(2) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(4)(L), who is authorized to act on behalf of a copyright owner or group of copyright owners with respect to verification of royalty payments by the mechanical licensing collective, subject to an appropriate written confidentiality agreement; and

(3) Attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.

(e) Safeguarding Confidential Information. The MLC, DLC, and any person or entity authorized to receive Confidential Information from either of those entities, must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information. The MLC and DLC shall each implement and enforce reasonable policies governing the confidentiality of their records, subject to the other provisions of this section.

(f) Maintenance of records. Any written confidentiality agreements relating to the use or disclosure of Confidential Information must be maintained and stored by the relevant parties for at least the same amount of time that certain digital music providers are required to maintain records of use pursuant to 17 U.S.C. 115(d)(4)(A)(iv).

(g) Confidentiality agreements. The use of confidentiality agreements by the MLC and DLC shall be subject to the other provisions of this section, and shall not permit broader use or disclosure of Confidential Information than permitted under this section. The MLC and DLC may not impose additional restrictions relating to the use or disclosure of Confidential Information, beyond those imposed by this provision, as a condition for participation on a board or committee.


Regan A. Smith,
General Counsel and Associate Register of Copyrights.

ADDRESS:
Commissioner of Copyrights
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Washington, DC 20559

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, H.R. 1551 ("MMA"). Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115. Prior to the MMA, licensees obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license ("NOI") on the relevant copyright owner (or filing it with the Copyright Office if the Office’s public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements. The MMA amends this regime most significantly by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries ("DPDs") of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as "covered activity," where such activity qualifies for a compulsory license). Instead of licensing one song

4 17 U.S.C. 115(d)(1), (e)(7); see H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket
at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective ("MLC"), which has been designated by the Register of Copyrights.5

By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined, if necessary, by the Copyright Royalty Judges ("CRJs").6 As permitted under the MMA, the Office designated a digital licensee coordinator ("DLC") to represent licensees in proceedings before the CRJs and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions.7

A. General Regulatory Background and Importance of Transparency

The MMA enumerates several regulations that the Copyright Office is specifically directed to promulgate to govern the new blanket licensing regime, and Congress invested the Copyright Office with "broad regulatory authority"8 to "conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license]."9 The legislative history contemplates that the Office will "thoroughly review"10 policies and procedures established by the MLC and its three committees, of which the MLC is statutorily bound to ensure are "transparent and accountable,"11 and promulgate regulations that "balance[] the need to protect the public's interest with the need to let the new collective operate without over-regulation."12 Congress acknowledged that "[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation," and that "[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations."13 Legislative history further states that "[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation."14 Accordingly, in designating the MLC, the Office stated that it "expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest," and that "the Register intends to exercise her oversight role as it pertains to matters of governance."15 Additionally, the Office stated that it "intends to work with the MLC to help it achieve the[] goals of "engagement with a broad spectrum of musical work copyright owners, including from those communities" and musical genres that some commenters in the designation proceeding asserted are underrepresented."

This notification of inquiry is focused on considerations to ensure appropriate transparency and public disclosure of information by the mechanical licensing collective. Fostering increased transparency is an animating theme of the MMA, which envisions the MLC as an "operat[ing] in a transparent and accountable manner."17 and ensuring that its "policies and procedures . . . are transparent and accountable."18 Indeed, some Members of Congress noted that a key aspect of the MMA is bringing transparency to the music industry.19 The MLC itself has expressed its commitment to transparency, both by including transparency as one of its four key principles underpinning its operations on its current website,20 and in written comments to the Office.21 For example, the MLC noted its "commitment to working with, and under the oversight of, the Office to ensure that issues relating to its policies and procedures are transparent and appropriate, including with respect to addressing and mitigating conflicts of interest, maintaining diversity, representing the entire musical works community, and ensuring board and committee member service complies will all relevant legal requirements."22

Further, the MMA specifically directs the Copyright Office to promulgate certain regulations related to the MLC’s creation of a free database to publicly disclose music work ownership information and identify the sound recordings in which the musical works are embodied.23 As discussed more

5 17 U.S.C. 115(d)(1)(3); 84 FR 32274 (July 8, 2019).
7 Id. at 115(d)(5)(B); 84 FR at 32274; see also 17 U.S.C. 115(d)(3)(D)(IV), (V), (G).
10 H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5; Conf. Rep. at 4, 12. The Conference Report further contemplates that the Office’s review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.
12 H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5; Conf. Rep. at 4, 12. See also SoundExchange Initial at 15; Future of Music Coalition ("FMC") Reply at 3 (appreciating "SoundExchange’s warning against too-detailed regulatory language," but "urging[ ] the Office to balance this concern for pragmatism and flexibility against the need for clear and precise language and oversight as possible to encourage trust"). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, is available via navigation from https://www.copyright.gov/music-modernization/. Comments received in response to the September 2019 notification of inquiry are available at https://www.regulations.gov/docket/Browser?pp=258&po=0&dct=PS&D=COLC-2019-00026&f=FID=COLC-2019-00026-0001. References to those comments and letters are by party name (abbreviated where appropriate), followed by either "Initial," "Reply," or "Ex Parte Letter," as appropriate. Guidelines for ex parte communications, along with records of such communications, are available at https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html. The Office encourages parties to refrain from requesting ex parte meetings on this notification of inquiry until they have submitted written comments. As stated in the guidelines, ex parte meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.
15 84 FR at 32280.
16 Id. at 32279. See also 17 U.S.C. 115(d)(3)(E), (e)(20).
19 See 164 Cong. Rec. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Senator Hatch) "I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill’s oversight and transparency provisions."; 164 Cong. Rec. S 501, 504 (Senator Chris Coons stating "[t]his important piece of legislation will bring much-needed transparency and efficiency to the music marketplace").
20 The MLC, Mission and Principles, https://thelmc.com/mission-and-principles (last visited Apr. 10, 2020) ("The MLC will build trust by operating transparently. The MLC is governed by a board of songwriters and music publishers who will help ensure our work is conducted with integrity.").
21 See also The MLC, The MLC Process, https://thelmc.com/how-it-works (last visited Apr. 10, 2020) ("The MLC is committed to transparency. The MLC will make data on unclaimed works and unmatched uses available to be reviewed by registered users of The MLC Portal and the public at large.").
22 See, e.g., MLC Reply at 42–43 ("The MLC is committed to transparency and submits that, while seeking to enact regulations is not an efficient or effective approach, the MLC will implement policies and procedures to ensure transparency.").
below, the statute requires the MLC’s public database to include various types of information, depending upon whether a musical work has been matched to a copyright owner. For both matched and unmatched works, the MLC’s database must also include “such other information” “as the Register of Copyrights may prescribe by regulation.” The database must “be made available to members of the public in a searchable, online format, free of charge,” as well as “in a bulk, machine-readable format, through a widely available software application,” to certain parties, including blanket licensees and the Copyright Office, free of charge, and to “[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.”

