Accountability Office so this rule may be reviewed.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order. This final rule will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.39

List of Subjects in 12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed above, the Board amends 12 CFR part 701 as follows:

PART 701—Organization and Operations of Federal Credit Unions

1. The authority citation for part 701 continues to read as follows:


2. In § 701.6, revise paragraphs (a) and (b) to read as follows:

§ 701.6 Fees paid by Federal credit unions.

(a) Basis for assessment. Each calendar year, or as otherwise directed by the NCUA Board, each Federal credit union shall pay an operating fee to the NCUA for the current fiscal year

(b) Coverage. The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year in accordance with paragraph (a) of this section, except as otherwise provided by this paragraph (b).

1. New charters. A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.

2. Conversions. (i) In the first calendar year following conversion:

(A) A newly chartered Federal credit union that converts to a Federal credit union charter must pay an operating fee based on the average assets reported in the year of conversion on NCUA Forms 5300 or 5310 from the four quarters immediately preceding the time the Board approves the agency’s budget in the year of conversion.

(B) A Federal credit union converting to a different charter will not receive a refund of any operating fees paid to the NCUA.

3. Mergers. (i) In the first calendar year following merger:

(A) A continuing Federal credit union that has merged with one or more federally insured credit unions must pay an operating fee based on the average combined total assets of the Federal credit union and any merged federally insured credit unions as reported on NCUA Forms 5300 or 5310 in the four quarters immediately preceding the time the Board approves the agency’s budget in the merger year.

(B) For purposes of this paragraph (b)(3), a purchase and assumption transaction where the continuing Federal credit union purchases all or essentially all of the assets of another depository institution shall be deemed a merger.

(ii) A Federal credit union that merges with a Federal or state-chartered credit union, or an entity not insured by the NCUA, will not receive a refund of any operating fee paid to the NCUA.

4. Liquidations. A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.

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by email at ochau@copyright.gov. Each can be contacted by telephone by calling (202) 707–8350.

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.

It does so by switching from a song-by-song licensing system to a blanket licensing regime that becomes available on January 1, 2021 (the “license availability date”), and is administered by a mechanical licensing collective (“MLC”) designated by the Copyright Office (“Office”). Among other things, the MLC is responsible for “[c]ollect[ing] and distribut[ing] royalties” for covered activities.

It also must “maintain the musical works database and other information relevant to the administration of licensing activities under [section 115].”

A. Regulatory Authority Granted to the Office

The MMA enumerates several regulations that the Office is specifically directed to promulgate to govern the new blanket licensing regime, and Congress invested the Office with “broad regulatory authority” to “conduct such proceedings and adopt such regulations as may be necessary or appropriate.” The MMA specifically directs the Office to promulgate regulations related to the MLC’s creation of a database to publicly disclose musical work ownership information and identify the sound recordings in which the musical works are embodied.

As discussed more below, the statute requires the 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 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,” and its contents must also be made available “in a bulk, machine-readable format, through a widely available software application,” to certain parties, including blanket licensees and the 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.”

In addition, the legislative history contemplates that the Office will “thoroughly review[]” policies and procedures established by the MLC and its three committees, which the MLC is statutorily bound to ensure are “transparent and accountable,” 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.”

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.”

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.” Accordingly, in designating the MLC as the entity to administer the blanket license, the Office stated that it “expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,” and that “[t]he Register intends to exercise her oversight role as it pertains to matters of governance.”

Finally, as detailed in the Office’s prior notifications and notice of proposed rulemaking, while the MMA envisions the Office reasonably and prudently exercising regulatory authority to facilitate appropriate transparency of the collective and the public musical works database, the statutory language as well as the collective’s structure separately include elements to promote disclosure absent additional regulation.

B. Rulemaking Background

Against that backdrop, on September 24, 2019, the Office issued a notification of inquiry (“September NOI”) seeking public input on a variety of aspects related to implementation of title I of the MMA, including issues regarding information to be included in the public musical works database (e.g., what additional categories of information might be appropriate to include by regulation), as well as the usability, interoperability, and usage restrictions of the database (e.g., technical or other specific language that might be helpful to consider in promulgating 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). In addition, the September NOI sought public comment on any issues that

