be able to provide their IPIs directly to the MLC, as songwriters can have multiple publishers and songwriter names can be spelled in various ways (*e.g.*, with or without initials or middle names), and otherwise they may have “no mechanism . . . to consolidate their names or their works or any of their IPIs.”<sup>298</sup> For its part, the MLC has advised that it is “working on additional ways to help [songwriters] flag and report data errors to [their] publisher or administrator.”<sup>299</sup>

The Office agrees that songwriters should have a voice regarding the information about themselves and their works maintained by the MLC. The Office reiterates that “[p]roviding songwriters with the ability to review and correct information about their works is important,” and that “transparency militates in favor of affording songwriters (including those who are [represented by publishers, administrators, or others]) easier access to information about use of their works.”<sup>300</sup> The Office thus recommends that represented songwriters be able to sign up with the MLC to gain appropriate access to the portal (or a tailored version of the portal), through which they can easily view and interact with information about their works, including the ability to alert their

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all these four or five names are really me . . . Why can’t I just notify the MLC with my IPI and make that claim? I think that would clean up a lot of the data very quickly on our end.”); Roundtable Tr. at 164:05–165:03 (Mar. 25, 2021) (Irwin, SCL) (“[T]here must be a repository for creators to enter their information that flags it in some way that it is then addressed by whoever else is claiming those royalties.”); *see also* Roundtable Tr. at 286:10–12 (Mar. 25, 2021) (Vice-Maslin).

<sup>297</sup> Roundtable Tr. at 164:05–165:03 (Mar. 25, 2021) (Irwin, SCL); *see also* Roundtable Tr. at 168:06–13 (Mar. 25, 2021) (North, SONA) (“So it’s mine. . . . I want my back pay and adjustment. I want the ability to a) make that request and b) receive an answer and, in fact, understand how I will see that, because the responses we’re receiving right now are Harry Fox is no longer the vendor, go to the MLC or go to Spotify.”).

<sup>298</sup> Roundtable Tr. at 138:10–139:03 (Mar. 25, 2021) (Irwin, SCL); *see also* Roundtable Tr. at 317:21–318:01 (Mar. 26, 2021) (Carnes, SGA) (stating that while publishing information changes, the identification of the songwriter is “the only thing that doesn’t change”).

<sup>299</sup> MLC, *Transfers of Historical Unmatched Royalties*, <https://www.themlc.com/historical-unmatched-royalties> (last visited June 25, 2021); *see also* MLC *Ex Parte* Letter at 5 (Dec. 3, 2020) (discussing “its intention to develop user-friendly methods for songwriters to access information about their musical works and to enable songwriters to notify their administrators of a possible issue with a work’s data or registration”).

<sup>300</sup> 85 Fed. Reg. at 86,817.

publishers, administrators, or other representatives to have them register with the MLC (if they have not already done so) and/or to have them address any potential data issues flagged by the songwriter, including where information is missing, outdated, or incorrect. Represented songwriters should also be able to provide data directly to the MLC, along with contact information for their publisher, administrator, or other representative, so the MLC can engage with the representative to have them register or verify the songwriter's data. The MLC should also consider whether it may be appropriate for it to independently verify certain songwriter-provided information (*e.g.*, perhaps cross-checking a submitted IPI against the IPI System) if a publisher, administrator, or other songwriter representative is unresponsive to update requests. While songwriters may not be able to view all information that their publisher, administrator, or other representative may view due to confidentiality restrictions (*e.g.*, banking information, information about works by other songwriters, etc.), “nothing prevents the MLC from working with publishers and administrators to offer non-self-administered songwriters permissions-based access to view stream count and revenue information for their musical works, and [the Office] encourages the MLC to explore such options.”<sup>301</sup>

#### 4. Audio Access

Some commenters suggested that access to sound recording audio should be made available in the portal,<sup>302</sup> with the UROC stating that it would “allow potential claimants to listen to the underlying audio, the most definitive reference for the usage of a musical work.”<sup>303</sup> The Office previously addressed the issue of audio access in a public rulemaking, adopting regulations requiring that DMPs provide the MLC in their reports of usage their “[u]nique identifier(s) . . . , including unique identifier(s) (such as, if applicable, Uniform Resource Locators (URLs)) that can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so (such audio access may be limited to a preview or sample of the sound recording lasting at least 30 seconds).”<sup>304</sup> DMPs “who [did] not assign such unique identifiers as of

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<sup>301</sup> *Id.*

<sup>302</sup> UROC Reply Comments at 8, 10; UROC Initial Comments at 2; Roundtable Tr. at 188:10–14 (Mar. 25, 2021) (North, SONA) (“We have to be able to audition the audio.”); Roundtable Tr. at 189:15–22 (Mar. 25, 2021) (Irwin, SCL) (“[T]he audio is key to all this.”); Roundtable Tr. at 190:02–12 (Mar. 25, 2021) (Kanner, Spotify) (stating that audio is “definitely recognized as a valuable datapoint”); *see also* SONA Reply Comments at 4 (“SONA is also pleased to see that the MLC is cognizant of the importance of audio links to aid songwriters in improving the accuracy of a musical work’s metadata[.]”).

<sup>303</sup> UROC Reply Comments at 10.

<sup>304</sup> 37 C.F.R. § 210.27(e)(1)(i)(C).

September 17, 2020, may make use of a transition period ending September 17, 2021, during which the requirement to report such unique identifiers accompanied by instructions shall be waived upon notification, including a description of any implementation obstacles, to the [MLC].”<sup>305</sup>

During the rulemaking, concerns were raised regarding “how the MLC intend[ed] to use sound recording audio obtained through DMP reporting and the obstacles DMPs face in accommodating what the MLC [sought].”<sup>306</sup> Accordingly, the Office’s regulations also require the MLC and DLC to provide quarterly reports to the Office “regarding the ability of users to listen to sound recordings for identification purposes through the collective’s claiming portal,”<sup>307</sup> and “should also identify an implementation strategy for addressing any identified obstacles, and any applicable progress made.”<sup>308</sup> In the meantime, while those discussions continue, the reported DMP-assigned identifiers and related instructions should be made available in the claiming portal and the MLC should generate hyperlinks for portal users using the reported information to the extent possible.<sup>309</sup>

## 5. Additional Functionality

In addition to the functionalities discussed above, the MLC stated that the portal will have the following features (or materially similar ones), which were recommended by SoundExchange, allowing users to:

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<sup>305</sup> *Id.* § 210.27(e)(3)(ii).

<sup>306</sup> 85 Fed. Reg. at 58,123–25 (“It appears to the Office that what the MLC essentially wants is for its claiming portal to have an embedded player (or something similar) where, even though the audio files still reside with the DMPs, portal users would be able to listen to the audio directly within the portal environment without having to link out or navigate away to each DMP’s service.”) (citations omitted).

<sup>307</sup> 37 C.F.R. § 210.27(e)(3)(iii)(A).

<sup>308</sup> 85 Fed. Reg. at 58,125.

<sup>309</sup> *See id.* (“A seamless experience using embedded audio is a commendable goal worthy of further exploration, but in the meantime, where significant engineering, licensing, or other unresolved hurdles stand in the way, providing hyperlinks in the portal—which it seems can be done at present for most DLC-member services based on the record—or other identifiers that permit access to a recording appears to be a reasonable compromise.”). As noted in the rulemaking, according to information provided by the DLC, at that time it appeared “that most tracks (or at least 30-second clips of most tracks), with relatively few exceptions, can be accessed for free through most DLC members’ services using a unique identifier, and that for most DLC members, the way the unique identifier is used is by plugging it into a URL that can be used either in the address bar of a web browser or to create a hyperlink.” *Id.* at 58,124–25.

- “Manage multiple accounts and add guest users[;]
- Update account information including contact and payment or banking information[;] . . .
- View payment history and revenue data, including by top works and top services[;]
- See what they are getting paid on and at what rate[;]
- See and confirm works and associated royalty claims[; and] . . .
- Access a dispute tool that notifies rights owners when other parties make competing ownership claims, enabling them to maintain or relinquish claims.”<sup>310</sup>

Other commenters echoed the suggestion of including a dispute management feature within the portal, including the ability to see pending disputes,<sup>311</sup> with the relevant parties visible to each other.<sup>312</sup> Commenters suggested that the portal allow for bulk claiming, with the DLC stating that “[b]ulk claiming mechanisms, through the delivery of bulk musical work data, and the ability to easily select multiple works,” will be “particularly important” for the claiming portal.<sup>313</sup> For its part, the MLC stated that it “is looking into providing ways for users to simultaneously claim their works in multiple recordings.”<sup>314</sup>

Commenters also suggested that the portal include the following functionality:

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<sup>310</sup> MLC Reply Comments at 12–13 (citing SoundExchange Initial Comments at 2–4).

<sup>311</sup> See Roundtable Tr. at 142:01–11 (Mar. 25, 2021) (Champarnaud, SACEM).

<sup>312</sup> Roundtable Tr. at 182:17–183:09 (Mar. 25, 2021) (Kanner, Spotify) (suggesting visibility “so that folks can understand who they’re claiming against, and even if they’re claiming against themselves, which is a particularly challenging thing in some of these circumstances because they don’t realize that they’ve submitted something on behalf of the—they’re the writer, or they’re submitting one share and then their publisher submitted as well. And now you’ve created noise and extra costs to everybody to fix a self-conflict”).

<sup>313</sup> DLC Initial Comments at 4; *see also* CISAC & BIEM Reply Comments at 2; Roundtable Tr. at 183:14–184:03 (Mar. 25, 2021) (Buchanan, Concord) (advising that a previous claiming portal “len[t] itself more to bulk claiming” and allowed users “to extract the data from the portal”).

<sup>314</sup> MLC *Ex Parte* Letter at 3 (Aug. 21, 2020).

- The ability for the MLC, through the portal, to “make suggestions related to recordings” it believes are the user’s, and then allowing the user to listen to the sound recording, and confirm whether or not it is in fact the user’s.<sup>315</sup>
- Allowing users to enter back-period claims within the portal, rather than emailing requests for adjustment to the MLC.<sup>316</sup>

The Office recommends that the MLC should implement the above-referenced portal functionalities that it proposed, which were also suggested by SoundExchange, as they generally appear reasonable and no commenter has suggested otherwise. More generally, the Office recommends that users should be able to engage with the MLC through the portal to the broadest extent reasonably practicable and that the portal should have a robust and sophisticated suite of user-friendly tools for users of all levels to easily digest and manage the administration of their works under section 115, including appropriate tools for identifying and addressing potential errors and other issues and flagging and managing disputes. The Office further recommends that the portal have built-in correspondence functionality to help streamline and centralize communications among users and between users and the MLC. The Office agrees that the portal should have appropriate mechanisms to facilitate bulk claiming, as the claiming process should be as efficient as possible. The Office also recommends that the MLC should explore ways to enable the portal to make relevant suggestions to users about unmatched usage that may embody their works. Lastly, the Office encourages the MLC to regularly engage with stakeholders and solicit feedback on both the portal and public database in order to continue refining and enhancing particular features and functionality as well as the overall user experience.

### ***C. Data Quality***

To do its job effectively—in addition to obtaining relevant work and ownership information through robust education and outreach efforts and having user-friendly registration and claiming systems—the MLC must ensure that its data is of the highest possible quality. The MLC has acknowledged this, stating that “the MLC should have access to the most authoritative, consistent and complete data on both sides of the

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<sup>315</sup> See Roundtable Tr. at 178:01–09 (Mar. 25, 2021) (North, SONA); Roundtable Tr. at 180:05–10 (Mar. 25, 2021) (Kanner, Spotify) (“You know, being able to suggest to rightsholders things. You are truly the experts all in your own catalogues, and the songwriters are experts, and they need to play that role in understanding, and it’s to give them tools that are going to allow for that.”).

<sup>316</sup> Roundtable Tr. at 163:10–16 (Mar. 25, 2021) (Buchanan, Concord) (“One suggestion that I would like to just throw out there is it’s great in fixing the works, but, as far as requesting adjustments or back period payments, it kind of falls short in that sense. You know that the work’s fixed going forward, but you don’t have the opportunity to put in a back period claim.”).

primary match,” where “[o]ne side of this match is the music used by [DMPs], and the other side is the musical works and their proper owners. . . . Without good data sets, matching systems cannot maximize their potential.”<sup>317</sup> The MLC has further said that “[o]btaining the best possible usage data set from DMPs must be met on the other side with a complete, accurate and authoritative data set on musical works ownership.”<sup>318</sup> To that end, the MLC has highlighted, among other things, “the importance of appropriately sourced and detailed metadata,” “the use of standard formats and unique identifiers,” and “the vital role of focused outreach and industry partnerships and resources.”<sup>319</sup>

Commenters also stressed the importance of having quality data, especially as it relates to matching. For example, the DLC noted that “[n]o improvement in technology will produce a match if the copyright owner is unknown,”<sup>320</sup> while CrossBorderWorks similarly added that “you can have great data and poor systems and you won’t get any good results[, a]nd vice versa, you can have really poor data and the best, most modern systems in the world and you won’t have any results.”<sup>321</sup> The UROC said that “[m]etadata needs to be standardized across the industry, to the extent possible,” and that the “MLC is in a position to be the standard-bearer and definitive source in this effort, and should look to marshal industry-wide support in laying further groundwork for global adoption (i.e., learning from what presently works, benefiting from the established practices of SoundExchange, CISAC/BIEM, and seeking access to the same tools utilized by global CMOs, providing definitive guides to stakeholders, etc.).”<sup>322</sup> Music Reports opined that “perhaps the most complicated part of the whole process is the process of creating the musical composition database, against which to do the matching in the first place,”<sup>323</sup> noting that “the data is extremely complicated.”<sup>324</sup> HFA similarly said that “the matching part isn’t the hardest part, it’s having the right data

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<sup>317</sup> MLC Initial Comments at 2–3.

<sup>318</sup> *Id.* at 5.

<sup>319</sup> MLC Reply Comments at 1.

<sup>320</sup> DLC Initial Comments at 4.

<sup>321</sup> Roundtable Tr. at 19:16–21 (Mar. 25, 2021) (Nauman, CrossBorderWorks); *see also* Roundtable Tr. at 66:21–67:11 (Mar. 25, 2021) (Merideth, Exploration Grp.) (“[S]oftware is an incredibly valuable tool for the amount of data that we have moving around, but we need to balance that more with a human element to actually cross check this because the software’s only going to move the data that we give it.”).

<sup>322</sup> UROC Reply Comments at 7.

<sup>323</sup> Symposium Tr. at 198:22–200:06 (Dec. 6, 2019) (Colitre, Music Reports) (discussing, in particular, the difficulties that exist with fragmented ownership and conflicting data).

<sup>324</sup> Roundtable Tr. at 69:14–70:10 (Mar. 25, 2021) (Shanley, Music Reports).

organized in a database.”<sup>325</sup>

The Office has already addressed the DMP-side of data flowing to the MLC through regulations promulgated pursuant to a public rulemaking.<sup>326</sup> As to the other side of the match—the repertoire side that the MLC will maintain and use to match against DMP reports of usage—commenters discussed several ways to help ensure its high quality. As discussed in more detail below, the Office generally agrees with commenters’ suggestions and recommends that the MLC take appropriate and reasonable steps to ensure that its data is of the highest possible quality.

## **1. Completeness, Accuracy, Currency, Conflicts, and Authoritativeness**

There was widespread agreement that the MLC’s repertoire data should be as complete, accurate, up-to-date, and de-conflicted as possible, and obtained from authoritative sources—meaning copyright owners or their representatives. The MLC stated that “[a]uthoritative ownership data means data *from owners*,”<sup>327</sup> and said it “will source its musical works repertoire and ownership data from copyright owners.”<sup>328</sup> Other commenters generally agreed with this approach.<sup>329</sup> SoundExchange stated that while “[r]epertoire data should be sourced directly from rights owners wherever possible,” “[i]n the absence of a complete repertoire record, usage data may still be valuable for distributing royalties, but as usage data is not authoritative, it should generally not be included in the public-facing database or, if it is included, must be identified as non-authoritative using a clear and conspicuous disclaimer.”<sup>330</sup> SONA relatedly said that

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<sup>325</sup> Symposium Tr. at 222:03–223:02 (Dec. 6, 2019) (Raso, HFA) (noting that “duplicate songs is a big problem”).

<sup>326</sup> See 37 C.F.R. §§ 210.26, 210.27; Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment, 85 Fed. Reg. 58,114 (Sept. 17, 2020).

<sup>327</sup> MLC Initial Comments at 6.

<sup>328</sup> MLC Reply Comments at 4–5 (“The MLC will only build repertoire data from copyright owners (including as received through their authorized representatives.”).

<sup>329</sup> See, e.g., CISAC & BIEM Reply Comments at 2 (“Only the copyright owners’ data should be considered as an authoritative source for [repertoire] information.”); SONA Reply Comments at 6; DLC Initial Comments at 4–5; see also Symposium Tr. at 225:06–08 (Dec. 6, 2019) (Raso, HFA) (“[U]nless you own it, or assigned own it, we don’t take it as authoritative.”); CMO REPORT at 15 (“Accuracy in the matching based on information from authoritative sources is key.”).

<sup>330</sup> SoundExchange Initial Comments at 14; see also id. at 7–9; SoundExchange Reply Comments at 1–3 (“The metadata stored in our repertoire database is sourced directly from sound recording rights owners and other authoritative sources, including record labels large and small, distributors, aggregators and artists who own their own masters.”).

“when resolving discrepancies in data for a musical work, data collected from the work’s rights administrator should be viewed as presumptively authoritative.”<sup>331</sup>

The MLC explained that to help maintain the quality of its data, it has implemented its Data Quality Initiative (“DQI”) to “assist[] copyright owners and administrators in comparing schedules of their works against the MLC’s works data” by providing “reports that highlight discrepancies between the two sets of data so that they can address those discrepancies and improve the accuracy of data related to their works.”<sup>332</sup> The MLC has engaged in partnerships with third parties “to provide DQI access to copyright owners who keep their works information on th[o]se platforms.”<sup>333</sup> Should data discrepancies be identified, a copyright owner or administrator would “need to register or update the corresponding works with The MLC using CWR or the work registration tools available in The MLC’s Portal.”<sup>334</sup> Multiple commenters expressed satisfaction with the MLC’s DQI,<sup>335</sup> though there were some suggestions to further enhance usability.<sup>336</sup>

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<sup>331</sup> SONA Reply Comments at 16–17.

<sup>332</sup> MLC Reply Comments at 3–4; *see* MLC Initial Comments at 5–6; Roundtable Tr. at 116:11–117:16 (Mar. 25, 2021) (Thompson, MLC); Roundtable Tr. at 135:03–21 (Mar. 25, 2021) (Bogan, MLC); *see also* MLC, 2020 DQI One Pager, <https://themlc.com/sites/default/files/2020-08/2020%20-%20DQI%20One%20Pager%20Updated%208-18-20.pdf> (“Participants create simple file(s) containing the works they want to compare with The MLC’s data, using a file format provided by The MLC. They then upload or email the files to The MLC. Upon receipt, The MLC will compare the data in those files with The MLC’s data and then send back comparison reports highlighting errors and inconsistencies in the data. Participants can then use these reports to troubleshoot the cause of these issues and take the appropriate corrective action.”).

<sup>333</sup> MLC Reply Comments at 3–4; *see* Roundtable Tr. at 135:22–136:20, 171:14–172:04 (Mar. 25, 2021) (Bogan, MLC) (noting that the DQI has “five partners that have launched in the marketplace, but we actually have a pipeline of over 50 partners who have been in the vetting process”); MLC, *Data Quality Initiative (DQI)*, <https://themlc.com/data-quality-initiative-0> (last visited June 25, 2021).

<sup>334</sup> MLC, *Data Quality Initiative (DQI)*, <https://themlc.com/data-quality-initiative-0> (last visited June 25, 2021).

<sup>335</sup> *See, e.g.*, CISAC & BIEM Reply Comments at 2; Recording Academy Initial Comments at 2; Roundtable Tr. at 139:07–08 (Mar. 25, 2021) (Buchanan, Concord); Roundtable Tr. at 139:24–140:05 (Mar. 25, 2021) (North, SONA) (“DQI is amazing, and the MLC is the very first society that I know of that has offered that kind of a tool where the rightsholder is able to submit a list of his or her works and related information and, in return, receive a report that shows the disparities.”).

<sup>336</sup> *See, e.g.*, SONA Reply Comments at 7 (encouraging “the MLC to incorporate user-friendly options within the DQI to allow a musical work administrator to resolve data discrepancies”); Roundtable Tr. at 139:09–22 (Mar. 25, 2021) (Buchanan, Concord) (“[I]t would be more useful on a going forward basis if we could extract the data to be reviewed from the portal directly by

The MLC said that the ability for copyright owners and their representatives to be able to directly update their data through its portal “represents a new era and a long-awaited opportunity to fix incorrect records of the past.”<sup>337</sup> The National Music Publishers’ Association (“NMPA”) echoed that “publishers now, with this ability to go in and see all of their data, to fix all of their data, . . . have to step forward and engage now . . . to make sure the data is correct.”<sup>338</sup> In the same vein, commenters discussed the need for data, including matches, to be reviewed, verified, and potentially investigated for accuracy and reconciliation, including through stakeholder feedback.<sup>339</sup>

The UROC more specifically suggested that it would be helpful to “[a]llow co-writers of a song to ‘tag’ their co-writers in a song registration, linking that in-progress registration to their co-writers so they can complete the missing metadata for their respective interests, for submission to The MLC once complete,” and to also “[p]rovide automated API links between a publisher’s internal song database & The MLC’s database to track

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various parameters like maybe IPI, writer name, so that we could see subsets of our catalogue come back and review in smaller batches, smaller doses than what the DQI has been able to offer us . . . It’s just a lot of data to go through at once. And the way that it comes to us is fixed in time . . . for when the DQI was ran. But it would be great if we had the ability through the portal to run a DQI, fix things, then go back and run that same DQI on that subset later . . . to see what still needs to be corrected.”).

<sup>337</sup> MLC Initial Comments at 6.

<sup>338</sup> Roundtable Tr. at 16:05–18:03 (Mar. 25, 2021) (Aguirre, NMPA).

<sup>339</sup> See, e.g., SoundExchange Initial Comments at 2, 16 (stating that “a collective must provide . . . to stakeholders . . . a means for providing feedback on the metadata associated with their works” and that “[p]ortals that allow payees to see and confirm their works and associated royalty claims will be a critical means for allowing them to give real-time feedback on the cycle of data”); DLC Initial Comments at 4 (advocating for stakeholders to have “[t]he ability to flag or correct inaccurate matches between a musical work and sound recording” reflected in the MLC’s records); Roundtable Tr. at 80:24–82:08 (Mar. 25, 2021) (Shanley, Music Reports) (explaining that “there’s a lot of potential for overlap,” “false identifications,” and “lack of understanding,” and that “it’s important to ensure that . . . you have people vetting accuracy;” “manual reconciliation to just vet incoming claims, to vet incoming data, is really important”); Roundtable Tr. at 82:24–84:06 (Mar. 25, 2021) (Perry, BHP Royalty Co.) (discussing accuracy issues and noting that “about 70 percent of our recordings have to be inputted manually because of previous information being incorrect where we have to correct it and then resubmit”); Roundtable Tr. at 133:07–15 (Mar. 25, 2021) (Champarnaud, SACEM) (“[B]efore being able to claim, we really need to have proper, what we call ‘documentation,’ copyright information fully documented in the MLC database.”); Roundtable Tr. at 146:21–147:02 (Mar. 25, 2021) (North, SONA) (“I absolutely want to see the link between writer and publisher . . . so that I could confirm, let’s say, that my share was being attributed to my publisher.”); see also CMO REPORT at 16 (“CMOs provide members with the opportunities to provide feedback on missing uses or perceived errors, which would be investigated and, if necessary, corrected.”).

and flag discrepancies, updates, [and] resolutions. The MLC's current 'DQI Initiative' is a step in this direction, with much further potential to be explored."<sup>340</sup> Others generally concurred with the use of APIs and similar data exchanges.<sup>341</sup>

SoundExchange remarked that, in its experience, in order to consistently maintain accurate and de-conflicted ownership data among its nearly 200,000 royalty recipients, when that data is constantly changing,<sup>342</sup> it employs different mechanisms for different "customer groups," explaining that for "the high volume players . . . the majors," "in order to get up-to-date rights information from them, you need APIs, you need the DDEX messages."<sup>343</sup> SoundExchange said that for "the middle tier . . . the mid-size indies," "they need bulk claiming, so Excel spreadsheets" and "[b]eing able to upload your data in a format that works for you," and for "the third . . . the true independents, the singer-songwriters, the creators," "you need a very clean, simple, intuitive user interface where they can go in, give the information they need, and get out."<sup>344</sup>

As to its practices, SoundExchange further explained that "the data we store in our repertoire database must always be in sync with the data submitted by the authoritative sources themselves. We do not alter the repertoire information we receive. If we find any issue with data submitted to us, we reject the submission, inform the submitter, and ask the submitter to correct and resubmit. . . . Our repertoire database receives metadata in real time, directly from rights owners, who have an economic incentive to ensure their data is accurate, complete, and timely."<sup>345</sup>

With respect to conflicts, SoundExchange elaborated that when it "detects multiple ISRCs provided by different submitters, or when multiple rights owners claim the same ISRC, SoundExchange alerts the claiming parties of the overlap and provides them the transparency and tools to resolve those overlaps in our portal, or by working with our

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<sup>340</sup> UROC Reply Comments at 8; *see also* Roundtable Tr. at 350:15–351:04 (Mar. 26, 2021) (Taylor, UROC). *But see* Roundtable Tr. at 169:05–14 (Mar. 25, 2021) (Levin, Sindee Levin Music) (cautioning against allowing "co-writers [to] . . . identify things" because "you're going to find people who, for whatever reason, feel that they got . . . screwed out of something, and they're going to . . . change the . . . splits to them," "[s]o I think it's a big mistake and will create a lot of problems").

<sup>341</sup> *See, e.g.*, CrossBorderWorks Supplemental Roundtable Comments at 2 (discussing "frequent data exchanges" with publishers and others); Roundtable Tr. at 118:07–10 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs) ("APIs can be very useful in keeping things up to date.")

<sup>342</sup> *See* Roundtable Tr. at 97:05–13 (Mar. 25, 2021) (Shanley, Music Reports) ("[I]n between accounting periods, thousands of music publishing catalogues are sold.").

<sup>343</sup> Symposium Tr. at 242:16–244:18 (Dec. 6, 2019) (Lieberman, SoundExchange).

<sup>344</sup> Symposium Tr. at 244:19–245:17 (Dec. 6, 2019) (Lieberman, SoundExchange).

<sup>345</sup> SoundExchange Reply Comments at 3.

Rights Management team.”<sup>346</sup> The MLC explained that there are accepted industry norms for dealing with conflicts established by the Society Publisher Forum, which involves the CISAC societies, and that the Forum “has done a lot of good work down the years on sort of producing best practices on producing policies and guiding principles that . . . can be used to sort of guide . . . because . . . it is a CMO’s role to facilitate . . . rather than, say, referee, the resolution over claims and conflicts.”<sup>347</sup> Music Reports noted that “what has to happen is tools have to be provided to rights owners so that they can” resolve any conflicts.<sup>348</sup>

The CMO Report added that “CMOs may reject any data that is received in extremely poor quality and pass that data back to the supplier of that information to be revised and re-submitted,” and that “CMOs may employ technology meant to ensure that both rights holders and licensees . . . deliver information that meets set standards for quality.”<sup>349</sup>

Broadly, the Office recommends that the MLC take all reasonable and appropriate steps to ensure that its repertoire data is as complete, accurate, up-to-date, and de-conflicted as possible, and is obtained from authoritative sources.

The Office agrees with commenters that the MLC’s musical work repertoire and ownership data should be of sufficient quality to be considered authoritative. The Office also agrees that when information about a musical work or its owner is provided to the MLC by that owner (or that owner’s representative), it may generally be regarded as authoritative. The Office recommends that the MLC nevertheless have appropriate mechanisms in place to help review, verify, and quality-check owner-provided information, and recognize problems like conflicts, inconsistencies, inaccuracies, and potential fraud in accepting such data. This is an area where the Office believes that being able to cross-reference against certain third-party data sources, as discussed below, may be a useful best practice to aid in detecting such potential problems so that they can be investigated and remedied if necessary, rather than assuming that everything registered or claimed with the MLC is always correct. Such a practice may also yield additional benefits to owners who are providing accurate data to the MLC, in that it may alert them to issues with data about their works being maintained in third-party repositories.

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<sup>346</sup> SoundExchange Initial Comments at 9.

<sup>347</sup> Roundtable Tr. at 121:09–122:10 (Mar. 25, 2021) (Thompson, MLC).

<sup>348</sup> Roundtable Tr. at 124:09–125:09 (Mar. 25, 2021) (Shanley, Music Reports); *see also* SONA Reply Comments at 7 (encouraging “the MLC to incorporate data conflict resolution within the MLC user portal system so it can be easily accessed and used by musical work copyright holders”).

<sup>349</sup> CMO REPORT at 16–17.

At the same time, information provided by musical work copyright owners about sound recordings embodying their musical works may not necessarily be considered authoritative, and DMP-provided data may also be unlikely to be considered authoritative as to sound recording or musical work repertoire or ownership information. That does not mean, however, that it would be inappropriate for such data to appear in the public database (provided its origin is conspicuously identified<sup>350</sup>) or for the MLC to use such information to further assist in enhancing its data. The Office recommends that the MLC use its best judgment in determining whether leveraging particular data from particular sources, including these as well as third-party sources discussed below, may be helpful toward achieving the overall goal of reducing the incidence of unclaimed royalties. In some cases, that may mean disregarding data that may, for example, cause confusion, give the false impression of a conflict, or lead to dubious matching results; but in other cases, using such information could be invaluable, such as in assisting with MLC research and investigations or facilitating claiming that ultimately results in additional matching and raises the overall quality of the MLC's data.

While in the Office's database-focused rulemaking, the Office adopted a "flexible approach for the MLC to determine the best way to populate the database and display sound recording information,"<sup>351</sup> the Office cautions the MLC against excluding musical work data reported by DMPs for unmatched musical works in the public database. To the extent DMPs report such information (e.g., songwriters, publishers, ISWCs, IPIs, ISNIs), even though not considered authoritative, such data could be what makes the difference for copyright owners attempting to identify and claim unmatched usage of their works. Indeed, that is, in part, why the statute and the Office's regulations require such data to be reported by DMPs in the first place. Specifically with respect to sound recording data, the Office discourages the MLC from merely populating the database with DMP-provided information, especially without de-duplicating it. The Office instead recommends that the MLC at least include authoritatively sourced sound recording information and any sound recording information provided by musical work copyright owners<sup>352</sup> in addition to the DMP-provided data, and that, to the extent reasonably possible, the MLC link, associate, or otherwise "roll up" the data where

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<sup>350</sup> See 37 C.F.R. § 210.31(e).