B. Non-Regulatory Requirements and Incentives for Transparency

While this notice is directed at exploring ways in which the Copyright Office may reasonably and prudently exercise regulatory authority to facilitate appropriate transparency and public disclosure, it is important to note that both the statutory language as well as the MLC’s structure separately include aspects that promote disclosure absent additional regulation. While the Copyright Office does not agree with the MLC that regulations regarding issues related to transparency “may be premature” because the MLC’s “policies and procedures are still being developed,” including because the statute directs the Office specifically to promulgate regulations concerning contents of the public database—the Office does recognize that any regulatory language would be additive to this existing scheme, and should be considered within the full context of the statutory goals.

First, the statute requires the MLC to make its bylaws publicly available, which the MLC has committed to doing. As the Recording Academy suggested, the publication of these bylaws “are key to establishing trust, and will help assuage any outstanding concerns amongst songwriters about the MLC’s operations.” Indeed, the MLC itself recognizes that making its bylaws publicly available “promotes transparency.” Second, and as noted below, the MLC must publish an annual report detailing its operations; while this notice seeks input on whether it would be appropriate to further specify contents of that report, this statutory obligation already serves as a mandate for the MLC to disclose various categories of information. Third, every five years, the MLC will submit itself to periodic public audits to ensure it does not “engage in waste, fraud and abuse,” and so some concerns about transparency may be addressed through the statutorily-mandated exercise of this audit provision. Fourth, in a separate provision, copyright owners may also audit the MLC to verify the accuracy of royalty payments paid by the MLC. Fifth, the MLC must ensure that its policies and practices “are transparent and accountable.” The MLC has several obligations of the Mechanical Licensing Collective, Dkt. No. 2020–5, published elsewhere in this issue of the Federal Register.


Conf. Rep. at 6 (“To ensure that the collective does not engage in waste, fraud and abuse, the collective is required to submit to periodic audits to examine its operations and procedures.”) U.S.C. 115(d)(3)(D)(ix)(II). Beginning in the fourth full calendar year after the MLC’s initial designation, and in every fifth calendar year thereafter, the MLC is required to retain a qualified auditor to “examine the [MLC’s] books, records, and operations” and “prepare a report for the [MLC’s] board of directors,” which must also be provided to the Register of Copyrights. Id. at 115(d)(3)(D)(ix)(II)(aa), (cc).

For each audit, the collective must retain a qualified auditor to “examine the books, records, and operations of the collective”; “prepare a report for the board of directors of the collective”; and “deliver the report . . . to the board of directors of the collective.” 17 U.S.C. 115(d)(3)(D)(ix)(II)(aa)(A)–(CC). Each report must address the collective’s “implementation and efficacy of procedures” “for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties”; “to guard against fraud, abuse, waste, and the unreasonable use of funds”; and “to protect the confidentiality of financial, proprietary, and other sensitive information.” Id. at 115(d)(3)(D)(ix)(II)(bb)(A)–(CC). And the collective must deliver each report to the Register of Copyrights and make it publicly available. Id. at 115(d)(3)(D)(ix)(II)(cc).

MLC Initial at 31 (The MLC believes that the promulgation of regulations concerning the Office’s role in overseeing and regulating the MLC’s operations and policies would be more fruitful once the MLC has fully developed its policies and procedures and is able to provide them to the Office for review.”).

MLC advises that it intends to make this policy public.45

Finally, some commenters raised questions about board governance, particularly with respect to appointments and succession.46 The initial designation process for MLC board and committee members, including those members' qualifications, was detailed in the Office’s July 2019 designation of the MLC and DLC, as well as the numerous public comments received, including the MLC’s detailed submission.47 In addition to the MLC’s bylaws, which necessarily detail its approach to board and committee members, the Copyright Office's website publicizes MLC and DLC contact information, as well as the procedure by which vacancies to the MLC board of directors, statutory committees, or nonvoting board seats are filled, including the process by which the Librarian of Congress, upon the recommendation of the Register of Copyrights, appoints successive voting members to the MLC board.48

C. Solicitation of Additional Public Comment

Against that backdrop, the Copyright Office seeks additional input on issues related to transparency and public disclosure of information by the MLC. On September 24, 2019, the Office issued a notification of inquiry seeking public input on a variety of aspects related to implementation of title I of the MMA, including considerations in facilitating an appropriate balance between promoting transparency and public access while protecting confidential information, as well as the scope and manner of the Office’s oversight role.49 The September 2019 notification of inquiry specifically asked for public input on any issues that should be considered regarding information to be included in the MLC’s musical works database (e.g., which specific additional categories of information might be appropriate to include by regulation), as well as the usability, interoperability, and usage restrictions of the MLC’s musical works database (e.g., technical or other specific language that might be helpful to consider in promulgating these regulations, discussion of the pros and cons of applicable standards, and whether historical snapshots of the database should be maintained to track ownership changes over time).50 In addition, the notification of inquiry sought public comment on any issues that should be considered relating to the general oversight of the MLC.

In response, many commenters emphasized the importance of transparency of the MLC’s operations and its public decision-making process, and urged the Office to exercise “expansive”51 and “robust”52 oversight. Given these public comments, and the MLC’s own recognition of the importance of transparency, the Office believes clear guidance at this time on certain areas, such as those related to annual reporting and the public musical works database, may be appropriate.

Having reviewed and carefully considered all relevant comments, the Office now seeks additional comment on the areas of inquiry below. In many areas, the Office has already received valuable information in response to the September 2019 notification of inquiry, but is providing another opportunity for comment before moving forward with a proposed rule. Commenters are reminded that while the Office’s regulatory authority is relatively broad, it is obviously constrained by the law. Congress enacted.53 After reviewing the comments received in response to this notification of inquiry, the Office is likely to publish a notice of proposed rulemaking. In recognition of the startup nature of the collective and current transition period, as the discussion and factual development progresses, the Office will also consider whether fashioning an interim rule, rather than a final rule, may be best-suited to ensure a sufficiently responsive and flexible regulatory structure.

