(2) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(1)(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.

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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 MLC, which envisions the MLC regulatory language," but "urging[] the Office to balance this concern for pragmatism and flexiblity against the need to ensure the MLC[’s] role in resolving disputes and oversight as possible to encourage trust"). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed 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?ppp=25690=PSID=COLC-2019-0002&refs=COLC-2019-0002-0001. 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.

The MLC itself has expressed its commitment to transparency, by including transparency as one of its four key principles underpinning its operations on its current website, and in written comments to the Office. 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."23

Further, the MLC specifically directs the Copyright Office to promulgate certain regulations related to the MLC’s creation of a free database to publicly disclose musical 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), (I)(G).
10 H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 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 copyright 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.

"operat[ing] in a transparent and accountable manner");18 and ensuring that its "policies and practices . . . are transparent and accountable."19 Indeed, some Members of Congress noted that a key aspect of the MMA is bringing transparency to the music industry.19

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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,30 which the MLC has committed to doing.31 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.”32 Indeed, the MLC itself recognizes that making its bylaws publicly available “promotes transparency.”33 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,”34 and so some concerns about transparency may be addressed through the statutorily-mandated exercise of this audit provision.35 Fourth, in a separate provision, copyright owners may also audit the MLC to verify the accuracy of royalty payments paid by the MLC.36 Fifth, the MLC must ensure that its policies and practices “are transparent and accountable”;37 the MLC has suggested that it would be more fruitful to allow the MLC room to “fully develop[] its policies and procedures” and “provide them to the Office for review” before considering whether regulation in this area is advisable.38 Sixth, the MLC must “identify a point of contact for publisher inquiries and complaints with timely redress.”39 Seventh, the MLC must “establish an anti-comingling policy for funds” collected and those not collected under section 115.40 Seventh, the MLC must fulfill a statutory mandate to outreach to songwriters and generally “publicize, throughout the music industry” its work and procedures by which copyright owners may claim their accrued royalties.41 Finally, the five-year designation process established by the statute provides another avenue for the Office to periodically review the mechanical licensing collective’s performance.42

In some instances, the Office understands that the MLC has already begun working to communicate to the public regarding its transparency of operations, such as by launching an initial website and participating in various industry conferences.43 The Office presumes these efforts will grow more robust as the license availability date approaches, and anticipates continued discussions with both the MLC and DLC on ways to cooperate on education and outreach. In other cases, the MLC has adopted policies that bear upon issues related to disclosure and governance, including by adopting a conflict of interest policy “for appropriately managing conflicts of interest in accordance with legal requirements and the MLC’s goals of accountability and transparency.”44 The MLC and DLC on ways to cooperate on education and outreach. In other cases, the MLC has adopted policies that bear upon issues related to disclosure and governance, including by adopting a conflict of interest policy “for appropriately managing conflicts of interest in accordance with legal requirements and the MLC’s goals of accountability and transparency.”44 The

30 MLC Reply at 42–43 (“The publication of the MLC’s bylaws is directly addressed by the statute, with which the MLC will of course comply . . ..”).
31 Recording Art at 4.
33 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.”).
34 Id. at 115(d)(3)(D)(ix)(ii).
35 Id. at 115(d)(3)(D)(ix)(ii).
36 Id. at 115(d)(3)(D)(ix)(ii).
37 Id.
38 Id.
39 Id. at 115(d)(3)(D)(ix)(ii).
40 Id. at 115(d)(3)(D)(ix)(ii).
41 Id. at 115(d)(3)(D)(ix)(ii).
42 Id. at 115(d)(3)(D)(ix)(ii).
43 Id. at 115(d)(3)(D)(ix)(ii).
44 Id. at 115(d)(3)(D)(ix)(ii).
MLC advises that it intends to make this policy public.\textsuperscript{45} Finally, some commenters raised questions about board governance, particularly with respect to appointments and succession.\textsuperscript{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.\textsuperscript{47} In addition, the Copyright Office’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.\textsuperscript{48}