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3. As permitted under the MMA, the Office designated a digital licensee coordinator (“DLC") to represent licensees in proceedings before the Copyright Royalty Judges (“CRJs”) and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(3)(B); 84 FR 32274 (July 8, 2019); see also 17 U.S.C. 115(d)(3)(D)(ii)(IV), (d)(5)(C).
5. Id. at 115(d)(3)(C)(iv).
8. See id. at 115(d)(3)(E), (o)(20).
9. Id. at 115(d)(3)(E)(ii), (iii).
10. Id. at 115(d)(3)(E)(ii)(V), (iii)(II).
11. Id. at 115(d)(3)(E)(v).
12. Id.
13. H.R. Rep. No. 115–651, at 5–6; 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further recognizes that the Office’s review will be important because the MLC must maintain 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.
18. 84 FR at 32280.
19. See 85 FR 22568, 22570–71 (Apr. 22, 2020) (detailing various ways the statute promotes transparency of the mechanical licensing collective, such as by requiring the collective to publish an annual report, make its bylaws publicly available and its policies and practices “transparent and accountable,” identify a point of contact for publisher inquiries and complaints with timely redress, establish an anti-conmilling policy for funds collected and those not collected under section 115, and submit to a public audit every five years; the statute also permits copyright owners to audit the collective to verify the accuracy of royalty payments, and establishes a five-year designation process for the Office to periodically review the collective’s performance).
20. 84 FR 49966, 49972 (Sept. 24, 2019).
should be considered relating to the
general oversight of the MLC.21

In response, many commentators
emphasized the importance of
transparency of the public database and
the MLC’s operations, and urged the
Office to exercise expansive and robust
oversight.22 Given these comments, on
April 22, 2020, the Office issued a
second notification of inquiry,23 and on
September 17, 2020, the Office issued a
notice of proposed rulemaking
(“NPRM”),24 both soliciting further
comment on these issues. In response to
the NPRM, the comments overall were
positive about the proposed rule,
expressing appreciation for the Office’s
responsiveness to stakeholder
comments.25

Having reviewed and considered all
relevant comments received in response
to both notifications of inquiry and
the NPRM, and having engaged in
transparent ex parte communications with
commenters, the Office is issuing
an interim rule regarding the categories
of information to be included in the
public musical works database, as well as
the usability, interoperability, and
usage restrictions of the database.

The Office is also issuing interim regulations
related to ensuring appropriate
transparency of the mechanical licensing
collective itself. Except as otherwise
discussed below, the proposed rule is being adopted for the
reasons discussed in the NPRM. The
Office has determined that it is prudent
to promulgate this rule on an interim
basis so that it retains some flexibility
for responding to unforeseen
complications once the MLC launches
the musical works database.26 In doing
so, the Office emphasizes that adoption on an interim basis is not an open-
ended invitation to revisit settled
provisions or rehash arguments, but
rather is intended to allow necessary
modifications to be made in response to
new evidence or unforeseen issues, or
where something is otherwise not
functioning as intended.

The interim rule is intended to grant
the MLC flexibility in various ways
instead of adopting requirements that
may prove overly prescriptive as the
MLC administers the public database.

For example, and as discussed below,
the interim rule grants the MLC
flexibility in the following ways:

- To label fields in the public
database, as long as the labeling takes
into account industry practice and
reduces the likelihood of user
confusion.

- To include non-confidential
information in the public database that
is not specifically identified by the
statute but the MLC finds useful,
including information regarding
terminations, performing rights
organization (“PRO”) affiliation, and
DDEX Party Identifier (D PID).27

- To allow songwriters or their
representatives, to have songwriter
information listed anonymously or
pseudonymously.

- To select the most appropriate
method for archiving and maintaining
historical data to track ownership and
other information database.

- To select the method for displaying
data provenance information in the
public database.

- To determine the precise disclaimer
language for alerting users that the
database is not an authoritative source
for sound recording information.

- To develop reasonable terms of use
for the public database, including
restrictions on use.

- To block third parties from bulk
access to the public database based on
their attempts to bypass marginal cost
recovery or other unlawful activity with
respect to the database.

- To determine the initial format in
which the MLC provides bulk access to
the public database, with a six-month
extension to implement bulk access
through application programming
interfaces (“APIs”).

- To determine how to represent
processing and distribution times for
royalties disclosed in the MLC’s annual
report.

II. Interim Rule

A. Ownership of Data in the Public
Musical Works Database

The MLC must establish and maintain
a free-of-charge public database of
musical work ownership information that
also identifies the sound recordings in
which the musical works are
embodied,28 a function expected to
provide transparency across the music
industry.29 The Office appreciates that
the MLC “is working on launching the
public search window on the website
that will allow members of the public to
search the musical works database in
January [2021],” and that the MLC
“anticipates launching the bulk data
program to members of the public in
January”30 (discussed more below).