To aid the Office’s review, it is requested that where a submission responds to more than one of the below categories, it be divided into discrete sections that have clear headings to indicate the category being discussed in each section. Comments addressing a single category should also have a clear heading to indicate which category it discusses. The Office welcomes parties to file joint comments on issues of common agreement and consensus. While all public comments are welcome, the Office encourages parties to provide specific proposed regulatory language for the Office to consider and for others to comment upon.

Concurrent with this notification of inquiry, the Office issued a notice of proposed rulemaking identifying appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used.54 The Office encourages interested commenters in connection with this notification of inquiry to

50 Id. at 4972.
51 Id. at 4973.
52 See MAC Initial at 2 (indicating “the need for more transparency” regarding the MLC’s structure); Music Innovation Consumers (“MIC”) Coalition Initial at 3 (“All stakeholders in the music marketplace benefit when current and accurate information about our creative works is easily accessible.”); Screen Composers Guild of Canada (“SCGC”) Reply Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at https://www.regulations.gov/#!docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011-0001 (“We urge you to make the choice that gives us transparency in the administration and oversight of our creative works, and a fair chance at proper compensation for those works, now and in the future.”); Iconic Artists LLC Initial Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011-0001 (“In the current paradigm there is a need for greater transparency and accuracy in reporting.”); DLC Reply at 28 (noting that “transparency will be critical to ensuring that the MLC fulfills its duties in a fair and efficient manner.”).
53 SGA Initial at 6 (urging the Register “to exercise the expansive oversight authority granted . . . under the MCLA”).
54 FMC Reply at 2 (stating “the Copyright Office’s oversight of the MLC’s activities should be robust”). See also Recording Academy Initial at 4 (“The Copyright Office should articulate clear standards for the MLC board regarding board operations and governance, including appointments and succession.”); Music Artists Coalition (“MAC”) Initial at 2 (expressing concern regarding the selection and makeup of the MLC board of directors and statutory committees).
review that separate notice carefully and consider commenting on that notice as well.

II. Subjects of Inquiry

A. Transparency of MLC Operations; Annual Reporting

One avenue for transparency with respect to the MLC is through its annual report. The MMA requires the MLC to publish an annual report no later than June 30 of each year after the license availability date, setting forth information regarding: (1) its operational and licensing practices; (2) how royalties are collected and distributed; (3) budgeting and expenditures; (4) the collective total costs for the preceding calendar year; (5) the MLC’s projected annual budget; (6) aggregated royalty receipt payments; (7) expenses that are more than ten percent of the MLC’s annual budget; and (8) the MLC’s efforts to locate and identify copyright owners of unmatched musical works (and shares of works).57 The MLC must deliver a copy of the annual report to the Register of Copyrights and make this report publicly available.58

The annual report thus functions as a statutorily-prescribed outlet for the MLC to provide much of the information requested by parties in response to the September 2019 notification of inquiry. Some commenters recognized the role that the annual reporting would play in facilitating the transparency envisioned by the MMA and the MLC itself. The DLC, for example, suggested that although the “the MMLA generally specifies that the MLC’s annual report must ‘set forth information regarding . . . the operational and licensing practices of the collective,’ ‘how royalties are collected and distributed,’ and ‘the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works),’” it “will be crucial for the Office to ensure that the MLC follows not just the letter of these requirements but their spirit.”59 Other commenters similarly asked that the MLC provide oversight to ensure disclosure of information in specific areas the statute envisions the annual report addressing, though without directly linking such oversight to the annual report: board governance,60 the manner in which the

MLC will distribute unclaimed royalties,61 development updates and certifications related to its IT systems,62 and the MLC’s efforts to identify copyright owners.63 These comments suggest that comprehensive annual reporting may be a key means through which visibility into MLC operations occurs, and thus certain information (in addition to statutorily required information) should be included for full transparency. Indeed, the MLC itself recognizes that its annual report is one way in which it intends to “promote transparency.”64

As part of analyzing whether it may be beneficial to flesh out the level of detail required in the MLC’s annual report through a rule, commenters may consider specific types of additional information the MLC should include. For example, a few commenters expressed a desire for more information about the MLC’s vendor selection process.65 While the Office may consider the MLC’s capabilities, including through its vendors, during the re-designation process as part of its duty to confirm whether the collective has “the administrative and technological capabilities to perform the required functions” of the collective,66 the statute vests the MLC itself with authority to “[i]nvest in relevant resources, and engage for services of outside vendors and others, to support the activities of the mechanical

licensing collective.”67 The MLC’s annual report could thus serve as a means for the collective to publicly address issues related to vendor selection criteria and performance.

Similarly, in addition to the information provided in the MLC’s bylaws, which will be made publicly available, the annual report could further address issues related to MLC board and committee selection criteria. The annual report could thus disclose any actual or potential conflicts raised with and/or addressed by its board of directors, if any, in accordance with the MLC’s policy.68

The Office seeks public input on any issues that should be considered relating to the substance of the MLC’s annual reports, including any proposed regulatory language. The Office welcomes views regarding any additional considerations or proposed regulatory approaches to address issues raised in the public comments beyond the annual reporting mechanism. Further, and in light of the MLC’s position that regulatory language may be premature, the Office invites the MLC to publicly share with greater particularity operational and communications planning information, such as notional schedules, beta wireframes, or other documentation, to provide context to MLC stakeholders in the months leading up to the license availability date.

B. Categories of Information in the MLC’s Musical Works Public Database

The MLC must establish and maintain a free public database of musical work ownership information. The MLC must also comply with the MMLA’s transparency mandate through its annual report by “mandating the undertaking through the institution of best practices, bona fide and easily reviewable definitions of the proper owners of unmatched royalties and titles as possible”).

