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July 8, 2020

**Via email**

Regan Smith  
General Counsel and Associate Register of Copyrights  
Jason Sloan  
Assistant General Counsel  
United States Copyright Office  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20559-6000

**Re: Docket No. 2020-5**  
**The MLC's updated proposed regulatory language concerning audio links**

Dear Ms. Smith and Mr. Sloan,

The Mechanical Licensing Collective (the "MLC") submits this letter to provide updated proposed regulatory language with respect to the audio link reporting discussed on the Office's June 19, 2020 ex parte call in the above-referenced proceeding (the "June 19 Call"), as invited in the Office's subsequent June 19, 2020 email. The updated proposed regulatory language is attached as Exhibit A hereto.

As discussed on the June 19 Call, there is broad consensus that audio links are a critical tool to minimize unmatched royalties, and that the issue identified in this rulemaking should be *how* and not *whether* audio link reporting is implemented. As discussed on the June 19 Call, the MLC believes that DLC concerns about the implementation of audio link reporting should be addressed within this rulemaking process. Since the audio link issue was raised in this rulemaking, the DLC's June 23, 2020 letter indicates that "productive collaboration has already begun" with the MLC on providing access to audio, and that the DLC is "ready, willing, and able" to continue discussions. The DLC also stated on the June 19 Call that none of its members has indicated that any obstacles to implementation of the audio link reporting are insurmountable.

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As raised by others on the June 19 Call, this rulemaking offers a unique opportunity to address this vital issue. This issue is both ripe and suitable for regulation, and the MLC and the DLC are perfectly placed entities to assess and report on any implementation concerns. Many federal regulations require substantive, qualitative reporting that assesses and describes needs and identifies responses and implementation strategies.<sup>1</sup> The MLC's updated regulatory proposal for addressing audio link reporting provides a framework to support and address any audio link implementation concerns while maintaining the acknowledged imperative of reaching the goal, and also delivers flexibility by explicitly providing for the Register to adjust the commencement date for the audio link usage reporting, if appropriate, based upon the report from the MLC and DLC.

The MLC proposal calls for an initial report to the Register after assessment by the MLC and DLC of any implementation obstacles and responsive strategies for the reporting of audio links as discussed on the June 19 Call. The proposal provides for further reporting in the discretion of the Register, and adjustment of deadlines if appropriate in light of the reports. The MLC believes that this proposal appropriately balances the concerns of the DLC against the tremendous importance of the audio link reporting to the reduction of unmatched royalties, which was a core and animating goal of the Music Modernization Act.

The MLC appreciates the Copyright Office's time, and is available to provide further information on request.

Sincerely yours,



Benjamin K. Semel

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<sup>1</sup> See, e.g., 26 CFR §1.501(r)-3 (requiring certain hospital facilities to complete community health needs assessments documented in a report that describes both needs and resources available to meet the needs, and further a written plan with an implementation strategy to meet the needs, which the regulation specifically contemplates may be done collaboratively with other entities); 45 CFR §1302.11 (requiring certain education programs to assess community needs and resources available to meet those needs, and §1302.142 requiring creation of implementation programs for meeting goals); 29 CFR §1910.30 (requiring employers to create a written fire prevention plan that identifies fire hazards as well as equipment and procedures necessary for implementation of the plan).

## EXHIBIT A

### REVISED PROPOSED REGULATION ON REPORTING OF AUDIO LINKS

(showing only changes as against the MLC's proposed § 210.27 in Appendix C of its comments)

#### **§ 210.27 Reports of usage and payment for blanket licensees.**

...

(e)(1)(i)(D) A link to an audio file (or similar) of each sound recording (which audio file, at the digital music provider's option, may be a thirty (30) second preview or sample of the sound recording) **that provides access to the audio of the reported uses of musical works for the MLC and registered users of the MLC portal for the purpose of identifying copyright owners of such musical works;**

....

#### **(o) Audio link reporting implementation assessment and report to Register of Copyrights.**

- (1) Initial report. Within 90 days of the effective date of this regulation, the MLC and DLC shall report to the Register of Copyrights concerning the implementation of usage reporting of audio links pursuant to subsection (e)(1)(i)(D) above. Such report shall:**
  - (i) Identify any implementation obstacles to reporting the audio links;**
  - (ii) Identify an implementation strategy for addressing any identified obstacles;**
  - (iii) Identify any recommended adjustments to the timeline for reporting the audio links.**
- (2) Supplemental reports. After review of the initial report, register may request additional information or reports from the MLC and DLC concerning the issues addressed therein.**
- (3) Collaboration on reports. The MLC and DLC shall cooperate in good faith to produce the reports required under this subsection. Such cooperation may include work through the MLC's Operations Advisory Committee, as well as any other formal or informal collaboration between the two organizations. The MLC and DLC shall submit joint reports, with coordinated content as to all areas on which they can reach substantial agreement, but which may contain separate report sections on areas where they are unable to reach substantial agreement.**
- (4) Adjustment of deadlines for reporting of audio links. The Register of Copyrights may adjust the date on which digital music providers must begin monthly reporting of audio links pursuant to subsection (e)(1)(i)(D). In making any such adjustment, the Register shall consider the information and recommendations in the reports submitted hereunder, and the impact of the adjustment on the incidence of unclaimed accrued royalties, and shall tailor any adjustment accordingly.**