As noted in the NPRM, the statute and
legislative history emphasize that the
database is meant to benefit the music
industry overall and is not “owned” by
n
the collective itself.31 The MLC acknowledges this, stating that “the data in the public MLC musical works database is not owned by the MLC or its vendor,” and that “data in this database will be accessible to the public at no cost, and bulk machine-readable copies of the data in the database will be available to the public, either for free or at marginal cost, pursuant to the MMA.”32 The Alliance for Recorded Music (“ARM”), Recording Academy, and Songwriters Guild of America (“SGA”) & Society of Composers & Lyricists (“SCL”)33 argued the Office for addressing the issue of data ownership, with ARM “encourag[ing] the Office to make this point explicit in the regulations.”34 In light of these comments, and the statute and legislative history, the interim rule confirms that data in the public musical works database is not owned by the mechanical licensing collective or any of its employees, agents, consultants, vendors, or independent contractors.

B. Categories of Information in the Public Musical Works Database

The statute requires the MLC to include various types of information in the public musical works database. For musical works that have been matched (i.e., the copyright owner of such work (or share thereof) has been identified and located), the statute requires the public 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 work is embodied, including the name of the sound recording, featured artist,35 and the recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.36

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.37

In other words, the statute requires the database to include varying degrees of information regarding the musical work copyright owner (depending on whether the work is matched), for both matched and unmatched works, identifying information for sound recordings in which the work is embodied (i.e., 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). For both matched and unmatched works, the Register of Copyrights may prescribe inclusion of additional fields by regulation.38

In considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office focused on fields that the record indicates would advance the goal of the public database: Reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed under the section 115 statutory license.39 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.40 Recognizing that a robust musical works database may contain many fields of information, the interim rule establishes a floor of required information that users can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.41 Stakeholder comments regarding the types of information to include (or exclude) are discussed by category below.

33 ARM NPRM Comment 1–2; see Recording Academy NPRM Comment at 2 (“The Office states unambiguously that ‘the statute and legislative history emphatically hold that the database . . . is not ‘owned’ by the collective itself.’ This principle is affirmed by the MLC . . . . The Academy appreciates that this issue is addressed in a clear, straightforward manner and included in the record to assure any concerns to the contrary.”); SGA & SCL NPRM Comment at 5 (“SGA and SCL were gratified by the USCO’s clear statement that MLC and vendor does not own data).
1. Songwriter or Composer

Comments—including the MLC—are overwhelmingly agreed that the database should include songwriter and composer information, and so the interim rule requires the MLC to accept such direction from the MLC. The Office encourages the MLC to grant any subsequent requests by a copyright owner or administrator to change a songwriter name to a pseudonym.

2. Studio Producer

The statute requires the public database to include “producer” to the extent reasonably available to the MLC, so does the interim rule. Initially, there appeared to be stakeholder disagreement about the meaning of the term “producer,” which has since been resolved to clarify that it refers to the studio producer. Because the term “producer” relates not only to the public database, but also to information provided by digital music providers in reports of usage, the Office defined “producer” in its interim rule concerning reports of usage, notices of license, and data collection efforts, among other things, to define “producer” to mean studio producer throughout its section 115 regulations.

3. Unique Identifiers

The statute requires the MLC to include ISRC and ISWC codes, when reasonably available. The Office has included in the interim rule requirements for standardized metadata such as ISRC and ISWC codes, as is a major step forward in reducing the number of unmatched works. The proposed rule required the public database to include the Interested Parties Information (“IPI”) and/or any other adequate identifier for identifying a unique individual or entity.

MLC April NOI Comment at 9 (agreeing with inclusion of songwriter information for musical works); MLC Reply September NOI Comment at 32 (same).

See SGA Initial September NOI Comment at 2; The International Confederation of Societies of Authors and Composers (“CISAC”) & the International Organisation representing Mechanical Rights (“MLC”) (urging Office to remove the term “songwriter” to include both songwriters and composers, 17 U.S.C. 115(e)[32]. To reduce the likelihood of confusion, the MLC may want to consider labeling this field “Songwriter or Composer” in the public database.

SGA & SCL NPRM Comment at 2–3.


For example, the MLC contends that “[i]f the copyright owner or administrator requests that the writer be identified as ‘anonymous’ or by a pseudonym, it can do so when it submits the musical work information to the MLC,” and that the MLC “will consider subsequent requests by an owner or administrator to change the name to ‘anonymous’ or to a pseudonym.” The MLC contends that the regulations should not “make it mandatory for the MLC to change songwriter names in the musical works database at the request of any particular party, because such may not always be appropriate,” and that the MLC “is also responsible for maintaining an accurate musical works database, and must be afforded the ability to fulfill that function.”