61 Lowery Reply at 8 (expressing concern about manner in which MCM will disclose unclaimed royalties based on market share); Monica Corton Consulting Reply at 3 (same).
62 Lowery Reply at 5 (expressing concern about manner in which MCM will disclose system updates).
63 SGA Initial at 6 (asking for the Office to “mandate the undertaking through the institution of best practices, bona fide and easily reviewable efforts by the MCM to identify as great a percentage of the proper owners of unmatched royalties and titles as possible.”).
64 The MLC, Transparency, https://themlc.com/faq/categories/transparency (last visited Apr. 10, 2020) (noting that the MCM will “promote transparency” by “[p]roviding an annual report to the public and to the Copyright Office detailing the operation and licensing practices, collection and distribution of royalties, budget and cost information, its efforts to resolve unmatched royalties, and total royalties received and paid out.”).
65 National Association of Independent Songwriters (“NOISI”) et al. Initial at 16 (“Complete transparency through public documents and test results in regards to the selection of the vendors must be provided. This should include the methodology used for selection along with the results of any Request For Proposals, test results, pricing structure, rates and additional criteria.”); MAC Initial at 3 (“The need for a fully transparent process is also deeply important in the RF/RFP process to select a vendor.”); Lowery Reply at 3, 12; SGA Reply at 4–5.
been matched, the statute requires the MLC’s database to include:

1. The title of the musical work;  
2. The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner;  
3. Contact information for such copyright owner; and  
4. To the extent reasonably available to the MLC, (a) the ISWC for the work, and (b) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.71

For unmatched musical works, the statute requires the database to include, to the extent reasonably available to the MLC:

1. The title of the musical work;  
2. The ownership percentage for which an owner has not been identified;  
3. If a copyright owner has been identified but not located, the identity of such owner and its ownership percentage of that owner;  
4. Identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works; and  
5. Any additional information reported to the MLC that may assist in identifying the work.72

For both matched and unmatched works, the MLC’s database must also include “such other information” “as the Register of Copyrights may prescribe by regulation.”73 The “Register shall use its judgement to determine what is an appropriate expansion of the required fields, but shall not adopt new fields that have not become reasonably accessible and used within the industry unless there is widespread support for the inclusion of such fields.”74

In considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office will focus on fields that would advance the goal of the MLC’s database: Reducing the number of unmatched works by accurately identifying musical work copyright owners so they can be paid what they are owed by digital music providers operating under the section 115 statutory license.75 At the same time, the Office is mindful of the MLC’s corresponding duties to keep confidential business and personal information secure and inaccessible; for example, data related to computation of market share is contemplated by the statute as sensitive and confidential, despite some comments suggesting that this information should be publicly shared.76 Recognizing that a robust musical works database may contain many fields of information, the Office tentatively concludes that this rulemaking may be most valuable in establishing a floor of required information, that copyright owners and other stakeholders can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.77

The September 2019 notification of inquiry asked which specific additional categories of information, if any, should be required for inclusion in the MLC’s database, and stakeholder comments, generally furthering mandating inclusion of additional information, are discussed by category below.78 To the extent additional categories of information should be made publicly available in the MLC’s database, but are not discussed below, the Office invites public comments regarding those additional categories.

1. Songwriter or Composer

Multiple commenters noted the importance of the database including “efficient and accurate collection and distribution of royalties.”79

72 Id. at 115(d)(3)(i)(III).  
73 Id. at 115(d)(3)(i)(IV), (iii)(II).  
75 See id. (noting that the “highest responsibility” of the MLC’s includes “efforts to identify the musical works embodied in particular sound recordings,” “identify[ing] and locate[ing] the copyright owners of such works so that [the MLC] can update the database as appropriate,” and making publicly available songwriter and composer information, with SGA for example noting, “[w]hile the names of copyright owners and administrators associated with a musical work may change on a constant basis, and other variables and data points are subject to frequent adjustment, the title and the names of the creators never vary from the date of a work’s creation forward.”79 Others echoed the strong need for the database to include songwriter/composer information, and the MLC and DLC both supported regulatory language including this field.80 The Office finds these comments persuasive in light of the statute, and is inclined to require that songwriter and composer information be publicly available in the MLC’s database, to the extent known to the MLC.

2. Studio Producer

The statute requires the database to include “producer,” to the extent reasonably available to the MLC.81 Initially, there appeared to be confusion about the meaning of this term, with the MLC originally believing that “producer” referred to “the record label or recording company,”82 but noting that the MLC expects to include “producer”83 and “the information that would help to identify a producer, such as the ISAC, and the Copyright Royalty Board.”84

The MLC and DLC both noted the importance of including the term “producer” in the database, and the MLC contended, however, that “the studio producer of a sound recording is not a data item that...”85

77 See SGA Initial at 2.  
78 See Barker Initial at 2 (urging inclusion of “data fields for songwriters for each musical work,” for matched and unmatched works); FMC Reply at 2 (“We agree that it’s of utmost importance that the MLC database contain songwriter/composer names.”); The International Confederation of Societies of Authors and Composers (“CISAC”) & the International Organisation representing Mechanical Rights Societies (“BIEM”) Reply at 6 (“CISAC and BIEM strongly support the need for the inclusion of creators’ names in the MLC Database since it is the safest information to identify a work (publishers may change, creators never change . . .).”); MLC Reply at 32 (agreeing with inclusion of songwriter information for musical works); DLC Reply at 26 (agreeing “with several commenters that songwriter and composer information should be collected and included in the database.”).  
80 Id. at 115(d)(3)(i)(III).  
81 Id. at 115(d)(3)(i)(IV), (iii)(II).  
82 MLC Initial at 13 n.6.  
83 Recording Academy Initial at 3 (urging Office to “clarify that a producer is someone who was part of the creative process that created a sound recording”), RIAA Initial at 11 (stating “producer” should be defined as “the primary person(s) contracted by and accountable to the content owner for the task of delivering the recording as a finished product”); MLC Reply at 35.
is needed operationally by the MLC,” and that the “producer” field is not included in the Common Works Registration (“CWR”) format or the DDEX DSRF format(s) that the MLC plans to use. Should the MLC be provided “a single feed of authoritative sound recording data,” the MLC “proposes that the ‘studio producer’ information be included to the extent available.”

The term “producer” relates not only to the public database, but also to other open rulemakings, including information provided by digital music providers in reports of usage. In connection with its separate NPRM concerning reports of usage, notices of license, and data collection efforts, among other things, the Office is currently proposing an overarching definition that applies throughout its section 115 regulations to clarify that “producer” refers to the studio producer.

3. Unique Identifiers

As noted, the statute requires that ISRC and ISWC codes, when available, be included in the MLC database. According to the legislative history, “[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of unmatched works.” The legislative history also notes that “the Register may at some point wish to consider after an appropriate rulemaking whether standardized identifiers for individuals would be appropriate, or even audio fingerprints.”

