



Congress of the United States  
House of Representatives  
Washington, DC 20515-4905

August 29, 2024

Shira Perlmutter  
Register of Copyrights and Director, U.S. Copyright Office  
101 Independence Ave SE  
Washington, DC 20559

Dear Register Perlmutter:

Thank you for your consistent dedication to advancing our nation's copyright system, including your Office's tireless work to implement the Music Modernization Act (P.L. 115 – 264). Last year, we celebrated the five-year anniversary of the Music Modernization Act, and the improvements envisioned by the law to modernize music licensing.

This year marks the first redesignation process for the Mechanical Licensing Collective (MLC). As you know, the MLC must be redesignated every five years under the MMA. The redesignation process is a feature of the law and an opportunity to ensure that the system is working for all stakeholders. Both Congress and the Copyright Office have a responsibility to embrace the process and use it for thoughtful and ongoing oversight.

Overall, I believe that the MLC has done a commendable job in carrying out the MMA's statutory requirements, processing more than two billion dollars in royalty payments, and building towards a robust and accessible database of musical works. As with any entity – and particularly one that is relatively new – work remains to be done to meet its full potential. I believe that additional transparency and oversight measures will provide the Copyright Office, and Congress, with a better understanding of whether the MLC is meeting its statutory requirement to be an “efficient and fair” administrator of the blanket license.<sup>1</sup>

Budget Transparency:

The Music Modernization Act directs the MLC to “ensure that the policies and practices of the collective are transparent and accountable,”<sup>2</sup> and requires the publication of an annual report. This statutorily mandated report is meant to provide stakeholders with the information needed to carry out effective oversight of the MLC's authorities and functions pursuant to subsection

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<sup>1</sup> See U.S. House of Representatives, Committee on the Judiciary, *Music Modernization Act* (To Accompany H.R. 5447) ... (H. Rpt. 115-651). At 6. “[T]he Committee believes that continuity in the collective would be beneficial to copyright owners so long as the entity previously chosen to be the collective has regularly demonstrated its efficient and fair administration of the collective in a manner that respects varying interests and concerns.”

<sup>2</sup> 17 U.S.C. § 115(d)(3)(D)(ix)(I)(aa)

(d)(3)(C) of the MMA. Unfortunately, the current annual report lacks key data necessary to examine the MLC's ability to execute these authorities and functions.

For example, the MMA requires that the MLC annual report include information related to budget and expenditures. While there is some information included (and appendices have been helpful for greater insight), there are still gaps that would be useful to fill. As a specific point of reference, The MLC's 2022 Annual Report projected significant increases in certain spending categories: personnel costs were expected to rise nearly 40%, professional fees to climb over 190%, and outreach and events expenditures to grow by 100%, to name a few.<sup>3</sup> Meanwhile, the MLC has offered little to no justification for such budgetary increases, oftentimes relying solely on tables and charts to describe future year expenditures. Additional transparency and specifics around how funds are being spent within each category, how they are contributing to improved outcomes, and why significant increases are necessary in certain categories, would provide the Copyright Office, and Congress, with a greater understanding of whether these increases in spending are leading to improvements in the MLC's core statutory functions.

Accordingly, as part of the redesignation process, I request that the following be included in subsequent annual reports, in line with the current categories contemplated by the MMA, as a condition of its redesignation:

- Detailed accounts of spending within key categories (personnel, litigation, vendors and consultants, travel and events, and other core categories)
- Description of the indicators the mechanical licensing collective deems to be key measures of its performance of its duties;
- Information on the MLC's investment policy, including how decisions are made around investments;
- Include, within the projected annual mechanical licensing collective budget, an analysis of how such budget will support the entity's authorities and functions pursuant to subsection (3)(C), target values for the key performance indicators, and, where applicable, justification detailing how projected increased spending is expected to improve performance of statutory functions;
- Explanation of any unspent funds (whether allocated or not) and details of annual surplus funds, including how a surplus offsets future allocations;
- Mechanisms to gain appropriate insight into MLC cost-benefit analysis around key decisions, such as hiring outside vendors; and
- Explanation of whether and how costs are expected to decrease in the future, due to systems implemented, efficiencies achieved, and other factors.

The MLC has a number of mechanisms and committees already in place that, in theory, could contribute to the production of this information and the ability to appropriately set benchmarks and performance indicators. For example, the Operations Advisory Committee (OAC) and the Dispute Resolution Committee were specifically built into the statute, and I commend the establishment of a Budget Performance Advisory Committee (BPAC). It is critical that these

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<sup>3</sup> The Mechanical Licensing Collective, 2022 Annual Report, Pg. 16.  
<https://www.themlc.com/hubfs/The%20MLC%202022%20Annual%20Report.pdf>



Committees are fully utilized to leverage their expertise and provide guidance to the MLC. I encourage you to consider how the Copyright Office, within its significant oversight authority of the MLC, can help facilitate or encourage greater use of these committees.

Board Neutrality:

In establishing the MLC, the MMA required a Board of Directors comprised of 14 voting members and 3 non-voting members.<sup>4</sup> Of the 14 voting members, ten are comprised of music publishers and four are songwriters. Publishers were given a majority of seats in order to assist with the collective's primary task of matching and distributing royalties. However, the MMA did not provide this allocation in order to convert the MLC into an extension of the music publishers.