Having carefully considered this issue, the Office has included in the interim rule adjusted language ensuring that the MLC develops and makes publicly available a policy on how it will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously. The Office encourages the MLC to grant any subsequent requests by a copyright owner or administrator to change a songwriter name to “anonymous” or to a pseudonym.
International Standard Name Identifier ("ISNI") for each songwriter, publisher, and musical work copyright owner, as well as the Universal Product Code ("UPC"), to the extent reasonably available to the MLC. As proposed, the public database must also include the MLC’s standard identifier for the musical work, and to the extent reasonably available to the MLC, unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee. The Office sought public comment on whether IPIs and/or ISNIs for foreign collective management organizations ("CMOs") should be required to be listed separately.

In response to the proposed rule, commenters expressed continued support for including IPIs, ISNIs, and UPC, which the MLC has agreed to include. The interim rule thus adopts this aspect of the proposed rule without modification. SGA & SCL “support the comments of CISAC and BIEM . . . as to the listing of IPIs and ISNIs for foreign collective management organizations.” As discussed more below, the Office declines to require the MLC to separately include IPIs and ISNIs for foreign CMOs in the database at this time, apart from where they may otherwise already be included as a relevant musical work copyright owner.

4. Information Related to Ownership and Control of Musical Works

By statute, the database must include information regarding 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.

Although the MMA does not reference 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—a number of commenters have urged inclusion of this information in the public musical works database.

As one commenter suggested, because “a copyright owner’s ownership percentage may differ from that same owner’s ‘control’ percentage,” the public database should include separate fields for “control” versus “ownership” percentage. The MLC agreed, stating that “the database should include information identifying the administrators or authorized entities who license the relevant musical work and/or collect royalties for such work on behalf of the copyright owner.”

In addition, with respect to specific ownership percentages, which are required by statute to be made publicly available, the MLC expressed its intention to mark overclaims (i.e., shares totaling more than 100%) as such and show the percentages and total of all shares claimed so that overclaims and underclaims (i.e., shares totaling less than 100%) will be transparent.

Relatedly, CISAC & BIEM raised concerns about needing “to clarify the concept of ‘copyright owner,’” as “foreign collective management organizations (CMOs) . . . are also considered copyright owners or exclusively mandated organizations of the musical works administered by these entities,” and thus “CMOs represented by CISAC and BIEM should be able to register in the MLC database the claim percentages they represent.” The MLC responded that it will “engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators,” and that it “intends to operate on a non-discriminatory basis, and all natural and legal persons or entities of any nationality are welcome to register their claims to works with the MLC.”

The NPRM noted that “[w]hile the MMA does not reference foreign musical works specifically, nothing in the statute indicates that foreign copyright owners should be treated differently from U.S. copyright owners under the blanket licensing regime, or prevents the MLC from seeking or including data from foreign CMOs in building the public database.” The Office also stated that “[w]here copyright on public comments, the Office concluded that to the extent reasonably available to the MLC, it would 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, and that music publishing administrator and control information would be valuable additions. Accordingly, the proposed rule required the public database to include administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for such musical work (or share thereof) in the United States. It would not prevent the MLC from including additional information with respect to foreign CMOs.

In response, CISAC & BIEM again expressed “the need to have CMOs clearly recognized as ‘copyright
owners,’” explaining that “outside the U.S., the ‘copyright ownership’ of the work is attributed to the CMOs managing the mechanical rights . . .” 82 CISAC & BIEM also contended that there is no “business need to include the creator percentage shares in the musical works” in the public database (as opposed to copyright owner share(s), which is required by the statute). “as this information is not required to license or distribute musical works, and constitutes particularly sensitive and confidential financial and business information for creators and their representatives.” 83 SONA emphasized the importance of the Office’s statement that “there is no indication that foreign copyright owners should have different treatment under the blanket licensing regime.” 84 For its part, the MLC has “repeatedly maintained that it will engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators,” and that “foreign CMOs should be treated no differently in the database from other mechanical rights administrators.” 85 The MLC also stated that if a foreign CMO “is an owner or administrator of US copyright rights, it will be treated as such, and in a non-discriminatory manner as compared to other US copyright owners or administrators.” 86

