

musicanswers

April 21, 2019

Ms. Karyn Temple, Register of Copyrights
United States Copyright Office
Washington, D.C.

— via online submission —

Dear Ms. Temple,

We write to you on behalf of the more than 3000 music creators across North America who have endorsed our Declaration of Principles¹, as well as tens of thousands of independent music creators around the world, who are completely unaware that their rights and royalties will soon fall under the control of a new entity established by a new American law.

The establishment of a Mechanical Licensing Collective (MLC), pursuant to the Orrin G. Hatch—Bob Goodlatte Music Modernization Act, could turn out to be of great benefit to all music creators. Or, it could perpetuate one of the music industry's darkest practices: the "black box," which for decades has enriched large and powerful music companies at the expense of all others.

We realize and appreciate that the Copyright Office is limited in its ability to ameliorate some provisions of the new law that were drafted to favor one group of copyright owners over another. Yet we believe that the Office has significant latitude in its discretion to choose a candidate to fill the role of Music Licensing Collective. We beseech the Office to exercise every possible opportunity to protect the rights and royalties of our supporters and all others on whose behalf we write.

First, we draw your attention to the composition of the Board of Directors of the MLC. While the Copyright Office cannot alter the drastically unbalanced ratio of ten publishers to four writers, it can insist that those publishers who sit on the Board have more than just a pecuniary interest in the operations of the MLC and that they are able to represent those copyright owners whose royalties will actually flow through it.

A Board consisting largely of major music publishers, most of who have (or will have) direct licensing arrangements with digital music services, and whose royalties are therefore unlikely to flow through the MLC, strikes us as an inappropriate choice. Moreover, because those same

¹ See <http://www.musicanswers.org/declaration-of-principles>

large publishers will receive the lion's share of any distribution of unclaimed funds² and would have control over the distribution of those funds, it is a blatant conflict of interest for individuals representing those large publishers to occupy a significant number of the seats on the Board of Directors.³

Another major concern is the timeline for the distribution of unclaimed funds, as delineated in the MMA. There is no way to know in advance just how long it will take for the new MLC to establish a working system for music creators to claim their works. Just building the interface is a monumental task, requiring not only technical skill, but expertise in developing consumer-facing systems that can work equally well for music creators around the globe.⁴

Once the claim system is developed, it needs to be promoted to the diaspora of independent music creators who provide a significant portion of the music streamed by digital music services. Special efforts will have to be made to reach and inform these creators, whose royalties are most likely to be held as "unclaimed" by the MLC, and for whom even modest royalties could make a tremendous difference. They will largely be young writers who are not savvy in the ways of the music business, and who will most likely be unaware of the existence of the MLC. Therefore, communication through established channels, like PROs, will be insufficient to reach these writers. New methods will need to be developed, tested, and implemented.

Once the claim system is developed and the communication channels established, a reasonable amount of time will need to be allotted for music creators to access the online MLC portal, register as music creators, find their music from among the millions of unclaimed songs, file their claims, secure verification of their claims, certify a method for payment (certainly, there are songwriters who live in areas of the world where access to banks and credit cards is limited), and receive their royalties.

During all this time, the clock established by the MMA will be ticking. And at a date certain, the Board of Directors of the MLC will have the legal authority to vote to distribute the billions of

² This provision of the MMA — that unclaimed royalties be distributed to publishers based on their market share — is one of the sections of the MMA most offensive to independent music creators because (1) large publishers are the least likely to have their music unidentified; (2) to make up for any real or possible loss of royalties, they will have already included "breakage" in their licensing agreements with digital music services; (3) the billion dollars of royalties likely to be distributed could be used to significantly benefit music creators and their families. As the MMA was being negotiated, the distribution of these revenues was one subject that was "absolutely non-negotiable" according to the proponents of the legislation.

³ The existence of an Unclaimed Royalties Committee, comprised of equal numbers of publishers and writers, to oversee the distribution of the black box gives us little comfort. That committee has no actual power to control this distribution. The MMA very clearly reserves that authority for the Board of Directors, not the Committee, which can only advise, not decide.

⁴ To be fair, the royalty claiming process must work evenly and easily for music creators from Singapore to Mumbai, Shanghai to San Diego. With easy worldwide access to the Internet, young music creators — many with no knowledge of the music business, let alone details of publishing contracts — are routinely uploading their music to online music sites, that, in turn, feed new music recordings to digital music services. While these songs may never achieve commercial success or accrue large sums, these music creators, along with all others, must be given a fair chance to claim their royalties. That is the essential promise of the MMA.

dollars in unclaimed funds, whether or not the MLC claim system has been built, tested, promoted to the world, and successful in distributing unclaimed royalties to their rightful owners.

With the above in mind, it is our fervent hope that the Copyright Office will (1) consider any potential conflicts of interest and self-dealing of the Board of Directors of any proposed MLC; (2) carefully examine the publicly-announced plans of these boards regarding the timing of the distribution of unclaimed royalties; (3) scrutinize the business plans presented by the candidates.

We applaud the Copyright Office's position that the role of any individual or entity in the passage of the MMA is irrelevant to its a candidacy to serve on or as the MLC. At the same time, we urge the Office to disregard the claim that only the largest music publishers have the necessary experience and expertise to fulfill the role of the MLC. On the contrary, we believe that an MLC operated primarily by those who have experience with unsigned, independent music creators is much more likely to operate in accordance with the intent of Congress. As you know, the goal of the MMA was *not* to perpetuate the status quo. Rather, it was to help shepherd the music industry into a new era in which all songwriters and their business partners can finally enjoy the benefits of the streaming of their musical works.

Upon reviewing the responsibilities of the MLC on behalf of our supporters, we looked for candidates committed to principles that harmonize with those upon which our organization was founded — principles endorsed by music creators across the world:

- Fairness of distribution;
- Accuracy and transparency of accounting;
- Best business and technological practices, including responsible budgetary policy;
- Identification and payment of unclaimed royalties to entitled parties;
- Board members without conflicts-of-interest.

We note that, to-date, only the American Music Licensing Collective has publicly committed to these principles.

We thank you for this opportunity to provide these comments.

Sincerely,



Phil Galdston



David Wolfert

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