<sup>351</sup> See 85 Fed. Reg. at 86,815.

<sup>352</sup> See 17 U.S.C. § 115(d)(3)(E)(iv) ("Each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the [MLC], *including for use in the musical works database, to the extent such information is not then available in the database*, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.") (emphasis added).

identical sound recordings are identified across DMP reporting and other data sources.<sup>353</sup>

The Office recommends that the MLC continue with the DQI and look into the usability suggestions made by commenters as well as other user-friendly enhancements. The MLC should also explore additional ways to provide simple and easy methods for even the smallest of copyright owners to be able to check what data the MLC has for their works, especially when they may not have the capacity to construct detailed schedules. The Office believes that all copyright owners, regardless of size or sophistication, should be able to identify, review, verify, and take appropriate actions (*e.g.*, flagging potential issues, making corrections, engaging in data conflict resolution, etc.) with respect to the MLC-held data for their works, including any related matches the MLC has made, and recommends that the MLC provide appropriate user-friendly mechanisms for them to easily do so through portal functionality, self-help tools, and access to MLC personnel for assistance.

The Office recommends that the MLC should work to ensure that its data is in sync with the data held and submitted by the authoritative sources of the data. More specifically, the Office recommends that the MLC employ automation where possible, such as by setting up data exchanges and using APIs with copyright owners' internal databases to assist with real-time updates and the detection of discrepancies, especially with larger copyright owners where the data is particularly voluminous. The Office further recommends that the MLC have appropriate mechanisms in place to accept new and updated (including corrected) information from those copyright owners who are not equipped for APIs and other automated exchanges, including by having flexible bulk processes (*e.g.*, by using spreadsheets in various common formats and allowing users to apply uniform updates across multiple works through the portal at the same time) and having simple, well-organized, and user-friendly web interfaces to manually input data.

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<sup>353</sup> See 85 Fed. Reg. at 86,815–16 (“Should a copyright owner be confronted with thousands of entries of the identical sound recording in the database (as opposed to numerous, but different, sound recordings embodying the musical work) that are not linked or associated, and each entry represents a single *use* of a sound recording instead of its *identity*, the Office questions the meaningfulness of such information.”); see also 85 Fed. Reg. at 22,524 (“Based on all of the comments, it seems efficient for the MLC to have access to an aggregated, regularly updated, and verified feed of the applicable data sourced directly from copyright owners, rather than consistently need to sort through potentially contradictory DMP-provided label data—especially where the Office has been told that labels sometimes provide different data for the same works to different DMPs, and that labels themselves sometimes send updates that alter previously-reported fields.”); Roundtable Tr. at 81:17–22 (Mar. 25, 2021) (Shanley, Music Reports) (“I think understanding that . . . one sound recording is the same sound recording across . . . Spotify and Apple and Amazon, et cetera, is extremely important so you can do all that work at once, especially if you’re in that centralized position like the MLC is.”).

With respect to the UROC’s suggestion to allow co-writers to tag each other, the Office recommends that the portal should more broadly enable users to tag others to alert them to potential issues affecting their respective interests. For example, the Office recommends that registered co-owners be provided with a means of alerting any of their unregistered co-owners that they need to register their shares of a particular work with the MLC. The MLC should also have mechanisms through which a copyright owner can flag potential data problems, such as an ownership dispute or non-ownership-based conflict (*e.g.*, a duplicate entry, an incorrect ISWC, or a misspelled name) involving information submitted by a co-owner or that otherwise appears in the database. Such a mechanism could also be potentially helpful in detecting fraud, such as where a registered co-owner recognizes a non-owner attempting to claim an unregistered co-owner’s share of a work. The Office further recommends that the MLC establish user-friendly mechanisms for resolving any discrepancies that include portal functionality, self-help tools, and access to MLC personnel for assistance. To the extent appropriate, mechanisms, tools, and other resources the MLC makes available to copyright owners to identify, review, and verify data, flag potential issues, and address discrepancies and other concerns should also be made available to a work’s represented songwriter(s) if they have signed up for portal access, as discussed above. A work’s represented songwriter(s) should not, however, be able to directly make changes to data without appropriate vetting and verification.

The Office additionally recommends that the MLC have appropriate mechanisms to detect potential duplicate or overlapping work submissions so that the MLC is not entirely reliant on others to identify such issues.

## 2. Data Bifurcation

Commenters agreed that usage and repertoire data should be maintained separately.<sup>354</sup> For example, SoundExchange said that the MLC will “be well-served by distinguishing between repertoire and usage,”<sup>355</sup> explaining its own practice of “maintain[ing] two distinct data repositories: our usage data repository, which stores all the distinct spellings, metadata combinations and raw representations of sound recordings as reported by DMPs in their reports of use, and our repertoire data repository, which is our authoritative ISRC and sound recording metadata database,” and that “[b]oth data

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<sup>354</sup> See, e.g., SoundExchange Initial Comments at 7–9, 14; SoundExchange Reply Comments at 2; DLC Reply Comments at 1–2; SONA Reply Comments at 5; MLC Reply Comments at 4–5.

<sup>355</sup> SoundExchange Initial Comments at 14; see Roundtable Tr. at 67:24–68:13 (Mar. 25, 2021) (Bonilla, SoundExchange) (“What we’ve seen in our experience is that the best way to actually achieve the possible maximum pay through rate and pay out as much as we can is to clearly split the data into three categories and clearly segregate usage, sound recording repertoire, and musical work repertoire.”).

sets are joined by a proprietary matching algorithm that relies on common sound recording metadata elements.”<sup>356</sup> It said that “[m]atching usage data to authoritative repertoire data and then distributing royalties based on the repertoire data allows for increased automation, lowers costs, increases payments, lowers unpaid balances, increases customer satisfaction, simplifies workflows and allows for a more efficient ecosystem.”<sup>357</sup> Other commenters agreed with SoundExchange, and further suggested that SoundExchange’s previous experiences be seriously considered.<sup>358</sup> The MLC also agreed, stating that its “matching process will similarly work to match the data in these two distinct data repositories (usage and repertoire), built from two different sources (DMPs and copyright owners).”<sup>359</sup>

The Office agrees with commenters, and recommends that usage and repertoire data be maintained separately to ensure the integrity of each distinct data repository. As noted above, this does not mean that usage data cannot be displayed in the public musical works database, but where it is, its source should be clearly identified to avoid confusion. The Office recommends that the MLC be vigilant in identifying and tracking the origins of the data it acquires, and separate it appropriately.

### 3. Standard Unique Identifiers

Commenters emphasized the importance of collecting and employing standard unique identifiers throughout the data chain.<sup>360</sup> For example, SoundExchange said that “to the extent possible, a collective must build systems and practices around standard unique identifiers, which are the best way to manage the huge volume of usage and repertoire data that a collective receives in the digital age.”<sup>361</sup> More specifically, SoundExchange discussed its experience with ISRCs, calling them “invaluable for disambiguating recordings,” and explaining that its “repertoire database ingests ISRCs from authoritative sources, typically rights owners, and only ingests ISRCs that are non-duplicative of other ISRCs and are validly composed.”<sup>362</sup> It stated that part of the way it joins its usage and repertoire databases is through the use of ISRCs in its matching

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<sup>356</sup> SoundExchange Reply Comments at 2; *see also* SoundExchange Initial Comments at 7–9, 14.

<sup>357</sup> SoundExchange Initial Comments at 8–9; *see* Roundtable Tr. at 68:14–20 (Mar. 25, 2021) (Bonilla, SoundExchange).

<sup>358</sup> *See, e.g.*, DLC Reply Comments at 1–2; SONA Reply Comments at 5.

<sup>359</sup> MLC Reply Comments at 4–5.

<sup>360</sup> *See, e.g.*, SoundExchange Initial Comments at 2, 5–7; SoundExchange Reply Comments at 2; CISAC & BIEM Reply Comments at 1–2; SONA Reply Comments at 2, 6–8; MLC Reply Comments at 6–7.

<sup>361</sup> SoundExchange Initial Comments at 2.

<sup>362</sup> *Id.* at 5–7.

algorithm, which “substantially improves the quality of the results, lowers the complexity of the algorithm, simplifies its implementation and lowers the overall cost.”<sup>363</sup> SoundExchange also said that it relies on ISRCs “when processing incoming repertoire submissions from the labels and determining whether it is a submission for a new sound recording or a submission updating an already-submitted sound recording.”<sup>364</sup>

Other commenters stressed that obtaining and using unique identifiers, especially ISRCs, ISWCs, IPIs, and unique DMP identifiers, is important for reducing the incidence of unclaimed royalties.<sup>365</sup> The MLC agreed with the importance of unique identifiers.<sup>366</sup> SGA & SCL called for “the designation of an ‘international creator number’ for every music creator in the world.”<sup>367</sup>

The Office agrees with commenters that using standard unique identifiers is essential to the MLC’s operations, and recommends that the MLC employ them to the broadest extent reasonably appropriate, including in its registration and claiming processes, matching processes, and general data maintenance activities. The Office previously determined in rulemaking proceedings which particular identifiers DMPs must report and which ones the MLC must include in the public database and in royalty statements to copyright owners (*e.g.*, ISRCs, ISWCs, IPIs, ISNIs, UPCs, and DMP-assigned identifiers).<sup>368</sup> The Office further recommends that the MLC’s systems be able to detect where received identifiers are duplicative or invalidly composed to help the MLC determine whether further investigation or remedial action is warranted. With respect to third-party data sources, discussed below, the Office recommends that wherever reasonably appropriate, the MLC should cross-reference provided identifiers, and

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<sup>363</sup> SoundExchange Reply Comments at 2.

<sup>364</sup> *Id.*

<sup>365</sup> See, *e.g.*, CISAC & BIEM Reply Comments at 1–2; SONA Reply Comments at 2, 6–8; Roundtable Tr. at 76:05–12 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs); see also Symposium Tr. at 198:18–21 (Dec. 6, 2019) (Colitre, Music Reports) (noting that Music Reports “leverag[es] whatever unique identifiers [it] can”); Symposium Tr. at 233:20–234:21 (Dec. 6, 2019) (Boissonneault, SOCAN/Dataclef) (“Years ago, we used to be able to do this textually. You’d start with a title, you’d start with a name. You can’t do that anymore. You have to start with the identifier, and then qualify with the title, with the name.”); CMO REPORT at 16 (noting that “CMOs may include a wide variety of industry-standard identifiers in the matching process,” including ISRCs, ISWCs, DMP codes, and IPIs).

<sup>366</sup> MLC Reply Comments at 6–8; Roundtable Tr. at 77:11–18 (Mar. 25, 2021) (Thompson, MLC).

<sup>367</sup> SGA & SCL Initial Comments at 4.

<sup>368</sup> See 37 C.F.R. §§ 210.27(e)(1), 210.29(c)(1)–(3), 210.31(b)–(c).

attendant data, against trusted repositories of such identifiers, to the extent they exist, to ensure accuracy and consistency and to help detect where further action may be needed.

Regarding SGA & SCL’s call for the creation of an “international creator number,” they have not provided enough information about their suggestion for the Office to opine. For example, it is not clear what the intended differences would be between the new identifier and an IPI or ISNI. If any new type of relevant identifier is adopted by the industry, the MLC should make use of it, and the Office will consider updating its regulatory requirements accordingly.

#### **4. Third-Party Data Sources**

There was widespread agreement that the MLC should obtain access to and employ data, as appropriate, from additional sources beyond DMP reporting and musical work copyright owner registration and claiming.<sup>369</sup> Several third-party data sources were mentioned, including, for example, CIS-Net, the IPI System, PRO and CMO databases, SoundExchange’s ISRC database, SoundExchange’s MDX system, and Music Reports. For example, the UROC suggested that the MLC “[m]ake use of existing data sets (via purchase or lease, if necessary) that may already contain matches between ISWC & ISRCs, to cross-reference against gaps in owner-provided data,” and employ “[c]ross-referencing of existing publicly available databases that provide contact information for copyright owners (i.e., ASCAP/BMI public search, etc.).”<sup>370</sup> CrossBorderWorks stated that “[d]ata silos that are not refreshed and do not cross-reference each other as well as third party sources will perpetuate problems,” and suggested a “multi-faceted approach” that includes using “PRO data and an ISRC reference library, as well as frequent data exchanges with PROs, publishers, and international collectives.”<sup>371</sup> Prager Metis CPAs broadly noted that “if you’ve got all the different sources matching and pointing you in the same direction, there’s value to that, and that can be used for confidence levels in algorithms. If you’ve got another database that you’re just checking against, even that can be valuable too.”<sup>372</sup> Spotify similarly stated that “there is value in

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<sup>369</sup> See, e.g., UROC Reply Comments at 8, 12; DLC Initial Comments at 5; CISAC & BIEM Initial Comments at 2–3; CISAC & BIEM Reply Comments at 2; SONA Reply Comments at 5–8; CrossBorderWorks Supplemental Roundtable Comments at 2; Roundtable Tr. at 105:14–21, 112:13–24 (Mar. 25, 2021) (Merideth, Exploration Grp.); Roundtable Tr. at 105:23–106:07 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs); Roundtable Tr. at 106:10–108:04 (Mar. 25, 2021) (Balcells, BMAT Music Innovators); Roundtable Tr. at 113:07–114:12 (Mar. 25, 2021) (Shanley, Music Reports); Roundtable Tr. at 115:10–18 (Mar. 25, 2021) (Selden, Spotify); see also CMO REPORT at 7–8 (describing the numerous sources from which CMOs obtain data).

<sup>370</sup> UROC Reply Comments at 8, 12.

<sup>371</sup> CrossBorderWorks Supplemental Roundtable Comments at 2.

<sup>372</sup> Roundtable Tr. at 105:23–106:07 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs).

third party data because it could help automate some of your confidence because every... source of data, every link is sort of a signal.”<sup>373</sup> BMAT Music Innovators suggested using third-party data to engage in “triangular matching across sources,” stating that “it is one of the best ways of really pushing the matching levels up.”<sup>374</sup> Exploration Group pointed out that “there’s a repository . . . of ISWC codes matched to ISRC codes . . . that already exists at Music Reports and in other sources as well that could lend a lot of support to what is unmatched.”<sup>375</sup>

CISAC & BIEM said that “[t]he MLC should . . . have access to international tools managed by CISAC,” including CIS-Net (which “can help the MLC to locate the source that will be in a position to provide the missing copyright information in a musical work”) and the IPI System (which “will specifically provide information on the society to which copyright owners are affiliated”), noting that “foreign CMOs are a reliable source and can provide clean data on their own repertoires.”<sup>376</sup> CISAC & BIEM further suggested that “the MLC should encourage representatives of non-US repertoires, including their US sub-publishers and foreign CMOs, to share information on cross-references between their musical works and related sound recordings in order to facilitate their identification process.”<sup>377</sup> The CMO Report relatedly stated that “some CMOs outside the U.S. may have more data on many individual or specific U.S. works . . . than any single U.S. mechanical rights agency or U.S. performing rights organization may have.”<sup>378</sup>

SONA “advocated for the collection of as much unique identifying information for musical works as reasonably possible”<sup>379</sup> and stated that “[t]he MLC should be sourcing its data from as many sources as possible,” adding that “if we can get the MLC into the CISAC hold, it could avail itself of the fact that the CISAC societies share their unclaimed works databases, and the sooner we clean up the data the better, and there’s no reason why, in our opinion, that the MLC should not be getting help from anywhere

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<sup>373</sup> Roundtable Tr. at 115:10–18 (Mar. 25, 2021) (Selden, Spotify).

<sup>374</sup> Roundtable Tr. at 106:10–108:04 (Mar. 25, 2021) (Balcells, BMAT Music Innovators).

<sup>375</sup> Roundtable Tr. at 112:13–24 (Mar. 25, 2021) (Merideth, Exploration Grp.).

<sup>376</sup> CISAC & BIEM Initial Comments at 2–3; *see also* Fonico, LLC Supplemental Roundtable Comments at 1–2 (discussing data challenges with foreign language repertoire); Roundtable Tr. at 403:05–07 (Mar. 26, 2021) (Liwall, UROC) (“[W]e often find foreign titles tend to be the most problematic when it comes to actually matching songs that are not fully matched.”).

<sup>377</sup> CISAC & BIEM Reply Comments at 2.

<sup>378</sup> CMO REPORT at 14.

<sup>379</sup> SONA Reply Comments at 5.

it can.”<sup>380</sup> Others agreed that the MLC should join CISAC and make use of its global network and tools.<sup>381</sup> SONA also said that “[t]here must be connectivity in order to accurately assess usage and also ensure that the [ISRC] and [UPC] for a work is consistent across datasets,” and suggested that “there should be a flow of information between [the MLC’s] datasets and SoundExchange’s,” as “[t]his is important to improve accuracy.”<sup>382</sup> SONA further suggested that “the MLC should be able to gather ISRC information from SoundExchange’s ISRC/UPC database to increase optimization,” and that “[i]deally, if a work is registered with the MLC or SoundExchange, the metadata associated with that work would be shared between the two systems.”<sup>383</sup>

SoundExchange similarly suggested that the MLC would benefit from using its databases, commenting at length about the benefits of embracing ISRCs and stating that “authenticated links between sound recordings and musical works are made available to those who subscribe to MDX.”<sup>384</sup> The Office is also aware that SoundExchange “regularly matches its lists of unregistered artists and labels against organizations who keep contact information for such creators,” with “[p]ast industry partners includ[ing] ASCAP, BandPage, CDBaby, MySpace, ReverbNation, and more than 150 others.”<sup>385</sup> The DLC specifically advocated for the MLC to use MDX, as a “new tool[] that ha[s]

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<sup>380</sup> Roundtable Tr. at 414:07–16 (Mar. 26, 2021) (Gorgoni, SONA); *see also* SONA Reply Comments at 7–8 (stating that using CIS-Net and the IPI System “is another opportunity for the MLC to integrate crucial datasets to improve accuracy and transparency for musical work copyright owners” that is “strongly encourage[d]”).

<sup>381</sup> *See, e.g.*, Roundtable Tr. at 155:06–22 (Mar. 25, 2021) (Champarnaud, SACEM) (“All the foreign societies inside of CISAC . . . we do share on a periodical basis what we call unidentified performances lists, and we do use our CIS Net network of databases where we all store our copyright information. We push that unidentified performances to this network so that all societies can search for their own work that are in performance, for example, in France or in Germany or wherever in the world, depending upon the CMO, and it’s very useful, and something similar or the MLC joining the club of CISAC so that all these unclaimed are known at least by the PRO and CMO community would be very helpful.”); Roundtable Tr. at 313:18–22 (Mar. 26, 2021) (Morris, Pandora) (noting that it should be considered with respect to matching); Roundtable Tr. at 382:05–11 (Mar. 26, 2021) (Evers, CIAM); *see also* Roundtable Tr. at 383:03–08 (Mar. 26, 2021) (Simson).

<sup>382</sup> SONA Reply Comments at 5–6.

<sup>383</sup> *Id.* at 6.

<sup>384</sup> *See, e.g.*, SoundExchange Initial Comments at 13–14.

<sup>385</sup> SoundExchange, *SoundExchange Outreach Efforts* (Aug. 17, 2017), [https://www.soundexchange.com/wp-content/uploads/2016/09/Outreach-Fact-Sheet\\_8.17.17.pdf](https://www.soundexchange.com/wp-content/uploads/2016/09/Outreach-Fact-Sheet_8.17.17.pdf).

been designed to improve mechanical licensing processes between labels and publishers.”<sup>386</sup>

Music Reports noted that using third-party data can be an “expensive endeavor” that requires “sophisticated integration that constantly takes place.”<sup>387</sup>

The MLC signaled an openness to gathering and employing third-party data in various ways, stating:

I think we need to think about each of those different sets of data in terms of what the appropriate alternative third-party data sources might be for each of those. I don’t think we can sort of treat them all as one large blob of data that we can augment. We need to make sure that we augment with the appropriate data source of an appropriate level of authority and an appropriate level of quality if we are going to meaningfully contribute to and improve the quality of the data available to the MLC.<sup>388</sup>

The MLC elaborated that it views the data it holds as generally broken into four categories: usage data and three types of repertoire-related data.<sup>389</sup> The MLC identified the first repertoire-related dataset as information identifying the musical work, which the MLC called “immutable . . . public, factual data . . . that can be reasonably sourced . . . ideally from . . . the rightsholders of it,” “[b]ut, equally, you could see . . . sourcing that sort of information about the identity of the work from something like the ISWC notes,” which “would be a trusted repository of that sort of data.”<sup>390</sup> The second such dataset was ownership claims information for the musical work, which the MLC said “is far from immutable” and “changes regularly.”<sup>391</sup> The MLC said it “would fairly strongly be of the view that that data is best sourced from the people who represent those copyrights at a given point in time,” and “caution[ed] there against . . . trying to . . . crowdsource that data or take any other approach.”<sup>392</sup> The third such dataset was related sound recording information, for which the MLC acknowledged that “there are potentially helpful sources of that,” and that “SoundExchange would be one such example.”<sup>393</sup>

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<sup>386</sup> DLC Initial Comments at 5.

<sup>387</sup> Roundtable Tr. at 113:07–114:12 (Mar. 25, 2021) (Shanley, Music Reports).

<sup>388</sup> See Roundtable Tr. at 111:03–13 (Mar. 25, 2021) (Thompson, MLC).

<sup>389</sup> See Roundtable Tr. at 108:21–111:02 (Mar. 25, 2021) (Thompson, MLC).

<sup>390</sup> Roundtable Tr. at 108:25–109:11 (Mar. 25, 2021) (Thompson, MLC).

<sup>391</sup> Roundtable Tr. at 109:12–15 (Mar. 25, 2021) (Thompson, MLC).

<sup>392</sup> Roundtable Tr. at 109:15–20 (Mar. 25, 2021) (Thompson, MLC).

<sup>393</sup> Roundtable Tr. at 110:18–22 (Mar. 25, 2021) (Thompson, MLC).

The Office agrees with commenters that obtaining access to and using third-party data is likely to benefit the MLC in maintaining high-quality data and helping to reduce the incidence of unclaimed royalties, and therefore the Office recommends that the MLC do so to the broadest extent reasonably appropriate. The Office emphasizes, however, that the appropriateness of using particular third-party data in particular circumstances will vary, and recommends that the MLC use its best judgment. The potential range of uses for third-party data is broad. For example, it could be used to regularly cross-reference against the whole of DMP reports of usage, the particular usage that remains unmatched after the application of initial matching efforts, copyright owner registrations and claims, or even the entirety of the musical works database. It could also be used as part of the matching process itself, where on one end of the spectrum, it could be integrated into automated processes, and on the other end, it could be used for discrete manual research and individual lookups. It further could be used within the portal to provide potentially helpful supplemental information to copyright owners attempting to identify and claim unmatched usage of their works. The Office recommends that the MLC explore the utility and viability of these and any other potential uses, including the costs and benefits associated with varying degrees of potential integration between third-party data sources and the MLC's systems.

Relatedly, the Office recommends that the MLC take a broad view of the potential usefulness of third-party data. Even if it would be inappropriate to treat such data as authoritative and use it to fill an information gap in the database or integrate into matching systems, the data could still be useful in other material ways. For example, as noted above, the existence of data discrepancies between the MLC's records and third-party sources could be an indication that the MLC should investigate further to confirm whether the data it has is in fact accurate. Such data could also be the proverbial breadcrumbs that lead the MLC to a match. For example, even third-party-sourced ownership data that the MLC would not incorporate into the database or use to make a royalty payment may still be helpful in directing targeted outreach or other activities focused on attempting to track down and confirm the identity and location of the owner of an unmatched work.

In terms of which specific data sources may be most appropriate, the Office believes the MLC is best situated to make that evaluation at this time, and recommends that strong consideration be given to multiple sources, as each may offer different advantages. To highlight a few potential non-exhaustive examples, access to SoundExchange's ISRC data may assist in identifying the sound recordings used by DMPs, while access to its MDX system may yield pre-matched purportedly authoritative links between sound recordings and musical works; access to CIS-Net and other CISAC-managed tools may be useful particularly for foreign works, and PRO databases and creator-focused sources may help to identify and locate relevant copyright owners. The Office also recommends that the MLC explore whether there are any non-music-industry data sources that may be useful.

The Office acknowledges that the MLC cannot compel third-party sources to provide their data, and that the MLC does not have a limitless budget with which to purchase access to and integrate such data. Consequently, the Office expects the MLC to make cost-effective and fiscally responsible decisions, and recommends that the MLC engage only with third-party data sources that agree to commercially reasonable terms. In enacting the MMA, Congress concluded that “[t]his situation must end” where “[m]usic metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on,”<sup>394</sup> and so the Office hopes industry participants will help work toward ensuring the MMA’s success by making their data reasonably available to the MLC. The MLC is encouraged to inform the Office if commercial disagreement stands in the way of otherwise beneficial uses of third-party data.

## 5. Transparency

Though not directly addressed in detail by commenters in this context, the need for the MLC to be transparent in its operations, as broadly discussed by commenters and noted throughout this report, is no less applicable here.<sup>395</sup> Consequently, the Office recommends that the full and complete policies, practices, and procedures, including related initiatives and technical implementations, adopted by the MLC with respect to data quality and related matters discussed in this section be documented in detail and made publicly available on the MLC’s website, along with clear explanations describing them in layperson’s terms. The Office also recommends that the MLC provide an explanation of its decision making—why it made the choices it did—and update the information on its website as appropriate to reflect any material changes in the future.

### *D. MLC Matching Practices*

Under the statute, one of the MLC’s core duties is to match the usage reported by DMPs to sound recordings, match those sound recordings to their underlying musical works, and match those musical works to their copyright owners, who must be identified and located. The MMA states that “[u]pon receiving reports of usage and payments of royalties from [DMPs] for covered activities, the [MLC] shall,” among other things, “engage in efforts to” “identify the musical works embodied in sound recordings

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<sup>394</sup> S. REP. NO. 115-339, at 8; CONF. REP. at 6; *see* H.R. REP. NO. 115-651, at 8.

<sup>395</sup> *See, e.g.*, MLC Reply Comments at 1 (supporting the principle of having “transparency and trust with stakeholders”); UROC Reply Comments at 5 (“[F]ull & complete transparency & accountability in the receipt, analysis, matching, & ultimate distribution of all unclaimed accrued royalties, are all absolutely necessary. . . . All efforts should therefore be undertaken to build the foundational principles of transparency & accountability into the very fabric of all operations of . . . The MLC[.]”).

reflected in such reports, and the copyright owners of such musical works (and shares thereof)," and shall "distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective."<sup>396</sup> This further requires the MLC to "locate the copyright owners of such works (and shares thereof)."<sup>397</sup> This obligation to engage in matching, including the affirmative duty to actively attempt to identify and locate copyright owners, is related to, but separate and distinct from, the registration and claiming processes and related tools for copyright owners to use that the MLC must establish, maintain, and publicize pursuant to other statutory provisions.<sup>398</sup> In this way, Congress intended that the MLC and copyright owners both share in the burdens associated with matching—neither can sit back and expect the other to do 100% of the work.<sup>399</sup>

There was consensus among commenters that the MLC's matching practices should include both automated computerized processes, to efficiently handle the large volume of data, and manual human processes, to further examine, research, and investigate where automated techniques do not yield a sufficiently confident match result, yield multiple potential match candidates, or do not fully match the reported usage to an identified and located musical work copyright owner.<sup>400</sup> Commenters further agreed

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<sup>396</sup> 17 U.S.C. § 115(d)(3)(G)(i)(I)(aa), (II); *see also id.* § 115(d)(3)(C)(i)(III), (d)(3)(E)(i), (e)(6)(A)(vii).

<sup>397</sup> *Id.* § 115(d)(3)(E)(i); *see also id.* § 115(d)(3)(C)(i)(III), (e)(6)(A)(vii), (e)(17).

<sup>398</sup> *See id.* § 115(d)(3)(C)(i)(IV)–(V), (J)(iii)(I), (J)(iii)(II)(aa)–(bb), (J)(iii)(III).

<sup>399</sup> *See S. REP. NO. 115-339*, at 14; *H.R. REP. NO. 115-651*, at 13; *CONF. REP.* at 11 (explaining that “[t]his legislation requires the new collective to undertake its own efforts to locate the copyright owner and update its database accordingly if so identified,” and also that “the simple way to avoid any distribution to other copyright owners and artists is to step forward and identify oneself and one’s works to the collective, an exceedingly low bar to claiming one’s royalties”).

<sup>400</sup> *See, e.g.*, CISAC & BIEM Initial Comments at 2 (“Data matching can use a number of combinations, including existing ISWC/ISRC cross-references, metadata matching using complex algorithms, etc. . . . [A]utomation cannot be 100% accurate and matching requires a minimum level of human checks and related manual activities, more specifically when the automated processes identify multiple potential matches or when a match is done on a work that is not fully documented.”); SoundExchange Initial Comments at 8–9, 13–15; UROC Reply Comments at 9 (“Automated matching efforts will only achieve a certain level of success, at which point manual methods requiring human intervention must be employed.”); SoundExchange Reply Comments at 5; SONA Reply Comments at 9; Roundtable Tr. at 72:13–73:08 (Mar. 25, 2021) (Shanley, Music Reports); Roundtable Tr. at 75:04–17 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs) (stating that while “the human element still does need to come in,” “when we’re talking about the volume that all of these services are disseminating daily, and all of the recordings that are coming in, you have to leverage the technology that’s out there”); Roundtable Tr. at 76:14–77:08 (Mar. 25, 2021)

that using standard unique identifiers as the foundation for matching processes is ideal, as doing so can improve the quality of the results (including by increasing the confidence levels of the results), lower overall costs, and reduce the amount of manual matching work that would otherwise be necessary, among other benefits.<sup>401</sup> For example, SoundExchange explained that “[t]he ideal for linking musical works to sound recordings is reliance upon unique identifiers for number-based look-up and joining, which is more accurate, less error-prone, and less resource-intensive than text-based matching.”<sup>402</sup> Commenters also noted the importance of having automated algorithmic matching across multiple metadata fields that include both text and unique identifiers to achieve high confidence results,<sup>403</sup> but also cautioned that how metadata is leveraged “is very much context-dependent,” meaning that, for example, which data fields algorithms use and how they use them need to take context into account and be adjusted as

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(Bonilla, SoundExchange); Roundtable Tr. at 84:15–85:13 (Mar. 25, 2021) (Balcells, BMAT Music Innovators); *see also* CMO REPORT at 11–16.

