

June 15, 2020

United States Copyright Office

Library of Congress

101 Independence Avenue SE

Washington, DC 20559-6000

Attn: Regan Smith, General Counsel and Associate Register of Copyrights

Jason Sloan, Assistant General Counsel

[Sent via email \(regans@copyright.gov, jslo@copyright.gov\)](mailto:regans@copyright.gov)

Re: **Docket No. 2020-5**

Music Modernization Act Reports of Usage – Audio Links

MLC Unclaimed Royalties Oversight Committee – supplemental comments

Dear Ms. Smith and Mr. Sloan:

In response to your June 8, 2020 letter, The Unclaimed Royalties Oversight Committee (“UROC”), advisory committee to The MLC, provides herewith supplemental commentary to the operational queries addressed in that letter to the MLC and DLC, specifically the Office’s questions directed to the MLC as follows:

1. *“The MLC’s comments, along with others, suggests that the utility of audio links primarily rests in identifying unmatched works in a public claiming portal, but the MLC requests that links for all sound recordings be included in each monthly report. Why does the MLC need links for every reported monthly use if the wide majority of sound recordings will be automatically matched to musical works?”*

For the UROC, which is comprised of five (5) representatives of music publishers and five (5) professional songwriters, the necessity that audio links be provided for all reported uses, whether matched or unmatched, pertains to transparency. To repeat what the Office has previously stressed, “transparency is critical where copyright owners are compelled by law to license their works.” As we stated in our comments to this proceeding, “There is no higher level of transparency than the simple ability to listen to the actual recordings and the songs contained therein for which royalties have been generated...A readily available audio reference is the easiest, most reliable and transparent way to confirm ownership of a song.”

The rationale for audio being provided for all uses, not just unmatched uses, speaks to the transparency of the process to the songwriting and publishing communities, and to addressing, especially in the early rollout stages following the License Availability Date, automatically-matched works based on metadata that may be incorrectly attributed, and thereby providing a mechanism for rectification & resolution, “allowing songwriters & publishers the ability to verify that existing matches are correct, let alone new matches.”

An example where existing matches will warrant verification by audio are when songs have been re-released under the same song title as the original, but with changes to lyrics and/or melody by the new artist, resulting in a derivative work. Case-in-point, UROC member & professional

songwriter **Erika Nuri Taylor** co-wrote the song “**Woman Up**” in 2013, which was originally recorded & released by Ashley Roberts of The Pussycat Dolls in 2014. **Meghan Trainor** went on to record the song for her second album in 2016, wherein she ended up re-writing some of the lyrics & melody, with an additional songwriter added to the mix as well. Megan Trainor’s version was released under the same song title, “Woman Up”, but with changes to the original lyrics and melody, and therefore changes to the resultant copyright shareholders as well. So Erika now has 2 songs titled "Woman Up" that have both been released with different lyrics & melody, and different copyright shareholders & splits. The only way to ensure that automated matching has happened correctly for existing as well as new recordings of both versions will be through listening to the actual audio recordings that have been matched to metadata.

1. (cont’d) “Are there more tailored methods the MLC could use to accomplish its goal of having links in the portal, such as issuing subsequent requests to DMPs to provide links limited to unmatched works, or, in appropriate cases, obtaining a recording from a single source when the identity of the sound recording is not in dispute (e.g., through a confirmed ISRC) but information identifying the musical work or its copyright owner(s) are incomplete?”

Requesting links on an ad hoc basis would presumably be more burdensome & time-consuming than an automated process whereby all links are provided for every reported use. The mechanism of actually asking the DMPs to provide links only upon request sounds efficient on its face, but would seem to be far less efficient in practice. It is the UROC’s expectation that the MLC will speak to this authoritatively from an operational perspective.

3. “As noted in the NPRM, the Office understands the dispute to center around whether monthly reports of usage must include clickable URLs, or if DMPs may instead provide a DMP identifier, where in either scenario (at least where DMPs have such identifiers) the MLC will receive access to the sound recording actually played by the DMP. The MLC is invited to clarify if it has a different understanding. If DMPs are required to provide the MLC with a no-cost subscription suitable for the MLC and public users of the claiming portal to obtain appropriate access to unmatched tracks using these DMP identifiers, is this sufficient for the MLC’s purposes? If not, please explain why not.”

To the members of this committee, clickable, working URLs would seem to be the most ‘frictionless’ to rights holders in their efforts to verify/validate usage of their works, whereas using DMP identifiers would seem to just add friction to the process. The UROC will defer to The MLC’s position on this from an operational perspective, but if the use of URLs would place the operational lift on the DMPs, while the use of unique identifiers would place more of the burden on the MLC, this committee believes that the burden should correctly be on the DMPs, substantiated by the fact that all other interested parties in the value-chain of music consumption covered by the statutory license will have already been compensated, irrespective of the songwriters & publishers being properly matched (successfully or not) to these recordings. As regards the songwriter and publisher community, especially the smaller independents & self-published songwriters, optics and trust in the systems & processes under the statutory license are everything. Rights holders are entitled to full & frictionless transparency, for themselves and for their clients to whom they are accountable.

4. *“Some commenters, including the MLC’s own Unclaimed Royalties Oversight Committee, have noted other potential applications for using audio links to assist in the MLC’s matching efforts beyond inclusion in the public claiming portal, such as by “employ[ing] ‘fingerprinting’ technology to compare unidentified audio files to known sound recordings” and “allowing the ability to match based on lyrics, melody, harmonic elements, [and] rhythmic patterns.” Does the MLC have plans to use audio links outside of the claiming portal to engage in these or other matching techniques? If so, when would the MLC expect to be able to begin using links in these ways? What are the operational differences to the MLC between using direct URLs and DMP identifiers for such purposes?”*

To clarify the UROC’s comments referenced above, “allowing the ability to match based on lyrics, melody, harmonic elements, [and] rhythmic patterns” – allowing such ability does not necessarily imply usage ‘beyond inclusion in the public claiming portal’, but can merely be done by listening with a trained ear to the requested audio links. Moreover, the UROC’s reference to the “importance of audio in general in reducing the incidence of unclaimed accrued royalties” via technological applications that are outside the scope of this current proceeding, served primarily to underscore our hope that the industry will come together at some point to explore such applications further, and that all efforts to improve the rate of matching, and decrease the amount of unclaimed/unmatched royalties, will continue to be explored, to the benefit of all songwriters, composers, lyricists, and copyright owners.

Thank you for this opportunity to provide supplemental comments on these operational queries, and we look forward to participating in the forthcoming teleconference. Our schedule remains open on either Friday, June 19th, or Monday June 22nd, 2020.

Respectfully submitted,

Unclaimed Royalties Oversight Committee:

Phil Cialdella (Atlas Music Publishing)
Patrick Curley (Third Side Music)
Michael Eames (PEN Music Group, Inc.)
Ben Glover (Songwriter)
Kay Hanley (Songwriter)
Frank Liwall (The Royalty Network, Inc.)
Dan Navarro (Songwriter)
Kathryn Ostien (TRO)
Tom Shapiro (Songwriter)
Erika Nuri Taylor (Songwriter)