\textbf{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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{51}

In response, many commenters emphasized the importance of transparency of the MLC’s operations and its public disclosure, and urged the Office to exercise “expansive”\textsuperscript{53} and “robust”\textsuperscript{54} 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.\textsuperscript{55} 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 start-up 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 welcomed, 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.\textsuperscript{56} The Office encourages interested commenters in connection with this notification of inquiry to

\textsuperscript{45} Id. at 4972.
\textsuperscript{46} Id. at 4973.
\textsuperscript{47} 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 ownership is easily accessible.”); Screen Composers Guild of Canada (“SCCC”) 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&refD=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 Initial at 4, available at https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=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.”).
\textsuperscript{48} SGA Initial at 6 (urging the Register to “exercise the expansive oversight authority granted . . . under the MMA”).
\textsuperscript{49} 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).
\textsuperscript{50} 84 FR at 37,975–76 (May 9, 2019).
\textsuperscript{52} 84 FR 49966, 49973 (Sept. 24, 2019).
\textsuperscript{54} See also Conf. Rep. at 4, 12.
\textsuperscript{55} U.S. Copyright Office, Notice of Proposed Rulemaking, Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator, Dkt. No. 2020–7, published elsewhere in this issue of the Federal Register.
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 receipts and 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 MMA 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 for MLC 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 that also identifies the sound recordings in which the musical works are embodied,69 a function expected to provide transparency across the music industry.70 For musical works that have

59 DLC Initial at 24.
60 Recording Academy Reply at 2 (encouraging the Copyright Office to “make oversight of the MLC a priority, particularly with regard to establishing processes and procedures for board governance”).
61 Lowery Reply at 8 (expressing concern about manner in which the MLC would distribute unclaimed royalties based on market share); Monica Corton Consulting Reply at 3 (same).
62 Lowery Reply at 5 (expressing concern about manner in which the MLC 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 MLC to identify as great a percentage of the proper owners of unmatched royalties and titles as possible”).
64 The MLC, Transparency, https://themlc.com/ focus/categories/transparency (last visited Apr. 10, 2020) (noting that the MLC will “promote transparency” by “[p]roviding an annual report to the public and to the Copyright Office detailing the operation and licensing collective, should disclose financial incentives or benefits received “from any person or entity MLC does business with.”).
66 See also Lowery Reply at 8 (asserting that the MLC, including board members, officers, and key employees, “[n]otwithstanding any other provision of law, must disclose to the Copyright Office,” their “business addresses, home addresses, professional addresses, and financial interests, if any, including reports of income, profits, and losses received from any person or entity MLC does business with”).
67 Id. at 115(d)(3)(C)(ii)(VII). See 84 FR at 32287 (discussing MLC applicants’ proposed approaches to using vendors).
68 See also Lowery Reply at 8 (asserting that the MLC, including board members, officers, and key employees, “[n]otwithstanding any other provision of law, must disclose to the Copyright Office,” their “business addresses, home addresses, professional addresses, and financial interests, if any, including reports of income, profits, and losses received from any person or entity MLC does business with.”).
69 164 Cong. Rec. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Norma Torres) (“Information regarding music owned royalties would be easily accessible through the database created by the Music Modernization Act. This transparency will surely improve the working relationship between creators and music platforms and aid the music industry’s innovation process.”). See also The MLC, Transparency, https://themlc.com/focus/categories/transparency (last visited Apr. 10, 2020) (noting that the MLC will “promote transparency” by “[p]roviding unprecedented access to musical works ownership information through a public database.”).
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 the 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

The statute requires the database to include “such other information” “as the Register of Copyrights may prescribe by regulation.” The Register shall use its judgment 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.”