<sup>401</sup> See, e.g., SoundExchange Initial Comments at 13–14; SoundExchange Reply Comments at 2, 5; SONA Reply Comments at 6–8; Roundtable Tr. at 76:05–12 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs); Roundtable Tr. at 76:14–77:08 (Mar. 25, 2021) (Bonilla, SoundExchange); Roundtable Tr. at 85:01–04 (Mar. 25, 2021) (Balcells, BMAT Music Innovators); Roundtable Tr. at 90:08–12 (Mar. 25, 2021) (Jennings, Amazon); *see also* Symposium Tr. at 198:18–21 (Dec. 6, 2019) (Colitre, Music Reports); Symposium Tr. at 233:20–234:21 (Dec. 6, 2019) (Boissonneault, SOCAN/Datalef); CMO REPORT at 16.

<sup>402</sup> SoundExchange Initial Comments at 13–14; *see also* SoundExchange Reply Comments at 5 (“Without ISRCs, sound recording matching and identification algorithms would need to rely exclusively on text string matches, which produce lower-quality results and are inherently complex, costly and ineffective. String-matching algorithms that exclusively rely on sound recording metadata and that do not leverage ISRCs regularly require more human intervention, and their use would increase the amount in unpaid balances by either decreasing the percentage of usage that gets matched and identified or the percentage of recordings linked to musical works.”); Roundtable Tr. at 85:01–04 (Mar. 25, 2021) (Balcells, BMAT Music Innovators) (“[A] huge part of [the confidence level yielded through automated matching] comes from the identifiers because they’re obviously much more robust to variations than the more fuzzy metadata field.”); Roundtable Tr. at 90:08–12 (Mar. 25, 2021) (Jennings, Amazon) (“[T]he identifiers are going to be your best bet as they provide the most definitive and direct links, and any other field besides the identifier is really just a best guess.”).

<sup>403</sup> See, e.g., SoundExchange Initial Comments at 8–9 (“SoundExchange joins the usage and repertoire data sets using a proprietary matching algorithm, which relies on common sound recording metadata elements, including ISRC, and employs a variety of matching techniques.”); SoundExchange Reply Comments at 2; Roundtable Tr. at 86:01–10 (Mar. 25, 2021) (Shanley, Music Reports) (stating that “you need to really secure high confidence matches on multiple fields before you can even, I think, approach the point of feeling confident about securing your match,” and specifically mentioning needing to match title, artist, ISRC, album, and UPC).

necessary.<sup>404</sup> In that vein, the CMO Report noted that “CMOs generally have policies that set out all of the factors that must be met for a match to be considered sufficient as well as different types of information that must be compared.”<sup>405</sup> Additionally, commenters suggested that the MLC look into employing new and emerging automated matching technologies, including machine learning, artificial intelligence, neural networks, and audio-based matching (sometimes referred to as audio-to-audio matching or audio fingerprinting analysis).<sup>406</sup>

Commenters also discussed how automated and manual processes may interact with each other, stating that an automated process typically yields a measure of how confident the system is in the match result, and then that confidence level, depending on where it falls, can be applied to thresholds (usually use- or value-based) to determine the scope and/or prioritization for applying manual efforts.<sup>407</sup> There was disagreement among commenters as to whether the MLC should, as CMOs sometimes do,<sup>408</sup> apply any such thresholds or otherwise engage in a cost/benefit analysis to determine what resources, if any, would be reasonable to expend to attempt to match a given work. For example, the UROC stated that “[t]here should be no material cut-off where perceived ‘low value’ unmatched works are deemed not worth the expense of matching efforts (i.e. cost-benefit determination),” explaining that “[a]s much of the unmatched/unclaimed are likely to be the long-tail works of independent artists & self-published songwriters, the compulsory nature of the blanket license, and the manner by which The MLC is funded, necessitates that the interests of all rights holders are looked after,” and that “[a]ll metadata received by The MLC should be utilized fully, and all avenues, including human intervention, should be exhausted for matching based on that metadata, however complete or incomplete it may be.”<sup>409</sup> Attorney Christian Castle similarly

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<sup>404</sup> See Roundtable Tr. at 90:13–91:04 (Mar. 25, 2021) (Jennings, Amazon).

<sup>405</sup> CMO REPORT at 17.

<sup>406</sup> See, e.g., CISAC & BIEM Initial Comments at 2; Roundtable Tr. at 75:13–17 (Mar. 25, 2021) (Bushmaker, Prager Metis CPAs); Roundtable Tr. at 79:06–80:03 (Mar. 25, 2021) (Balcells, BMAT Music Innovators); Roundtable Tr. at 81:13–22 (Mar. 25, 2021) (Shanley, Music Reports); Roundtable Tr. at 90:23–91:04 (Mar. 25, 2021) (Jennings, Amazon); Roundtable Tr. at 84:02–06 (Mar. 25, 2021) (Perry, BHP Royalty Co.); see also CMO REPORT at 14, 16. But see Roundtable Tr. at 82:13–22 (Mar. 25, 2021) (Jennings, Amazon) (agreeing that audio-based matching is “helpful in identifying that a particular song is the same across a different service,” but observing that “by itself, it still doesn’t solve the real underlying problem, which is that we’re trying to figure out what is the underlying composition to an audio recording”).

<sup>407</sup> See, e.g., Roundtable Tr. at 84:15–85:13 (Mar. 25, 2021) (Balcells, BMAT Music Innovators); CISAC & BIEM Initial Comments at 2.

<sup>408</sup> See CISAC & BIEM Initial Comments at 2; CMO REPORT at 11, 13, 14.

<sup>409</sup> UROC Reply Comments at 9.

suggested that any cost/benefit analysis like those of the CMOs would be inapplicable to the MLC because its operating costs do not come out of the royalties; it is instead funded by the DMPs.<sup>410</sup>

Others took the opposite view, suggesting that it is reasonable to use thresholds and engage in cost/benefit analyses as appropriate. For example, the Digital Media Association (“DiMA”) noted that “the statute does require the service to pay the reasonable collective costs,” “[a]nd so . . . there’s still an element of efficiency here that we need to think about in terms of . . . the money spent to match dollars.”<sup>411</sup> Spotify similarly said that “you always have to do a cost-benefit analysis . . . because you could spend endless resources matching the long tail, but that’s not super-efficient,” and suggested that “[y]ou have to prioritize . . . to get the biggest bang for your buck” because “there’s . . . limited tech resources at the end of the day, limited manual resources at the end of the day.”<sup>412</sup> Amazon noted that the cost for automated matching “is relatively low for . . . a large volume of works,” while manual matching is an “inherently non-scalable process and expensive,” and that this “really should be a prioritization discussion to say . . . these are the biggest impact or the most streamed works, and these might be the ones, after automated matching fails, these are the ones that we will tackle in order for manual matching.”<sup>413</sup>

SONA “recognize[d] that there is indeed a threshold where matching efforts would be greater than the amount of royalties to be collected, but encourages the MLC to have transparent practices on how such a determination is made, provide clear guidance on its user portal for how such parameters are determined, and engage with stakeholders . . . to form the practices that govern this standard.”<sup>414</sup> CISAC & BIEM stated that because “it is likely that many of non-US repertoires are part of the long tail of distributions” and “since a mandatory blanket license system is in place,” “[i]t is therefore crucial that the MLC does not impose technology and resources limitations that would prevent such repertoires from being identified and remunerated,” suggesting that, “[f]or example, automated matching could be done on the full usage reports, at least on the basis of identifiers (ISWC and ISRC), while manual matching

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<sup>410</sup> See Christian Castle Initial Comments at 23; Roundtable Tr. at 35:19–36:24 (Mar. 25, 2021) (Castle, Christian L. Castle Attorneys).

<sup>411</sup> Roundtable Tr. at 38:01–07 (Mar. 25, 2021) (Levin, DiMA).

<sup>412</sup> Roundtable Tr. at 98:03–21 (Mar. 25, 2021) (Selden, Spotify).

<sup>413</sup> Roundtable Tr. at 98:24–99:15 (Mar. 25, 2021) (Jennings, Amazon) (suggesting there is no “particular threshold that I would necessarily recommend to say . . . don’t even bother to match”).

<sup>414</sup> SONA Reply Comments at 9.

could be limited depending on number of uses or value.”<sup>415</sup> Lastly, SoundExchange noted that “there will be many cases involving less prominent repertoire where the MLC will not be able to obtain good-quality data from DMPs and will not be able to find authorship and ownership information from public sources cost-effectively, if at all,” such that “[i]t may be that royalties accrued for those works can only be distributed if the rights owners come forward to identify their works as a result of the MLC’s education and outreach efforts.”<sup>416</sup>

With respect to the actual setting and adjustment (also referred to as tuning) of appropriate confidence levels, Music Reports said that the “best practices of . . . achieving higher levels of match confidence is to run that test, Q&A, and then redesign and rerun,” and that “there has to just be . . . regression testing in any matching algorithm. . . . [T]he best way to achieve that high confidence is to really fine-tune your matching algorithms by vetting that through people and testing.”<sup>417</sup>

Commenters generally supported pre-matching, whereby the MLC would always be working to match sound recordings to musical works and musical works to identified and located copyright owners (with the latter being constantly refreshed to capture ownership changes), rather than waiting until it receives a usage report from a DMP to first begin the matching process.<sup>418</sup> Music Reports called this practice “core to a successful platform,” saying that not doing so would “create this sort of logjam of attempting to get these things done in time for royalty distributions,”<sup>419</sup> though Music Reports also suggested that manual resources should not be expended on works that have not actually been used.<sup>420</sup>

Commenters said little about how frequently matching efforts should be repeated, though Music Reports said that it “attempt[s] to rematch every work at least two times

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<sup>415</sup> CISAC & BIEM Initial Comments at 2.

<sup>416</sup> SoundExchange Initial Comments at 16.

<sup>417</sup> Roundtable Tr. at 94:11–19 (Mar. 25, 2021) (Shanley, Music Reports).

<sup>418</sup> See, e.g., CrossBorderWorks Supplemental Roundtable Comments at 2; Roundtable Tr. at 68:21–69:02 (Mar. 25, 2021) (Bonilla, SoundExchange); Roundtable Tr. at 70:11–71:11, 97:15–22 (Mar. 25, 2021) (Shanley, Music Reports); see also CMO REPORT at 16.

<sup>419</sup> Roundtable Tr. at 70:18–25 (Mar. 25, 2021) (Shanley, Music Reports).

<sup>420</sup> Roundtable Tr. at 96:16–25 (Mar. 25, 2021) (Shanley, Music Reports).

per day,” at least using automated processes,<sup>421</sup> and highlighted more generally that data quality and match rates get better over time.<sup>422</sup>

With respect to manual matching activities, commenters emphasized the need to have dedicated and sufficiently funded resources, including a sizable well-trained staff.<sup>423</sup> The UROC, for example, said that “[t]he MLC must have dedicated staff whose sole mission is the matching of works by all means, tools, and methods available.”<sup>424</sup> In terms of the actual efforts to be undertaken, Music Reports described manual matching as “literally the act of researching a sound recording to find the embodied composition and locate the folks who are responsible for actually creating the work.”<sup>425</sup> SoundExchange added that “[t]here will presumably be many cases where the MLC is able to conduct internet research to identify songwriters or copyright owners based on information reported by DMPs, and the internet and social media have made it much easier than it used to be to locate and contact people who have been identified.”<sup>426</sup>

Most other specific activities that were raised by commenters were more limited to locating identified copyright owners. For example, the UROC recommended having “[a] public notice/listing of the unreachable parties (general press, music & legal trades, etc.)” that “should be shared as widely as possible including via social media to help in crowdsourcing the ability to locate them” and “[e]xplor[ing] ways to incentivize 3<sup>rd</sup> parties to seek out such unlocatable copyright owners.”<sup>427</sup> SoundExchange noted that it “publicizes lists of artists and right owners for whom we are holding unclaimed

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<sup>421</sup> See Roundtable Tr. at 102:08–16 (Mar. 25, 2021) (Shanley, Music Reports).

<sup>422</sup> See Symposium Tr. at 210:03–212:16, 257:12–258:15 (Dec. 6, 2019) (Colitre, Music Reports) (discussing that “a time lag exists in the way music information moves through the system”).

<sup>423</sup> See, e.g., UROC Reply Comments at 9–10 (“The level of success achieved in reducing the size of the unclaimed/unmatched pools . . . will be in direct correlation to the level of funding that is budgeted toward these human intervention efforts.”); SoundExchange Initial Comments at 15; CISAC & BIEM Initial Comments at 2; Roundtable Tr. at 71:12–72:04 (Mar. 25, 2021) (Shanley, Music Reports) (noting that Music Reports has “50-plus manual operators of our Songdex database in our copyright research department”).

<sup>424</sup> UROC Reply Comments at 10.

<sup>425</sup> Roundtable Tr. at 72:13–73:08 (Mar. 25, 2021) (Shanley, Music Reports) (“[M]anual matching is literally the act of our Copyright Research Specialists . . . analyzing sound recording metadata—title, artist, album, ISRC codes—and attempting to find manually any information that could be available about the composition.”).

<sup>426</sup> SoundExchange Initial Comments at 15–16.

<sup>427</sup> UROC Reply Comments at 11–12.

royalties,”<sup>428</sup> while SGA & SCL suggested “the hiring of special investigators to track down such [unlocated] parties under necessary and appropriate circumstances (subject to privacy safeguards).”<sup>429</sup>

The CMO Report stated that “the MLC may need to proactively search for additional information about the works in order to accurately identify them,”<sup>430</sup> explaining that “CMOs conduct research services that are performed by expert research officers,” and that “[f]or manual matching, the researchers may look to sources including the following:

- Most commonly, domestic CMOs that also manage music rights and with which the CMO has a bilateral agreement (where there is more than one CMO in the country);
- Most commonly, foreign CMOs with which the CMO has a bilateral agreement;
- Most commonly, the IPI database administered by the Swiss copyright society SUISA (access restricted);
- Most commonly, the nodes in the CIS-Net network (access restricted);
- The databases of those CMOs that have created regional hubs (access restricted); and
- Publicly available information on websites.”<sup>431</sup>

The CMO Report also stated that CMOs may additionally share and post lists of unidentified or partially identified works in various ways so members and others can view and compare to their records, and even run their own automated bulk matching processes.<sup>432</sup>

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<sup>428</sup> SoundExchange Initial Comments at 4 & n.3 (cautioning that “[a]dvertising that money is available to a long list of people invites the occasional false claim,” and that “it is important for a collective to strike the right balance between making it easy for stakeholders to be paid and preventing fraudulent claims”); *see also* SoundExchange, *SoundExchange Outreach Efforts* (Aug. 17, 2017), [https://www.soundexchange.com/wp-content/uploads/2016/09/Outreach-Fact-Sheet\\_8.17.17.pdf](https://www.soundexchange.com/wp-content/uploads/2016/09/Outreach-Fact-Sheet_8.17.17.pdf) (discussing related targeted outreach efforts, including direct contact with identified stakeholders—using postal mail, email, phone calls, social media, and agent/management contacts—to notify them that they have royalties being held).

<sup>429</sup> SGA & SCL Initial Comments at 3.

<sup>430</sup> CMO REPORT at 7.

<sup>431</sup> *Id.* at 14.

<sup>432</sup> *Id.* at 13–14.

The CMO Report added that “[i]nformation obtained by researchers is typically reviewed by quality assurance teams through a series of processes set up by the CMO to help ensure accuracy. If a CMO is able to identify that a work belongs to an unrepresented local rights holder, efforts may be made to contact that rights holder directly.”<sup>433</sup> The CMO Report also said that “the results of automated matching processes are compared against expected benchmarks and high value records reviewed for accuracy,”<sup>434</sup> and that “CMOs may have tools that perform quality checks,” such as, for example “a tool may create groups of sample automatic matches that will then be checked daily by a quality assurance team member.”<sup>435</sup>

Lastly, as discussed above, commenters also suggested using third-party data sources as part of the matching process.

For its part, the MLC has stated that it supports the use of “exhaustive matching efforts including dedicated manual matching work,”<sup>436</sup> explaining that it “is fully committed to building the strongest and most effective matching system to date” and “deploying that system robustly and relentlessly to attempt to match all uses.”<sup>437</sup> The MLC further described its approach to matching as follows:

The MLC sees its matching work at the core of its functions, and . . . is committed to exhaustive matching efforts, including extensive manual matching work where needed.

The matching process begins with metadata analysis based on the MLC’s data sets. Matching software takes the usage reporting from DMPs and utilizes sophisticated algorithms to attempt to match each sound recording use against the MLC’s musical works data. Prioritization is not an issue as to matching software operations. All usage data is run through matching software (and all uses deemed unmatched would regularly be rerun through matching software). . . . The MLC confirms that automated matching *will* be done on the *full* usage reports of blanket licensees, and not simply in a limited fashion based on unique identifiers,

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<sup>433</sup> *Id.* at 14; *see also id.* at 16 (“CMOs may employ a policy for reviewing manual matches,” which “may include a requirement for a researcher to add commentary to outline their reasons for believing the source of information for the match. This commentary would be scrutinized by a member of a quality assurance team for additional validation.”).

<sup>434</sup> *Id.* at 15.

<sup>435</sup> *Id.* at 17.

<sup>436</sup> MLC Reply Comments at 1.

<sup>437</sup> *Id.* at 11 (quoting MLC Initial Comments at 54, U.S. Copyright Office Dkt. No. 2018-11, <https://www.regulations.gov/comment/COLC-2018-0011-0012> (Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator)).

but rather full automated matching will be applied to full usage reports, including the entire long tail.

The issue of prioritization is a question of which partial matches then get reviewed manually and in what order. Prioritization of what goes through manual review begins with the confidence level of the automated system's match. The matching software analyzes multiple metadata fields in parallel and returns a confidence level as to a match for each use, such as a match percentage. An attempted match is moved to manual review based on whether its confidence level exceeds the threshold to be determined a conclusive match (subject always to dispute and correction by copyright owners or courts). . . . Properly tuning the confidence levels of a matching system is a critical best practice for matching. . . . Tuning confidence levels and policies for manual review so that matches are accurate and manual review is effective is essential. . . . The MLC agrees that manual matching is integral to its functions, and has planned for substantial manual matching.

Beyond determining when attempted matches should move to manual review, and dedicating adequate resources to manual review, best practices for manual review also hinge on quality information. Manual review teams should leverage as much information and communication as possible to meet the overall goals of reducing unclaimed royalties. . . . Manual review can output information to outreach teams to help them tune outreach or target specific unlocated copyright owners. Manual review can also feedback information to help tune the algorithms and confidence levels of the automated matching system.

In addition to the needs of maintaining good data sets, running well-calibrated metadata matching systems, and following up with informed manual review, the MLC believes that exhaustive matching requires being engaged with new and cutting-edge technology. There are constantly new developments in algorithms, machine learning, and what is often described as artificial intelligence, as applied to matching musical works. Technologies for matching based on audio content are also improving. Leveraging these technologies as they mature will be important to minimize unclaimed royalties.<sup>438</sup>

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<sup>438</sup> MLC Reply Comments at 8–11; *see also* Roundtable Tr. at 77:11–78:24, 87:05–88:16 (Mar. 25, 2021) (Thompson, MLC) (endorsing the use of identifiers and reliance on more than a single factor in the matching process, supporting exploration of audio-to-audio matching, and cautioning against oversimplifying the complexity involved with confidence levels, stating that

From the MLC's description, its matching processes appear to be largely in line with what many commenters have suggested and generally seem reasonable based on the information available in the record. The Office thus recommends that the MLC continue on the course it described, subject to the further recommendations below.

The Office recommends that the MLC robustly employ both automated and manual matching processes that rely on standard unique identifiers. Automated processes should be top-notch, including in terms of the algorithms and other technologies employed as well as the manner in which calibration, quality assurance testing and review, and validation are performed. Confidence levels should be carefully tuned and regularly reviewed and adjusted as appropriate. All usage data should be run through automated matching processes that attempt to confirm matches across multiple metadata fields, including both text and unique identifiers. These automated processes should be sufficiently sophisticated to be able to recognize and account for issues that may foreseeably arise with music metadata (*e.g.*, misspellings and common variations<sup>439</sup>), to the extent reasonably and technologically practicable. The MLC should also explore the new and emerging automated matching technologies discussed by commenters, as well as other relevant technologies and processes that may currently exist or emerge in the future, to evaluate how they can be leveraged, what enhancements in matching capabilities may be reasonably expected from employing them, and the feasibility of implementation. If the MLC decides that a particular technology may not yet be ready, it should be regularly reevaluated as the technology matures.

With respect to the issue of using thresholds and cost/benefit analyses to determine the appropriate scope and/or prioritization of matching efforts for a given work, the Office

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"it is [not] helpful or realistic to think we can boil down the sophistication, simplify these algorithms down to a single percentage confidence level").

<sup>439</sup> Some examples of potential types of variations might include: (1) "The Beatles" vs. "Beatles, The" vs. "Beatles;" (2) "Pink" vs. "P!nk;" (3) "Sean Combs" vs. "Diddy" vs. "Puffy" vs. "Puff Daddy" vs. "P. Diddy;" (4) "Hello" vs. "Hello (radio edit)" vs. "Hello (live); and (5) "An der schönen, blauen Donau" vs. "The Blue Danube Waltz" vs. "On the Beautiful Blue Danube." See, *e.g.*, RIAA NOI Initial Comments at 3, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0013> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective); Paul Jessop NOI Initial Comments at 2, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0003> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective); DLC NOI Reply Comments at 9, U.S. Copyright Office Dkt. No. 2019-5, <https://www.regulations.gov/comment/COLC-2019-0002-0026> (Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective); MLC *Ex Parte* Letter at 5 (Feb. 26, 2020); DLC *Ex Parte* Letter at 2, 4 (July 13, 2020); DLC *Ex Parte* Letter Presentation at 15 (Feb. 14, 2020).

recommends that, at minimum, some level of automated matching efforts should be undertaken for all reported usage regardless of royalty value. The MLC’s statutory obligation to match is not conditioned upon royalty value.<sup>440</sup> At the same time, the statute does not prescribe specifically how much effort must be applied, and requires that the “administrative assessment” paid by DMPs to fund the MLC’s “collective total costs”—which includes the “costs of automated and manual efforts to identify and locate copyright owners of musical works (and shares of such musical works) and match sound recordings to the musical works the sound recordings embody”—be “calculated to defray the *reasonable* collective total costs.”<sup>441</sup> This indicates that applying appropriate thresholds and cost/benefit analyses with respect to certain types of matching processes may be necessary to ensure that the MLC’s matching-related costs remain reasonable. Moreover, the MLC’s budget, though not derived from the royalty pool, is finite, and the amount of the administrative assessment paid by DMPs cannot be changed without the involvement of the Copyright Royalty Judges.<sup>442</sup>

The MLC should be careful in adopting and applying thresholds or cost/benefit analyses to appropriately balance the need to be cost-effective and fiscally responsible with the core duty to vigorously match. Such decisions will likely be context-specific, and the MLC should recognize where a cost may be reasonable when viewed over time or in the aggregate when applied to multiple unmatched works. The Office recommends that the MLC work with the UROC and operations advisory committee in making any such decisions. The Office notes that even if thresholds and cost/benefit analyses are applied, copyright owners of works with low-value usage remain better-situated than under the pre-MMA regime. Under the MMA, the royalties must be held for at least three years during which the copyright owner can come forward and claim them, whereas previously, if a copyright owner was not identified in the Copyright Office’s records, the owner was not entitled to receive any royalties.<sup>443</sup>

Turning to manual matching activities, the Office agrees with commenters that they are integral and recommends that the MLC should engage in them to a substantial degree using dedicated and sufficiently funded resources, including an adequately sized and well-trained staff (subject to the above threshold and cost/benefit analysis discussion). In terms of types of manual activities, the Office recommends that the MLC have the

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<sup>440</sup> See 17 U.S.C. § 115(d)(3)(G)(i).

<sup>441</sup> See *id.* § 115(d)(7)(D), (e)(6)(A)(vii) (emphasis added).

<sup>442</sup> See *id.* § 115(d)(7)(D); 37 C.F.R. pt. 390.

<sup>443</sup> See 17 U.S.C. § 115(c)(1) (2017) (“To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.”).

capacity to deploy a broad array, including, at minimum, online and offline research, individual lookups in public and private third-party databases, and leveraging its membership and network of industry partners. The Office further recommends that, in addition to having the claiming portal, the MLC should share real-time lists of unmatched works (and shares) with those who may wish to review them or execute their own automated bulk matching processes on the data. With respect to locating identified copyright owners, the Office recommends that the MLC's activities should include sharing real-time lists of such owners as widely as reasonably possible, engaging in social media crowdsourcing, exploring appropriate third-party partnerships, and engaging private investigators if appropriate. The Office recommends that the manner in which the MLC apply these and other manual activities be based on context and not be a one-size-fits-all approach. The MLC should consider, among other things, the type of unmatched work, the available metadata, and the results of automated matching in deciding which manual activities to pursue and in what order. The Office further recommends that the MLC should also have appropriate mechanisms in place with respect to quality assurance of manual matching to help ensure the accuracy of newly obtained information.

As to pre-matching, the Office agrees with commenters that the MLC should engage in this practice so that when usage is reported, it can be matched and the associated royalties can be paid as quickly and efficiently as possible. The Office additionally agrees with commenters and recommends, however, that manual resources should not be expended on works that have not actually been used. The Office believes that any pre-matching activities, including automated ones, must be reasonable and cost-effective, and based on Music Reports' assertion that "on an . . . average streaming service today . . . maybe 80 percent of [the service's] recordings have zero plays,"<sup>444</sup> the Office believes it would be unreasonable to expend material sums attempting to pre-match works for which royalties may never accrue. The Office is also cognizant of the \$424 million backlog of historical usage that the MLC must attempt to match while simultaneously processing ongoing monthly reporting, and acknowledges that it may be some time before the MLC is in a position to pre-match.

With respect to the frequency of applying matching efforts, the Office recommends that all usage that remains unmatched after initial efforts be made subject to further automated efforts and, to the extent appropriate, further manual efforts that are repeated multiple times at appropriate intervals for as long as the associated royalties are held by the MLC. With data constantly changing, being updated, and supplemented

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<sup>444</sup> Symposium Tr. at 253:04–254:21 (Dec. 6, 2019) (Colitre, Music Reports) (stating that "[o]ne percent of the works generate 99 percent of the value, and 99 percent of the works shares one percent of the value," "[a]nd that curve is getting steeper all the time").

over time, the Office believes that it would be a best practice to make numerous repeated attempts to match over the years that the royalties must be held.

As discussed above, the Office recommends that the MLC leverage third-party data sources to assist with matching as appropriate.

Lastly, the Office recommends that the MLC be fully transparent with respect to its matching processes. The Office recommends that the full and complete policies, practices, and procedures, including related initiatives and technical implementations, adopted by the MLC with respect to its matching activities be documented in detail and made publicly available on the MLC’s website, along with clear explanations describing them in layperson’s terms. The Office also recommends that the MLC provide an explanation of its decision making—why it made the choices it did—and update the information on its website as appropriate to reflect any material changes in the future. More specifically, the Office recommends that the MLC clearly and publicly articulate how it defines a match, including the factors that must be met for a match to be sufficient, and describe the different types of information that are reviewed and compared in establishing a match—with respect to both its automated and manual processes. Appropriate information about confidence levels, including the levels themselves and how they are tuned, should also be made publicly available. The MLC’s documentation and public disclosure in this area should include, for example, its policies regarding any thresholds or cost/benefit analyses employed in determining the appropriate scope and/or prioritization of matching efforts for a given work, information about its quality assurance controls, and pertinent budget and personnel resource allocations. These public online disclosures should be in addition to the MLC’s required annual reporting.<sup>445</sup>

### ***E. Holding and Distributing Unclaimed Accrued Royalties***

The statutory scheme by which unclaimed accrued royalties will be held for a period of time and eventually distributed to identified copyright owners by market share is one of the more controversial aspects of the MMA. The statute created the UROC as an advisory group of five musical work copyright owners and five songwriters appointed by the MLC board,<sup>446</sup> to “establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest in accordance with [section 115(d)(3)(J)], including the provision of usage data to copyright owners to allocate payments and credits to songwriters pursuant to [section 115(d)(3)(J)](iv), subject to the approval of the board of directors of the [MLC].”<sup>447</sup> As an overarching observation, the

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<sup>445</sup> See 37 C.F.R. § 210.33(b)(1), (3), (8).

<sup>446</sup> 17 U.S.C. § 115(d)(3)(D)(v).

<sup>447</sup> *Id.* § 115(d)(3)(J)(ii).

Office believes that the UROC's mandate is not limited to developing policies and procedures for the distribution of unclaimed accrued royalties.<sup>448</sup> For example, while the statute explicitly refers to the UROC establishing "distribution" policies, because the holding and distribution of unclaimed royalties are inextricably intertwined, the development of holding policies also reasonably falls within the UROC's purview. Congress has made it clear that "such policies and procedures will be thoroughly reviewed by the Register to ensure the fair treatment of interested parties."<sup>449</sup> The Office looks forward to reviewing these policies and procedures at the appropriate time, and expects the MLC to provide them far in advance of the first distribution of unclaimed royalties.<sup>450</sup>

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<sup>448</sup> See *id.*; see also Roundtable Tr. at 298:23–299:01 (Mar. 26, 2021) (Taylor, UROC) ("[W]e talk about and discuss what the best way is to make sure that all copyright owners, rightful copyright owners, are able to collect their mechanical royalties."); Roundtable Tr. at 359:03–17 (Mar. 26, 2021) (Liwall, UROC) ("[W]e tried to put together on the committee some best practices . . . to ensure that the most equitable and fair matching and distribution is done through the MLC.").

<sup>449</sup> S. REP. NO. 115-339, at 5; H.R. REP. NO. 115-651, at 5–6; CONF. REP. at 4.