Having considered these comments, the Office reaffirms the general requirement that the database 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, irrespective of whether those persons or entities are located outside the United States. The interim rule thus adopts this aspect of the proposed rule without modification. CISAC & BIEM’s concerns about the recognition of copyright ownership by foreign CMOs, the interim rule references the statutory definitions of “copyright” and states that a copyright owner includes entities, including foreign CMOs, to which “copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.” 87 Where a foreign CMO is the copyright owner of the musical work under U.S. law, the database should identify the foreign CMO as the copyright owner, along with its percentage share. 88 The database should take a parallel approach with respect to administration rights. Depending upon the specific arrangements in place, this may mean that the database will need to display information related to both the foreign CMO as well as a U.S. sub-publisher or administrator (along with percentage shares). 89 And while the songwriter or composer of the same musical work must, by regulation, be identified in the database as the songwriter or composer (as discussed above), if he or she is not the copyright owner due to assignment of the copyright to a foreign CMO, he or she would not have ownership shares to display in the database. To the extent that sub-publishers own or control foreign musical works in the U.S. and foreign CMOs do not (i.e., the foreign CMOs do not have a U.S. right of ownership or administration), the Office concludes that the mechanical licensing collective should not be required to include information about such foreign CMOs in the database. The Office recognizes that including foreign CMO information even when the CMOs are not copyright owners or administrators in the U.S. may be desired by certain commenters, but the Office is reluctant to require the MLC to include such information at this time, given the MLC’s indication that it needs to focus on more core tasks. As noted above, in considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office focused on fields that the record indicates would advance the goal of the public database: Reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed under the section 115 statutory license. Should confusion arise after the musical works database becomes publicly available, the Office is willing to consider whether adjustment to the interim rule is warranted.

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

Given the general consensus of comments, the interim rule largely adopts the proposed rule without modification, which requires the public database to include the following fields, to the extent reasonably available to the MLC: Alternate titles for musical works, opus and catalog numbers of classical compositions, and track duration, version, and release date of sound recordings. 90 It also incorporates the statutory requirements to include, to the extent reasonably available to the mechanical licensing collective, other non-confidential information commonly used to assist in associating sound recordings with musical works (for matched musical works), and for unmatched musical works, other non-confidential information commonly used to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works. 92 The MLC notes that “[o]pus and catalog numbers for classical compositions and UPC have now been added to the DDEX format, so the MLC will provide that information

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82 CISAC & BIEM NPRM Comment at 1–2.
83 Id. at 2 (emphasis added).
84 SONA NPRM Comment at 6 (“When contemplating rules and procedures to implement a database intended to show the public information on the ownership of a musical work, it is important that the development of the database conceive that the data it incorporates and users that rely on that data are not all of U.S. origin.”).
85 MLC NPRM Comment at 3 (citation omitted).
86 MLC Ex Parte Letter #11 at 4.
87 17 U.S.C. 101. SGA maintains that “[m]any songwriters (including composers) and their heirs have carefully opted to retain ownership of the copyrights in their musical compositions, and to assign only limited administration or co-administration rights to third party music publishing entities,” and that “any songwriter or heir who retains copyright ownership in her or his portion of a work [should be able to] serve notice on the MLC at any time directing that she or he is to be listed as the copyright owner in the database with respect to that portion.” SGA NPRM Comment at 4. If a songwriter or a songwriter’s heir is the copyright owner of a musical work, the public database should identify the songwriter or heir as such, to the extent such information is available to the mechanical licensing collective.
89 See CISAC & BIEM September NOI Initial Comment at 3. In the case of GEMA, when the MLC adopts the proposed rule without modification, the database will need to display the percentage share. CISAC & BIEM et al. Ex Parte Letter Oct. 27, 2020 at 2 (noting “the existence of certain limitations in certain cases, that prevent sub-publishers from collecting 100% of mechanical (e.g. 25% limitation in the case of GEMA works”).
90 The rule uses the term “playing time.” See 37 CFR 210.271(e)(1)(i)(D).
91 85 FR at 58188–89; see Recording Academy NPRM Comment at 2; SONA NPRM Comment at 7; ARM April NOI Comment at 3; MLC Reply September NOI Comment at 6; and SGA NPRM Comment at 4. ARM April NOI Comment at 10; Recording Academy Initial September NOI Comment at 3; Recording Academy April NOI Comment at 3; RIAA Initial September NOI Comment at 6–7; SONA April NOI Comment at 6; SoundExchange Initial September NOI Comment at 7. Because UPC numbers are “product-level” identifiers and sound recordings can thus have multiple UPC numbers (i.e., one for each product on which the sound recording appears), ARM and SoundExchange ask the MLC to be careful about conveying the association between the UPC number displayed in the database and the track at issue to reduce confusion. ARM NPRM Comment at 2; SoundExchange NPRM Comment at 5.

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to the extent it is reasonably available to the MLC.”

ARM and SoundExchange seek clarity regarding the meaning of “release date.” ARM maintains that because “it is not uncommon for a given sound recording to be released on more than one product, each with its own release date,” “the release date included in the database must reflect the actual, not the intended, release date,” and “regulations should prohibit the MLC from publicly displaying any data about a sound recording prior to its actual release date.” The Office agrees that “release date” should not be an intended release date; rather, it should reflect the date on which the recording was first released. The Office encourages the MLC to include an explanation of release date in its glossary.