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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.44 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.”45

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.46

3. Unique Identifiers

As noted, the statute requires that ISRC and ISWC codes, when available, be included in the MLC database.87 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.”88 The legislative history also notes that “the Register may include any standard identifiers . . . used for creators and copyright owners themselves,” such as Interested Parties Information (IPI)90 or International Standard Name Identifier (“ISNI”),91 to the extent reasonably available to the MLC.92 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.”93

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.94 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.”95 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.”96 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.”97 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.98

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.99 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.100 The MLC agrees with this approach.101 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.”102 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

44 MLC Reply at 35.
45 Id. at 35–36.
49 Id.
50 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/unclaimed-royalties/glossary.pdf.
51 SoundExchange Initial at 21; DLC Reply Add. at A–16.
52 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 results in the database to other databases when ISWC is not included in one or the other of the databases.”).49
53 MLC Reply at 33.
54 Id. at 34.
56 Id.
57 DLC Reply Add. at A–16.
58 SoundExchange Initial at 8.
59 Barker Initial at 2.
60 Id. at 3.
61 MLC Reply at 32.
62 SoundExchange Initial at 8–9.

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/unclaimed-royalties/glossary.pdf.

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/unclaimed-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
as an ‘overclaim’) or less than 100% (frequently referred to as an ‘underclaim’).”

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, commentators 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 MLC’s proposal would also require the database to include additional fields “reported to the mechanical licensing collective as may be useful for the identification of musical works that the mechanical licensing collective deems appropriate to publicly disclose.” In a separate concurrent notice of proposed rulemaking, the Office 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.

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.

Here, too, the Office would like to avoid a regulatory approach that discourages the MLC from including additional fields that it determines may be useful to include in the public database. The Office invites further public comment on these issues, including whether a regulatory structure similar to that proposed for the MLC’s provision of data in royalty statements to copyright owners is appropriate regarding information to be made publicly available in the MLC’s database, including what, if any, additional fields should be required as part of a regulatory floor.

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 mechanical rights, performing 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 . . . 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.”

The largest PROs, The American Society of Composers, Authors, and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”), similarly object that because “music performing rights organizations such as BMI and ASCAP all have comprehensive databases on musical


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The largest PROs, The American Society of Composers, Authors, and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”), similarly object that because “music performing rights organizations such as BMI and ASCAP all have comprehensive databases on musical
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. Terminus

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 commented 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.”).
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.
124 DLC Ex Parte Letter Feb. 14, 2020 (“DLC Ex Parte Letter #1”) at 3; DLC Ex Parte Letter #1
125 DLC Initial at 20.
126 DLC Reply Add. 1–15–16.
127 SoundExchange Initial at 10–11.
128 The American Association of Independent Music (“AAIM”) & 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.
G. 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 royalties 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 relationship between record labels and DMPs.”138 In short, information in “the ERN message is not meant to be used to make legal determinations of ownership.”139 RIAA notes the potential for confusion stemming from the SRCO field in the MLC database being populated from the labels’ ERN messages—for both the MLC (i.e., the MLC could “inadvertently misinterpret or misapply SRCO data”), and users of the free, public database (i.e., they could mistakenly assume that the sound recording copyright owner information is authoritative with respect to ownership of the sound recording).140 Separate but related, SoundExchange notes that it “devotes substantial resources” to tracking changes in sound recording rights ownership, suggesting that inclusion of this field creates a “potential trap for the unwary.”141 Those concerns were echoed in ex parte meetings with individual record labels. Universal Music Group (“UMG”) explained that “actual copyright ownership is irrelevant” in the digital supply chain, as “DMPs only need to know who to pay and, maybe, who to call,” whereas record companies separately track copyright ownership information.142 UMG suggested that the MLC’s inclusion of a field labeled “sound recording copyright owner” might confuse relations between the actual copyright owner and the record label conveying information to the DMP, where the label is functioning as a non-copyright owner distributor through a licensing or press and distribution (P&D) arrangement.143 Sony Music (“Sony”) expressed similar concerns, suggesting that the Office’s regulations specify how the “sound recording copyright owner” line in the MLC’s database should be labeled or defined to minimize confusion.144 Specifically, Sony suggested that three fields—DDEX Party Identifier (DPID), LabelName, and PLine—may provide indicia relevant to determining sound recording copyright ownership, noting that “DIY artists and aggregators serving that community” may be most likely to populate the DPID field.145 In reply comments, A2IM & RIAA also identified these same three fields.146