<sup>450</sup> See Christian Castle Initial Comments at 21 & n.39. The Office notes that some commenters have expressed concerns "that absent proper oversight, the MLC board . . . may adopt rules and systems designed to obfuscate and compromise the rights of songwriters and composers to the benefit of the board's largest and most influential representative members." SGA & SCL Initial Comments at 2–3 (contending that board members "may benefit by the MLC *not* identifying the proper owners of unmatched works" and stating that "every effort must be made to ensure that the search process for the rightful owners be a bona fide and sufficiently financed global effort"); *see, e.g.*, SGA & SCL Reply Comments at 5 (proposing "a neutral, full-time Ombudsperson be appointed to independently oversee and ensure that MMA-related disputes, problems and 'anomalies' (including the application of undue pressure and coercion due to conflicts of interest within the MLC) are handled fairly and expeditiously under the statute"); Christian Castle Reply Comments at 14–15 (suggesting that unclaimed royalties be held in an escrow account under the Office's control and that the Office appoint "an independent overseer . . . along the lines of the Library of Congress Inspector General"). The Office takes these concerns seriously, though some proposals seem potentially contrary to the statute. See 17 U.S.C. § 115(d)(3)(H)(ii) (requiring that royalties be held in an account "maintained by the [MLC]"). As the Office has previously explained, "there are other ways that the statute addresses these issues and protects smaller independent songwriters." See 84 Fed. Reg. at 32,283–84; *see also* Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information, 85 Fed. Reg. 22,568, 22,570–71 (Apr. 22, 2020) (detailing various ways the statute promotes transparency of the MLC). The Office will continue to exercise oversight over the MLC in accordance with the authority granted by Congress, including by remaining engaged with the MLC to stay informed on how its operations are going, reviewing key MLC policies, making regulatory adjustments proving necessary once the blanket license administration is further underway, and periodically reviewing the MLC's performance as part of the statute's five-year designation process.

## 1. Holding Period

The MMA requires that the MLC “hold accrued royalties associated with particular musical works (and shares of works) that remain unmatched for a period of not less than 3 years after the date on which the funds were received by the [MLC], or not less than 3 years after the date on which the funds were accrued by a [DMP] that subsequently transferred such funds to the [MLC] pursuant to [the limitation on liability for unlicensed uses made before January 1, 2021, described in section 115(d)](10)(B), whichever period expires sooner.”<sup>451</sup> At the end of the statutory minimum holding period, accrued royalties for musical works (and shares of works) that remain unmatched become eligible for distribution by relative market share “to copyright owners identified in the records of the collective,” at which point they become “unclaimed accrued royalties.”<sup>452</sup> The first such distribution cannot occur until 2023 at the earliest, after which there must be at least one distribution of unclaimed royalties each calendar year.<sup>453</sup>

The legislative history to the MMA elaborates, explaining that it is expected that “there will be some percentage of unmatched works that generate royalties that will decline over time as the collective’s database becomes more robust and the music industry

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With respect to the MLC’s intentions, the Office notes that the MLC has stated that it “fully agrees” that it “should not move quickly to make a market share distribution of unclaimed accrued royalties,” and “is fully committed to building the strongest and most effective matching system to date, including automatic and manual processes, traditional and emerging technologies, and input from its unparalleled network of industry stakeholders.” MLC Reply Comments at 11 (quoting MLC Initial Comments at 54, U.S. Copyright Office Dkt. No. 2018-11, <https://www.regulations.gov/comment/COLC-2018-0011-0012> (Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator)); *see also* UROC Initial Comments at 2 (“[W]e desire in a perfect world for there to be no unclaimed/unmatched royalties at all and that all parties on every musical composition ever streamed by the [DMPs] is paid correctly and properly. We acknowledge the challenges, but that does not detract us from our unified goal of ensuring that every rightsholder be paid their rightful share for the use of their musical compositions.”). The MLC has also said that it is “committed to deploying that system robustly and relentlessly to attempt to match all uses, and to utilizing its discretion to delay distribution of unclaimed accrued royalties where appropriate to allow encouraging matching results to run their course.” MLC Reply Comments at 11 (quoting MLC Initial Comments at 54, U.S. Copyright Office Dkt. No. 2018-11, <https://www.regulations.gov/comment/COLC-2018-0011-0012> (Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator)).

<sup>451</sup> 17 U.S.C. § 115(d)(3)(H)(i).

<sup>452</sup> *Id.* § 115(d)(3)(J)(i), (e)(34).

<sup>453</sup> *Id.* § 115(d)(3)(J)(i)(I); *see also* 85 Fed. Reg. at 33,738.

continues to recognize the importance of obtaining and sharing proper metadata in advance of the initial distribution of a work,” and that “[s]ince the legislation permits the distribution of unclaimed royalties that were accrued on unmatched works for which the creators will not be paid, a significantly higher bar to such distributions is required compared to the more routine royalty distributions of matched works.”<sup>454</sup> Congress further explained that the holding period “is intended to give the collective time to actively search for the copyright owner,” but with the caveat that “[w]hile there may be some copyright owners and/or artists who would prefer that such money be escrowed indefinitely until claimed, the simple way to avoid any distribution to other copyright owners and artists is to step forward and identify oneself and one’s works to the collective, an exceedingly low bar to claiming one’s royalties.”<sup>455</sup>

There was broad consensus among commenters that distributions of unclaimed accrued royalties should not be incentivized or rushed, and that the holding period should be longer than the statutory minimum, at least for the first distribution, to provide appropriate time both for the MLC to begin operating at its maximum potential and for copyright owners to be educated about the MLC and the blanket license and register and claim through a robust and user-friendly portal.<sup>456</sup> The MLC seemed to agree, acknowledging that it will take a few years for all of its systems, processes, and procedures to be fully developed.<sup>457</sup> The Recording Academy stated that

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<sup>454</sup> S. REP. NO. 115-339, at 13; H.R. REP. NO. 115-651, at 13; CONF. REP. at 11.

<sup>455</sup> S. REP. NO. 115-339, at 13–14; H.R. REP. NO. 115-651, at 13; CONF. REP. at 11.

<sup>456</sup> See, e.g., CISAC & BIEM Initial Comments at 5; Recording Academy Initial Comments at 3–4; SGA & SCL Initial Comments at 5; Christian Castle Initial Comments at 14, 21–22; ARA Reply Comments at 2; Roundtable Tr. at 302:10–303:11 (Mar. 26, 2021) (Lieberman, SoundExchange); Roundtable Tr. at 364:25–365:25 (Mar. 26, 2021) (Dupler, Recording Academy); Roundtable Tr. at 415:03–16 (Mar. 26, 2021) (Gorgoni, SONA); Roundtable Tr. at 369:04–10 (Mar. 26, 2021) (Simson); Roundtable Tr. at 381:08–20 (Mar. 26, 2021) (Barker, ClearBox Rights); Roundtable Tr. at 383:25–384:10 (Mar. 26, 2021) (Turnbow, NSAI); Roundtable Tr. at 316:12–317:12 (Mar. 26, 2021) (Smith, Copyright Office) (asking whether anyone thought the initial ramp-up time for the MLC should not be factored into the initial holding period, to which no one disagreed that it should); see also SONA Reply Comments at 14–15 (noting that while it “is not opposed to this idea,” “such a delay would mean that some copyright owners would not be receiving anticipated royalties within the expected time frame,” and that should the MLC decide to do this, “it should be done in an open and transparent manner”); Roundtable Tr. at 305:16–21 (Mar. 26, 2021) (Ambers, SOCAN) (saying it is important that the holding period “is not based on when the society receives the royalties but . . . when they put it up on the portal and it’s available to be claimed”).

<sup>457</sup> See MLC Reply Comments at 11; Symposium Tr. at 36:03–38:03 (Dec. 6, 2019) (Thompson, MLC) (referring to the MLC at the time of the license availability date as “version 1” and stating that “it’ll be three, four, five years is when . . . we will really be . . . motoring along”); Roundtable Tr. at 11:04–09 (Mar. 25, 2021) (Ahrend, MLC) (“[W]e are very much in the building stages.”).

“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,” and that the MLC should similarly follow suit.<sup>458</sup> For its part, SoundExchange said that it “waited about 10 years,”<sup>459</sup> though its former executive director said SoundExchange “waited five years from our inception, ten years from the first royalties.”<sup>460</sup>

There was also strong support for using various criteria to determine the appropriate time for when the first distribution and subsequent distributions should occur, rather than adhering to a predetermined amount of time beyond the statutory minimum.<sup>461</sup> For example, CISAC & BIEM suggested that the “achievement of an adequate level of matching/distribution should be incentivized, establishing a threshold to be achieved before the MLC can proceed to distribute on the basis of market shares.”<sup>462</sup> More generally, the UROC stated that:

[T]his committee supports the indefinite withholding by The MLC of all unclaimed, accrued pools beyond the statutory holding period, so that all outreach efforts to all underrepresented copyright owners are fully pursued, and all matching efforts, technological as well as manual

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<sup>458</sup> Recording Academy Initial Comments at 3; *see* Roundtable Tr. at 361:04–09 (Mar. 26, 2021) (Simson).

<sup>459</sup> Roundtable Tr. at 302:20–303:11 (Mar. 26, 2021) (Lieberman, SoundExchange).

<sup>460</sup> Roundtable Tr. at 360:05–361:23 (Mar. 26, 2021) (Simson).

<sup>461</sup> *See, e.g.*, CISAC & BIEM Initial Comments at 5; SGA & SCL Initial Comments at 5; Christian Castle Initial Comments at 21–22 (“The three-year holding period imposes a one-size-fits all Washington-style solution on a very complex process. It is simply not a fit.”); ARA Reply Comments at 2; MLC Reply Comments at 11; UROC Reply Comments at 4; Roundtable Tr. at 299:23–300:15 (Mar. 26, 2021) (Taylor, UROC); Roundtable Tr. at 302:10–304:10 (Mar. 26, 2021) (Lieberman, SoundExchange) (explaining some of the types of criteria SoundExchange used and stating that “[y]ou want to look at all the efforts that the organization’s doing before those unclaimed funds are released”); Roundtable Tr. at 306:22–307:13 (Mar. 26, 2021) (Sorensen, NMPA) (“[F]unds should be held as long as the matching efforts continue to be effective.”); Roundtable Tr. at 307:15–308:23 (Mar. 26, 2021) (Sokol, ARA) (“[A]s matching rates decline and as the things you can think of to do feel like the things you’ve already done, [that] is probably the time that . . . you wouldn’t want distribution before then.”); Roundtable Tr. at 366:08–368:01 (Mar. 26, 2021) (Dupler, Recording Academy) (suggesting looking at match rates, outreach metrics, metrics about small payouts, and metrics relevant to whether the MLC’s efforts are continuing to result in matches or if the success of those efforts is leveling off); Roundtable Tr. at 371:01–11 (Mar. 26, 2021) (Barker, ClearBox Rights); Roundtable Tr. at 383:25–384:10 (Mar. 26, 2021) (Turnbow, NSAI).

<sup>462</sup> CISAC & BIEM Initial Comments at 5.

methods & those requiring human intervention, are fully employed, before any such market-share distributions take place. Withholding these monies beyond the 3-year statutory holding period not only increases the likelihood of eventual successful matching, thereby putting those \$\$ into the hands of their rightful copyright owners, but it also serves to build & maintain trust & transparency in the overall system, and help alleviate concerns of any perceived conflicts of interest between the likely beneficiaries of market-share distributions, and influence over policy-making within The MLC.<sup>463</sup>

The MLC similarly stated that it is “fully committed” “to utilizing its discretion to delay distribution of unclaimed accrued royalties where appropriate to allow encouraging matching results to run their course.”<sup>464</sup> ARA analogized the idea of not making a distribution before appropriate efforts have been exhausted to microwaving popcorn, explaining that “it’s like . . . when you’re trying to figure out when to take popcorn out of the microwave, and it’s sort of . . . slowing down, but how much has it slowed down that it really feels just kind of done.”<sup>465</sup>

Relatedly, commenters suggested that different categories of unclaimed royalties should be identified and potentially subject to different holding periods, policies, and criteria based on particular circumstances.<sup>466</sup> For example, SGA & SCL said that unclaimed royalties associated with works for which the copyright owner has been identified but not located should be held indefinitely until the owner is found.<sup>467</sup> Christian Castle proposed that “[i]f works are identified in whole or in part,” then the “MLC should not be allowed to distribute the funds.”<sup>468</sup> Other commenters suggested differing treatment,

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<sup>463</sup> UROC Reply Comments at 4.

<sup>464</sup> MLC Reply Comments at 11 (quoting MLC Initial Comments at 54, U.S. Copyright Office Dkt. No. 2018-11, <https://www.regulations.gov/comment/COLC-2018-0011-0012> (Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator)).

<sup>465</sup> Roundtable Tr. at 307:15–308:23 (Mar. 26, 2021) (Sokol, ARA).

<sup>466</sup> See, e.g., Christian Castle Initial Comments at 14; SGA & SCL Initial Comments at 3; Roundtable Tr. at 324:09–325:01 (Mar. 26, 2021) (Taylor, UROC) (“[W]e should have as many categories as we need.”); Roundtable Tr. at 305:22–306:20 (Mar. 26, 2021) (Ambers, SOCAN); Roundtable Tr. at 313:09–22 (Mar. 26, 2021) (Morris, Pandora); Roundtable Tr. at 321:12–19 (Mar. 26, 2021) (Sokol, ARA); Roundtable Tr. at 370:10–371:18 (Mar. 26, 2021) (Barker, ClearBox Rights); Roundtable Tr. at 372:17–373:11 (Mar. 26, 2021) (Evers, CIAM); Roundtable Tr. at 387:05–22 (Mar. 26, 2021) (Turnbow, NSAI); Roundtable Tr. at 391:14–392:08 (Mar. 26, 2021) (Simson).

<sup>467</sup> SGA & SCL Initial Comments at 3.

<sup>468</sup> Christian Castle Initial Comments at 14.

for example, where splits for new releases have not been confirmed,<sup>469</sup> where the unclaimed royalties involve foreign<sup>470</sup> or partially claimed works,<sup>471</sup> and depending on the reason the work is unmatched (*e.g.*, because the sound recording usage has not been linked to the embodied musical work versus because the copyright owner of the musical work has not been identified versus because ownership is in dispute).<sup>472</sup> The MLC stated that “anything that is matched to a song, and the song’s shares are already determined, but we don’t know who to pay because they [haven’t] registered or we don’t have their payee information[, that] is not considered unmatched,” and “[t]hat will not go into the market share distribution. . . . The only thing that will go into the market share distribution is something that is totally unidentifiable, a recording that is not matched to a song that we don’t have any copyright, songwriter, owner, or publisher information.”<sup>473</sup>

The concept of having categories of unclaimed royalties with differing treatment raised the question of whether the MLC should retain all unclaimed royalties from a given reporting period together, or whether it should distribute some, but not all, such royalties where continued holding may be beneficial for particular categories or specific works (or shares), but not others. Commenters did not offer precise suggestions, but generally said that the MLC should err on the side of holding unclaimed royalties longer.<sup>474</sup>

A tangentially related topic raised by commenters was the handling of partially claimed works, overclaimed works (or shares), and works (or shares) subject to ownership disputes. With respect to partially claimed works, the MLC stated that it “intends to distribute royalties on partially claimed works provided there are no disputes or legal

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<sup>469</sup> Roundtable Tr. at 313:09–22 (Mar. 26, 2021) (Morris, Pandora).

<sup>470</sup> *Id.*; Roundtable Tr. at 372:17–373:11 (Mar. 26, 2021) (Evers, CIAM).

<sup>471</sup> Roundtable Tr. at 387:05–22 (Mar. 26, 2021) (Turnbow, NSAI) (recommending reaching out to the known owners in such situations).

<sup>472</sup> Roundtable Tr. at 370:10–371:18 (Mar. 26, 2021) (Barker, ClearBox Rights).

<sup>473</sup> Roundtable Tr. at 373:13–374:13 (Mar. 26, 2021) (Coleman, MLC).

<sup>474</sup> See Roundtable Tr. at 399:16–21 (Mar. 26, 2021) (Coleman, MLC) (“[W]e really need to take our time and not be forced into a position to make a distribution before the . . . popcorn’s popped.”); Roundtable Tr. at 342:11–21 (Mar. 26, 2021) (Sorensen, NMPA) (“[I]t’s important to hold for a very long period of time, as long as it’s possible, and then to pay out at the end of that period.”); Roundtable Tr. at 343:23–344:07 (Mar. 26, 2021) (Sokol, ARA) (noting “a bias towards waiting longer before those initial distributions”); Roundtable Tr. at 366:01–07 (Mar. 26, 2021) (Dupler, Recording Academy) (“[I]f you’re going to err, you should err on waiting a little bit too long to give songwriters a chance to find their money as opposed to doing it a little bit too early before they don’t.”); Roundtable Tr. at 381:08–20 (Mar. 26, 2021) (Barker, ClearBox Rights).

holds,”<sup>475</sup> which is similar to how SoundExchange said it operates.<sup>476</sup> Regarding works (or shares) where there is an ownership dispute, a question was raised as to what will happen if a dispute takes longer than three years to resolve,<sup>477</sup> to which the MLC and UROC responded that royalties for disputed works will be held until those disputes are resolved and will not be distributed by market share.<sup>478</sup>

Lastly, it was cautioned that “there is a point at which holding too long has a negative impact on the industry.”<sup>479</sup> It was also said that “at some point, when you start to get to a diminishing return on matching, a call to action, a moment of, hey, either show up or you’re going to lose this, is a motivator for people,” otherwise, “people will just procrastinate unless you give them a reason that they have to stop.”<sup>480</sup> The MLC responded that it does not “think there is a too long,” but expressed “concern[] about the starting date because [it] sets a trigger to have to do it every year after that.”<sup>481</sup>

The Office agrees with many of the views expressed by the commenters and recommends that unclaimed royalties should be held for longer than the statutory minimum periods where appropriate, and that the length of the extended holding periods should be tied to whether specific criteria have been satisfied. In the case of the first distribution, the Office recommends that it not occur for at least five years from the date that the ability to claim in the portal is made available to the public with complete and full functionality and populated with all unmatched usage from periods prior to the license availability date. For example, the release of a beta version of the claiming portal or a version with only basic functionality and minimal tools should not trigger the start of the five-year period. After five years, the MLC should apply relevant criteria to determine whether the first distribution should be further deferred. The Office believes this minimum fixed extension is advisable in light of the MLC’s understandable need for a multiyear ramp-up period, the claiming portal not yet being available, and time

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<sup>475</sup> MLC Reply Comments at 13.

<sup>476</sup> SoundExchange Initial Comments at 4–5 (“Another element of accountability is to distribute what we can when we can. For example, when fewer than all of the performers in a musical group claim royalties for their recordings, we will still distribute their artist royalties to them without waiting for all performers to register and claim.”).

<sup>477</sup> Roundtable Tr. at 306:04–08 (Mar. 26, 2021) (Ambers, SOCAN).

<sup>478</sup> Roundtable Tr. at 374:02–13 (Mar. 26, 2021) (Coleman, MLC); Roundtable Tr. at 309:09–21 (Mar. 26, 2021) (Taylor, UROC).

<sup>479</sup> Roundtable Tr. at 319:24–320:13 (Mar. 26, 2021) (Sorensen, NMPA).

<sup>480</sup> Roundtable Tr. at 383:25–384:10 (Mar. 26, 2021) (Turnbow, NSAI); *see* Roundtable Tr. at 320:15–321:04 (Mar. 26, 2021) (Sokol, ARA) (suggesting that while it is a “little bit of know it when you see it,” three years is probably too short and ten years is probably too long).

<sup>481</sup> Roundtable Tr. at 385:01–06 (Mar. 26, 2021) (Coleman, MLC).

needed to educate copyright owners about the existence of the MLC and the blanket license so they know to come forward to register and claim. Additionally, the MLC has stated that DMP reporting of pre-2021 unmatched usage “contain[s] in excess of 1.3 terabytes and nine billion lines of data,” signifying that there is much for the MLC and copyright owners to work through in attempting to match and claim, and ample time should be provided to do so.<sup>482</sup> SoundExchange’s history provides precedent for such a delay, and the Office believes a delay is reasonable and warranted here. To the extent some may desire a lengthier initial fixed holding period, the Office notes that its recommendation is a floor, not a ceiling.<sup>483</sup> At the same time, the Office does not believe such a minimum fixed period is so long that it would harm the industry as a whole or lead to the indefinite procrastination some commenters sought to avoid.

For subsequent distributions, although the statute says that the minimum three-year period begins to run from when the “funds were received by the [MLC],”<sup>484</sup> the Office recommends that the MLC, in practice, apply the minimum three-year period from the date that the unmatched usage associated with those funds is made available in the claiming portal, especially if there is any significant lag time between those events. The statute expressly requires the portal,<sup>485</sup> and the Office believes the spirit of the statute counsels that owners should have a minimum of three full years to claim, while the MLC is simultaneously engaged in matching efforts.

With respect to criteria used to determine when, after the expiration of the preset fixed holding periods, the first distribution and subsequent distributions should be made, the Office recommends that they generally be grounded in the MLC’s outreach, matching, and other related efforts focused on reducing the incidence of unclaimed royalties, including the MLC’s degree of success. More specifically, the Office recommends that such criteria include, at minimum:

- Attainment of reasonable match rates, using appropriate confidence levels, for each relevant reporting period;

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<sup>482</sup> See Press Release, MLC, The Mechanical Licensing Collective Receives \$424 Million in Historical Unmatched Royalties from Digital Service Providers (Feb. 16, 2021), <https://themlc.com/press/mechanical-licensing-collective-receives-424-million-historical-unmatched-royalties-digital>. Compare *id.* with Roundtable Tr. at 360:10–13 (Mar. 26, 2021) (Simson) (“[W]hen you look at \$424 million [that was transferred by DMPs to the MLC], [SoundExchange] had \$6.3 million paid into escrow from services who were streaming music at that time. So it was tiny.”).

<sup>483</sup> See Christian Castle Initial Comments at 22 (suggesting a ten-year minimum initial holding period).

<sup>484</sup> See 17 U.S.C. § 115(d)(3)(H)(i).

<sup>485</sup> *Id.* § 115(d)(3)(J)(iii)(I).

- Attainment of reasonable engagement metrics tied both to claiming in the portal and the MLC's outreach activities for each relevant reporting period;
- Exhaustion of reasonable outreach efforts;
- Exhaustion of reasonable matching efforts (both automated and manual), including repetitions at appropriate intervals throughout the holding period;
- Whether metrics indicate significant diminishing returns in that the degree of success in matching (through both portal claiming and MLC direct efforts) has dropped below reasonable threshold levels for each relevant reporting period, including not only an objective threshold but also a comparative threshold relative to the degree of success achieved earlier in the holding period;
- Whether the particular work is missing key metadata such that the likelihood of further holding resulting in a match is remote; and
- Whether the value of the usage of a particular work (or share) from each relevant reporting period and the overall unclaimed royalty value for each relevant reporting period are below reasonable threshold amounts.

In addition, the Office recommends that more specialized criteria be established for specific types of works or situations to the extent appropriate. For the first distribution, the Office further recommends that the MLC consider additional metrics related to engagement to ensure its education and outreach efforts have been successful and that a critical mass of copyright owners have registered their works and are using the portal to make claims. Relatedly, the MLC should confirm that it has achieved a high degree of overall data quality before making the first distribution, and to the extent measurable, the Office recommends that the first distribution not occur until at least a significant majority of all known musical works are reliably identified in the public database.

In making these recommendations, the Office is mindful that the statute requires at least one distribution of unclaimed royalties each calendar year after the first distribution. By the time the MLC makes the first distribution and begins making subsequent distributions, the above-recommended criteria should be achievable for at least some amount of unclaimed royalties on an annual basis. If, however, that turns out not to be the case, the MLC could make a *de minimis* distribution of unclaimed royalties connected to works with particularly low value and poor data to satisfy the statute, while retaining the bulk of unclaimed royalties that will benefit from continued matching and claiming activities. This is another reason why the MLC should be careful not to make the first distribution too early.

Regarding having different categories of unclaimed royalties subject to different holding periods, policies, and criteria based on particular circumstances, the Office believes this is reasonable, as it is in essence an extension of considering whether certain tailored

criteria have been satisfied before making a distribution. In particular, the Office agrees with commenters and recommends that unclaimed royalties associated with works (or shares) for which the copyright owner has been identified but not located should be held until the owner is found. While mindful of Congress's intent not to have funds held forever, the Office sees this as a special scenario. Regarding partially claimed works, the Office does not believe that unclaimed royalties must be held indefinitely, but at a minimum, the MLC should exhaust all reasonable efforts to engage directly with the known owner(s) of the matched share(s) to attempt to identify and locate the missing co-owner(s) of the unmatched share(s) before those unclaimed royalties are distributed. Some of the other categories suggested by commenters do not appear to be necessary because the relevant works (or shares), and their associated royalties, would neither be unmatched nor unclaimed within the meaning of the statute. For example, where DMP usage is linked to a musical work with an identified and located owner, the MLC cannot distribute related royalties to other copyright owners by market share under section 115(d)(3)(J) simply because the rightful matched owner has not registered with the MLC or the MLC is missing other pertinent information, such as payment details or where identified and located co-owners' splits are unknown.<sup>486</sup>

In addition, the Office recommends that the MLC make partial distributions of unclaimed accrued royalties where appropriate and need not dispose of all unclaimed royalties from a given reporting period at the same time. This approach provides the MLC with flexibility to hold or distribute specific funds based on more nuanced criteria than merely which reporting period they came from and whether the bulk of royalties from that period are ready to be distributed or should be held. This recommendation should not, however, be construed as blessing premature distributions. The Office agrees with commenters and recommends that if the MLC is going to err, it should err on the side of holding unclaimed royalties longer.

With respect to the tangential issue of the handling of partially claimed works, overclaimed works (or shares), and works (or shares) subject to ownership disputes, the Office makes a few observations. First, the Office agrees that the MLC should distribute royalties on the matched shares of partially claimed works. The statute seems to expect this result,<sup>487</sup> and it is not clear what benefits might be gained by withholding such royalties from their rightful owners. Second, where there is an overclaimed work (or share) or other type of ownership dispute, the associated royalties should be handled in accordance with the MLC's dispute resolution policies and procedures which, pursuant

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<sup>486</sup> See *id.* § 115(d)(3)(J), (e)(17), (e)(34)–(35). If the splits are in dispute, as opposed to merely being unknown to the MLC or not-yet-decided-upon, then the treatment should be the same as any other dispute.

<sup>487</sup> See *id.* § 115(d)(3)(H)(i) (providing that the MLC "shall hold accrued royalties associated with particular musical works (*and shares of works*) that remain unmatched") (emphasis added).

to the statute, must “include a mechanism to hold disputed funds . . . pending resolution of the dispute.”<sup>488</sup> The Office agrees with the MLC and UROC that during the pendency of the dispute, such held royalties cannot be distributed to other copyright owners by market share under section 115(d)(3)(J); such royalties should be treated as neither unmatched nor unclaimed.<sup>489</sup>

## 2. Market Share Calculation

With respect to the distribution of unclaimed accrued royalties, the statute requires that:

Copyright owners’ payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in reports of usage provided by [DMPs] for covered activities for the periods in question, including, in addition to usage data provided to the [MLC], usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities, to the extent such information is available to the [MLC].<sup>490</sup>

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<sup>488</sup> See *id.* § 115(d)(3)(K)(ii); see also *id.* § 115(d)(3)(G)(i)(III)(bb).

<sup>489</sup> While there is some ambiguity in the statute on this point, the Office believes that this is the better interpretation. Specifically, while section 115(d)(3)(G)(i)(III) requires the MLC to “deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to—(aa) an inability to identify or locate a copyright owner of a musical work (or share thereof); or (bb) a pending dispute before the dispute resolution committee of the [MLC],” and section 115(d)(3)(K)(ii) states that there must be “a mechanism to hold disputed funds in accordance with the requirements described in subparagraph (H)(ii) pending resolution of the dispute,” the cross-referenced provision, section 115(d)(3)(H)(ii), only refers to “[a]ccrued royalties for unmatched works (and shares thereof).” The omission of an explicit reference to disputed funds in section 115(d)(3)(H)(ii) does not signal to the Office that Congress intended for such funds to be treated as unmatched. Such a reading would allow them to become eligible for market share distributions, creating a conflict with the more specific provision in section 115(d)(3)(K)(ii) that requires such funds to be held until the dispute is resolved. The Office notes that if for some reason after a dispute is resolved the rightful owner of the work (or share) is not actually identified or located (which seems unlikely), then at that point the work (or share) could be considered unmatched and the associated royalties could be subject to becoming unclaimed royalties.

<sup>490</sup> *Id.* § 115(d)(3)(J)(i)(II). The statute permits the MLC to “require copyright owners seeking distributions of unclaimed accrued royalties to provide, or direct the provision of, information concerning the usage of musical works under voluntary licenses and individual download licenses for covered activities.” *Id.* § 115(d)(3)(J)(i)(II)(aa).

The MMA also states that “[c]opyright owners that receive a distribution of unclaimed accrued royalties and accrued interest shall pay or credit a portion to songwriters (or the authorized agents of songwriters) on whose behalf the copyright owners license or administer musical works for covered activities, in accordance with applicable contractual terms, but notwithstanding any agreement to the contrary,” “such payments and credits to songwriters shall be allocated in proportion to reported usage of individual musical works by [DMPs] during the reporting periods covered by the distribution from the [MLC]” and “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner attributable to usage of musical works (or shares of works) of that songwriter.”<sup>491</sup>

In terms of the market share calculation, NMPA said that “the way that the royalties statement is divvied up between all copyright owners for any given month should be the same way that the unmatched is divvied up for that month,” and noted that the term market share “may be a little bit of a misnomer because what we’re really talking about is actual usage, not . . . the size of the company but how many streams did you have in a particular period. And that’s what the unmatched should be paid out based on.”<sup>492</sup> ClearBox Rights stated that “the only way to do a market share correctly is to do it at the song level rather than the publisher or the owner level, the reason being” that “a song may have been bought or sold or perhaps terminated since” the relevant reporting period when it was used by the DMP, and “if a payment goes out to the owner from five years ago,” “that publisher may not even be in business” and “the likelihood that that would . . . get passed on to the writers is pretty slim.”<sup>493</sup> NSAI said that this provision of the statute “was painstakingly written and negotiated . . . to make sure that . . . a distribution of unclaimed . . . [is] made in the most fair way possible, that market share didn’t mean . . . I’m publisher A and I have 50 percent of the market, that it really was attributable all the way down the line to . . . the smallest self-published songwriter who earned money from that service during that period.”<sup>494</sup>

NMPA suggested that it may be appropriate to look to certain past industry agreements for guidance because NMPA “think[s] the statute is written in a way that reflects industry practices 99 percent of the time.”<sup>495</sup> Others seemed to imply that that may not be entirely appropriate. For example, the Society of Composers, Authors and Music Publishers of Canada (“SOCAN”) noted that at least one of those agreements “was

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<sup>491</sup> *Id.* § 115(d)(3)(J)(iv).