The DLC proposes that the MLC’s database should include “any standard identifiers . . . used for creators and copyright owners themselves,” such as Interested Parties Information (IPI) or International Standard Name Identifier (“ISNI”), to the extent reasonably available to the MLC. For its part, SoundExchange asserts that the “CWR standard contemplates a much richer set of information about ‘interested parties’ linked to CISAC’s Interested Party Information (‘IPI’) system, including information about songwriters and publishers at various levels,” and so the database should include and make available a full set of information about interested parties involved in the creation and administration of the musical work, including shares and identifiers.”

The MLC plans to include the IPI number and ISNI in the public database, but does not believe it should be required to do so through regulation. The MLC also plans to create its own proprietary identifier for each musical work in the database, and while it does not identify which, the MLC “is giving careful consideration to the virtue of also including third party proprietary musical work identifiers to aid interoperability of its database.”

The Office seeks public input on issues relating to the inclusion of unique identifiers for musical works in the MLC’s database, including whether regulations should require including IPI or ISNI, the MLC’s own standard identifier, or any other specific additional standard identifiers reasonably available to the MLC, along with supporting rationale.

4. Information Related to Ownership and Control of Musical Works

By statute, the MMA database must include information related to the ownership of the musical work as well as the underlying sound recording, including “the copyright owner of the work (or share thereof), and the ownership percentage of that owner,” or, if unmatched, “the ownership percentage for which an owner has not been identified.” The statute also requires a field called “sound recording copyright owner,” the meaning of which is discussed further below.

The DLC proposed that the MLC database should include, to the extent available to the MLC, “all additional entities involved with the licensing or ownership of the musical work, including publishing administrators and aggregators, publishers and sub-publishers, and any entities designated to receive license notices, reporting, and/or royalty payment on the copyright owners’ behalf.” Similarly, SoundExchange observes that “[c]ommercialization of musical works often involves chains of publishing, sub-publishing and administration agreements that determine who is entitled to be paid for use of a work,” and that the CWR standard contemplates gathering this information, such that the MLC database should also collect and make available this information.

The MMA does not specifically call out music publishing administrators, that is, entities responsible for managing copyrights on behalf of songwriters, including administering, licensing, and collecting publishing royalties without receiving an ownership interest in such copyrights. One music publishing administrator noted that because “the copyright owner may not necessarily be the entity authorized to control, license, or collect royalties for the musical work,” the MLC’s database should include information identifying the administrators or authorized entities who license or collect on the behalf of musical work copyright owners. He also proposes that because “a copyright owner’s ownership percentage may differ from that same owner’s control percentage,” the MLC’s database should include separate fields for “control” versus “ownership” percentage. The MLC agrees with this approach. In addition, with respect to specific ownership percentages, which are required by statute to be made publicly available, SoundExchange raises the question of how the database should best address “the frequent situation (particularly with new works) where the various co-authors and their publishers have, at a particular moment in time, collectively claimed more or less than 100% of a work.”

Noting that it may be difficult for the MLC to withhold information regarding the musical work until shares equal 100% (the practice of other systems), it suggests the MLC “make available information concerning the shares claimed even when they total more than 100% (frequently referred to

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84 MLC Reply at 35.
85 Id. at 35–36.
89 Id.
90 IPI is “a unique identifier assigned to rights holders with an interest in an artistic work, including natural persons or legal entities, made known to the IPI Centre. The IPI System is an international registry used by CISAC and BIEM societies.” U.S. Copyright Office, Glossary, https://www.copyright.gov/policy/uncalled-royalties/glossary.pdf.
91 ISNI is “a unique identifier for identifying the public identities of contributors to creative works, regardless their legal or natural status, and those active in their distribution. These may include researchers, inventors, writers, artists, visual creators, performers, producers, publishers, aggregators, and more. A different ISNI is assigned for each name used. ISNI is not widely in use across the music industry.” U.S. Copyright Office, Glossary, https://www.copyright.gov/policy/uncalled-royalties/glossary.pdf.
92 DLC Initial at 21; DLC Reply Add. at A–16.
93 SoundExchange Initial at 8; see id. at 7–8 (“Reflecting all applicable unique identifiers in the MLC Database will allow users of the MLC Database readily to match works in the database to other databases when ISWC is not included in one or the other of the databases.”).
94 MLC Reply at 33.
95 Id. at 34.
96 17 U.S.C. 115(d)(3)[C][E](ii)–(iii).
97 Id.
98 Id. at 3.
99 MLC Reply at 32.
100 Id. at 8–9.
as an ‘overclaim’) or less than 100% (frequently referred to as an ‘overclaim’).”

The Office tentatively concludes that it will be beneficial for the database to include information related to all persons or entities that own or control the right to license and collect royalties related to musical works in the United States, including that music publishing administrator and control information would be valuable additions. With respect to the question SoundExchange raises regarding works that may reflect underclaiming and overclaiming of shares, the Office suggests that the MLC’s dispute resolution committee may be an appropriate forum to consider this issue, as part of the committee’s charge to establish policies and procedures related to resolution of disputes related to ownership interests in musical works. In general, the Office seeks public input on any further issues related to inclusion of this information in the public musical works database, including proposed regulatory approaches.

5. Additional Information Related to Identifying Musical Works and Sound Recordings

Commenters proposed that the public database include various other fields to identify the musical work at issue or the sound recording in which it is embodied. With respect to musical works, some commenters pointed to fields included in the existing Common Works Registration (CWR) format, and supported inclusion of information relating to alternate titles for musical works, whether the work utilizes samples and medleys of preexisting works, and opus and catalogue numbers and instrumentation of classical compositions. With respect to sound recordings, commenters suggested inclusion of information relating to track duration, version, and release date of sound recording. The MLC acknowledges the merits of including such information, noting it “recognizes CWR as the de facto industry standard used for registration of claims in musical works, and intends to use CWR as its primary mechanism for the bulk electronic registration of musical works data.” While cautioning that it “continues to believe that overregulation is unnecessary and may be detrimental to the MLC’s ability to adapt its musical works database as necessary to ensure its usefulness in identifying musical works,” it amended its proposed regulatory language to clarify that the database would include “alternative titles of the musical work, and to the extent available to the mechanical licensing collective, the track duration, version title and release date of any sound recordings embodying a particular musical work.”

The Office has issued a notice of proposed rulemaking, the Office has proposed requiring that the MLC report certain data fields in royalty statements provided to copyright owners to the extent such information is “known” to the MLC as a regulatory floor, while encouraging the MLC to report additional information. And the Office has issued a notice of proposed rulemaking regarding the circumstances under which digital music providers must provide these and other fields to the MLC in reports of usage.

