

## Summary of Ex Parte Discussion of March 8, 2024

March 15, 2024

### Via Email

Suzanne Wilson, Esq.  
General Counsel and Associate Register of Copyrights  
United States Copyright Office  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20559-6000

Re: Summary of the March 8, 2024 *Ex Parte* Video Teleconference between the United States Copyright Office and Representatives of MCNA, The Recording Academy, SCL, SGA & SONA.

Dear Ms.. Wilson:

This letter summarizes the March 8, 2024 *ex parte* video teleconference (“March 8 Teleconference”) between representatives of the United States Copyright Office (“USCO”) and the following independent music creator organizations (“organizations”) acting in their capacity as advocates for the rights and interests of songwriters and composers, as listed in alphabetical order: **Music Creators North America** (“MCNA”); the **Recording Academy**; the **Society of Composers & Lyricists** (“SCL”); the **Songwriters Guild of America** (“SGA”); and, **Songwriters of North America** (“SONA”).

The persons participating in the March 8 Teleconference were: **Rick Carnes** (SGA & MCNA), **Ashley Irwin** (SCL & MCNA), **Charles Sanders** (SGA & MCNA)), **Marla Grossman** (SGA & SCL), **Todd Dupler and Michael Lewan** (Recording Academy), and **Jack Kugell and Linda Bloss-Baum** (SONA). The persons representing the USCO were General Counsel and Associate Register of Copyrights **Suzanne Wilson**, Assistant General Counsel **John Riley**, and Assistant General Counsel **Jason Sloan**.

The organizations thank the USCO for its time and attention in meeting with us. The following summarizes our discussion:

The participants in the discussion began by acknowledging that the conversation would focus principally on the issue of rules concerning the administration by the Mechanical Licensing Collective (“MLC”) of termination rights-related payment matters. The USCO briefly reviewed the positions it had taken, and the alternative solutions it had posed, in its original NPRM and subsequent SNPRM. The USCO made clear its goal is to finalize rules in the immediate future, and it stressed that now is the time for interested parties to make additional points and suggestions, if any.

After an initial, brief discussion concerning statutory construction, administrative practicalities and industry practices, the organizations cautiously expressed non-objection to promulgation of a rule that would establish a presumption permitting the MLC to regard the payee listed in its database at the time of the MLC’s normal payment of royalties as the proper recipient of such royalties, even if the date of use that generated such royalties occurred post-termination, *so long as*:

- A. Such presumption is explicitly deemed to be both rebuttable and non-prejudicial to the rights of any terminating party seeking to challenge the ownership of and/or entitlement to such royalties and all future royalties;
- B. Rules are simultaneously promulgated to prevent undue delay in implementing change of payee status in the MLC database by the MLC as a result of termination, whether such delay is by reason of a failure to cooperate by the terminated party or otherwise;
- C. The required form of notice of termination to the MLC by terminating parties is fashioned to be as simple and easy to use as possible, with minimal formalities and in a manner and form determined by the USCO (not as determined by the MLC board, which operates without equal music creator representation);
- D. Any letter of direction to the MLC executed by a terminating party regarding the disposition of post-term royalties in favor of a terminated party must have been executed after the effective date of termination, contain full disclosure of the rights of the terminating party and its available choice not to relinquish such rights, and be fully consistent with the provisions of the Copyright Act that nullify pre-termination waivers of termination rights under enumerated circumstances;
- E. Rules are simultaneously promulgated requiring the MLC to promptly rectify the mis-payment of post-termination royalties to the terminated payee once discovered or proven; and,
- F. In cases of a dispute (as the MLC has expressed that allowing time for the disputing parties to settle their dispute among themselves may lead to a faster resolution than having the MLC make a determination), the USCO should absolutely provide guidance and establish, at maximum, a thirty-day (30) period for the disputing parties to provide instructions to the MLC resolving such dispute.

The organizations addressed the above proposed “presumption” solution only in the context of terminations, and did not express opinions as to other situations involving payee changes, which they believe should each be considered on a category by category basis with similar deference given to the rights and interests of individual songwriters, composers and music creators.

The organizations made several other points throughout the discussion as follows:

1. The “presumption” solution, as supplemented by the additional provisions listed above, seems to represent a reasonable and practical solution that accounts for both business considerations and the protection of creators’ rights under the law in termination rights situations. There was further consensus that the administrative convenience of the MLC should not be a primary factor in the promulgation of rules that foreseeably may result in the diminishment or deprivation of creators’ rights as granted under the Copyright Act.
2. There was strong consensus expressed by the organizations that by its enactment of the Music Modernization Act (“MMA”), Congress intended that the USCO have broad and effective oversight authority to ensure fairness, transparency and accuracy in the carrying out by the MLC of its statutory duties. The groups noted their opinion that the USCO had itself presented a compelling assessment in the original NPRM concerning the scope of its oversight authority to guide the MLC in the fulfillment of its responsibilities, and urged the USCO to regard itself --on Congress’ authority-- as a watchdog for the equitable protection of songwriter and composer rights under the MMA.

3. As to the issue of transparency relating to the administrative rules under consideration, the additional point that the MLC's understanding and interpretation of the term "copyright owner" as referenced in the MMA has never been clearly articulated by the MLC. The relevance of the MLC's statutory interpretation of the "ownership" concept to the current discussion relates to the general designation of a "payee" in the MLC database. Since the implications of this issue are far broader than just rules relating to post-termination royalty payments (i.e., that an administrator is not an "owner" if the creator has retained the copyright), it was suggested by the USCO that this issue might better be the subject of further discussion in a separate meeting. The organizations will consider requesting such a meeting with the USCO in the near future.

The organizations thank the USCO for its continuing efforts to ensure maximum fairness, accuracy and efficiency for music creators in connection with the fulfillment by the MLC of its statutory duties. Such oversight is sincerely appreciated.

With regards,

Music Creators North America ("MCNA")  
Recording Academy  
The Society of Composers & Lyricists ("SCL")  
The Songwriters Guild of America ("SGA")  
Songwriters of North America ("SONA")