<sup>492</sup> Roundtable Tr. at 328:01–329:06 (Mar. 26, 2021) (Sorensen, NMPA).

<sup>493</sup> Roundtable Tr. at 390:14–391:11 (Mar. 26, 2021) (Barker, ClearBox Rights).

<sup>494</sup> Roundtable Tr. at 392:10–20 (Mar. 26, 2021) (Turnbow, NSAI).

<sup>495</sup> Roundtable Tr. at 329:07–330:04 (Mar. 26, 2021) (Sorensen, NMPA).

based on the period as a whole, not . . . on a monthly period,”<sup>496</sup> ARA said that “the time period and context matters in that 1 percent of the time,”<sup>497</sup> and NSAI stated that the fact that at least half must flow through to songwriters “is a really important distinction from distributions we’ve seen in the past.”<sup>498</sup>

SGA expressed concern that “if [the MLC’s calculation] isn’t checked independently, then it’s going to be checked legally” in court if someone “do[es]n’t think the distribution is fair.”<sup>499</sup> SOCAN agreed that there should be independent verification.<sup>500</sup> As far as the point in time when the market share calculation should be performed, NMPA said it “should be done at the very end,” because “distributions of unmatched should be based on as much accurate usage information as we have,” which “means you have to wait until you’ve done most of the matching and you understand who owns most of those songs that were used.”<sup>501</sup>

Concerning partial distributions, the Office asked commenters about their potential effect on the market share calculation and, in particular, what should happen if there is additional successful matching after the MLC makes a partial distribution from a given reporting period—and whether previous market share calculations for earlier partial distributions from the period should be recalculated to consider the new matching results (with potential royalty credits or debits made to previous distribution recipients), or if the new matching results should only be considered in the market share calculations going forward for new distributions from that reporting period. Commenters generally agreed that there should not be a recalculation (or credit or debit) with respect to a previous partial distribution, and that any new information should only be used to recalibrate going forward.<sup>502</sup>

The Office declines to issue any specific recommendations at this time regarding how the statutory market share calculation should be performed due largely to the sparse record on this issue, though the Office notes that it has previously opined on the meaning of market share in a different MMA context, concluding there that it should be

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<sup>496</sup> Roundtable Tr. at 332:04–10 (Mar. 26, 2021) (Ambers, SOCAN).

<sup>497</sup> Roundtable Tr. at 334:20–335:02 (Mar. 26, 2021) (Sokol, ARA).

<sup>498</sup> Roundtable Tr. at 392:21–25 (Mar. 26, 2021) (Turnbow, NSAI).

<sup>499</sup> Roundtable Tr. at 331:18–332:01 (Mar. 26, 2021) (Carnes, SGA).

<sup>500</sup> See Roundtable Tr. at 332:11–12 (Mar. 26, 2021) (Ambers, SOCAN).

<sup>501</sup> Roundtable Tr. at 340:10–18 (Mar. 26, 2021) (Sorensen, NMPA).

<sup>502</sup> See Roundtable Tr. at 342:03–19 (Mar. 26, 2021) (Sorensen, NMPA); Roundtable Tr. at 343:15–344:07 (Mar. 26, 2021) (Sokol, ARA); Roundtable Tr. at 400:25–401:06 (Mar. 26, 2021) (Turnbow, NSAI).

“measured by applicable licensing revenue.”<sup>503</sup> The Office nevertheless has some related observations and more general recommendations. First, the Office cannot overemphasize that any distribution, including the calculation methodology, must be “transparent and equitable.”<sup>504</sup> Second, the UROC and MLC should be cautious in looking to prior industry agreements for guidance, as they may not necessarily reflect the requirements of the MMA or the equities it embodies. Third, the Office recommends that the MLC’s market share calculations for each distribution should be verified by an independent third-party accountant or auditor that has been approved by the UROC. The Office recommends that the finally adopted calculation methodology itself be independently reviewed as well to confirm it operates as intended. Fourth, the Office recommends that the market share calculation should be performed as late as possible before making the distribution. Lastly, the Office sees both pros and cons with respect to the handling of retroactive recalculations and partial distributions. On the one hand, if recalculations are performed, then later-identified owners would be able to share in distributions of unclaimed royalties in which they would have otherwise been able to share if they had been identified earlier or if the royalties had been held longer. On the other hand, recalculations could result in a need to claw back funds that have not only already been disbursed to copyright owners, but that may have also already been shared with their songwriter partners. The Office believes the statute is flexible enough to permit either approach, so the UROC and MLC must carefully weigh the appropriate equities before making a decision. This determination should also consider how to handle other aspects of partial distributions, such as the timing for when copyright owners can provide usage data associated with voluntary licenses to the MLC.

An additional issue, related to one of the Office’s MMA implementation rulemakings, is whether and to what extent the market share calculation and distribution of unclaimed accrued royalties should consider certain pre-MMA agreements whereby certain participating copyright owners may have already received royalties associated with the use of unmatched works and given contractual releases of claims for additional royalties from various historical reporting periods from particular DMPs. In the rulemaking, several commenters argued that publishers who participated in such agreements should not be entitled to receive any MLC market-share-based distributions of unclaimed royalties from the DMPs and reporting periods those agreements covered.<sup>505</sup> That

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<sup>503</sup> See 84 Fed. Reg. at 32,282.

<sup>504</sup> See 17 U.S.C. § 115(d)(3)(J)(i)(II).

<sup>505</sup> See ARA, FMC, & Music Answers Supplemental Comments at 4–5, U.S. Copyright Office Dkt. No. 2020-12, <https://www.regulations.gov/comment/COLC-2020-0011-0013> (Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective); MAC, Recording Academy, & SONA Supplemental Comments at 4–5, U.S. Copyright Office Dkt. No. 2020-12, <https://www.regulations.gov/comment/COLC-2020-0011-0017>

position has also been advanced by certain commenters as part of this study.<sup>506</sup>

Responding to those comments, NMPA noted “that settlements are not necessarily always just a distribution of unclaimed but also a settlement of infringement claims sometimes,” and that “without having the details about each specific settlement, it’s really impossible to say.”<sup>507</sup> ARA countered that “the payments are for the usage of music under those settlements, whether it’s by way of kind of getting a license through a royalty concept or a use fee if I had a license and we have an infringement claim against you, to us, it seems to amount to the same thing.”<sup>508</sup> SOCAN clarified that its position is that the exclusion is “only for the period that the settlement was part of and if there’s any monies in that period,” but for “other periods from the same DSP,” the participating copyright owners should “receive [distributions of unclaimed royalties] like any other distribution.”<sup>509</sup> The MLC stated that “those publishers that are part of the settlement do not participate in the market share distribution whenever that happens for those historical unmatched periods,” “[s]o nobody’s getting . . . paid twice if they were part of a settlement already and they agree that they were part of that settlement.”<sup>510</sup>

This issue directly intersects with, and is largely resolved by, the Office’s regulations governing the reporting and transfer to the MLC by DMPs of accrued royalties for pre-2021 uses of unmatched musical works (or shares).<sup>511</sup> Those regulations “allow[] the DMP to employ reasonable estimations, subject to adjustment, where the unmatched status of the work prevents the DMP from definitively confirming whether or not it is subject to a relevant voluntary agreement. . . . If, after the MLC later engages in its

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(Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective).

<sup>506</sup> See Roundtable Tr. at 332:13–21 (Mar. 26, 2021) (Ambers, SOCAN); Roundtable Tr. at 335:25–336:23 (Mar. 26, 2021) (Sokol, ARA) (stating “that folks who have already been paid, who have already received significant payments for that period of time shouldn’t share at the end of the day after the matching and distribution of what’s left, and those monies should go to the folks who haven’t been paid,” and further asserting that “the statute allows” this because it “specifically talks about an equitable distribution based on the usage” and “doesn’t say exactly how that usage must be used,” “[i]t doesn’t provide a formula”); Roundtable Tr. at 394:03–19 (Mar. 26, 2021) (Evers, CIAM); Roundtable Tr. at 401:18–402:16 (Mar. 26, 2021) (Dupler, Recording Academy) (highlighting that the statute “talk[s] about an equitable manner for calculating market share”).

<sup>507</sup> Roundtable Tr. at 334:05–12 (Mar. 26, 2021) (Sorensen, NMPA).

<sup>508</sup> Roundtable Tr. at 335:18–25 (Mar. 26, 2021) (Sokol, ARA).

<sup>509</sup> Roundtable Tr. at 339:06–10 (Mar. 26, 2021) (Ambers, SOCAN).

<sup>510</sup> Roundtable Tr. at 396:07–24 (Mar. 26, 2021) (Coleman, MLC).

<sup>511</sup> See generally 37 C.F.R. § 210.10; 86 Fed. Reg. 2176.

matching activities, it is discovered that the DMP’s estimate was off because it mistakenly, but in good faith, believed certain usage of works to be subject to certain agreements when in fact the opposite turns out to be true once they have been identified, the DMP will either need to make a true-up payment for any shortfall or may be entitled to credit or refund for any surplus.”<sup>512</sup> Importantly, the Office’s regulations also dictate a process for the handling of a dispute between a DMP and a copyright owner over the DMP’s reliance on an agreement in connection with its estimation and adjustment of accrued royalties.<sup>513</sup>

Under the Office’s regulations, if a DMP relied on a relevant agreement to determine that it was not required to transfer funds that might otherwise be owed to copyright owners who participated in such an agreement, and those copyright owners do not dispute the DMP’s reliance, then those owners are not entitled to any royalty distributions from the MLC from that DMP for the reporting period(s) covered by that agreement, whether it would have been a distribution for matched works or a market-share-based distribution of unclaimed royalties for unmatched works under section 115(d)(3)(J).<sup>514</sup> If a participating copyright owner disputes the appropriateness of the DMP’s reliance on the agreement with respect to potential distributions of unclaimed accrued royalties under section 115(d)(3)(J), then at the time the MLC provides the advance distribution notice required under section 115(d)(3)(J)(iii)(II)(dd), the MLC must send an invoice and/or response file to the DMP for the amount that would otherwise be distributed at that time (including interest) to the copyright owner but for the DMP’s reliance on the disputed agreement.<sup>515</sup> Upon receiving the invoice and/or response file, the DMP has fourteen business days to pay the invoiced amount, which is then held by the MLC pending the private resolution of the dispute between the parties.<sup>516</sup>

Resolution of the dispute should resolve whether or not the copyright owner is entitled to share in a distribution of unclaimed royalties, but may not necessarily resolve how such an owner should share. In such cases, where that question remains, the Office believes that if the resolution of the dispute encompasses a conclusion that the copyright owner already received royalties for the use of unmatched works pursuant to the

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<sup>512</sup> 86 Fed. Reg. at 2197.

<sup>513</sup> *Id.* at 2197–99; 37 C.F.R. § 210.10(c)(5).

<sup>514</sup> See 37 C.F.R. § 210.10(c)(5)(iii)(C) (“The [MLC] shall presume that a [DMP] has appropriately relied upon an identified agreement, except with respect to a relevant copyright owner who has delivered a valid notice of dispute for such agreement pursuant to paragraph (c)(5)(iii)(B)(1) of this section.”); 86 Fed. Reg. at 2198–99.

<sup>515</sup> See 37 C.F.R. § 210.10(c)(5)(iii)(B); 86 Fed. Reg. at 2198.

<sup>516</sup> See 37 C.F.R. § 210.10(c)(5)(iii)(B)(2)–(3); 86 Fed. Reg. at 2198.

agreement, then even if the owner is permitted to receive a market-share-based distribution, the amount of unclaimed royalties it would otherwise receive must be appropriately offset against the amount it already received for unmatched usage under the agreement. This would be the most equitable approach, and most consonant with the intent of the Office’s regulations, as it would ensure that no copyright owner receives, and no DMP is compelled to make, a true double payment.<sup>517</sup>

As to the actual market share calculation, there seemed to be some confusion among commenters as to whether the amount of unclaimed royalties distributable to a copyright owner who did not participate in a relevant agreement may vary depending on whether copyright owners who did participate are also sharing in the distribution.<sup>518</sup> The Office wishes to clarify that, under the Office’s regulations, this is not the case. This issue is one between participating copyright owners and the DMPs with which they contracted; non-participating copyright owners are unaffected by the existence of, including the resolution of a dispute pertaining to, one of these agreements. To use a simplified illustration, if there are only two identified copyright owners, each with a 50% relative market share for the relevant period based on the applicable usage information, and one participated in a relevant pre-MMA agreement and the other did not, the question is whether the participating owner should receive its 50% share (or a portion of it). The non-participating owner will receive its 50% share no matter what, but is not entitled to the participating owner’s additional 50% if that owner is excluded from the distribution. In such cases, under the Office’s regulations, if the MLC is holding the relevant funds, the participating owner’s 50% share would be credited or

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<sup>517</sup> See 86 Fed. Reg. at 2198; Letter from Lindsey O. Graham, Chairman, United States Senate Committee on the Judiciary, to Shira Perlmutter, Register of Copyrights at 1 (Sept. 30, 2020), <https://www.copyright.gov/rulemaking/mma-transition-reporting/mma-payment-dispute-letter.pdf> (“[I]t is critical that . . . services are not burdened with double payments.”).

<sup>518</sup> See Roundtable Tr. at 332:13–21 (Mar. 26, 2021) (Ambers, SOCAN) (“I think the money should be going market share to the parties that weren’t a party to any of those settlements.”); Roundtable Tr. at 335:25–336:23 (Mar. 26, 2021) (Sokol, ARA) (“[T]hose monies should go to the folks who haven’t been paid.”); Roundtable Tr. at 394:03–19 (Mar. 26, 2021) (Evers, CIAM) (“[T]here is a danger that if they are those artists which have received those settlement monies will cash in another time . . . on the disadvantage of the real claimants and the parties who would deserve those monies.”); Roundtable Tr. at 401:18–402:16 (Mar. 26, 2021) (Dupler, Recording Academy); ARA, FMC, & Music Answers Supplemental Comments at 4–5, U.S. Copyright Office Dkt. No. 2020-12, <https://www.regulations.gov/comment/COLC-2020-0011-0013> (Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective); MAC, Recording Academy, & SONA Supplemental Comments at 4–5, U.S. Copyright Office Dkt. No. 2020-12, <https://www.regulations.gov/comment/COLC-2020-0011-0017> (Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective).

refunded back to the DMP as an overpayment.<sup>519</sup> If the participating owner did not dispute the DMP's reliance on the agreement, the funds representing its 50% share likely would not have been transferred to the MLC by the DMP in the first place, and would not be available to be distributed to the non-participating owner. In such cases, under the Office's regulations, the MLC is prohibited from billing the DMP for additional funds or distributing funds it received from the DMP in a manner that is inconsistent with the DMP's reliance on the agreement.<sup>520</sup> The Office emphasizes, however, that if the original amount the DMP transferred to the MLC ends up being insufficient to cover the non-participating copyright owner's 50% share, then the MLC must bill the DMP for, and the DMP must pay, the amount outstanding (including interest) to make the non-participating copyright owner whole.<sup>521</sup>

### 3. Advance Notice

Under the MMA, the MLC must "engage in diligent, good-faith efforts to publicize, throughout the music industry . . . any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made."<sup>522</sup> With respect to this requirement, commenters highlighted the importance of notice being widely publicized in advance, including to music organizations worldwide, and being posted on the MLC's website.<sup>523</sup> Commenters also

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<sup>519</sup> See 37 C.F.R. § 210.10(c)(5)(iii)(B)(3), (c)(5)(v).

<sup>520</sup> See *id.* § 210.10(c)(5)(iii)(C); 86 Fed. Reg. at 2198–99.

<sup>521</sup> See 37 C.F.R. § 210.10(c)(5)(iv)(A); 86 Fed. Reg. at 2198–99.

<sup>522</sup> 17 U.S.C. § 115(d)(3)(J)(iii)(II)(dd).

<sup>523</sup> See, e.g., CISAC & BIEM Initial Comments at 5 ("This information should be published on the MLC website. It is also recommended that notifications are sent to the foreign CMOs."); Jan Seedman Initial Comments at 1 ("Post notices through PROs, streaming companies and social media. Send press releases to the music media (e.g., Billboard, Rolling Stone, etc.) in the hopes of the media publishing articles about the program."); SGA & SCL Initial Comments at 5; MLC Reply Comments at 14–15; Roundtable Tr. at 345:11–346:24 (Mar. 26, 2021) (Taylor, UROC) (suggesting it be "blasted" on PRO websites, at award shows, and on social media, that influencers and celebrities should be used to help, and that all of the publishers should send mass emails to all of their writers); Roundtable Tr. at 347:17–348:08 (Mar. 26, 2021) (Lieberman, SoundExchange) (explaining that posting on a website "alone is not sufficient," and that "[t]he biggest thing to do . . . is to meet the rights owners, those artists, songwriters where they are," such as by "going to trade events, going to South by Southwest," and "the best thing you can do is meet someone face-to-face or virtually," and also "going through trusted third party resources, like the NMPA, like SONA, like these other organization . . . rather than cold calling"); Roundtable Tr. at 348:11–20 (Mar. 26, 2021) (Carnes, SGA) (questioning "why ASCAP, BMI, and CISAC haven't been proactive on this"); Roundtable Tr. at 384:11–19 (Mar. 26, 2021) (Simson) (noting that before SoundExchange's first distribution, it got coverage in the NBC Nightly News,

emphasized the need for transparent and clear information about upcoming distributions, for notices to look official and use key words and phrases to capture attention and avoid being mistaken for spam, and for notices to make plain that claiming is not difficult and that the MLC can help walk owners through the process.<sup>524</sup> Regarding the 90-day period, some commenters suggested that it may be too short,<sup>525</sup> while the MLC “stresses that this 90-day notice would come near the end of years of numerous other public notices and disclosures related to particular unclaimed accrued royalties” such that “[t]here will be substantial publicity about the existence of unclaimed accrued royalties long before this 90-day notice.”<sup>526</sup> The MLC also stated that its “outreach will include multiple clear notices of any scheduled distributions of unclaimed accrued royalties, with identification of which unmatched uses are subject to the distribution,” and that it “intends to leverage the vast network of its global industry partners, including [Music Creators of North America] and CIAM, to help publicize any contemplated distributions of unclaimed royalties well in advance.”<sup>527</sup>

The Office recommends that the required advance notice be publicized as widely as reasonably possible, including to the international music community. All of the forms, methods, and channels of education and outreach discussed above should be utilized here as well. Among them, the Office emphasizes that the MLC should work closely with third parties, such as the DLC, DMPs, PROs, and distributors and aggregators, to have these notices posted in as many relevant places as possible. The Office will also help publicize these notices and will post them to its website.

The Office does not believe there needs to be a special subset of education and outreach activities reserved for the statutory notice, as all such activities should be employed regularly even when there is no immediately pending distribution.<sup>528</sup> The Office

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L.A. Times, New York Times, and other “major publications saying, artists, you’re going to lose your money if you don’t come forward and claim it now”); Roundtable Tr. at 403:01–19 (Mar. 26, 2021) (Liwall, UROC); Roundtable Tr. at 403:21–404:03 (Mar. 26, 2021) (Evers, CIAM); Roundtable Tr. at 404:14–20 (Mar. 26, 2021) (Coleman, MLC); Roundtable Tr. at 405:19–406:11 (Mar. 26, 2021) (Meikle, Easy Song/Giddy Music).

<sup>524</sup> See CISAC & BIEM Initial Comments at 5; Jan Seedman Initial Comments at 1; MLC Reply Comments at 14–15; Roundtable Tr. at 405:06–17 (Mar. 26, 2021) (Turnbow, NSAI).

<sup>525</sup> SGA & SCL Initial Comments at 6; Roundtable Tr. at 403:21–404:03 (Mar. 26, 2021) (Evers, CIAM); Roundtable Tr. at 405:02–06 (Mar. 26, 2021) (Turnbow, NSAI); see CISAC & BIEM Reply Comments at 3 (“This holding period should be determined by taking into account the time needed for identification by interested parties after the publication of the unclaimed reports.”).

<sup>526</sup> MLC Reply Comments at 14.

<sup>527</sup> *Id.* at 15.

<sup>528</sup> SoundExchange’s note about engaging in “outreach surge efforts and matching efforts before any unclaimed funds are released” may be appropriate in the future, but at this early stage, the

therefore does not believe it is necessary for the statutory notice, which will come at the end of several years of general and specific publicity and the availability for the public to claim, to be issued more than 90 days in advance of the scheduled distribution date. The Office expects that copyright owners will come to the MLC to review unmatched works and make claims on a regular basis and without waiting for a statutory notice to come forward. Nevertheless, because 90 days is the statutory minimum and its purpose is to provide notice and time for copyright owners to assert claims, if the MLC's portal or other related systems are unavailable at any time during the period, the MLC should extend the period by at least a corresponding amount of time. Additionally, the Office recommends that if the MLC detects an increase in claiming activity from the relevant reporting period(s) during the 90-day period, the distribution should be delayed until such claiming is completed.

With respect to the content of the notice, the Office recommends that it be extremely clear and explain what it is and what is going to happen. The notice should be user-friendly and accessible, and written in plain language. The Office recommends that it include at least the following information:

- The planned date of distribution;
- The total amount of royalties to be distributed if no further matching or claiming occurs (broken down by reporting period and provided both with and without accrued interest);
- A list of the unmatched works (and shares) having associated royalties that will be subject to the market share distribution, with live links to the claiming portal for additional details; and
- Simple and clear step-by-step instructions on how to claim.

Where the particular form of outreach makes providing all of the information above infeasible, the MLC should at least include the date and total amount of the planned distribution, along with a link to a dedicated public webpage containing the complete notice.

#### **4. Transparency**

Transparency with respect to the holding and distribution of unclaimed royalties is critical. Comments on this issue generally fell into four categories: (1) transparency regarding the MLC's policies and procedures concerning the holding and distribution of

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Office believes the MLC should already be “firing on all cylinders” in its outreach efforts and should continue to do so for the foreseeable future. Roundtable Tr. at 344:12–345:02 (Mar. 26, 2021) (Lieberman, SoundExchange).

unclaimed royalties; (2) transparency about the amount and nature of the royalties being held; (3) transparency about upcoming distributions;<sup>529</sup> and (4) transparency about distributions that have been made.

Regarding the first category, commenters stated that policies and procedures, including the timeline for claiming royalties, should be clearly documented and made publicly available, including exactly how unclaimed royalties will be distributed.<sup>530</sup> Commenters also suggested that the MLC disclose its decision making.<sup>531</sup> The Office agrees and recommends that the full and complete holding and distribution policies and procedures adopted by the MLC, including its market share calculation methodology and related practices, be documented in detail and made publicly available on the MLC's website, along with clear explanations describing them in layperson's terms. The Office also recommends that the MLC provide an explanation of its decision making with respect to these policies and procedures—why it (and the UROC) made the choices it did. If the policies and procedures are materially amended in the future, the Office further recommends that the MLC publicly announce the changes and provide an explanation and description on its website.

As to the second category, comments largely overlapped with those about how success in reducing the incidence of unclaimed royalties can be measured and made publicly available. As a result, comments connected to measuring success are discussed in the context of that section below. Beyond those, MAC suggested that the MLC “clearly list the current tally of unclaimed royalties,” including “a tally of which portion of the fund is subject to imminent redistribution.”<sup>532</sup> The UROC suggested that the MLC “[c]reate an active counter of the unclaimed royalty daily amount that can be embedded as a widget on websites (including the DMPs) to have on display so every time a creator goes on Spotify for example they are reminded to search the MLC claiming portal for any work that they own and claim the money.”<sup>533</sup>

The Office believes that an embeddable counter of some kind may be useful and recommends that the MLC explore this idea further, including the suitability for use by

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<sup>529</sup> Comments regarding this category are discussed above in the context of the statutorily required advance notice for distributions of unclaimed royalties.

<sup>530</sup> See CISAC & BIEM Initial Comments at 5; MAC Initial Comments at 2; Jan Seedman Initial Comments at 1; CISAC & BIEM Reply Comments at 3; SONA Reply Comments at 2, 14.

<sup>531</sup> SONA Reply Comments at 2; Roundtable Tr. at 407:07–17 (Mar. 26, 2021) (Barker, ClearBox Rights) (suggesting that communications between the UROC and MLC be made public).

<sup>532</sup> MAC Initial Comments at 1–2.

<sup>533</sup> UROC Reply Comments at 11.

DMPs.<sup>534</sup> The Office also recommends that the MLC publicly display on its website a regularly updated tally of all of the royalties it is holding. In addition to the numerous types of related metrics and breakdowns discussed below in connection with measuring success, the Office recommends the following overarching breakdowns of that total to help clarify and provide transparency as to what the MLC actually possesses at any given point in time:

- The amount of royalties held as *unmatched* (*i.e.*, royalties associated with reported uses of sound recordings embodying musical works for which the copyright owners of such musical works (or shares thereof) have not been identified or located);<sup>535</sup>
- The amount of royalties held as *unclaimed* (*i.e.*, the subset of held unmatched royalties that have been held for the statutory minimum length of time under section 115(d)(3)(H)(i) and which have become statutorily eligible for distribution by market share under section 115(d)(3)(J));<sup>536</sup>
- The amount of royalties held as *pending distribution* (*i.e.*, the subset of held unclaimed royalties that have been noticed for distribution pursuant to section 115(d)(3)(J)(iii)(II)(dd) and that have not yet been distributed);
- The amount of royalties held as *disputed* (*i.e.*, royalties that are neither unmatched nor unclaimed, but rather are held by the MLC pending resolution of an ownership dispute over a work (or share));<sup>537</sup> and
- *Any other* royalty amounts held by the MLC (*e.g.*, royalties owed to matched copyright owners that have not yet exceeded the minimum threshold for distribution,<sup>538</sup> that are being held pending registration with the MLC, or that are being held pending reporting of proper splits).

For each of these categories, the Office recommends that the MLC provide the royalty figures both with and without accrued interest, and also the number of associated musical works. The MLC should be very clear about how these figures may change in response to DMP reporting adjustments and the reconciliation of any related royalty underpayments or overpayments permitted by the Office's regulations. The MLC

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<sup>534</sup> See 17 U.S.C. § 115(d)(5)(C)(iii) (discussing DLC and DMP role in assisting MLC with publicizing unclaimed royalties).

<sup>535</sup> See *id.* § 115(e)(35).

<sup>536</sup> See *id.* § 115(e)(34).

<sup>537</sup> See *id.* § 115(d)(3)(K).

<sup>538</sup> See 37 C.F.R. § 210.29(h)(2).

should likewise be transparent about any fluctuations resulting from the application of any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs, including the amount of unclaimed accrued royalties applied and plans for future reimbursement of such royalties from future collection of the assessment.<sup>539</sup>

Concerning the fourth category, commenters stated that information about the amounts distributed should be made transparent and known, and that in particular the amount paid to each copyright owner (including all MLC board members) should be made public for each distribution of unclaimed royalties.<sup>540</sup> Additionally, SGA said it would be helpful to songwriters for the MLC “to notify them that a distribution has gone out,” so they are aware.<sup>541</sup> While the Office agrees that the MLC should be fully transparent with respect to distributions of unclaimed royalties, publicly disclosing the specific amount of unclaimed royalties distributed to each copyright owner (including MLC board members) would not be appropriate because precise market share figures could then be determined, which runs contrary to the Office’s confidentiality regulations.<sup>542</sup> The Office does believe, however, that publicly disclosing the identities of all copyright owners receiving a distribution of unclaimed royalties is essential. Given that the statute requires such distributions to be shared by copyright owners with their songwriters,<sup>543</sup> this information is important to empowering songwriters seeking to confirm whether the copyright owners who license or administer their works received a distribution.<sup>544</sup>

Therefore, the Office recommends that contemporaneously with each distribution of unclaimed royalties, the MLC publicly disclose (including through press release, an email listserv that the public, including any songwriter, can sign up for, and a public

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<sup>539</sup> See 17 U.S.C. § 115(d)(7)(C); 37 C.F.R. § 210.33(b)(11).

<sup>540</sup> See CISAC & BIEM Initial Comments at 5; MAC Initial Comments at 2; SGA & SCL Initial Comments at 3 (suggesting that “each member of the MLC board of directors (whether voting or non-voting . . .) [should be required to] publicly disclose whether and how much he or she personally—and whether and how much the company or companies by which she or he may be employed—benefitted by each distribution of unmatched royalties on a market share basis”).

<sup>541</sup> Roundtable Tr. at 351:11–18 (Mar. 26, 2021) (Carnes, SGA).

<sup>542</sup> See 37 C.F.R. § 210.34; see also 17 U.S.C. § 115(d)(3)(J)(i)(II)(bb).

<sup>543</sup> 17 U.S.C. § 115(d)(3)(J)(iv).

<sup>544</sup> The Office strongly encourages copyright owners to be open and transparent with their songwriters with respect to these distributions by reporting to them the total amount received from the MLC (broken down by reporting period) and the relevant usage data used to determine the amount of the received payment attributable to usage of musical works (or shares) of the particular songwriter. The Office recommends that the MLC should explore with stakeholders the possibility of providing permissions-based access to information like this directly to relevant songwriters through the MLC’s portal.

notice posted on its website) the details of the distribution, which should include, at minimum:

- The total amount of unclaimed royalties distributed;
- The difference between that amount and the amount that had been noticed in advance (if different);<sup>545</sup>
- A link to the prior advance notice for the distribution;
- The total number of identified copyright owners receiving unclaimed royalties pursuant to the distribution;
- The identity of each such copyright owner (including full name (both legal and trade, if different) and, if available, appropriate standard unique identifiers); and
- The amount of any remaining royalties from the relevant reporting period(s) that the MLC is continuing to hold (if any).

The Office recommends that all disclosed figures be broken down by reporting period, and that royalty figures be provided both with and without accrued interest. All notices should be kept online indefinitely as a matter of public record.

## *F. Ensuring Effectiveness*

### **1. Measuring Success**

Congress has described the duty “to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works” as the MLC’s “highest responsibility,” next to the “efficient and accurate collection and distribution of royalties.”<sup>546</sup> The former Senate Judiciary Committee Chairman reaffirmed this point to the Office, writing that “[a]ll artists deserve to be fully paid for the uses of their works” and that “[r]educing unmatched funds is the measure by which the success of [the MMA] should be measured.”<sup>547</sup> He further “urge[d] [the Office’s] use of a specific metric as a key measurement for determining the impact and value of any

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<sup>545</sup> While the actual amount distributed could be less than the amount noticed (*e.g.*, if there is additional successful matching during the notice period), in no case may the MLC distribute a greater amount of unclaimed royalties than what it noticed pursuant to section 115(d)(3)(J)(iii)(II)(dd).