Finally, the MLC contends that the phrase “other non-confidential information commonly used to assist in associating sound recordings with musical works” is vague, and suggests changing it to “other non-confidential information that the MLC reasonably believes would be useful to assist in associating sound recordings with musical works.” After carefully considering the statute, legislative history, and comments, the Office agrees that the MLC should have some flexibility to include additional information that may be helpful for matching purposes, but is also mindful that the phrase proposed by the NPRM was taken directly from the statute. Accordingly, the Office has adjusted the interim rule to add the phrase “reasonably believes, based on common usage” for consistency with the statute (i.e., the MLC is required to include, to the extent reasonably available to it, other non-confidential information that it reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works).

6. Performing Rights Organization Affiliation

In response to the September NOI, a few commenters maintained that the public database should include PRO affiliation. By contrast, the MLC and FMC raised concerns about including and maintaining PRO affiliation in the public database. The largest PROs, the American Society of Composers, Authors, and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”), also objected, stating 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.”

After evaluating these comments, in the April NOI the Office tentatively concluded against requiring PRO affiliation in the public database, noting that “[b]ecause 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.” Similarly, the Office declined to require the inclusion of PRO affiliation in the proposed rule.

In response to the NPRM, the DLC asked the Office to consider and include PRO affiliation in the public database. The DLC contends that PRO affiliation may aid matching in some instances, giving the example of songwriters affiliated with ASCAP being able to “target their searches of the MLC’s database for works that the MLC has affiliated with ASCAP,” and “more readily confirm that the PRO and MLC databases contain consistent information regarding information such as share splits and unique identifiers (i.e., “mark[ing] the MLC database a useful cross-check for PRO data”).

Initial September NOI Comment at 2; Barker Initial September NOI Comment at 8–9. See MLC Reply September NOI Comment at 36 (pointing 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, maintain[ing], update[ing] and includ[ing] . . . 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];” FMC Reply September NOI Comment at 3. ASCAP & BMI Reply September NOI Comment at 2.

85 FR at 22576; see 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”).

DLC NPRM Comment at 3; DLC Ex Parte Letter Dec. 11, 2020 (“DLC Ex Parte Letter #8”) at 3–4. DLC Ex Parte Letter #8 at 4. The DLC also states that “BMI has taken the position that it is not barred from licensing mechanical rights in addition

The DLC asks that the MLC, “not throw away valuable musical works metadata,” and states it “would not be opposed to an accommodation such as a six-month transition period for this aspect of the database.” MAC similarly requests inclusion of PRO affiliation. By contrast, CISAC & BEIM, FMC, Recording Academy, and SGA & SCL agree it should not be included, with Recording Academy stating that “information related to public performance rights goes beyond the scope of the MMA, which is focused on mechanical rights.” For its part, the MLC contends that it “should be afforded the opportunity to focus on its main priority of a robust and fulsome mechanical rights database,” and not include PRO affiliation, but that “[i]f, at some time in the future, the MLC has the capacity and resources to also incorporate performance rights information, it may undertake this task . . .”

Having considered these comments, the statutory text, and legislative history, the Office concludes that the mechanical licensing collective should not be required to include PRO affiliation in the public database at this time. The Office recognizes that PRO affiliation is desired by certain commenters, particularly licensees, for transparency purposes, and that the record contains some limited suggestions that it could be a useful data point in the MLC’s core project of matching works under the mechanical license. Without further information, the Office is reluctant to require the MLC to include such information, given the statutory prohibition against administering performance licenses and the MLC’s suggestion that it needs to focus on more core tasks. In addition, in a related rulemaking, the Office declined to require that musical work copyright owners provide information related to PRO affiliation in connection with the statutory obligation to undertake commercially reasonably efforts to deliver sound recording

to public performance rights, and ASCAP has sought an amendment to its consent decree permitting it to engage in such licensing,” and that “[i]f the PROs begin to administer mechanical rights in the United States, then including information about mechanical rights licensing in the MLC’s database will be especially important.” Id.

MAC NPRM Comment at 4.

Recording Academy NPRM Comment at 3; CISAC & BEIM April NOI Comment at 3; FMC April NOI Comment at 2; S&G SCL NPRM Comment at 3–4; see also SONA NPRM Comment at 7 (accepting Office’s decision not to compel PRO affiliation).