6. Performing Rights Organization Affiliation

A few commenters contend that the MLC’s database should include performing rights organization (“PRO”) affiliation, with MIC Coalition for example asserting that “[a]ny data solution must not only encompass mechanical rights, but also provide information regarding performance rights, including PRO affiliation and splits of performance rights.” The MLC points out that its “primary responsibility is to engage in the administration of mechanical rights and to develop and maintain a mechanical rights database,” and that “gathering, maintaining, updating and including . . . performance rights information—which rights it is not permitted to license—would require significant effort which could imperil [its] ability to meet its statutory obligations with respect to mechanical rights licensing and administration by the [license availability date].”

88 See MLC Reply at 33, App. E (agreeing with inclusion of duration, version, and release year of the sound recording, to the extent available to the MLC); Recording Academy Initial at 3 (noting such information would “help distinguish between songs that have been recorded and released under different titles or by different artists multiple times”); RIAA Initial at 6–7 (same); RIAA recommends revising the “sound recording name” field to “sound recording track title,” or in the alternative, “sound recording name/sound recording track title.” Id. at 10–11.

89 Id. at 32.

90 Id. at App. E.

91 Id.


94 Id.

95 Id.

96 Id.

97 Id.


99 Barker Initial at 8 (“Sometimes the official title of a song includes an alternate title, or a primary title followed by a second, parenthetical title.”); MLC Reply at 32 (agreeing with inclusion of alternate titles for musical works).

100 SoundExchange Initial at 9 (noting that the CWR standard contemplates provision of such information).

101 Id. (noting that the CWR standard contemplates provision of such information).

102 Id.; see id. at 15 (“[U]sers of the MLC Database should be able to access information about situations in which there are conflicting claims to a work, including an overlap (i.e., a situation where putative copyright owners have claimed shares that collectively amount to more than 100% of the work), so as to be able to understand the extent of the overlap and the rightsholders whose claims are involved.”). 103 17 U.S.C. 115(d)(3)(K).


105 Id.

106 Id.

107 See RIAA Initial at 8 (“Sometimes the official title of a song includes an alternate title, or a primary title followed by a second, parenthetical title.”); MLC Reply at 32 (agreeing with inclusion of alternate titles for musical works).

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109 MLC Reply at 38.

110 Id. at 32.

111 Id. at App. E.

112 Id.


115 MIC Coalition Initial at 2. See DLC Initial at 20 (suggesting that including PRO affiliation “will ensure that the MLC’s database is fully usable, including as a resource for direct licensing activities); see Barker Initial at 8–9.

116 MLC Reply at 36.

117 Barker Initial at 8 (“[I]t’s difficult to see how including PRO information in the MLC database could work—as the MLC won’t be paying PROs, it’s hard to envision what would incentivize keeping this data accurate and authoritative up to date. Repertoire transparency is important, but it is not the Copyright Office’s job to facilitate MLC’s members’ efforts to bypass Performing Rights Organizations that offer songwriters collective representation.”).
works ownership rights, and these databases are publicly available.” “administration of data with respect to the licensing of public performing rights does not require government intervention.” 118

Because the MMA explicitly restricts the MLC from licensing performance rights, it seems unlikely to be prudent or frugal to require the MLC to expend resources to maintain PRO affiliations for rights it is not permitted to license.119 Having considered these comments, the statutory text, and legislative history, the Office tentatively concludes against requiring the MLC to include PRO affiliation in its database. This conclusion does not inhibit PRO access or use of the database for their own efforts, and explicitly permits bulk access for a fee that does not exceed the MLC’s marginal cost to provide such access; nor does it restrict the MLC from optionally including such information.120

7. Terminations

Title 17 allows, under certain circumstances, authors or their heirs to terminate an agreement that previously granted one or more of the author’s exclusive rights to a third party.121 One commenter suggests that to the extent terminations of musical work grants have occurred, the MLC’s database should include “separate iterations of musical works with their respective copyright owners and other related information, as well as the appropriately matched recording uses for each iteration of the musical work, and to make clear to the public and users of the database the appropriate version eligible for future licenses.” 122 Separately, as addressed in a parallel rulemaking, the MLC has asked that the Office require digital music providers to include server fixation dates for sound recordings, contending that this information will be helpful to its determination whether particular usage of musical works is affected by the termination of grants under this statutory provision.123 The DLC has objected to this request.124

Understanding that termination issues can be complex, the Copyright Office notes that presumably, any requirement to denote whether termination rights are relevant should be conditioned upon information provided to the MLC, and/or otherwise reasonably available to it. The Copyright Office seeks public input on issues that should be considered relating to whether the proposed rule should address the inclusion of termination information in the MLC’s database.

8. Data Provenance

The DLC contends that if the MLC’s database includes third-party data, “it should be labeled as such.” 125 The DLC’s proposed language suggests that for musical work copyright owner information, the MLC’s database should indicate “whether the ownership information was received directly from the copyright owner or from a third party.” 126 SoundExchange agrees, stating that “the MLC Database should identify the submitters of the information in it, because preserving that provenance will allow the MLC and users of the MLC to make judgments about how authoritative the information is.” 127 Others commenters noted that for sound recordings, first-hand data is more likely to be accurate.128 Separately, the Copyright Office is addressing certain sourcing issues with respect to data collection efforts and information provided by digital music providers in a parallel rulemaking proceeding.129

The Office appreciates that issues related to data sourcing, confidence in data quality, accurate copyright ownership information, and agency or licensing arrangements, can be nuanced. The Office tentatively believes that the MLC may be better-suited to explore the best way to promote accuracy and transparency in issues related to data provenance without such regulatory language, including through the policies and practices adopted by its dispute resolution and operations committees, and by establishing digital accounts through which copyright owners can view, verify, or adjust information.

The Office seeks further public input on any issues that should be considered relating to the identification of data sourcing in the MLC’s database, including whether (and how) third-party data should be labeled.