<sup>546</sup> S. REP. NO. 115-339, at 9; H.R. REP. NO. 115-651, at 9; CONF. REP. at 7.

<sup>547</sup> Letter from Lindsey O. Graham, Chairman, United States Senate Committee on the Judiciary, to Karyn Temple, Register of Copyrights at 1 (Nov. 1, 2019), <https://www.copyright.gov/policy/unclaimed-royalties/Nov-1-Letter.pdf>.

Copyright Office regulation as well as any expenditures or actions by the [MLC]—the impact of such action or expenditure upon improving the overall matching rate.”<sup>548</sup> The MLC, UROC, and others agreed that the success of the MMA should be measured by the reduction in the incidence of unclaimed royalties.<sup>549</sup> The UROC provided the following explanation:

It is important to stress that the ongoing measurement of the reduction of unclaimed should be more than just a static data point that might appear in annual reports for a selective audience. Rather, it should be the ultimate barometer of success in terms of implementation of the MMA, and of the MMA itself. . . . It was the failure of the industry to sufficiently match streamed recordings to the owners of the musical works embodied in those recordings that got us here in the first place. The MMA was passed into law to solve this problem. Measurement of how well it solves this problem needs to be transparently front and center for all stakeholders, continuous in its reporting, and ongoing in its analysis. . . . A detailed, robust, and continual analysis of the makeup of any existing unclaimed, accrued pool is a breadcrumb trail leading to where the problems still lie, and thus where fixes & solutions are still needed. This measurement of success (or lack thereof) in the reduction of unclaimed is therefore more than just a report card of achievement. It is a roadmap to further, continual improvement of the overall system.<sup>550</sup>

While perhaps not the sole barometer for measuring the MMA’s, or the MLC’s, success, the Office concurs that the reduction of unclaimed royalties is one of the most important key metrics, if not the most critical, and should be closely tracked, analyzed, and publicly reported by the MLC on a regular basis in various ways. The Office agrees that relevant metrics should be treated as more than a mere report card; they should be utilized to help identify shortcomings and make continuing improvements.

In terms of how best to measure and track the MLC’s success in carrying out this core task of reducing the incidence of unclaimed royalties, commenters offered a number of suggestions. The UROC listed several “metrics [that] can be established to clearly validate a diminishing scope of unclaimed royalties relative to overall collections, including:

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<sup>548</sup> *Id.*

<sup>549</sup> See, e.g., MLC Initial Comments at 1; Recording Academy Initial Comments at 1; SGA & SCL Initial Comments at 6; UROC Reply Comments at 2.

<sup>550</sup> UROC Reply Comments at 2–3.

- \$\$ of unclaimed/unmatched royalties in total, and as a percentage of total collections, and how those figures change over time[;]
- # of unclaimed/unmatched works, relative to the total number of works in the system[;]
- # of new works received & successfully matched in the period, relative to the total number of new works received (match success rate - volume)[;]
- \$\$ of new royalties received & successfully matched in the period, relative to the total \$\$ new royalties received (match success rate - \$\$)[;]
- \$\$ matched and cleared from public list of [u]nclaimed royalties on MLC portal[;]  
...
- Each unclaimed royalty pool should be analyzed by The MLC to determine trends, so a more focused approach can be put into practice to further minimize those figures[; and]
- Measurement of these and other metrics (including further breakdowns of the above by genre, matching-methodology, DMP source, etc.) should be recorded from inception, and then continually over time (quarterly, semi-annually, & annually) to assess trends in successful matching, as well as identifying where work still needs to be done.”<sup>551</sup>

CISAC & BIEM suggested that the “ratio of claims processed and works successfully identified could be published on the MLC website and updated on a monthly basis,” and “[f]or the estimate of the effectiveness of the matching and distribution system, the proportion between claimed and unclaimed royalties should be made public at least for half year periods, in terms of:

- Amount of the non-allocated royalties and its percentage on total collections in the period[;]
- Number of unidentified works (in whole or in part unidentified)[; and]
- Number of unidentified/unlocated rights owners[.]”<sup>552</sup>

CrossBorderWorks proposed measuring quarterly “the percentage match rate on all songs that are used/monetized in the previous period and organiz[ing] data into quartiles:

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<sup>551</sup> *Id.* at 3.

<sup>552</sup> CISAC & BIEM Initial Comments at 5–6.

- 100% matched (meaning 100% of all publishing shares have been linked to a master recording/ISRC and paid out to the publishers)[;]
- 75–99% matched (meaning up to one quarter of the publishing associated with sound recordings streamed has not been identified or paid)[;]
- 50–74% matched (at least half of publishing shares are unmatched/unpaid)[;]
- 25–49% matched (up to 75% of publishing shares are unmatched/unpaid)[; and]
- 0–24% matched (most of the publishing shares are unmatched—putting nearly all of the mechanical royalties associated with these sound recordings into unattributed)[.]”<sup>553</sup>

CrossBorderWorks further stated that it also “can envision a variety of other ways to measure success through data,” providing as examples: “a rolling average of % match rates over time, parse the data by label or distributor to know where most of the problems are occurring, and measure effectiveness of tools at the songwriter level as well as in the supply chain.”<sup>554</sup> It additionally said that the MLC should “measure engagement of the creator community—look at the outreach efforts and measure engagement with the MLC platform and whether this has an impact on improved data and linking of master recording to publishing.”<sup>555</sup> Other commenters also agreed that engagement levels should be tracked and measured in various ways.<sup>556</sup>

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<sup>553</sup> CrossBorderWorks Supplemental Roundtable Comments at 1–2; *see* Roundtable Tr. at 20:18–21:14 (Mar. 25, 2021) (Nauman, CrossBorderWorks).

<sup>554</sup> CrossBorderWorks Supplemental Roundtable Comments at 2; *see also* Roundtable Tr. at 42:20–43:22 (Mar. 25, 2021) (Nauman, CrossBorderWorks) (emphasizing having “granularity”).

<sup>555</sup> CrossBorderWorks Supplemental Roundtable Comments at 2; *see also* Roundtable Tr. at 53:22–54:04 (Mar. 25, 2021) (Nauman, CrossBorderWorks) (“[T]he engagement side of this also has to have some sort of neutral datapoint that shows what activities are being done, what tools are being made available, and how effective those tools are to engage the smaller entities that are in the publishing landscape.”).

<sup>556</sup> *See, e.g.*, Roundtable Tr. at 41:02–16 (Mar. 25, 2021) (Casini, Ecco Artist Servs.) (“[T]he statistics we need to start measuring is how many people are signed up and how many works have they entered.”); Roundtable Tr. at 44:14–46:06 (Mar. 25, 2021) (Aguirre, NMPA); Roundtable Tr. at 52:01–18, 57:03–11 (Mar. 25, 2021) (Colitre, Music Reports) (“To measure engagement with the claiming system, you should also report the amount of dollars that are claimed and disbursed from the system before they get liquidated in another way. And to that point also, the number of tracks claimed across that system, the number of rightsholders who engage with that system to do claiming, and the degree to which the claims made by those parties turn out to be incorrect versus correct and affirmed.”).

NMPA suggested that “the best way to determine metrics for how to reduce [the unmatched] is to understand where that unmatched is coming from. . . . and then being able to target those areas to reduce the issues.”<sup>557</sup> Music Reports advised to “[m]easure how fast and how accurately and how completely the royalties are being distributed on a monthly basis,” and also the “royalties matched” and “tracks matched.”<sup>558</sup> Christian Castle proposed that there be a measurement of feedback, comments, and complaints from copyright owners and songwriters related to song data and royalty payments and how the MLC handles them.<sup>559</sup> ARA suggested looking at how well the MLC is “finding people that are hard to be found and getting them their money. . . . [I]t’s the percentage of relatively small payouts and whether the percentage of overall royalties distributed has an increasing share of relatively small payouts.”<sup>560</sup> SGA added that “[w]e need a metric that shows whether or not the royalties are reaching the end user,” meaning the songwriter.<sup>561</sup>

The MLC suggested that:

In addition to the metrics discussed by CISAC, change in amount of royalties accrued (either as a percentage or absolute value) is a common metric for assessing performance, focusing on minimizing the amount of unmatched royalties. Change in the number of unmatched works (either as a percentage or absolute value) is another common metric, one which focuses more on the volume performance of matching efforts. There are myriad other metrics to drill into more detail on matching performance, such as looking at the change in the number of unique copyright owners who have been matched to works, or the change in works matched through various processes (automatic matching versus manual review versus claiming portal activity). The above metrics can also be broken down in many different ways to gain further insights, such as broken out by genre, or the stage of matching, whether digital use to sound recording, sound recording to musical work, musical work to copyright owners or location of copyright owners. Even further the performance by

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<sup>557</sup> Roundtable Tr. at 45:04–46:06 (Mar. 25, 2021) (Aguirre, NMPA).

<sup>558</sup> Roundtable Tr. at 49:20–25, 51:23–52:18 (Mar. 25, 2021) (Colitre, Music Reports).

<sup>559</sup> Roundtable Tr. at 28:19–31:12, 50:12–51:13 (Mar. 25, 2021) (Castle, Christian L. Castle Attorneys) (suggesting “having a robust complaint and customer service analytical process” that looks at “not just kind of how many calls we got, but what were those calls and what issues were they raising. Were they in a foreign language? Were they elderly people who don’t have internet connectivity and don’t have any understanding of what’s going on? What are they, right?”).

<sup>560</sup> Roundtable Tr. at 47:03–13 (Mar. 25, 2021) (Kalo, ARA).

<sup>561</sup> Roundtable Tr. at 54:06–16 (Mar. 25, 2021) (Sanders, SGA).

any metrics can be broken down into performance within the spectrum, such as breaking down performance by deciles of value or amount, which can provide insights into whether successes or failures fall disproportionately in one area or another.<sup>562</sup>

The Office believes the MLC should use a variety of metrics to track and analyze its level of success over time in reducing the incidence of unclaimed royalties. The metrics suggested by the commenters generally appear reasonable, and no commenter has suggested otherwise. There seemed to be some disagreement as to the primacy of match rates compared to other types of metrics, such as engagement, especially during the current early stage of the MLC's existence, but no commenter contended that match rates are categorically unhelpful or irrelevant.<sup>563</sup> Indeed, the former Senate Judiciary Committee Chairman specifically identified improvements to "overall matching rate" as a "key measurement."<sup>564</sup> The Office thus recommends that the MLC track the various metrics identified by commenters and continually review and analyze them both to evaluate the MLC's relative effectiveness over time in carrying out the core duty of reducing unclaimed royalties and to identify areas for improvement going forward.

The Office further recommends that the metrics identified by commenters only act as a floor, given that the MLC's and others' comments suggest they were not necessarily meant to be exhaustive.<sup>565</sup> For example, other metrics the MLC should additionally consider include how much usage (in terms of royalties, works, and owners expressed as

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<sup>562</sup> MLC Reply Comments at 16.

<sup>563</sup> See, e.g., Roundtable Tr. at 44:14–46:06 (Mar. 25, 2021) (Aguirre, NMPA); Roundtable Tr. at 48:07–09 (Mar. 25, 2021) (Casini, Ecco Artist Servs.); Roundtable Tr. at 38:12–40:05 (Mar. 25, 2021) (Levin, DiMA); CrossBorderWorks Supplemental Roundtable Comments at 1.

<sup>564</sup> Letter from Lindsey O. Graham, Chairman, United States Senate Committee on the Judiciary, to Karyn Temple, Register of Copyrights at 1 (Nov. 1, 2019), <https://www.copyright.gov/policy/unclaimed-royalties/Nov-1-Letter.pdf>. The Office notes that the MLC sought match rates as part of its Request for Proposal for End-to-End Matching Services, which asked candidates to "[c]omment on the historical average sound recording to composition match rate using your platform" and "the percentage of usage processed through automation, and the percentage and process of incremental manual (i.e. human) matching." MLC Designation Proposal Ex. 4 at 14, U.S. Copyright Office Dkt. No. 2018-11, <https://www.regulations.gov/comment/COLC-2018-0011-0012>; see also CMO REPORT at 17 ("CMOs may set objective, expected matching rates for automated matching and manual, research matching.").

<sup>565</sup> See, e.g., MLC Reply Comments at 16 (noting that there "are myriad other metrics" and using "such as"); UROC Reply Comments at 3 (referring to "[v]arious metrics" and using "including"); CrossBorderWorks Supplemental Roundtable Comments at 2 (noting that "[t]hese are all just examples").

both real numbers and percentages) has been matched from a given monthly reporting period tracked and cumulatively updated at different intervals of time (*e.g.*, at forty-five days after the end of the period and at the end of each subsequent month). While similar to some of the above-mentioned suggestions, this particular example would allow the MLC to track its match rate progress at a period-by-period level over time until any remaining unclaimed royalties from that period are distributed. Additional breakdowns of metrics the MLC should consider include by territory of origin if known, language, type of activity or offering, DPD configuration, sound recording copyright owner, distributor, and aggregator if known, and whether or not, and the degree to which, the work is partially claimed. The Office recognizes that actions by other industry stakeholders can impact the MLC’s success, and so to the extent these metrics point to an issue outside of the MLC’s direct control, the MLC should engage with relevant stakeholders, and may involve the Office if a regulatory adjustment is necessary.

While tracking progress is essential, it would also be helpful if the MLC were able to compare its matching success to recognized industry benchmarks, not because they would necessarily be appropriate goals<sup>566</sup>—the MLC and others have stated that the MLC’s matching goal should always be 100%<sup>567</sup>—but because they may be helpful guideposts. Unfortunately, there are few potential benchmarks in the record. Consequently, the Office recommends that the MLC try where possible to obtain appropriate benchmarks so it can more fully evaluate how well things are going. If the MLC received any appropriate benchmarks from various industry vendors in response to its Request for Proposal, they may be a good place to start.

One benchmark in the record is a match rate asserted by a vendor of various DMPs. Music Reports explained that within forty-five days after the close of a current period, it is generally able to match and pay out 80% of royalties, and over three years, it is able to liquidate around 80-90% of the remaining 20%, leaving about 3-5% of the pool that

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<sup>566</sup> See Roundtable Tr. at 45:01–04 (Mar. 25, 2021) (Aguirre, NMPA) (“[Y]ou can’t pick a number and if you pick a number, you’re setting something up for failure.”); Roundtable Tr. at 48:07–12 (Mar. 25, 2021) (Casini, Ecco Artist Servs.) (“[P]icking a number, 80 percent, is kind of arbitrary this early in the game. . . . [S]etting 80 percent as the goal kind of limits the opportunity that the MLC has.”); Roundtable Tr. at 34:11–12 (Mar. 25, 2021) (Colitre, Music Reports) (“[W]hether [Music Reports’ rate] should be the goal for the MLC is a different question.”).

<sup>567</sup> UROC Initial Comments at 2; Roundtable Tr. at 57:22–23 (Mar. 25, 2021) (Ahrend, MLC); Roundtable Tr. at 34:13–15 (Mar. 25, 2021) (Colitre, Music Reports); Roundtable Tr. at 48:11–12 (Mar. 25, 2021) (Casini, Ecco Artist Servs.); Roundtable Tr. at 307:23–25 (Mar. 26, 2021) (Sokol, ARA). Though some have also noted that a 100% match rate is unlikely to be achievable realistically. See CMO REPORT at 15; Roundtable Tr. at 21:15–18 (Mar. 25, 2021) (Nauman, CrossBorderWorks).

usually turns out to be non-music, public domain, or works where the owner never surfaces.<sup>568</sup> In other words, Music Reports claims to achieve a match rate of about 95-97% of royalties from a given reporting period by the end of three years after the close of the reporting period. The confidence levels of the matches associated with that match rate, however, are unknown, making a direct comparison to the MLC challenging.

The only other benchmark in the record is also a match rate, and comes from the CMO Report, which noted that while “there are no match rates that are concrete or considered to be the best match rate,” “matches from current DSP usage reports to works represented by the CMO (as registered by members) in the high 80 percentile range are generally considered to be very good.”<sup>569</sup> While these two benchmarks provide something for the MLC to compare itself to, without additional details, the usefulness of that comparison is difficult to determine.

As a final point about benchmark match rates, the Office notes that it was stated that under the pre-MMA regime, match rates were “generally but informally defined as at least one publishing share linked to an ISRC that had usage in a streaming platform,” as opposed to being measured across all shares of a work.<sup>570</sup> It is not clear whether this is how the benchmarks in the record have been defined, but seems to be another reason to be cautious in attempting to use them for a direct comparison.

## 2. Transparency

Equally paramount to the MLC using a variety of metrics to track its degree of success in reducing the incidence of unclaimed accrued royalties is the MLC’s transparency in publicly communicating these metrics, especially to copyright owners and songwriters who deserve to know how well the MLC is ensuring that their royalties are being matched and paid properly. Licensees similarly deserve to know if the administrative assessment they pay to fund the MLC is being used appropriately to reduce the amount of unclaimed royalties. Indeed, this information is relevant to a number of industry stakeholders, and will also be pertinent to the Office’s assessment of the MLC during the periodic review of its designation under the statute.<sup>571</sup>

The MLC has said that it “is committed to providing multiple useful metrics to help stakeholders understand the scope and progress of work on unclaimed royalties, and

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<sup>568</sup> Roundtable Tr. at 34:05–12 (Mar. 25, 2021) (Colitre, Music Reports); Symposium Tr. at 257:12–258:15 (Dec. 6, 2019) (Colitre, Music Reports);

<sup>569</sup> CMO REPORT at 15.

<sup>570</sup> CrossBorderWorks Supplemental Roundtable Comments at 1; *see* Roundtable Tr. at 19:24–21:14 (Mar. 25, 2021) (Nauman, CrossBorderWorks).

<sup>571</sup> *See* 17 U.S.C. § 115(d)(3)(B)(ii).

will listen closely to the interests of copyright owners in choosing metrics and disseminating statistics.”<sup>572</sup> The UROC suggested that the “% of overall unclaimed funds should be shared publicly on a regular calendar basis (quarterly, semi-annually, or annually).”<sup>573</sup> CISAC & BIEM suggested monthly public website updates for certain metrics and that others should be “made public at least for half year periods.”<sup>574</sup> CrossBorderWorks said that “[o]pening up the songs and data for analysis by data science companies as well as songwriters and publishers for claiming will help enable all parties to participate in improvements.”<sup>575</sup> Music Reports suggested that “given that the process is set up to be monthly . . . the MLC should report monthly on its progress on as wide a range of metrics as possible.”<sup>576</sup>

The Office recommends that the MLC make all such metrics publicly available, except to the extent it would cause confidential or business sensitive information to be improperly disclosed.<sup>577</sup> Specifically regarding match rates, the Office acknowledges the MLC’s point that “vendors can easily increase their claimed ‘match percentage’ by simply dropping the confidence level at which they call something a match.”<sup>578</sup> For that reason, the Office recommends that the MLC provide appropriate context for its metrics, including information surrounding how it defines a match, relevant confidence levels, and how confidence levels are tuned.<sup>579</sup> Additionally, so that they are clear and precise, and to avoid possible confusion, the Office recommends that all royalty figures be provided both with and without accrued interest.

The Office recommends that in addition to providing annual statistics in its annual report,<sup>580</sup> the MLC also have a dedicated public webpage displaying all of these metrics in a clear, well-organized, user-friendly, and accessible manner. The webpage should be interactive and allow users to search, sort, and break down the data so it may be more easily reviewed and analyzed. The webpage should also have an export or download feature, including bulk exporting/downloading, to aid public consumption and dissemination. The Office recommends that the webpage be updated monthly after each

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<sup>572</sup> MLC Reply Comments at 15–16.

<sup>573</sup> UROC Reply Comments at 3.

<sup>574</sup> CISAC & BIEM Initial Comments at 5–6.

<sup>575</sup> CrossBorderWorks Supplemental Roundtable Comments at 2.

<sup>576</sup> Roundtable Tr. at 51:23–52:01 (Mar. 25, 2021) (Colitre, Music Reports).

<sup>577</sup> See 37 C.F.R. § 210.34. For example, publicly disclosing certain types of detailed, non-aggregated DMP-, record label-, or distributor-based breakdowns may be inappropriate.

<sup>578</sup> MLC Reply Comments at 9.

<sup>579</sup> See Roundtable Tr. at 52:19–53:07 (Mar. 25, 2021) (Colitre, Music Reports) (“The MLC should definitely publish the match . . . the percentage confidence that it uses for that process.”).

<sup>580</sup> See 37 C.F.R. § 210.33(b)(8).

batch of new reports of usage arrive and go through initial matching processes. All metrics should be retained and made available online indefinitely (though the MLC could distinguish between current and historic metrics in the future) so long-term trends can be assessed and to ensure the public and the Office have access to them in connection with the review of the MLC’s designation every five years. The MLC should also be very clear about how applicable metrics may change in response to DMP reporting adjustments and the reconciliation of any related royalty underpayments or overpayments permitted by the Office’s regulations. Relatedly, the Office also recommends that the MLC make publicly available relevant metrics about DMP-reported usage that the MLC determines is not subject to blanket licenses (*e.g.*, where it is subject to a voluntary license instead, public domain musical works, etc.), such that any related paid royalties have been credited or refunded back to the DMP.

Lastly, CISAC & BIEM proposed that the MLC’s “[p]erformance should be evaluated on a regular basis according to . . . transparent criteria by a panel composed of a wide range of copyright owner representatives, including non-US based repertoires,” and that “[d]epending on the results obtained, the USCO could require improvements to the operations of the MLC.”<sup>581</sup> SGA similarly suggested that “somebody outside of the MLC needs to establish what success looks like and hold them to that rate.”<sup>582</sup> The Office does not believe any formal body needs to be created at this time, as part of the reason for recommending the public disclosure of various metrics is so stakeholders can review and evaluate them. The Office welcomes feedback from stakeholders as relevant to its periodic review of the MLC’s performance as part of the statute’s five-year designation process.

## IV. CONCLUSION

Reflecting the broad diversity of opinions and perspectives expressed by commenters, the Office’s recommendations in this report are meant to be comprehensive and help the MLC achieve the overall goal of reducing the incidence of unclaimed royalties. The Office urges the MLC to carefully consider these recommendations and give them substantial weight, as required by the statute, and continue engaging with and seeking feedback from stakeholders as it develops and implements initiatives, systems, and policies. The Office will continue to monitor the MLC’s activities and welcomes ongoing feedback from stakeholders on the MMA.

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<sup>581</sup> CISAC & BIEM Initial Comments at 6.

<sup>582</sup> Roundtable Tr. at 312:11–13 (Mar. 26, 2021) (Carnes, SGA).

**APPENDIX A**

**FEDERAL REGISTER NOTICES**

under specified circumstances. Specifically, ConocoPhillips Company, Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CUI–JIP intends to file additional written notifications disclosing all changes in membership.

On March 22, 2018, CUI–JIP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2018 (83 FR 17851).

The last notification was filed with the Department on October 4, 2018. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 2, 2018 (83 FR 55204).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2019–23627 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2019–6]

#### Unclaimed Royalties Study: Announcement of Public Symposium

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

**ACTION:** Notice of public symposium.

**SUMMARY:** As directed by the Music Modernization Act, the U.S. Copyright Office is conducting a study to evaluate best practices that the Mechanical Licensing Collective should implement in the following areas: (1) To identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; (2) to encourage musical work copyright owners to claim the royalties of those owners; and (3) to reduce the incidence of unclaimed royalties. To initiate this effort, the Office is holding a one-day symposium to provide an educational foundation and facilitate public discussion on issues relevant to the study. Following this symposium, the Office will separately issue Notices of Inquiry soliciting written comments and announcing roundtables, both of which will provide opportunities for public input on the Unclaimed Royalties Study.

**DATES:** The symposium will be held on December 6, 2019. Registration will start

at 8:30 a.m. and the event will run all day ending at 6:00 p.m. Additional information is available on the Copyright Office website at <https://www.copyright.gov/policy/unclaimed-royalties/>.

**ADDRESSES:** Library of Congress Madison Building, 101 Independence Avenue SE, Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:** John R. Riley, Assistant General Counsel, by email at [jrl@copyright.gov](mailto:jrl@copyright.gov) or Cassandra Sciortino, Barbara A. Ringer Honors Fellow, by email at [csciortino@copyright.gov](mailto:csciortino@copyright.gov). Each may be reached by telephone at 202–707–8350. Requests for ADA accommodations should be made five business days in advance at [ada@loc.gov](mailto:ada@loc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”).<sup>1</sup> Title I of the MMA substantially modifies the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.<sup>2</sup> Prior to the MMA, licensees obtained a section 115 compulsory license on a song-by-song basis by serving a notice of intention on the relevant copyright owner (or filing it with the Copyright Office if the Office’s public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.<sup>3</sup>

The MMA amends this regime most significantly by establishing a new blanket license that digital music providers may obtain to make digital phonorecord deliveries (“DPDs”) of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as “covered activity”).<sup>4</sup> The blanket licensing structure is designed to reduce the transaction costs associated with song-

<sup>1</sup> Public Law 115–264, 132 Stat. 3676 (2018).

<sup>2</sup> See S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), [https://www.copyright.gov/legislation/mma\\_conference\\_report.pdf](https://www.copyright.gov/legislation/mma_conference_report.pdf); see also H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee’s efforts to review music copyright laws).

<sup>3</sup> See 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, *Copyright and the Music Marketplace* 28–31 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> (describing operation of prior section 115 license).

<sup>4</sup> 17 U.S.C. 115(d)(1), (e)(7); see H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

by-song licensing by commercial services striving to offer “as much music as possible,” while “ensuring fair and timely payment to all creators” of the musical works used on these digital services.<sup>5</sup> The new blanket license will become available upon the statutory license availability date (*i.e.*, January 1, 2021).<sup>6</sup> In the interim, the MMA “creates a transition period in order to move from the current work-by-work license to the new blanket license.”<sup>7</sup>

This blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (“MLC”), which has recently been designated by the Register of Copyrights.<sup>8</sup> As previously detailed by the Office,<sup>9</sup> the MLC, through its board of directors and task-specific committees,<sup>10</sup> is responsible for a variety of duties under the blanket license, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.<sup>11</sup> The MLC is also tasked with distributing unclaimed accrued royalties following a proscribed holding period.

As the legislative history explains, these responsibilities are intended to fill a gap in the music licensing marketplace:

[F]or far too long, it has been difficult to identify the copyright owner of most copyrighted works, especially in the music industry where works are routinely commercialized before all of the rights have been cleared and documented. This has led to significant challenges in ensuring fair and timely payment to all creators even when the licensee can identify the proper individuals to pay. . . . [T]here is no reliable, public database to link sound recordings with their

<sup>5</sup> S. Rep. No. 115–339, at 4, 8.

<sup>6</sup> 17 U.S.C. 115(d)(2)(B), (e)(15).

<sup>7</sup> H.R. Rep. No. 115–651, at 10; S. Rep. No. 115–339, at 10; see 17 U.S.C. 115(b)(2)(A), (d)(9), (d)(10). The Copyright Office has separately issued regulatory updates related to digital music providers’ obligations during this transition period before the blanket license is available. See 84 FR 10685 (Mar. 22, 2019); 83 FR 63061 (Dec. 7, 2018).

<sup>8</sup> 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2018).

<sup>9</sup> See generally 84 FR 32274; 83 FR 65747 (Dec. 21, 2018).

<sup>10</sup> By statute, the MLC board must establish three committees: An operations advisory committee, 17 U.S.C. 115(d)(3)(D)(iv), an unclaimed royalties oversight committee, *id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii), and a dispute resolution committee, *id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K).

<sup>11</sup> *Id.* at 115(d)(3)(C).

underlying musical works. Unmatched works routinely occur as a result of different spellings of artist names and song titles. . . . The Committee believes that this must end so that all artists are paid for their creations and that so-called “black box” revenue is not a drain on the success of the entire industry.<sup>12</sup>

In designating the MLC, the Copyright Office accordingly noted that it is the MLC’s “core project [to] encourag[e] musical work copyright owners with unclaimed accrued royalties to come forward and claim such monies” after identifying them based on the data ingested through uses of the license.<sup>13</sup>

In recognition of the significant duties involved with respect to the potential distribution of unclaimed, accrued royalties for which the creators of such works will not be paid,<sup>14</sup> the MMA also directs the Copyright Office to undertake a study that recommends best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties. The resulting Unclaimed Royalties Study recommending best practices for the collective must be submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives by July 8, 2021. The Register is directed to solicit and review comments and relevant information from music industry participants and other interested parties, and consult with the Comptroller General of the United States. The MLC is required to carefully consider, and give substantial weight to, the recommendations that will be set forth in the Unclaimed Royalties Study.<sup>15</sup> Separately, the MMA also directs the Copyright Office to engage in education and outreach activities to educate songwriters and other interested parties about the new law, including the processes by which a copyright owner may claim ownership in accrued royalties and the MLC may distribute unclaimed, accrued royalties.<sup>16</sup>

While the statute, legislative history, and indeed, prior Copyright Office policy studies are highly informative with respect to various aspects relevant to the policy study,<sup>17</sup> the Office appreciates the keen interest of

interested members of the public with respect to the MLC’s functions. For example, the recent designation of the MLC resulted in over 600 comments, including many submitted by individual songwriters, expressing views with respect to the MLC’s forthcoming activities matching uses to musical works and ownership information, locating copyright owners with accrued royalties, and ultimately reducing the amount of unclaimed royalties.<sup>18</sup>

Because the section 115 license and the MLC’s statutory duties are a relatively complex area of copyright that affects many in the music licensing ecosystem, the Copyright Office is electing to initiate its study with an educational public event. The public process for this study will roughly track that of the Office’s recently-completed study on attribution and integrity rights.<sup>19</sup> To launch the Unclaimed Royalties Study, the Office is holding a symposium on December 6, 2019. A transcript and video of the event will be made available on the Copyright Office website, and interested members of the public will have a subsequent opportunity to comment on statements or topics raised during the symposium, to aid the Office in its analysis of the issues. In 2020, the Office will separately issue a Notice of Inquiry soliciting written comments from the public, and also expects to announce public roundtables. These subsequent steps in the study process are intended to provide ample opportunities for the public to provide input on the Unclaimed Royalties Study.

## II. Subjects of Discussion

The symposium will consist of three core panel discussions regarding: (1) Creating comprehensive databases (including discussions of past efforts); (2) matching musical works to sound recordings; and (3) education on unclaimed royalties across the industry. The symposium is also expected to include representatives from the MLC and the Digital Licensee Coordinator, as well as a breakout session to solicit artists’ perspectives on relevant issues. The Office will also provide participants and observers with an opportunity to offer additional comments for the record, following the panel discussion.