MLC April NOI Comment at 10.
information to the MLC.\textsuperscript{110} Given that the MLC intends to source musical work information from copyright owners or administrators, requiring the MLC to “pass through” PRO affiliation from DMPs may potentially be confusing as to the source of such information or result in incorrect or conflicting information. After the MLC has been up and running, the Office is willing to consider whether modifications to the interim rule prove necessary on this subject. In the meantime, as previously noted by the Office, not requiring the MLC to include PRO affiliation does not inhibit the MLC from optionally including such information.\textsuperscript{111} Should the MLC decide to include PRO affiliation in the database and source such information from DMPs’ reports of usage, the Office encourages the MLC to include an explanation of PRO affiliation and the sourcing of such information in its glossary.

7. Historical Data
In response to the September NOI and April NOI, multiple commenters asserted that the public database should maintain and make historical ownership information available.\textsuperscript{112} For its part, the MLC stated its intention to “maintain information 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,” and to “maintain at regular intervals historical records of the information contained in the database.”\textsuperscript{113} The MLC confirmed that it “will maintain an archive of data provided to it after the license availability date (‘LAD’) and that has subsequently been updated or revised (e.g., where there is a post-LAD change in ownership of a share of a musical work), and the MLC will make this historic information available to the public.”\textsuperscript{114} The MLC contends that it “should be permitted to determine, in consultation with its vendors, the best method for maintaining and archiving historical data to track ownership and other information changes in its database.”\textsuperscript{115} The proposed rule adopted the MLC’s request for flexibility as to the most appropriate method for archiving and maintaining historical data to track ownership and other information changes in the database, stating that the MLC shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time.\textsuperscript{116} No commenters objected to this aspect of the proposed rule. The Office continues to believe that granting the MLC discretion in how to display such historical information is appropriate, particularly given the complexity of ownership information for sound recordings (discussed below).

Accordingly, the interim rule adopts this aspect of the proposed rule without modification. As previously noted by the Office, 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.\textsuperscript{117} CISAC & BIEM did seek clarity on whether the database will include historical information for both musical works and sound recordings.\textsuperscript{118} The Office confirms that the interim rule broadly covers information changes in the database, which covers information relating to both musical works and sound recordings.

8. Terminations
Title 17 allows authors or their heirs, under certain circumstances, to terminate an agreement that previously granted one or more of the author’s exclusive rights to a third party.\textsuperscript{119} In response to the September NOI, one commenter suggested that to the extent terminations of musical work grants have occurred, the public 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.”\textsuperscript{120} Separately, as addressed in a parallel rulemaking, the MLC 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.\textsuperscript{121} The DLC objected to this request.\textsuperscript{122}

In the April NOI, the Office sought public input on issues that should be considered relating to whether termination information should be included in the public database.\textsuperscript{123} The DLC, SGA & SCL, and SONA support including information concerning the termination of grants of rights by copyright creators in the public database.\textsuperscript{124} By contrast, the MLC contended that it “should not be required to include in the public database information regarding statutory termination of musical works per se.”\textsuperscript{125} The Recording Academy asked the Office to “set aside any issue related to termination rights and the MLC until it conducts a full and thorough examination of the implications . . . for songwriter and other authors, including an opportunity for public comment.”\textsuperscript{126}

The proposed rule did not require the mechanical licensing collective to include termination information in the public database, an approach that is adopted by the interim rule.\textsuperscript{127} While in response to the NPRM, SGA & SCL reiterate their viewpoint that this information should be required, at this time, the Office is not convinced this requirement is necessary in light of the statutory obligation to maintain an up-to-date ownership database.\textsuperscript{128} Indeed,
the MLC has noted its intention to include information regarding administrators that license musical works and/or collect royalties for such works, and as information regarding “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,” which presumably should include updated ownership information that may be relevant for works that are being exploited after exercise of the termination right. The Office’s conclusion does not restrict the MLC from optionally including such information.

9. Data Provenance

In response to both notifications of inquiry, commenters overwhelmingly supported having the public musical works database include data provenance information. The DLC and SoundExchange contend that including data provenance information will allow users of the database to make their own judgments as to its reliability. Others noted that for sound recordings, firsthand data is more likely to be accurate. For its part, the MLC maintains that it “should be given sufficient flexibility to determine the best and most operationally effective way to ensure the accuracy and quality of the data in its database, rather than requiring it to identify the source of each piece of information contained therein.” The MLC also stated that it “intends to show the provenance of each row of sound recording data, including both the name of and DPID for the DMP from which the MLC received the sound recording data concerned,” and that it “intends to put checks in place to ensure data quality and accuracy.” For musical works information, the MLC maintains that it “will be sourced from copyright owners.”