9. Historical Data

Again pointing to the CWR standard, SoundExchange asserts that the MLC database should “maintain and make available historical interested party information so it is possible to know who is entitled to collect payments for shares of a work both currently and at any point in the past.” 130 As noted above, the DLC has also proposed that the MLC database include “information regarding each entity in the chain of copyright owners and their agents for a particular musical work” as well as “relational connections between each of these entities for a particular musical work.” 131 The MLC sought clarity about the DLC’s specific proposal, suggesting “[i]t is unclear whether the DLC . . . is referring to the entire historical chain of title for each musical work. If so, the MLC objects that ‘such information is voluminous, burdensome to provide and maintain, and in this context unnecessary and must not be required.’” 132 The MLC intends, however, to maintain information in its database about “each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities.” 133

The Copyright Office tentatively agrees with the MLC’s approach to focus on current relationships with respect to this rulemaking, but welcomes further public input.134 The Office notes that separately, the MLC must maintain all material records of the operations of the mechanical licensing collective in a secure and reliable manner, and such information will also be subject to audit.135

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118 ASCAP & BMI Reply at 2.
119 17 U.S.C. 115(d)(3)(C)(iii) (limiting administration of voluntary licenses to “only [the] reproduction or distribution rights in musical works for covered activities.”).
120 Id. at 115(d)(3)(E)(v). See Barker Initial at 9.
121 17 U.S.C. 203, 304(c), 304(d).
122 Barker Initial at 4.
123 DLC Reply at 19, 55. See also U.S. Copyright Office, Notice of Proposed Rulemaking, Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment, Dkt. No. 2020–5, published elsewhere in this issue of the Federal Register.
125 Id. at 10.
126 DTC Initial at 20.
128 SoundExchange Initial at 10–11.
129 The American Association of Independent Music (“A2IM”) & RIAA Reply at 2 (asserting MLC should be required to obtain its sound recording data from a single authoritative source); Jessop Initial at 3 (“The MLC should obtain sound recording information from as close to the source as possible. In practice this means from the record label or someone directly or indirectly authorized to manage this information for them.”).
130 SoundExchange Initial at 10.
131 DLC Initial at 20.
132 DLC Reply at 34.
133 Id.
134 The Office does not envision language prohibiting the MLC from providing such historical information.
C. Sound Recording Copyright Owner Information and Disclaimers in MLC Public Database

RIAA, and individual record labels, expressed concern about which information will populate and be displayed to satisfy the statutory requirement to include “sound recording copyright owner” (SRCO) in the MLC’s database. Specifically, RIAA explained that under current industry practice, digital music providers send royalty notices pursuant to information received from record companies or others releasing recordings to DMPs “via a specialized DDEX message known as the ERN (or Electronic Release Notification),” which is “typically populated with information about the party that is entitled to receive royalties (who may or may not be the actual legal copyright owner), because that is the information that is relevant to the business relationships between record labels and DMPs.” RIAA noted that inclusion of this field “creates a potential trap for the unwary.”

The Copyright Office received no comments disputing the labels’ description of industry practice. As the RIAA also requires “sound recording copyright owner” to be reported by DMPs to the MLC in monthly reports of usage, the Office has separately proposed a rule regarding which data the proposed rule should require DMPs to report to the MLC database to satisfy the statutory requirement, including whether to require inclusion of multiple fields to lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.

D. Access to Public Information in the MLC’s Database

As noted above, the statute directs the Copyright Office to “establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [MLC’s] musical works database.” The database must “be made available to members of the public in a searchable, online format, publicly listed as “Party Delivering the Sound Recording to the DMP” and the LabelName, listed as “Releasing Party (if provided).” Finally, since these concerns connect directly to the ERN standard, the Office welcomes any information regarding whether it is likely that the ERN standard may evolve in a relevant manner, and again reiterates its commitment to ensuring appropriate regulatory flexibility.

Relatedly, the Office also notes that it has received persuasive comments requesting that the MLC be required to include a conspicuous disclaimer regarding sound recording copyright ownership information in its database. For example, RIAA suggests that the MLC should be required to “include a clear and conspicuous disclaimer on the home screen of the public database that it does not purport to provide authoritative information regarding sound recording copyright owner information.” A2IM & RIAA, CISAC & BIEM, and SoundExchange agree that the MLC’s database should display such a disclaimer. And the MLC itself has agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording information.

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The MLC must make the database available “in a bulk, machine-readable format, through a widely available software application,” to digital music providers operating under valid notices of license, compliant significant nonblanket licensees, authorized vendors of such digital music providers or significant nonblanket licensees, and the Copyright Office, free of charge, and to “[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.” The legislative history stresses the importance of the MLC’s database and making it available to “the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.” It adds that “[i]ndividual lookups of works shall be free although the collective may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.” And it further states that “there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.”

1. Method of Access

The DLC maintains that the MLC should not be required to provide more than “[b]ulk downloads (either of the entire database, or of some subset thereof) as a file format, once per week per user,” and “[o]nline song-by-song searches to query the database, e.g., through a website.” The DLC also contends that “[i]t would be unreasonable for digital music providers and significant nonblanket licensees to foot the bill for database features that would only benefit entities or individuals who are not paying a fair share of the MLC’s costs,” and that APIs are “not needed by digital music providers and significant nonblanket licensees.” In response, multiple commenters assert that real-time access to the MLC’s database—whether via bulk access or online song-by-song searches—would be crucial for ensuring that the database is up to date and accurate.

2. Marginal Cost

Despite the statute and legislative history stating third parties may be assertion that providing APIs would be financially burdensome, stating that “it is not obvious that there would be a significant cost difference between providing full API access and the diminished access the DLC describes.” SoundExchange also notes that in the designation of the mechanical licensing collection, the Office stated that both applicants intended to develop APIs. At this time, the Office is tentatively disinclined to regulate the precise format in which the MLC provides bulk access to its database (e.g., APIs), so as to provide the MLC flexibility as technology develops in providing database access. The Office notes, however, that Congress clearly envisioned use of the MLC’s database by entities other than digital music providers and significant nonblanket licensees. Moreover, the MLC’s database is meant to serve as an authoritative source of information regarding mechanical work ownership information, and provide support real-time access to the MLC’s database, either via bulk access or online song-by-song searches.

The Office seeks public input on any issues that should be considered relating to access to the MLC’s database, including proposed regulatory language that would facilitate the MLC’s provision of real-time access to the database (bulk and online song-by-song).