The Office is currently finalizing its list of panelists. The finalized agenda

for the symposium will be made available through the Office’s website in the weeks prior to the event. The symposium hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the symposium.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2019-23625 Filed 10-29-19; 8:45 am]

BILLING CODE 1410-30-P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19-076)]

### NASA Advisory Council; Science Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Monday, November 18, 2019, 8:30 a.m.–4:15 p.m., and Tuesday, November 19, 2019, 8:30 a.m.–12:45 p.m., Local Time.

**ADDRESSES:** NASA Headquarters, Room 9H40, 300 E Street SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov*.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free number 1–888–469–1762 or toll number 1–212–287–1653, passcode 8281293 followed by the # sign, on both days, to participate in this meeting by telephone. The WebEx link is <https://nasaenterprise.webex.com>; the meeting number is 906 106 313 and the

<sup>12</sup> H.R. Rep. No. 115–651, at 7–8.

<sup>13</sup> 84 FR at 32279, 32289.

<sup>14</sup> See H.R. No. 115–651, at 13.

<sup>15</sup> Public Law 115–264, sec. 102(f), 132 Stat. at 3722–23.

<sup>16</sup> *Id.* at sec. 102(e), 132 Stat. at 3722.

<sup>17</sup> See generally U.S. Copyright Office, *Copyright and the Music Marketplace* (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>; H.R. Rep. No. 115–651, at 2 (citing same).

<sup>18</sup> See 84 FR at 32283–84 (discussing ways in which the statute addresses issues with respect to smaller independent songwriters, including the Unclaimed Royalties Study).

<sup>19</sup> U.S. Copyright Office, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States* (2019), <https://www.copyright.gov/policy/moralrights/full-report.pdf>.

duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that manlifts are in safe operating condition.

*Periodic Inspections and Records (paragraph (e)).* This provision requires that each manlift be inspected at least once every 30 days and it also requires that limit switches shall be checked weekly. The manlift inspection is to cover at least the following items: Steps; step fastenings; rails; rail supports and fastenings; rollers and slides; belt and belt tension; handholds and fastenings; floor landings; guardrails; lubrication; limit switches; warning signs and lights; illumination; drive pulley; bottom (boot) pulley and clearance; pulley supports; motor; driving mechanism; brake; electrical switches; vibration and misalignment; and any "skip" on the up or down run when mounting a step (indicating worn gears). A certification record of the inspection must be prepared upon completion of the inspection. The record must contain the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift.

*Disclosure of Inspection Certification Records.* The agency has no annualized cost associated with enforcing the Standard. OSHA would only review records in the context of an investigation of a particular employer to determine compliance with the Standard. These activities are outside the scope of the PRA. See 5 CFR 1320.4(a)(2).

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

The agency is requesting no change to the burden hours associated with this Information Collection Request. Therefore, the agency would like to retain the previous estimate of 37,800 hours.

*Type of Review:* Extension of a currently approved collection.

*Title:* Manlifts (29 CFR 1910.68).

*OMB Control Number:* 1218–0226.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 3,000.

*Number of Responses:* 36,000.

*Frequency of Responses:* On Occasion.

*Average Time per Response:* Varies.

*Estimated Total Burden Hours:* 37,800.

*Estimated Cost (Operation and Maintenance):* \$0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0051).

You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

## V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2020–11805 Filed 6–1–20; 8:45 am]

BILLING CODE 4510–26–P

## LIBRARY OF CONGRESS

### U.S. Copyright Office

[Docket No. 2019–6]

### Unclaimed Royalties Study: Notice of Inquiry

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

**ACTION:** Notice of inquiry.

**SUMMARY:** The U.S. Copyright Office is undertaking a study as directed by the Music Modernization Act to evaluate best practices that the newly-established mechanical licensing collective ("MLC") may implement to: Identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; encourage musical work copyright owners to claim their royalties; and reduce the incidence of unclaimed royalties. The MLC is expected to carefully consider, and give substantial weight to, the Office's recommendations when establishing procedures for the identification and location of musical work copyright owners and the distribution of unclaimed royalties. The Office is soliciting input from music industry participants and other interested members of the public on these issues to aid its study.

**DATES:** Written comments must be received no later than August 3, 2020 at 11:59 p.m. Eastern Time. Written reply

comments must be received no later than August 31, 2020 at 11:59 p.m. Eastern Time. The Office will be announcing one or more public meetings, potentially virtually, by separate notice in the future.

**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 comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/policy/unclaimed-royalties>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:**

Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov) or John R. Riley, Assistant General Counsel, by email at [jril@copyright.gov](mailto:jril@copyright.gov). They can be reached by telephone at 202-707-8350.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Orrin G. Hatch–Bob Goodlatte Music Modernization Act<sup>1</sup> significantly changed the section 115 compulsory license to make and distribute phonorecords of nondramatic musical works (the “mechanical license”). Prior to the MMA, those who wished to obtain a section 115 compulsory license were able to do so by serving a notice of intention to obtain a compulsory license (“NOI”) on the copyright owner and then paying applicable royalties accompanied by accounting statements or, if the Copyright Office’s records did not identify the copyright owner, by filing the notice with the Office.<sup>2</sup> Where the musical work copyright owner was not identified in the Office’s records, royalties were not due.<sup>3</sup>

Frustrations with the former song-by-song licensing system’s inefficiencies are well-documented, both in the legislative history and the Copyright Office’s 2015 comprehensive study on the music licensing marketplace.<sup>4</sup>

<sup>1</sup> Public Law 115–264, 132 Stat. 3676 (2018) (“MMA”).

<sup>2</sup> 17 U.S.C. 115(b)(1) (2017).

<sup>3</sup> *Id.* at 115(c)(1) (2017).

<sup>4</sup> Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 3 (2018), [https://www.copyright.gov/legislation/mma-conference\\_report.pdf](https://www.copyright.gov/legislation/mma-conference_report.pdf) (“Conf. Rep.”) (“Song-by-song licensing negotiations increase the transaction costs to the extent that only a limited amount of

Digital services “complain[ed] about the lack of readily available data concerning musical work ownership” and “asserted that the inaccessibility of ownership information leads to costly and burdensome efforts to identify the rightsholders and potentially incomplete or incorrect licenses, exposing them to the risk of statutory infringement damages despite diligent efforts.”<sup>5</sup> Publishers, songwriters, and licensing administrators were also frustrated with noncompliant statutory licensees, noting that NOIs were “frequently deficient, and licensees regularly fail[ed] to timely and accurately pay and report usage.”<sup>6</sup> Some copyright owners sued digital music services for missing mechanical licenses,<sup>7</sup> in some instances resulting in settlements whose terms included the establishment of online portals allowing copyright owners to claim their settlement shares.<sup>8</sup>

*A. Identifying and Paying Copyright Owners Under the New Blanket License*

The MMA largely eliminated the song-by-song mechanical compulsory licensing regime by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries (“DPDs”) of musical works, including in the form of permanent downloads, limited downloads, or interactive streams.<sup>9</sup> Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a new entity called the mechanical licensing collective (“MLC”), which was designated last summer by the Copyright Office.<sup>10</sup> Following a present transition period, the MLC will begin

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music would be worth engaging in such licensing discussions, depriving artists of revenue for less popular works and encouraging piracy of such works by customers looking for such music”); U.S. Copyright Office, *Copyright and the Music Marketplace* 107 (2015), <https://www.copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

<sup>5</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* 107 (2015).

<sup>6</sup> *Id.* at 110.

<sup>7</sup> See, e.g., Dan Rys, *Tidal Hit With Lawsuit Over Royalty Payments* (Feb. 29, 2016), <https://www.billboard.com/articles/business/6890854/tidal-lawsuit-royalty-payments> (noting lawsuits against Spotify, Tidal, Slacker, Deezer, Rdio, Rhapsody, and Beats Music).

<sup>8</sup> See, e.g., *Ferrick v. Spotify USA Inc.* (last updated Mar. 30, 2020), <https://spotifypublishingsettlement.com>.

<sup>9</sup> The mechanical compulsory license for non-DPDs (e.g., CDs, vinyl) continues to follow the preexisting song-by-song NOI system.

<sup>10</sup> 17 U.S.C. 115(b)(1), (c)(5) (2017); 84 FR 32274 (July 8, 2019).

administering the blanket license on what the statute terms the “license availability date,” or January 1, 2021.<sup>11</sup> The MMA’s legislative history explains that the blanket licensing structure is designed to improve efficiency by allowing digital music services to offer “as much music as possible,” while “ensuring fair and timely payment to all creators” of the musical works used on these digital services.<sup>12</sup>

By consolidating musical work usage and ownership data and royalty distributions with the MLC, the MMA aims to improve the preexisting problems of missing data and incomplete royalty payments. Digital music providers using the blanket license are required to pay royalties and provide reports of usage for all covered activities to the MLC on a monthly basis.<sup>13</sup> The MLC will collect those royalties and distribute them to musical work copyright owners in accordance with the digital service providers’ usage reports and the ownership and other information contained in the MLC’s records, including its public database.<sup>14</sup>

**1. The MLC’s Public Musical Works Database**

The MLC’s musical works database will contain information relating to musical works (and shares of such works), including, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied.<sup>15</sup> Accurately identifying musical works and their associated sound recordings and owners requires reliable data throughout the statutory licensing ecosystem. To this end, as explained in more detail in separate notices published by the Office,<sup>16</sup> the MMA outlines roles for digital music providers, musical work owners, and the MLC in providing, reporting, and curating accurate music data.

Digital music providers operating under the blanket license will “engage in good-faith, commercially reasonable efforts to obtain” various sound recording and musical work information from sound recording copyright owners and other licensors of sound recordings made available through the digital music providers’ services.<sup>17</sup> These digital music providers will deliver

<sup>11</sup> 17 U.S.C. 115(d)(2)(B), (e)(15).

<sup>12</sup> S. Rep. No. 115-339, at 4, 8 (2018).

<sup>13</sup> 17 U.S.C. 115(e)(7), (d)(4).

<sup>14</sup> *Id.* at 115(d)(3)(G)(i)(II).

<sup>15</sup> *Id.* at 115(d)(3)(E)(i).

<sup>16</sup> 85 FR 22549 (Apr. 22, 2020); 85 FR 22518 (Apr. 22, 2020).

<sup>17</sup> 17 U.S.C. 115(d)(4)(B); see also 85 FR at 22521–25.

reports of usage to the MLC containing usage data for musical works used in covered activities under the blanket license, voluntary licenses, and individual download licenses.<sup>18</sup> Certain entities engaging in covered activities pursuant to voluntary licenses or individual download licenses, but that do not operate under a blanket license (called significant nonblanket licensees), will also submit reports of usage to the MLC.<sup>19</sup> And musical work copyright owners with works listed in the MLC's database will "engage in commercially reasonable efforts to deliver" to the MLC if not already listed in the database, "information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable."<sup>20</sup> On April 22, 2020, the Office issued a notice of proposed rulemaking discussing these matters in more detail and seeking public comment on proposed regulatory language to govern these obligations.<sup>21</sup>

Once these inputs are provided to the MLC, it will engage in efforts "to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate."<sup>22</sup> The MMA's legislative history describes this duty to locate and identify musical work owners as the MLC's "highest responsibility," next to the MLC's "efficient and accurate collection and distribution of royalties."<sup>23</sup> The Senate Judiciary Chairman subsequently reaffirmed this sentiment, writing to the Office that "[a]ll artists deserve to be fully paid for the uses of their works [and] . . . [r]educing unmatched funds is the measure by which the success of this important legislation should be measured."<sup>24</sup>

Information for both matched and unmatched works will be provided in the MLC's public musical works database, and the statute lists a number of fields that must be included with

respect to matched and unmatched works.<sup>25</sup> In addition, the Office may promulgate regulations to require additional information to be included in the MLC's database,<sup>26</sup> and must also "establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the musical works database."<sup>27</sup> The Office has recently published a notification of inquiry soliciting information on these topics.<sup>28</sup>

For those musical works (or shares thereof) that are unmatched, copyright owners will be able to come forward and assert ownership claims by viewing the MLC's public database, including through a public online portal.<sup>29</sup> The MLC has announced intentions that its claiming portal, expected to premiere in the third quarter of this year, will be "user-friendly, ADA-compliant, and can be used by stakeholders of any sophistication."<sup>30</sup> For technologically sophisticated entities, the MLC will also use "APIs and data transfer processes and formats to allow for bulk submission and updating of rights data."<sup>31</sup>

## 2. Education and Outreach

Congress has directed the MLC to "engage in diligent, good-faith efforts to publicize, throughout the music industry . . . the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties."<sup>32</sup> The digital licensee coordinator ("DLC") (an entity that was designated by the Copyright Office to represent the interests of digital services pursuant to the statute), and Copyright Office also have roles in educating copyright owners and songwriters about the existence of the MLC and its role in the new blanket license system.<sup>33</sup> For the DLC, this includes encouraging digital music providers to post the MLC's contact information on services' websites and applications and conduct in-person songwriter outreach.<sup>34</sup> The

Copyright Office has engaged in several activities to fulfill its educational duties thus far, including by establishing a MMA-related web page with FAQs, informational handouts, seven MMA-related videos, three new circulars, and information related to the statute's legislative history, as well as hosting an all-day symposium and speaking at approximately 40 in-person or virtual events.<sup>35</sup>

## 3. Unclaimed, Accrued Royalties

For those works for which royalties have accrued but the copyright owner is unknown or not located, the MLC will hold such royalties for a designated minimum time period. This holding period will provide the MLC with an additional period of time<sup>36</sup> (compared to the pre-MMA system) to engage in efforts to identify the musical works embodied in particular sound recordings, and locate their associated copyright owners, and for copyright owners and other songwriters to identify their works in the MLC database and come forward to claim their ownership interests.<sup>37</sup> In general, the MLC must hold accrued royalties for "a period of not less than 3 years after the date on which the funds were received by the [MLC], or not less than 3 years after the date on which the funds were accrued by a digital music provider that subsequently transferred such funds to the [MLC] . . . whichever period expires sooner."<sup>38</sup> The MMA also states that the first such distribution "shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such distribution to take place

<sup>18</sup> 17 U.S.C. 115(d)(4)(A); see also 85 FR at 22526–35. The statute prescribes categories of information that must be included in reports of usage, including a provision for the Copyright Office to prescribe additional categories by regulation. 17 U.S.C. 115(d)(4)(A)(ii)(I).

<sup>19</sup> 17 U.S.C. 115(d)(6)(A)(ii), (e)(31); see also 85 FR at 22535–36.

<sup>20</sup> 17 U.S.C. 115(d)(3)(E)(iv); see also 85 FR at 22525–26.

<sup>21</sup> 85 FR 22518.

<sup>22</sup> 17 U.S.C. 115(d)(3)(E)(i).

<sup>23</sup> Conf. Rep. at 7.

<sup>24</sup> Letter from Lindsey Graham, Chairman, Senate Judiciary Committee, to Karyn Temple, Register of Copyrights 1 (Nov. 1, 2019) (on file with Copyright Office).

<sup>25</sup> 17 U.S.C. 115(d)(3)(E)(ii), id. at 115(d)(3)(E)(iii)(I).

<sup>26</sup> Id. at 115(d)(3)(E)(ii)(V), (iii)(II).

<sup>27</sup> Id. at 115(d)(3)(E)(vi).

<sup>28</sup> 85 FR 22568 (Apr. 22, 2020).

<sup>29</sup> 17 U.S.C. 115(d)(3)(J)(iii)(I).

<sup>30</sup> Mechanical Licensing Collective, Designation Proposal at 37, U.S. Copyright Office Dkt. No. 2018-11 (Mar. 22, 2019), <https://www.regulations.gov/document?D=COLC-2018-0011-0012> ("MLC Designation Proposal").

<sup>31</sup> Id.

<sup>32</sup> 17 U.S.C. 115(d)(3)(J)(iii)(II)(bb).

<sup>33</sup> Id. at 115(d)(5)(C)(i)(VII); MMA at sec. 102(e), 132 Stat. at 3722.

<sup>34</sup> 17 U.S.C. 115(d)(5)(C)(iii).

<sup>35</sup> See U.S. Copyright Office, *MMA Educational Materials*, <https://www.copyright.gov/music-modernization/educational-materials/> (last visited, May 19, 2020).

<sup>36</sup> For works that were initially accrued by a digital music provider prior to the license availability date and then transferred to the MLC, the MLC may have as few as two years to locate the copyright owner, but the minimum total holding period for these funds will be three years. See 17 U.S.C. 115(d)(3)(H)(i), (3)(J)(i)(I), (10)(B)(iv)(III)(aa).

<sup>37</sup> Conf. Rep. at 11 ("For unmatched works, the collective must wait for the prescribed holding period of three years before making such distribution. This is intended to give the collective time to actively search for the copyright owner."); see also U.S. Copyright Office, *Unclaimed Royalties Study: Kickoff Symposium*, Tr. at 194:18–195:01, 213:03–05 (Dec. 6, 2019) (Sarah Rosenbaum, Google) (noting that the MMA allows the music industry to address data issues in a "less time-pressured environment"). Transcripts of the Office's symposium are cited with the abbreviation "Tr." along with the page and line numbers, and date, of the cited material. These citations also include the name of the speaker and organization (if any) with which the speaker is affiliated. Transcripts of the symposium are available at <https://www.copyright.gov/policy/royalties/transcript.pdf>.

<sup>38</sup> 17 U.S.C. 115(d)(3)(H)(i).

during each calendar year thereafter.”<sup>39</sup> Reading these provisions together, in no case can these unclaimed royalties be distributed before 2023.<sup>40</sup>

After the holding period, the MLC “shall distribute [unmatched works] accrued royalties, along with a proportionate share of accrued interest, to copyright owners identified in the records of the collective.”<sup>41</sup> It must also “engag[e] in diligent, good-faith efforts to publicize . . . any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made.”<sup>42</sup> Once the MLC makes an initial distribution of unclaimed, accrued royalties, “not less than 1 such distribution [shall] take place during each calendar year thereafter.”<sup>43</sup> Copyright owners’ shares of distributions of unclaimed accrued royalties will be determined by the MLC in accordance with unclaimed accrued royalties for particular payment periods, and “determined in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question” as well as available “usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities.”<sup>44</sup>

By statute, the MLC has established an Unclaimed Royalties Oversight Committee, which will establish policies and procedures “for the distribution of unclaimed accrued royalties and accrued interest . . . including the provision of usage data to copyright owners to allocate payments and credits to songwriters,” subject to the MLC board’s approval.<sup>45</sup> During the public process of designating the collective, the MLC noted that it “does not intend to ever distribute the entirety of unclaimed royalties simultaneously,” and that it interprets section 115(d)(3)(J) “to grant discretion to MLC to retain unclaimed accrued royalties beyond the year that they become eligible for

<sup>39</sup> *Id.* at 115(d)(3)(J)(i)(I).

<sup>40</sup> *Id.*; see also 84 FR at 32291 (July 8, 2019) (noting “the statute does not permit the first such distribution to occur before January 1, 2023”); MLC Designation Proposal at 52 (same).

<sup>41</sup> 17 U.S.C. 115(d)(3)(J)(i).

<sup>42</sup> *Id.* at 115(d)(3)(J)(iii)(II)(dd).

<sup>43</sup> *Id.* at 115(d)(3)(J)(i)(I).

<sup>44</sup> *Id.* at 115(d)(3)(J)(i)(II). Songwriters’ unclaimed accrued royalty shares will be paid “in accordance with applicable contractual terms,” but “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner.” *Id.* at 115(d)(3)(J)(iv)(II).

<sup>45</sup> *Id.* at 115(d)(3)(J)(ii).

distribution, to allow diligent attempts to match all uses and works, no matter the vintage, to continue. MLC 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.”<sup>46</sup> In designating the MLC, the Office noted its agreement with this interpretation.<sup>47</sup>

#### B. Copyright Office Study on Best Practices Study, and Related Foundational Work

To further Congress’s intent to reduce the instance of unmatched works and unclaimed royalties, the MMA directs the Copyright Office to conduct a policy study, in consultation with the Government Accountability Office, recommending best practices that the MLC may implement to:

- (A) Identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective;
- (B) encourage musical work copyright owners to claim the royalties of those owners; and
- (C) reduce the incidence of unclaimed royalties.<sup>48</sup>

The MLC must carefully consider and give substantial weight to the Office’s recommendations when establishing procedures to identify and locate musical work copyright owners and to distribute unclaimed royalties.<sup>49</sup>

#### 1. Educational Symposium

To initiate the study, the Office held an all-day educational symposium to facilitate public understanding and discussion on issues relevant to the study. The Office invited industry participants, including songwriters and other interested members of the public, to discuss topics including: (i) Past and current initiatives to facilitate authoritative and comprehensive music ownership databases; (ii) challenges of matching musical works to sound recordings, including current matching methods and challenges, the role of technology, and how success can be measured; and (iii) the most effective ways to educate creators on the changes effected by the MMA. The symposium featured an update from the MLC and DLC, and a discussion among creators concerning the challenges and benefits associated with accurately capturing metadata during the creative process as well as the role of creators in taking ownership of their song data. The event

<sup>46</sup> MLCI Designation Proposal at 52–53.

<sup>47</sup> 84 FR at 32291.

<sup>48</sup> MMA at sec. 102(f)(1), 132 Stat. at 3722.

<sup>49</sup> *Id.* at sec. 102(f)(2), 132 Stat. at 3722–23.

concluded with an opportunity for audience participation. The Office has posted videos and a transcript of the symposium on its website, as well as a glossary of acronyms and other frequently used terms that arose during discussions.<sup>50</sup>

While observing that the MLC’s mission shares some similarities with past music ownership database development efforts, panelists noted that the MLC lacks the funding challenges of earlier European efforts, and that it may benefit from being narrower in scope.<sup>51</sup> There was discussion on the role of standards setting, including the common works registration (“CWR”) standard format used by publishers and DDEX messaging standards; the MLC has confirmed it intends to ingest data through multiple formats, including CWR as well as through its claiming portal.<sup>52</sup> The symposium addressed other industry efforts to facilitate improved data quality, including a best practices working group established between record labels and music publishers that generated a platform called the Music Data Exchange and the Open Music Initiative, an effort to build consensus towards establishing open data protocols and promote increased education and monetization opportunities for artists.<sup>53</sup> Other panelists discussed ways to determine whether the ownership data for a work is authoritative, which may involve algorithmic matching, different levels of manual review, inspecting the

<sup>50</sup> U.S. Copyright Office, *Unclaimed Royalties Study*, <https://www.copyright.gov/policy/unclaimed-royalties/> (last visited May 19, 2020).

<sup>51</sup> Tr. at 79:04–07 (Dec. 6, 2019) (Michel Allain, WIPO); Tr. at 83:15–85:11 (Dec. 6, 2019) (David Hughes, Recording Industry Association of America (“RIAA”)).

<sup>52</sup> Tr. at 76:10–20 (Dec. 6, 2019) (Michel Allain, WIPO) (discussing utility of CWR format as used by “main publishers” while noting that its complexity is not always accessible for smaller publishers); Tr. at 61:12–62:08, 62:16–63:14, 130:13–131:10 (Dec. 6, 2019) (Mark Isherwood, DDEX) (noting that DDEX “standardiz[es] . . . the communication of data between all the different business partners that exist within the music industry value chain” and “creat[e]s standard choreographies around those messages,” but “to implement DDEX standards, you’ve got to have a half-decent IT facility . . . [a]nd that immediately cuts lots of people out”); Mechanical Licensing Collective Initial Comments at 25–26, U.S. Copyright Office Dkt. No. 2019–5 (Nov. 9, 2019), <https://www.regulations.gov/document?D=COLC-2019-0002-0011> (“the MLC has joined and is working with DDEX, and continues to explore the proper formats and standards for efficient and accurate data sharing”); MLCI Designation Proposal at 37–38 (discussing the CWR format’s utility).

<sup>53</sup> Tr. at 111:15–112:05 (Dec. 6, 2019) (Nicole d’Avis, Open Music Initiative) (discussing the Open Music Initiative’s efforts); Tr. at 90:10–91:07 (Dec. 6, 2019) (David Hughes, RIAA) (discussing creation of the MDX best practice working group).

Copyright Office's records, or reaching directly out to rightsholders to address ownership conflicts.<sup>54</sup> Specific practices that frustrate accurate royalty payments were addressed, including instances where digital music providers may alter song titles or artist names supplied by a record label.<sup>55</sup>

Artists and others who work with creators noted the lack of a one-size-fits-all solution to educating self-administered songwriters about how the MMA may affect their interests. Singer-songwriter Rosanne Cash emphasized that increased transparency "would take so much pressure off of musicians and songwriters" and help ensure they are paid fairly.<sup>56</sup> There was agreement that talking to creators "in ways that really resonate . . . looks different in LA than it does in Miami."<sup>57</sup> In some cases, reaching creators may involve making free educational information available in the form of blog posts, webinars, e-books, or podcasts<sup>58</sup> or it may require "peers talking to peers from their local community that have credibility."<sup>59</sup> It was suggested that "the more information that songwriters have and the easier we make it for them to act on that information, the more successful [educating them] is going to be."<sup>60</sup>

## 2. Practices of Other Collective Management Organizations

The Copyright Office also commissioned a report by Susan Butler, publisher of Music Confidential, to provide a factual report detailing

<sup>54</sup> Tr. at 198:16–21, 247:01–08 (Dec. 6, 2019) (Bill Colitre, Music Reports) (noting that Music Reports uses syntax matching and unique identifiers to match works, but also "50 copyright professionals" to check the Copyright Office's records "on a regular basis" and contact rightsholders); Tr. at 222:22–224:21 (Dec. 6, 2019) (John Raso, Harry Fox Agency) (discussing how the Harry Fox Agency approaches automated matching and the "push and pull of which way that algorithm should move" to pay royalties and avoid "bad matches"); Tr. at 231:12–232:07 (Dec. 6, 2019) (Sarah Rosenbaum, Google) (discussing using Google's "proposer tool," used to reach out to rightsholders when there conflicting ownership assertions).

<sup>55</sup> Tr. at 119:03–120:06 (Dec. 6, 2019) (David Hughes, RIAA); *see also* 85 FR at 22522–23.

<sup>56</sup> Tr. at 163:09–11 (Dec. 6, 2019) (Rosanne Cash).

<sup>57</sup> Tr. at 346:01–22 (Dec. 6, 2019) (Kimberly Tignor, Institute for Intellectual Property & Social Justice); *see also* Tr. at 296:13–20, 297:02–12 (Dec. 6, 2019) (Jennifer Turnbow, Nashville Songwriters Association International) (noting that "Nashville is kind of a unicorn in the music industry because really, most of the commerce of music . . . happens on about three streets" and there is opportunity and encouragement for songwriters to talk about issues like the MMA).

<sup>58</sup> Tr. at 311:05–09 (Dec. 6, 2019) (Dae Bogan, TuneRegistry) (discussing these engagement methods).

<sup>59</sup> Tr. at 318:13–16 (Dec. 6, 2019) (Todd Dupler, Recording Academy).

<sup>60</sup> Tr. at 291:05–08 (Dec. 6, 2019) (Todd Dupler, Recording Academy).

matching and royalty distribution practices of global collective management organizations ("CMOs"). In preparing her report, Ms. Butler surveyed CMOs around the world that represent musical works (whether performing rights, mechanical rights, or both) or public performance rights in recordings (neighboring rights).<sup>61</sup> Along with the Office's symposium, Ms. Butler's report is designed to give commenting parties an understanding of some of the activities and practical solutions that the MLC may potentially consider, based on experiences of CMOs around the world. It also highlights some of the structural distinctions between the MLC on the one hand and the many membership-based collectives throughout the world. Ms. Butler's report outlines several reasons why CMOs may encounter difficulty linking a recording title reported by a digital music provider to a specific musical work or specific rights holders to be able to distribute money to those rights holders, and methods that CMOs may employ in an attempt to identify and match works to recordings and rights holders, even after automated and manual methods have been employed.<sup>62</sup> The Butler report is available on the Copyright Office's website at <https://www.copyright.gov/policy/unclaimed-royalties/CMO-report>.

## II. Subjects of Inquiry

The Office is seeking public comment on the following topics. While the focus of the study remains on best practices that may be recommended to the MLC, the Office has previously noted that "the problems in the music marketplace need to be evaluated as a whole, rather than as isolated or individual concerns of particular stakeholders."<sup>63</sup> Therefore, the Office is also soliciting limited input related to policies or actions that digital music providers and others may implement to reduce the instance of unclaimed royalties as well as ways to empower and educate songwriters and copyright owners to address ownership data issues themselves.

In responding to the questions below, the Office encourages commenters to provide evidentiary support for their views, including by providing empirical data if possible. A party choosing to respond to this notice of inquiry need

<sup>61</sup> Susan Butler, *Collective Rights Management Practices Around the World: A Survey of CMO Practices to Reduce the Occurrence of Unclaimed Royalties in Musical Works 3* (2020), <https://www.copyright.gov/policy/unclaimed-royalties/CMO-full-report.pdf>.

<sup>62</sup> *Id.* at 11–13.

<sup>63</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* at Preface (2015).

not address every topic, but the Office requests that responding parties clearly identify and separately address each topic for which a response is submitted.

### A. Identifying and Locating Musical Work Copyright Owners

1. Please describe best practices that the MLC may employ in matching musical works to sound recordings and otherwise identifying and locating musical work copyright owners associated with works embodied in sound recordings pursuant to administering the blanket license. As applicable, please identify specific technological or manual approaches, as well as considerations relevant to the MLC's prioritization of resources.

2. Please identify any special issues with respect to the MLC's matching and distribution policies for musical works with identified, but unlocated copyright owners, or works for which only a partial amount of ownership information is available.

3. If you believe that practices of similar CMOs, here or abroad, are relevant or helpful, please identify those practices.

4. If you believe that past practices of individual digital music providers or vendors facilitating voluntary or statutory licensing are relevant or helpful, including any under the prior song-by-song licensing system, please identify those practices.

5. Are past efforts to build music ownership databases, such as the Global Repertoire Database, International Music Rights Registry, and International Music Joint Venture, helpful to consider in identifying best practices for the MLC? If so, how?

### B. Encouraging Musical Work Copyright Owners To Claim Royalties

6. How can the MLC facilitate claiming of accrued royalties through its public database? If there are specific fields, search capabilities, or tools that would be beneficial, or not, to the MLC's core project, please identify them.

7. Please identify particular data formats or file types that would be helpful for the MLC to use in connection with encouraging copyright owners to have their works identified in the MLC's database.

