



The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

The Honorable Marsha Blackburn
United States Senate
357 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ted W. Lieu
United States House of Representatives
2454 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Adam B. Schiff
United States House of Representatives
2309 Rayburn House Office Building
Washington, D.C. 20515

August 21, 2024

Dear Senator Blackburn, Representative Lieu, and Representative Schiff:

Thank you for your letter of June 12, 2024, regarding your concerns over alleged “bad faith exploitation” of the section 115 compulsory blanket license.¹ The Copyright Office is aware of the recent developments involving Spotify mentioned in your letter, as well as litigation filed by the Mechanical Licensing Collective (“MLC”) against Spotify related to these developments.² Because these matters are the subject of ongoing litigation, and the regulations at issue were adopted by the Copyright Royalty Judges³ and not the Copyright Office, I express no views on their merits.

With respect to the questions you posed:

- 1. Are there protections in place to ensure that companies that use the compulsory license and statutory rate process cannot abuse that system to the detriment of copyright owners?**

The Music Modernization Act (“MMA”) has several provisions to guard against abuse of the blanket license. For example, digital music providers (“DMPs”) are subject to detailed usage and royalty reporting and records retention requirements, including the requirement to file an

¹ This letter follows up on and summarizes the matters discussed by phone between members of our respective staffs on July 30, 2024.

² On May 16, 2024, the MLC filed suit against Spotify alleging that its interpretation of the relevant ratesetting regulations is wrong and therefore Spotify has underpaid royalties owed under the blanket license. Complaint, *Mechanical Licensing Collective v. Spotify USA Inc.*, No. 24-cv-3809 (S.D.N.Y. May 16, 2024).

³ Notably, the regulations at issue are the result of a settlement between copyright owners and digital music providers who participated in the most recent ratesetting proceeding, including Spotify. 87 Fed. Reg. 80,448, 80,448–80,453 (Dec. 30, 2022). The next proceeding to amend these regulations is scheduled to commence in January 2026.

annual report with the MLC that must be certified by a certified public accountant.⁴ The MMA also grants the MLC the right to conduct audits “to verify the accuracy of royalty payments by the [DMP].”⁵ The MLC also may “[e]ngage in legal and other efforts to enforce rights and obligations under [the blanket license].”⁶ Additionally, the MLC has the authority to terminate a DMP’s blanket license if the DMP fails to comply with a material term or condition of the license.⁷ A DMP also potentially faces the assessment of late fees for late royalty payments.⁸ The possible imposition of late fees and significant risk of losing the blanket license entirely are powerful deterrents against bad behavior on the part of a DMP.

2. Is there an efficient, low-cost process by which copyright owners may seek relief where improper or illegal actions are taken by licensees?

Where a licensee’s conduct constitutes copyright infringement, copyright owners of musical works can enforce their rights like any other copyright owner. This typically involves filing suit in federal court, which can be costly and time-consuming. The Copyright Claims Board (“CCB”)—a small claims forum established by Congress within the Copyright Office—offers a cost-efficient and user-friendly alternative to federal court to resolve copyright infringement claims. By statute, recovery in CCB proceedings is limited to \$30,000 or less and participation is voluntary.⁹

* * *

I hope you find this input helpful. I would be happy to discuss these issues further at your convenience.

Sincerely,



Shira Perlmutter
Register of Copyrights and Director,
United States Copyright Office

⁴ 17 U.S.C. § 115(c)(2)(I), (d)(4)(A); *see* 37 C.F.R. § 210.27.

⁵ 17 U.S.C. § 115(d)(4)(D).

⁶ 17 U.S.C. § 115(d)(3)(C)(i)(VIII); *see also id.* § 115(d)(3)(G)(ii) (describing how the MLC is to distribute “[a]ny royalties recovered . . . as a result of efforts to enforce rights or obligations under a blanket license, including through a . . . legal action”).

⁷ 17 U.S.C. § 115(d)(4)(E).

⁸ 17 U.S.C. § 115(d)(8)(B); *see* 37 C.F.R. § 385.3 (currently set at “1.5% per month, or the highest lawful rate, whichever is lower”).

⁹ 17 U.S.C. § 1502(a); *id.* § 1504(e)(1)(A)(ii)(I), (e)(1)(D), (e)(3) (statutory damages are limited to no more than \$15,000 per infringed work, total monetary recovery is limited to \$30,000, and attorneys’ fees are typically unavailable to prevailing parties).

Congress of the United States

Washington, DC 20510

June 12, 2024

Ms. Shira Perlmutter
Register of Copyrights and Director, U.S. Copyright Office
Library of Congress - Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Dear Register Perlmutter:

American songwriters create the music we love but have long labored under a compulsory licensing system that robs them of control over their work and the ability to receive fair compensation. Six years ago, Congress passed the Music Modernization Act (MMA) to address that problem. It was a landmark compromise that benefited streaming platforms by modernizing music licensing while reducing legal liability for digital streaming companies, while at the same time ensuring publishers and songwriters were compensated more fairly. We believe it is essential, then, that Congress raise serious questions regarding whether Spotify's recent actions are in step with the spirit of the Music Modernization Act.

A May 9, 2024, [article](#) in *Billboard* titled "Spotify to Pay Songwriters About \$150 Million Less Next Year With Premium, Duo, Family Plan Changes," revealed how Spotify recently re-designated its streaming music service as a "bundle." Under current law, rates for mechanical royalties are set every five years by the Copyright Royalty Board (CRB). In so doing, the CRB also establishes royalty rates for when music is offered as part of a bundle with other services. The purpose of the special rate structure is to ensure rightsholders are given a fair share of royalty payments when services are bundled together and sold at a discount.

This past November, Spotify began offering audiobooks as a free service with its \$10.99 monthly music subscription. Then, in March, it made the unexpected decision to offer audiobooks as a standalone monthly subscription for \$9.99. Few would expect customers to purchase audiobooks at that rate when it is available for free with the music service for only \$1 more per month. This was, however, the same moment in which Spotify automatically reclassified the 50 million subscribers in its music services into a bundle. The result of these moves by Spotify was an immediate sharp reduction in royalty payments made to publishers and songwriters, and one they executed without warning.

As members of the Judiciary Committee, which originated the Music Modernization Act, we want to see the law faithfully implemented and copyright owners protected from harm arising from bad faith exploitation of the compulsory system. Digital service providers should not be permitted to manipulate statutory rates to slash royalties, deeply undercutting copyright protections for songwriters and publishers. A fair system should prevent any big tech company from setting their own price for someone else's intellectual property, whether the owner wants to sell or not.

As we explore a response to these recent developments, we would appreciate the Office's help to understand the available options. Specifically,

- Are there protections in place to ensure that companies that use the compulsory license and statutory rate process cannot abuse that system to the detriment of copyright owners?
- Is there an efficient, low-cost process by which copyright owners may seek relief where improper or illegal actions are taken by licensees?

Thank you for the work you do to uphold the American copyright system, which is among the most robust in the world. Your efforts help protect the innovative and creative communities in their essential work. We look forward to your timely response.

Sincerely,



Ted W. Lieu
Member of Congress



Adam B. Schiff
Member of Congress



Marsha Blackburn
United States Senator