The Copyright Office received no comments disputing the labels’ description of industry practice. As the MLC 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 information should be included in such reports to satisfy this requirement. That rule proposes that DMPs can satisfy this obligation by reporting information in each of the fields identified by the labels: DDEX Party Identifier (DPID), LabelName, and PLine.147 The Office seeks public comment regarding which data the proposed rule should require including in 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.148 The Office also welcomes comments related to the labelling of such fields. For example, contending that in many cases, the PLine name an individual who may wish not to be listed in a public database, A2IM & RIAA suggest that the MLC database include the DPID name, publicly listed as “Party Delivering the Sound Recording to the DMP” and the LabelName, listed as “Releasing Party (if provided).”149 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.”145 A2IM & RIAA, CISAC & BIEM, and SoundExchange agree that the MLC’s database should display such a disclaimer.149 And the MLC itself has agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording information.150 Similarly, given the current record regarding these issues, the Office is not presently inclined to require that the MLC include information relating to sound recording copyright owner with the same prominence as other information related to matched and unmatched musical works. The Office invites comment on these issues.

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.”151 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).”149 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.”145 A2IM & RIAA, CISAC & BIEM, and SoundExchange agree that the MLC’s database should display such a disclaimer.149 And the MLC itself has agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording information.150 Similarly, given the current record regarding these issues, the Office is not presently inclined to require that the MLC include information relating to sound recording copyright owner with the same prominence as other information related to matched and unmatched musical works. The Office invites comment on these issues.

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.”151 The database must “be made available to members of the public in a searchable, online format,
free of charge.” The MLC must make the data 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) in 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—not merely a weekly file—is necessary to meet the goals of the statute. For example, SoundExchange replied that “[w]eekly downloads of a copy of the database are distinctly different and less useful than real-time access to current data,” noting that the MLC will be making constant updates and thus a weekly download would quickly become out of date. SoundExchange asserts that failure to provide real-time access “could unfairly distort competition for musical work license administration services by giving the MLC and its vendors preferred access to current data,” and that the Office should “maintain a level playing field in the market for musical work license administration services.” A2IM & RIAA also note that it would be “damaging to the entire music ecosystem for third parties to utilize stale data, especially if they use it in connection with some sort of public-facing, data-related business or to drive licensing or payment decisions.”

Further, RIAA, SoundExchange, FMC, MAC, and the Recording Academy all stress the importance of real-time access to the MLC’s database through APIs. MAC asserts that having API access and ensuring interoperability “with other systems is the best way to make certain the MLC database becomes part of the overall music licensing ecosystem.”

SoundExchange challenges the DLC’s 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 musical work ownership information, and provide 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).

2. Marginal Cost

Despite the statute and legislative history stating third parties may be

152 Id. at 115(d)(3)(E)(v).
153 Id. at 115(d)(3)(E)(v).
157 DLC Initial at 21.
158 Id. at 26.
159 DLC Reply at 26.
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.” 170 RIAA contends that otherwise third-party businesses “would be able to access that data at a highly subsidized, below-market price.” 171 RIAA asks the Office to define “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.” 172

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.173

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 bulk 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.” 174 Both the MLC and DLC propose regulatory language that would provide the MLC discretion to block efforts to bypass the marginal cost recovery. 175 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. 176 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.” 177 By contrast, the DLC maintains that “licensees should be able use the data they receive from the MLC for any legal purpose.” 178 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). 179

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. 180 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. 181

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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170 A2IM & RIAA Reply at 7.
171 Id.
172 Id. at 8.
173 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.”).
175 MLC Initial at 25; DLC Reply Add. at A–17.
176 A2IM & RIAA Reply at 7.
177 CISAC & BIEM Reply at 7.
178 DLC Initial at 4.
179 MLC Initial at 21.
181 See Conf. Rep. at 6 (“Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on . . . ”).