8. What lessons can be learned from prior music dispute settlements and claiming systems, including the *Ferrick v. Spotify*, *Football Association Premier League v. YouTube*, and *National Music Publishers' Association/Spotify* settlements? What about the claiming portals or opt-in procedures for these agreements were beneficial or

detrimental in encouraging copyright owners to claim accrued royalties?

9. Please identify education and outreach practices that the MLC should consider adopting in encouraging copyright owners to claim royalties.

10. Please identify activities or policies that the MLC may take or adopt to encourage groups of musical work copyright owners who may be underrepresented in the MLC's database to come forward and claim accrued royalties. Your response may consider, for example, the unique experiences of self-administered songwriters; genres expected to generate a more diffuse record of musical work ownership;<sup>64</sup> non-English language works or genres; non-U.S. based musical work copyright owners, including the role of international collection societies; and particular challenges associated with classical music metadata.

#### *C. Reducing Incidence of Unclaimed, Accrued Royalties and Distribution of Royalties*

11. Please identify issues for the MLC to consider in establishing policies related to its duty to distribute unclaimed accrued royalties after a prescribed holding period in a manner that incentivizes reduction in the overall incidence of unclaimed accrued royalties. In particular, identify considerations related to the timing of the initial distribution of unclaimed, accrued royalties, as well as the retention of a portion of accrued royalties in the hope that they may later be matched.

12. Please identify preferred methods for the MLC to publicize the existence of unclaimed accrued royalties before they are distributed, in light of the minimum 90-day period required by the statute.

13. Please describe how success in lowering the incidence of unclaimed royalties may best be measured.

#### *D. Others in the Music Marketplace*

14. What actions can others, including those engaged in digital platform, sound recording, music publishing, and music creation activities, voluntarily take to contribute to a more accurate musical work data supply chain?

15. What actions can better ensure the accurate assignment of unique identifiers like the International Standard Recording Code ("ISRC") and International Standard Musical Work

Code ("ISWC") identifiers early in the digital supply chain?

16. Please identify education and outreach practices that digital music providers and others may consider adopting in encouraging copyright owners to claim royalties.

17. Please recommend existing guides or other resources regarding music data that can be used by copyright owners and songwriters, and/or information to be included in such educational materials.

#### *E. Other Issues*

18. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study, including any further legislative changes that you believe are needed to reduce the instance of unclaimed royalties.

Dated: May 28, 2020.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2020-11893 Filed 6-1-20; 8:45 am]

BILLING CODE 1410-30-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2020-043]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of proposed extension request.

**SUMMARY:** We are planning to request that the Office of Management and Budget (OMB) renew its approval for us to engage in the following information collection and invite you to comment on it. We use this collection to obtain information from private foundations or other entities involved in designing, constructing, and equipping Presidential libraries.

**DATES:** We must receive in writing on or before August 3, 2020.

**ADDRESSES:** Send comments by email to [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov). Because our buildings are temporarily closed during the COVID-19 restrictions, we are not able to receive comments by mail during this time.

#### FOR FURTHER INFORMATION CONTACT:

Contact Tamee Fechhelm, Paperwork Reduction Act Officer, by email at [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov) or by telephone at 301.837.1694 with requests for additional information or copies of

the proposed information collection and supporting statement.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions; (b) our estimates of the burden of the proposed information collections and their accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, we solicit comments concerning the following information collection:

*Title:* Presidential Library Facilities.

*OMB number:* 3095-0036.

*Agency form number:* None.

*Type of review:* Regular.

*Affected public:* Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

*Estimated number of respondents:* 1.

*Estimated time per response:* 40 hours.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 40 hours.

*Abstract:* The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

**Swarnali Haldar,**

*Executive for Information Services/CIO.*

[FR Doc. 2020-11829 Filed 6-1-20; 8:45 am]

BILLING CODE 7515-01-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2020-042]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

<sup>64</sup> See Tr. at 263:17–22 (Dec. 6, 2019) (Ed Arrow, Universal Music Publishing Group) (noting collaborative nature of rap, hip-hop, and pop music); Tr. at 264:09–11 (Dec. 6, 2019) (Bill Colitre, Music Reports) (noting that the rap song "Grillz" by Nelly has "17 writers and 23 music publishers").

later than thirty (30) days after the publication date of this revised notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<i>pubcommentees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will also provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$17 (68 pages at 25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is \$8.5.

#### Patricia McKenna,

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2021-02486 Filed 2-5-21; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Brenda Massey*, was lodged with the United States District Court for the Southern District of Mississippi, Southern Division, on February 2, 2021, Case No. 1:21cv17-HSO-JCG.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Brenda Massey, pursuant to Sections 309, 402, and 404 of the Clean Water Act (“CWA”), 33 U.S.C. 1319, 1342, and 1344, for discharging pollutants into waters of the United States in George County, Mississippi without a permit, in violation of CWA Section 301(a), 33 U.S.C. 1311(a). The proposed Consent Decree resolves injunctive claims for relief by requiring the Defendant to

perform environmental restoration and provide for mitigation of temporal losses through a monetary payment to an approved mitigation bank.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Michael Augustini, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044-7611, *pubcomment eds.enrd@usdoj.gov*, and refer to *United States v. Brenda Massey*, DJ #90-5-1-21358.

The proposed Consent Decree may be examined at the Clerk’s Office, United States District Court for the Southern District of Mississippi, Southern Division, Dan M. Russell, Jr., United States Courthouse, 2012 15th Street, Suite 403, Gulfport, MS 39501. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

#### Cherie Rogers,

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2021-02479 Filed 2-5-21; 8:45 am]

**BILLING CODE 4410-15-P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

#### [Docket No. 2019-6]

### Unclaimed Royalties Study

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

**ACTION:** Notice of public roundtables.

**SUMMARY:** The U.S. Copyright Office will be holding public roundtables as part of its study to evaluate best practices that the newly established mechanical licensing collective may implement to identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective, encourage musical work copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties. Music industry participants and others interested in participating in the roundtables are invited to submit requests to participate pursuant to the instructions set forth below.

**DATES:** The public roundtables will be held on March 25, 2021. Requests to participate must be received no later than 11:59 p.m. Eastern time on

February 26, 2021. Once the roundtable agenda is finalized, the Office will notify all participants and post the times and dates of the roundtables at <https://copyright.gov/policy/unclaimed-royalties/>.

**ADDRESSES:** The Office will conduct the roundtables remotely using the Zoom videoconferencing platform. Requests to participate should be submitted through the request form available at <https://www.copyright.gov/policy/unclaimed-royalties/roundtable-request.html>. Additional information will be made available at <https://www.copyright.gov/policy/unclaimed-royalties/roundtable>.

#### FOR FURTHER INFORMATION CONTACT:

Jason E. Sloan, Assistant General Counsel, by email at [jslo@copyright.gov](mailto:jslo@copyright.gov); or Cassandra G. Sciortino, Attorney-Advisor, by email at [csciortino@copyright.gov](mailto:csciortino@copyright.gov). Each can be contacted by telephone by calling (202) 707-8350.

**SUPPLEMENTARY INFORMATION:** The U.S. Copyright Office (“Office”) is undertaking a policy study as directed by the Music Modernization Act to evaluate best practices that the newly established mechanical licensing collective (“MLC”) may implement to reduce the incidence of unclaimed royalties. The Office initiated the study on December 6, 2019, with an all-day educational symposium to facilitate discussion on these issues by a broad range of industry participants and members of the public.<sup>1</sup> The Office also commissioned a report on matching and royalty distribution practices of various collective management organizations (“CMOs”) around the world. A transcript of the symposium as well as the report of global collective rights management practices are provided on the Office’s website for public consideration.<sup>2</sup> On June 2, 2020, the Office issued a notice of inquiry (“NOI”) which solicited public comment on several topics concerning best practices to identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective, encourage musical work copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties, including by commenting

<sup>1</sup> 84 FR 58176 (Oct. 30, 2019); U.S. Copyright Office, *Unclaimed Royalties Study Kickoff Symposium*, <https://www.copyright.gov/policy/unclaimed-royalties/symposium/>.

<sup>2</sup> Susan Butler, *Collective Right Management Practices Around the World: A Survey of CMO Practices to Reduce the Occurrence of Unclaimed Royalties in Musical Works* (2020), <https://www.copyright.gov/policy/unclaimed-royalties/cmo-full-report.pdf>. The transcript of the symposium is available at <https://www.copyright.gov/policy/unclaimed-royalties/transcript.pdf>.

upon the prior symposium and comparative report.<sup>3</sup> The Office received two rounds of public comments in August 2020. Information about the study, including the NOI, public comments, symposium materials, and comparative report may be accessed on the Office's website at <https://www.copyright.gov/policy/unclaimed-royalties/>.

The Office will now hold roundtable discussions to allow interested members of the public to discuss and provide additional information on the topics of the study. The Office also will provide sign-up information for members of the public who wish to observe, but not participate in, one or more of the roundtable sessions. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Office's website.

#### A. Submitting Requests To Participate

A request to participate should be submitted to the Office using the form on the Office's website indicated in the **ADDRESSES** section above by February 26, 2021. Shortly thereafter, the Office will notify participants of their selection and session assignments. In order to accommodate the expected level of interest, the Office plans to assign no more than one representative per organization to each session. If multiple persons from the same organization wish to participate on *different* issues, each should submit a separate request. Depending upon the number and nature of the requests, the Office may not be able to accommodate all requests to participate.

The public roundtables will offer an opportunity for interested parties to comment on the information submitted to the Office to date and offer additional views concerning the best practices the MLC may implement to reduce the incidence of unclaimed royalties. While the Office will tailor sessions based on expressions of interest, it expects that sessions will address various issues related to data matching and identification of musical work copyright owners; user experience and accessibility of the public database and claiming portal; education and outreach to promote awareness and encourage royalty claiming; and holding and distribution of accrued royalties. Although the primary focus of the statutorily-mandated study must remain on best practices the Office may recommend for the MLC to consider in order to reduce the overall incidence of unclaimed accrued royalties, the Office

will also entertain discussion of how other actors in the music ecosystem may support the successful administration of the section 115 blanket license.

All requests to participate must clearly identify:

- The name of the person desiring to participate;
- The organization or organizations represented, if any;
- Contact information; and
- A two- to three-sentence summary of the substantive issues the participant expects to discuss.

Following receipt of the requests to participate, the Office will prepare an agenda listing the participants, dates, and times for each session. These will be circulated to participants and posted at <https://www.copyright.gov/policy/unclaimed-royalties/roundtable> on or about March 18, 2021.

#### B. Format of Public Roundtables

Each roundtable session will cover a topic relevant to the study, as discussed above. Depending on the level of interest, the Office may hold multiple sessions on the same topic to accommodate a greater number of participants and provide additional time for discussion. Following a discussion of the various agenda topics by roundtable participants, members of the public will be provided a limited opportunity to offer additional comments for the record, but parties who wish to provide detailed information to the Office are encouraged to submit a request to participate.

Dated: February 2, 2021.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2021-02460 Filed 2-5-21; 8:45 am]

**BILLING CODE 1410-30-P**

## NATIONAL SCIENCE FOUNDATION

#### Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:*

Astronomy and Astrophysics Advisory Committee (#13883)—(Zoom Meeting).

*Date and Time:* June 2, 2021; 12 p.m.–4 p.m.

*Place:* National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Zoom).

*Type of Meeting:* Open.

Attendance information for the meeting will be forthcoming on the

website: <https://www.nsf.gov/mps/ast/aaac.jsp>.

*Contact Person:* Dr. Martin Still, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703-292-4290.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

*Agenda:* To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them. Discuss the Committee's draft annual report due 15 March 2021.

Dated: February 2, 2021.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2021-02463 Filed 2-5-21; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL SCIENCE FOUNDATION

#### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF

<sup>3</sup> 85 FR 33735 (June 2, 2020).

**APPENDIX B**

**COMMENTING PARTIES AND SYMPOSIUM  
AND ROUNDTABLE PARTICIPANTS**

**Participants in the Washington, D.C. Symposium  
(December 6, 2019)**

1. Allain, Michel (World Intellectual Property Organization) (WIPO)
2. Arrow, Ed (Universal Music Publishing Group) (UMPG)
3. Barias, Ivan
4. Bloss-Baum, Linda (SoundExchange)
5. Bogan, Dae (TuneRegistry)
6. Boissonneault, Terry (Society of Composers, Authors and Music Publishers of Canada/Dataclef) (SOCAN/Dataclef)
7. Cash, Rosanne
8. Coleman, Alisa (Mechanical Licensing Collective) (MLC)
9. Colitre, Bill (Music Reports)
10. Corton, Monica (Monica Corton Consulting)
11. d'Avis, Nicole (Open Music Initiative)
12. Delicata, Alex
13. Dupler, Todd (Recording Academy)
14. Eisenberg, Mark (SoundCloud)
15. Erickson, Kevin (Future of Music Coalition) (FMC)
16. Gress, Jay (Sony Music Entertainment)
17. Hughes, David (Recording Industry Association of America) (RIAA)
18. Irwin, Ashley (Society of Composers & Lyricists) (SCL)
19. Isherwood, Mark (Digital Data Exchange) (DDEX)
20. Levin, Garrett (Digital Licensee Coordinator) (DLC)
21. Lieberman, Ali (SoundExchange)
22. McAnally, Erin
23. Nauman, Vickie (CrossBorderWorks)

24. Peace, Leon
25. Raso, John (Harry Fox Agency) (HFA)
26. Rosenbaum, Sarah (Google)
27. Sanders, Charles (Songwriters Guild of America) (SGA)
28. Selden, Lisa (DLC)
29. Shocked, Michelle
30. Simson, John
31. Thompson, Richard (MLC)
32. Tignor, Kimberly (Institute for Intellectual Property and Social Justice) (IIPSJ)
33. Turnbow, Jennifer (Nashville Songwriters Association International) (NSAI)

**Parties Who Submitted Initial Comments in  
Response to the June 2, 2020 Notice of Inquiry**

1. Artist Rights Alliance (ARA)
2. Castle, Christian
3. Cuevas, Marti
4. Digital Licensee Coordinator (DLC)
5. International Confederation of Societies of Authors and Composers (CISAC) & Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (BIEM)
6. Keating, Zoe
7. Mechanical Licensing Collective (MLC)
8. Music Artists Coalition (MAC)
9. Music Library Association's Legislative Committee
10. Recording Academy
11. Seedman, Jan
12. Small, Donald
13. Songwriters Guild of America (SGA) & Society of Composers & Lyricists (SCL)
14. SoundExchange
15. Unclaimed Royalties Oversight Committee (UROC)

**Parties Who Submitted Reply Comments in  
Response to the June 2, 2020 Notice of Inquiry**

1. Alliance for Recorded Music (ARM)
2. Artist Rights Alliance (ARA)
3. Castle, Christian
4. Digital Licensee Coordinator (DLC)
5. International Confederation of Societies of Authors and Composers (CISAC) & Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (BIEM)
6. Mechanical Licensing Collective (MLC)
7. Unclaimed Royalties Oversight Committee (UROC)
8. Songwriters Guild of America (SGA) & Society of Composers & Lyricists (SCL)
9. Songwriters of North America (SONA)
10. SoundExchange

**Virtual Roundtable Participants  
(March 25, 2021)**

1. Aguirre, Danielle (National Music Publishers' Association) (NMPA)
2. Ahrend, Kris (Mechanical Licensing Collective) (MLC)
3. Balcells, Daniel (BMAT Music Innovators)
4. Berg, Seth (South Bay Music Group)
5. Bloss-Baum, Linda (SoundExchange)
6. Bogan, Dae (MLC)
7. Bonilla, Luis (SoundExchange)
8. Buchanan, Brian (Concord)
9. Bushmaker, Jane (Prager Metis CPAs)
10. Casini, Kevin (Ecco Artist Services)
11. Castle, Christian (Christian L. Castle Attorneys)
12. Champarnaud, Caroline (Society of Authors, Composers and Publishers of Music) (SACEM)
13. Coles, Kevin (1020 MUZIK)
14. Colitre, Bill (Music Reports)
15. Corton, Monica (Go to Eleven Entertainment)
16. Donnelly, Bob
17. Elton, Serona (MLC)
18. Galdston, Phil (Music Answers)
19. Irwin, Ashley (Society of Composers & Lyricists) (SCL)
20. Jennings, Alan (Amazon)
21. Kalo, Ted (Artist Rights Alliance) (ARA)
22. Kanner, Donny (Spotify)
23. Levin, Garrett (Digital Media Association) (DiMA)

24. Levin, Sindee (Sindee Levin Music)
25. Merideth, Rene (Exploration Group)
26. Nauman, Vickie (CrossBorderWorks)
27. North, Abby (Songwriters of North America) (SONA)
28. Perry, Bishop (BHP Royalty Company)
29. Sanders, Charles (Songwriters Guild of America) (SGA)
30. Schwab, Pierre
31. Schwartz, Eddie (International Council of Music Creators) (CIAM)
32. Seale, Gwendolyn
33. Selden, Lisa (Spotify)
34. Shanley, Michael (Music Reports)
35. Shocked, Michelle
36. Tayebwa, David (Opus Music Publishing Africa)
37. Thompson, Richard (MLC)
38. Vice-Maslin, Michele
39. Winck, Alex (Pandora)
40. Yoko, Jai (Jai Yoko Entertainment)

**Virtual Roundtable Participants  
(March 26, 2021)**

1. Ambers, Steven (Society of Composers, Authors and Music Publishers of Canada) (SOCAN)
2. Barker, John (ClearBox Rights)
3. Carnes, Rick (Songwriters Guild of America) (SGA)
4. Chen, Cecille (Smithsonian Folkways Recordings)
5. Coleman, Alisa (Mechanical Licensing Collective) (MLC)
6. Dupler, Todd (Recording Academy)
7. Evers, Jörg (International Council of Music Creators) (CIAM)
8. Gorgoni, Adam (Songwriters of North America) (SONA)
9. Lieberman, Ali (SoundExchange)
10. Liwall, Frank (Unclaimed Royalties Oversight Committee) (UROC)
11. Meikle, Mark (Easy Song/Giddy Music)
12. Morris, Iain (Pandora)
13. Nix, William (Creative Projects Group)
14. Simson, John
15. Sokol, Sam (Artist Rights Alliance) (ARA)
16. Sorensen, Shannon (National Music Publishers' Association) (NMPA)
17. Taylor, Erika Nuri (UROC)
18. Turnbow, Jennifer (Nashville Songwriters Association International) (NSAI)
19. Vice-Maslin, Michele

**APPENDIX C**

**ACRONYM GLOSSARY**

## Acronym Glossary

Acronym	Full Name	Brief Description
AFM	American Federation of Musicians	A labor union representing professional musicians in the United States and Canada.
ASCAP	American Society of Composers, Authors, and Publishers	A U.S. nonprofit performing rights organization (PRO) that provides public performance licenses for musical works. Subject to a consent decree.
BIEM	Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique	An international organization representing member mechanical rights societies. Negotiates licensing agreements with IFPI, assists in technical collaboration between its member societies to solve problems that arise between individual members, and contributes to the defense and development of copyright protection in the domain of mechanical rights.
BMI	Broadcast Music, Inc.	A U.S. nonprofit performing rights organization (PRO) that provides public performance licenses for musical works. Subject to a consent decree.
CIS	Common Information System	Common information system that uses a variety of international standard identifier codes for musical works (ISWC), audiovisual works (ISAN) and rights holders (IPI, ISNI), several tools and databases (CIS-Net, IPI System, AV Index, Agreements, etc.) and a set of standardized formats (CWR, AVR, UP, CRD) for information exchange. Launched by CISAC and used by all CISAC members.
CIS-Net	Common Information System Network	A network of databases for the use of CISAC members built upon the CIS standards.
CISAC	International Confederation of Societies of Authors and Composers	Worldwide organization of authors' societies, representing more than 4 million creators from all geographic areas and all artistic repertoires (including musical compositions, audio visual, dramatic, literary, and visual works). CISAC launched its CIS system to streamline rights data management. The ISWC, ISNI, and IPI unique identifiers are part of CISAC's CIS system.

Acronym	Full Name	Brief Description
CMO	Collective Management Organization	CMOs collectively license the use of rights they manage and collect and distribute royalties generated by various licensed uses. Includes PROs, mechanical rights societies, music licensing companies (a.k.a. neighboring rights societies), and other collective licensors. The term is most often used outside of the United States.
CRB/CRJs	Copyright Royalty Board/Copyright Royalty Judges	Three-judge panel that makes determinations and adjustments of terms and rates of royalty payments for the U.S. statutory licenses. Part of the Copyright Office.
CWR	Common Works Registration	CISAC standard developed with publishers with a primary use to register works with collecting societies. However, the CWR has recently expanded and is used in other types of exchanges (e.g., publishers to DMPs). CWR employs data standards that have been developed for the Common Information System (CIS) project of CISAC.
DAW	Digital Audio Workstation	An electronic device or software application used for recording and producing music. Examples are ProTools and Logic Pro.
DDEX	Digital Data Exchange, LLC	An international organization that develops standards for the exchange of data and information across the music ecosystem.
DLC	Digital Licensee Coordinator	A nonprofit, designated by the Copyright Office, that coordinates the activities of digital music providers under the blanket section 115 compulsory mechanical license. The DLC is authorized to participate in Copyright Royalty Board proceedings to establish the administrative assessment to be paid by digital music providers to operate the MLC. A DLC representative serves as a nonvoting member on the MLC's board.
DMP	Digital Music Provider	Generally, services offering recorded music and other forms of digital entertainment to the public via streaming or download.

Acronym	Full Name	Brief Description
DPD	Digital Phonorecord Delivery	A “DPD” means each individual delivery of a phonorecord by digital transmission of a sound recording that results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording and includes a permanent download, a limited download, or an interactive stream.
DQI	Data Quality Initiative	An MLC-created mechanism intended to provide a streamlined way for users to compare their musical work data sets against the MLC’s data sets.
DSP	Digital Service Provider	In the music context, services offering recorded music and other forms of digital entertainment to the public via streaming or download, i.e., a DMP.
DSR	Digital Sales Report Message Suite Standard	DDEX standard that communicates information about sales, usage, or revenue generated on a digital music service.
ERN	Electronic Release Notification	DDEX standard that provides core metadata about sound recording and video releases to DMPs.
GAO	Government Accountability Office	An independent, nonpartisan agency that provides analyses, options, recommendations, and other assistance to help Congress make effective oversight, policy, and funding decisions.
GMR	Global Music Rights	A U.S. for-profit performing rights organization (PRO) that provides public performance licenses for musical works. Not subject to a consent decree.
GRD	Global Repertoire Database	An earlier, EU-initiated attempt to create a comprehensive and authoritative database for ownership and administration of musical works throughout the world. The GRD was not developed.
GRid	Global Release Identifiers	A unique identifier for sound recordings developed by MI3P.
IFPI	International Federation of the Phonographic Industry	A nonprofit trade organization that represents the interests of the recording industry worldwide.

Acronym	Full Name	Brief Description
IMJV	International Music Joint Venture	An early effort by PROs to develop a comprehensive and authoritative worldwide musical work ownership database. Ultimately never developed.
IMR	International Music Registry	WIPO's project to develop a database, intended to be a single access point for rights management systems around the world, to provide the rights status of musical works and sound recordings. Ultimately dissolved.
IPI	Interested Parties Information	A unique identifier assigned to rights holders with an interest in an artistic work, including natural persons or legal entities, made known to the IPI Centre. The IPI System is an international registry used by CISAC and BIEM societies. The collation and presentation of IPI information is standardized according to the CIS business rules. The IPI serves the documentation, distribution, and accounting processes of the societies that use the IPI System. The IPI system is administered by the Swiss copyright society SUISA.
IPN	International Performer Number	A unique identifier to identify performers. Allocated and used by performer CMOs. IPNs are managed by Societies Council for the Collective Management of Performers' Rights (SCAPR).
ISNI	International Standard Name Identifier	A unique identifier for identifying the public identities of contributors to creative works, regardless their legal or natural status, and those active in their distribution. These may include researchers, inventors, writers, artists, visual creators, performers, producers, publishers, aggregators, and more. A different ISNI is assigned for each name used. ISNI is not widely in use across the music industry.
ISO	International Standards Organization	An international standard-setting body that promotes worldwide standards.
ISRC	International Standard Recording Code	A unique identifier assigned to sound recordings and music videos (assigned at the track level rather than by album) and created in conjunction with ISO. Managed by IFPI and regional agents (U.S. agent is RIAA).

Acronym	Full Name	Brief Description
ISWC	International Standard Musical Work Code	A unique identifier assigned to musical works and used in exchanges of information between PROs, publishers, record companies, and other interested parties on an international level. The system was developed by CISAC member societies. Managed by CISAC and regional agents (U.S. agent is ASCAP).
MDOW	Music Data Organization Worksheet	An MLC-created spreadsheet template intended to assist users in compiling the data they will need to register their musical works with the MLC.
MDX	Music Data Exchange	A software application developed by SoundExchange in cooperation with RIAA and NMPA to facilitate the exchange of sound recording and publishing data between record labels and music publishers. Provides a central database of metadata and publisher rights and claiming capabilities.
MEAD	Media Enrichment and Description	DDEX standard that provides more than the core information delivered in an ERN message.
MI3P	Music Industry Integrated Identifiers Project	Project to develop a global infrastructure for the music industry to facilitate uses by online music services through a system of standardized data exchange. Governed by DDEX.
MLC	Mechanical Licensing Collective	A nonprofit entity responsible for administering the blanket licensing system established by the MMA. The MLC collects notices and reports from DMPs, collects and distributes royalties, and identifies musical works and their owners for payment. It also maintains a public database containing information relating to musical works.
MMA	Music Modernization Act	The Music Modernization Act updates the music licensing landscape to better facilitate legal licensing of music by digital services. It creates a blanket license for DMPs using the compulsory license for making and distributing musical works (the section 115 mechanical license). It also provides certain protections (and exceptions to those protections) to pre-1972 U.S. sound recordings and addresses the distribution of certain producers' royalties.

Acronym	Full Name	Brief Description
NMPA	National Music Publishers Association	A nonprofit trade organization that represents part of the music publishing industry in the United States.
NOI	Notice of Intention to Obtain a Compulsory License	Prior to the MMA, users had to file a notice of intention with the copyright owner to obtain a compulsory mechanical license under section 115 (or if the copyright owner could not be identified or located from the Copyright Office's public records, the NOI had to be filed with the Copyright Office). The MMA's blanket licensing regime replaced this process for DMPs. The NOI system, however, remains in place for non-digital uses (e.g., CDs, vinyl, etc.) and a record company may obtain an "individual download license" using the NOI system (except that NOIs can only be filed with the Office in the case of the former, not the latter).
PLine	Phonogram Line	DDEX field signifying a rights statement for musical works.
PRO	Performing Rights Organization	Responsible for licensing public performance rights of musical works for affiliated songwriters and publishers and collecting and distributing royalties from those licenses (e.g., ASCAP, BMI, SESAC, GMR).
RIAA	Recording Industry Association of America	A nonprofit trade organization that represents part of the U.S. recorded music industry.
RDx	Repertoire Data Exchange	Centralized data exchange gateway under development by IFPI and the Worldwide Indie Network of Independent Labels (WIN) to allow record companies and music licensing companies to submit and access authoritative recording data via a single point.
RIN	Recording Information Notification	DDEX standard incorporated into recording studio equipment and DAWs that allows for producers and other users to store metadata associated with a recording project.

Acronym	Full Name	Brief Description
SAG-AFTRA	Screen Actors Guild-American Federation of Television and Radio Artists	A nonprofit labor union that represents actors, journalists, radio personalities, recording artists, singers, voice actors, and other media professionals.
SESAC	Society of European Stage Authors and Composers	A U.S. for-profit performing rights organization (PRO) that provides public performance licenses for musical works. Owns the Harry Fox Agency (HFA), a U.S. provider of music rights administration services, especially for mechanical rights for musical works. Also operates certain services outside the United States. Not subject to a consent decree.
SFTP	Secure File Transfer Protocol	A network protocol that provides secure file access, transfer, and management over any reliable data stream.
SRDB	Sound Recording Database	RIAA database of sound recording ownership information.
UPC	Universal Product Code	In the music context, a UPC is a set of numbers, along with a corresponding barcode, that identifies a finished music product. A different UPC is typically necessary for each product version to distinguish among, for example, albums, singles, or remixed versions of sound recordings.
UROC	Unclaimed Royalties Oversight Committee	An MLC committee mandated by the MMA that must consist of five musical work copyright owners and five professional songwriters, and must establish policies and procedures for the distribution of unclaimed royalties and accrued interest, subject to the approval of the board of directors of the MLC.
WIPO	World Intellectual Property Organization	An agency of the United Nations that administers international treaties on a wide range of intellectual property areas, including copyright.
XML	Extensible Markup Language	A file format used to create common information formats and share both the format and the data using standard text.

### Additional Music Terms

Term	Brief Description
Authors' Rights Societies	CMOs, including performing right organizations and mechanical rights societies, that represent the rights of songwriters and, for some CMOs, other types of authors and publishers.
Individual Download License	A compulsory license, under section 115, obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work.
License Availability Date	January 1, 2021. The date that the section 115 blanket license became available; unmatched royalties, along with usage reports, are now being transferred from DMPs to the MLC; and prior section 115 compulsory mechanical licenses were automatically substituted for and superseded.
Music Distributor	Signs agreements with record labels/ artists giving the distributor the right to sell the music to retail shops and /or digital music services.
Music Publisher	Enters into agreements with songwriters and composers where the copyrights in musical works are assigned to (or are administered by) the publishing company, which licenses the musical works to others. The publisher typically handles administration duties associated with the musical work, including ensuring that licensees are paying appropriate royalties.
Musical Work	The composition created by the songwriter or composer along with any accompanying lyrics.
Performers' Collective Management Organizations	CMOs that represent performers' public performance (called neighboring rights outside of the United States) and other rights in recordings. Some performers' CMOs also represent producers and are music licensing companies.
Phonorecord	Material objects in which sound recordings are fixed (e.g., vinyl records, CDs, digital downloads, etc.), but does not include videos.
Record Label	Aids in the making and marketing of sound recordings and music videos and enters into agreements with performers, producers, and others. The copyrights in sound recordings and music videos are typically owned by the record label, which then licenses those works to others. The record label typically handles administration duties associated with sound recordings and music videos, including ensuring that licensees are paying appropriate royalties.

Term	Brief Description
Sound Recording	A work that results from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.
SoundExchange	A nonprofit organization designated by the U.S. Copyright Royalty Judges to collect and distribute digital performance royalties for sound recordings under the section 114 statutory license. Also operates SXWorks, its music publisher services arm.

Note that some terms here are defined more precisely in title 17.