152 Id. at 115(d)(3)(E)(v).
153 Id. at 115(d)(3)(E)(v).
157 DLC Initial at 21.
158 Id.
159 DLC Reply at 26.
160 SoundExchange Reply at 4–5, 7 (noting that its Rights Management Department is “devoted to ensuring that our rights management database is always populated with the most current information about who is entitled to be paid for use of the sound recordings in our repertoire database,” and that they “make changes to our rights management database all day every day”); see SoundExchange Initial at 13–14 (“no third party maintaining a local musical work repertoire database will ever be able to obtain and maintain ownership information as current and accurate as the MLC’s. Providing robust API access to the MLC Database will discourage the creation and maintenance of less accurate local alternatives, promoting accurate licensing of and payment for musical works.”).
161 SoundExchange Reply at 9. See also id. at 5 (“Making only last week’s data available to bulk users would also result in a curious situation where members of the public with free access to the MLC Database to search for information on individual works would seem to have access to more current data than commercial users with bulk access, who in some cases would have to pay for such access.”).
162 A2IM & RIAA Reply at 7.
163 RIAA Initial at 11 (“To facilitate efficient business-to-business use of the MLC database, the regulations should require the MLC to offer free API access to registered users of the database who request bulk access.”); SoundExchange Reply at 4–5; FMC Reply at 3 (concurring with SoundExchange’s recommendations about API access, “including the recommendations that API access include unique identifiers, catalog lookup, and fuzzy searching”); Recording Academy Initial at 4 (“ensuring that the database has a user-friendly API and ‘machine-to-machine’ accessibility is important to its practical usability”).
164 MAC Initial at 2.
165 Id. at 3 (citing 84 FR at 32289). In its September 2019 notification of inquiry, the Office noted that “[MLC] stated that it strongly support[s] the adoption of standards, formats, and frameworks that allow information to be easily and accurately shared throughout the industry, and that good systems functioning and architectural practices instruct that components should have proper APIs.” 84 FR at 49972.
166 See also MIC Coalition Initial at 3 (“The opaqueness of the current music marketplace creates uncertainty that disproportionately harms small artists and independent labels, hinders innovation, and stifles competition for music work.”). See also RIAA Initial at 11 (asserting that record labels “anticipate making frequent use of the MLC database”).
167 See 17 U.S.C. 115(d)(3)(E)(v) (granting bulk access to the MLC’s database to “[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity”).
169 See MIC Coalition Initial at 3 (“The mechanical marketplace benefit when current and accurate information about copyright ownership is easily accessible. We believe this transparency is necessary baseline in creating a more sustainable and equitable system, and a good step toward supporting greater fairness in the music marketplace.”).
charged the “marginal cost” of being provided bulk access. A2IM & RIAA express concern about making the MLC’s database available to third parties “unless the fee those third parties are required to pay takes into account the cost for the MLC to acquire that data and all of the costs and hard work that goes into creating, compiling, verifying, deduping, etc. the sound recording data that will reside within the MLC database and the potential opportunity costs to [record labels] of having that data available to third parties via the MLC.” RIAA contends that otherwise third-party businesses “would be able to access that data at a highly subsidized, below-market price.”

The Office defines “marginal cost” to “include not just the cost of creating and maintaining the bulk access, but also the cost to the MLC of acquiring the data, including payment to the data source, for the hard work of aggregating, verifying, deduping and resolving conflicts in the data.”

The Office tentatively declines this request. It is not clear that “marginal cost” is a vague term, and at this point, the Office believes the MLC should be able to determine the best pricing information in light of its operations, based on the statutory and legislative history language.

3. Abuse

The Office does welcome comments regarding proposed regulatory language to deter abusive third-party access to the database. The legislative history states that in cases of block efforts by third parties to bypass the marginal cost recovery for bulk access (i.e., abuse), the MLC “may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.” Both the MLC and DLC propose regulatory language that would provide the MLC discretion to block efforts to bypass the marginal cost recovery. A2IM & RIAA also suggest that the MLC be required to implement technological protection measures (“TPMs”) to reduce the likelihood of third parties “scraping” data without paying any fee. The Office agrees that, in principle, the MLC should at a minimum have such discretion. The Office seeks public input on any issues that should be considered relating to regulatory language concerning the MLC’s ability to block efforts to bypass the marginal cost recovery, particularly how to avoid penalizing legitimate users while providing the MLC flexibility to police abuse, and whether regulatory language should address application of TPMs.

4. Restrictions on Use

CISAC & BIEM ask the Copyright Office to issue regulations defining “strict terms and conditions” for use of data from the MLC’s database by digital music providers and significant nonblanket licensees (and their authorized vendors), “including prohibition for DSPs to use data for purposes other than processing uses and managing licenses and collaborating with the MLC in data collection.” By contrast, the DLC maintains that “licensees should be able use the data they receive from the MLC for any legal purpose.” While the MLC “agrees that there should be some reasonable limitation on the use of the information to ensure that it is not misappropriated for improper purposes” and “intends to include such limitation in its terms of use in the database,” the MLC believes appropriate terms of use should address potential misuse of information from the MLC’s database (rather than regulations).

While the Office agrees that it will be important for the MLC to develop reasonable terms of use to address potential misuse of information in its database and appreciates the role that contractual remedies may play to deter abuse, the MMA directs the Office to issue regulations regarding “usage restrictions,” in addition to usability and interoperability of the database. The Office is mindful of the risk of misuse. For example, bad actors could acquire and misrepresent information, or exploit personally identifiable information (“PII”) that must be publicly available under the statute (e.g., copyright owner of the musical work or share thereof), and the ownership percentage of that owner). At the same time, the Office recognizes that potential regulations and any terms of use issued by the MLC should not be overly broad or impose unnecessary restrictions upon good faith users.

The Office seeks public input on any issues that should be considered relating to restrictions on usage of information in the MLC’s database, including whether regulatory language should address remedies for misuse (and if so, how and why), or otherwise provide a potential regulatory floor for the MLC’s terms of use. The Office invites parties to provide specific proposed regulatory language for the Office to consider and for others to comment upon.


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A2IM & RIAA Reply at 7.

Id.

Id. at 8.

See Conf. Rep. at 7 (“Given the importance of this database, the legislation makes clear that it shall be made available to the Copyright Office and the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.”). See also Music Reports Initial at 5 (“Music Reports notes that the marginal cost of automated daily data delivery protocols is relatively trivial, and calls upon the Office to ensure that such automated delivery be made available upon the first availability of the MLC’s database, and that the fee schedule scrupulously adhere to the ‘marginal cost’ standard.”).


MLC Initial at 25; DLC Reply Add. at A–17.

A2IM & RIAA Reply at 7.

CISAC & BIEM Reply at 7.

DLC Initial at 4.

DLC Initial at 21.