Unfortunately, we have seen numerous examples over recent years of publishers using their leverage in the MLC to take reciprocal, or near reciprocal, actions in front of the Copyright Office. These examples include submitting near identical comments to the Copyright Royalty Board during rulemaking proceedings related to Fees for Royalty Payments under the MMA, taking substantively similar positions on the Copyright Office's treatment of royalty liquidation agreements, and adopting a policy on statutory termination rights that was clearly tilted in favor of the publishers. It has also been reported that the MLC has used the same counsel as that of the National Music Publishers' Association (NMPA) in its activities against digital streaming providers seeking unpaid royalties for blanket licenses under the MMA.<sup>5</sup>

Also noteworthy is the board's composition. Per the MMA, the MLC is required to maintain an independent board of directors. However, what we've seen since establishing the collective is anything but independent. For example, in both 2023 and 2024, all ten publishers represented by the voting members on the MLC Board of Directors were also members of the NMPA's board.<sup>6</sup> This not only raises questions about the MLC's ability to act as a "fair" administrator of the blanket license but, more importantly, raises concerns that the MLC is using its expenditures to advance arguments indistinguishable from those of the music publishers—including, at times, arguments contrary to the positions of songwriters and the digital streamers.

Further, comments raised by stakeholders suggest that section 4.2(b)(1) of the MLC bylaws give music publishers near veto power over successor music creator board members, yet do not give reciprocal rights to selection of music publisher board members.<sup>7</sup> This veto power is what has also allowed the nonvoting Songwriter Trade Group Director seat to be held, since inception, by the Nashville Songwriters Association International (NSAI) despite the fact that the MMA mandates only that the music creator seat be occupied by "a representative of a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of

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<sup>4</sup> 17 U.S.C. § 115(d)(3)(D)(i).

<sup>5</sup> Pandora Media, LLC's Answer to Plaintiff's Complaint, *Mechanical Licensing Collective v. Pandora Media, LLC*, No. 3:24-cv-00168 (U.S. Dist. Ct. M.D. Tenn.).

<sup>6</sup> Board of Directors, THE MECH. LICENSING COLLECTIVE, <https://www.themlc.com/board-governance>.

<sup>7</sup> Comments of the Songwriter Guild of American (SGA), the Society of Composers & Lyricists (SCL), and the Music Creators North America (MCNA), Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Docket No. 2024-1), May 29, 2024. At 4. <https://thescl.com/news/scl-calls-for-protections-amidst-first-re-designation-process-of-mechanical-licensing-collective-and-digital-licensee-coordinator/>.

songwriters in the United States.”<sup>8</sup> This paints a troubling picture of a figurative rubber stamp within the MLC boardroom.

For these reasons, I would urge you to examine the overlapping representation on the MLC board to determine whether there exists potential conflicts of interest and bias towards major publishers. I would also urge you to examine whether there should be additional changes to the MLC board as a precondition for redesignation, such as changes to the MLC bylaws, greater scrutiny over Director approvals to allow for the approval of independent songwriters and publishers, the public issuance of board minutes, or additional reporting requirements by the songwriter-publisher board members independent of the MLC annual report.

Further, questions remain regarding the MLC’s investment policy by which it may invest royalty and assessment funds. The MLC’s Investment Policy Statement provides little insight into how those funds are invested, their market risk, the revenue generated from those investments, and the percentage of revenue (minus fees) transferred to the copyright owner upon distribution of royalties. I would urge the Copyright Office to require more transparency into these investments as a condition of redesignation.

*Distribution of Unmatched Royalties:*

Under the Music Modernization Act (MMA), if the MLC is unable to locate the copyright owner of a particular work, it deposits the accrued but undistributed royalties in a “black box” and, after three years, any unclaimed royalties will be distributed on a pro-rata, market share basis.<sup>9</sup> It is estimated that over \$300 million remains in this so-called “black box.” While I commend the MLC’s efforts thus far to distribute historical amounts of mechanical royalties to rightsholders, questions remain about whether the eventual market share based distribution serves as a disincentive to continue innovation. I would encourage the Copyright Office to define clear timeframes and transparency measures in the distribution process as a condition of redesignation.

Additionally, comments raised by stakeholders suggest the MLC’s distribution practices result in small or independent songwriter’s royalties going unmatched.<sup>10</sup> In the committee report to accompany the Music Modernization Act, the Committee states that “[i]t is the intent of Congress to ensure that songwriters receive their fair share of monies distributed to copyright owners under subsection (d)(3)(J).”<sup>11</sup> I would urge the Copyright Office to ensure the fair distribution of royalties to all songwriters.

The music industry is not only a key driver of culture, but also an economic driver in the United States. A transparent, efficient, and unbiased MLC is critical to the effective functioning of the mechanical licensing system, which is a key component of the music licensing system and overall U.S. music industry. Additional transparency and oversight benefits stakeholders and consumers alike and ensures the continued success of the MLC.

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<sup>8</sup> 17 U.S.C. § 115 (d)(3)(D)(i)(V)

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

<sup>10</sup> Comments of the American Association of Independent Music (A2IM), Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Docket No. 2024-1). At 2.

<sup>11</sup> Supra note 1, at 13.

I appreciate your consideration of these requests. Please do not hesitate to contact Thomas Blanford ([Thomas.Blanford@mail.house.gov](mailto:Thomas.Blanford@mail.house.gov)) in my office should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Scott Fitzgerald". The signature is written in a cursive style with a large, stylized "S" and "F".

Scott Fitzgerald  
Member of Congress

Cc:  
Suzy Wilson  
General Counsel, US Copyright Office