The proposed rule would require the MLC to include data provenance information for sound recording information in the public database, though it grants the MLC some discretion on how to display such information. The proposed rule would not require the MLC to include data provenance information for musical work information, as the MLC intends to source musical works information from copyright owners (which commenters generally supported). Specifically, the Office noted that “data provenance issues appear to be especially relevant to sound recording information in the public database,” particularly “given that the MLC intends to populate sound recording information in the public database from reports of usage, as opposed to using a single authoritative source.” The Office sought public input on this aspect of the proposed rule.

ARM and SoundExchange both ask for regulations to require the MLC to identify the actual person or entity from which the information came, as opposed to including a categorical description such as “digital music provider” or “usage report,” though ARM does “not oppose inclusion of those sorts of descriptors along with the party name.” In addition, ARM and CISAC & BIEM contend that the database should also include data provenance information regarding musical works information, with ARM stating that data provenance information for musical works “would be of similar benefit to users of the database, particularly those who are required to pay mechanical royalties outside of the blanket license.” For its part, the MLC “confirmed that it will include in the database DMP names and DPID information where it receives it.” Accordingly, the interim rule states that for sound recording information received from a digital music provider, the MLC shall include the name of the digital music provider. Because the MLC has stated that it will source musical work information from copyright owners and administrators of those works, and because (as noted above) copyright owners and administrators will already be included in the database, the Office concludes at this time that the regulations do not need to require data provenance information for musical works. Should future instances of confusion suggest that modifications to the interim rule are necessary, the Office is willing to reconsider this subject. The interim rule does not dictate the precise format in which such information is made available in the database.

C. Sound Recording Information and Disclaimers or Disclosures in the Public Musical Works Database

1. “Sound Recording Copyright Owner” Information

In response to the September NOI, RIAA and individual record labels expressed concern about which information will populate the database and be displayed to satisfy the statutory requirement to include “sound recording copyright owner” (SRCO) in the public musical works 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.” In short, information “in the ERN message is not meant to be used to make legal determinations of ownership.” RIAA noted the
potential for confusion stemming from a field labeled “sound recording copyright owner” in the public database being populated by information taken from the labels’ ERN messages—for both the MLC (i.e., the MLC could “inadvertently misinterpret or misapply the SRCO data”), and users of the free, public database (i.e., they could mistakenly assume that the so-called “sound recording copyright owner” information is authoritative with respect to ownership of the sound recording). Relatedly, SoundExchange noted that it “devotes substantial resources” to tracking changes in sound recording rights ownership, suggesting that inclusion of a SRCO field “creates a potential trap for the unwary.”

A2IM & RIAA and Sony suggested that three fields—DDEX Party Identifier (DPID), LabelName, and PLine—may provide indicia relevant to determining sound recording copyright ownership. In the April NOI, the Office sought public comment regarding which data should be displayed 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. In response, ARM did not object “to a regulation that requires the MLC to include [DDEX Party Identifier (DPID), LabelName, and PLine] in the Database, provided the fields are each labeled in a way that minimizes confusion and/or misunderstanding.” As this will lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.” For DPID, the Office understands that ARM does not object to including the DPID party’s name, but does “object to the numerical identifier being disclosed, as the list of assigned DPID numbers is not public and disclosing individual numbers (and/or the complete list of numbers) could have unintended consequences.” The MLC “has[ ] no issue with including LabelName and PLine information in the public database to the extent the MLC receives that information from the DMPs,” but expressed concern about including DPID because it “does not identify sound recording copyright owner, but rather, the sender and/or recipient of a DDEX-formatted message.” The MLC stated that LabelName and PLine “are adequate on their own,” as DPID “is not a highly valuable data field,” and contended that the burden of converting DPID numerical codes into parties’ names (to address ARM’s concern about displaying the numerical identifier) outweighs any benefit of including DPID in the public database.

The Recording Academy, although acknowledging that DDEX ERN information is an important source of reliable and authoritative data about a sound recording, asserted that “many of the fields serve a distinct purpose in the digital supply chain and do not satisfy the ‘sound recording copyright owner’ field required in the MLC database.”

The proposed rule tentatively concluded that DPID does not have as strong a connection to the MLC’s matching efforts or the mechanical licensing of musical works as the other identified as relevant to the statutory requirement to list a sound recording copyright owner. In light of this, and the commenters’ concerns, the proposed rule did not require the MLC to include DPID in the public database. In case the MLC later chooses to include DPID in the public database, the proposed rule states that the DPID party’s name may be displayed, but not the numerical identifier. In addition, because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, to satisfy the statute’s requirement to include information regarding “sound recording copyright owner,” the proposed rule requires the MLC to include data for both LabelName and PLine in the public database, to the extent reasonably available. In light of numerous commenters expressing similar views, the Office tentatively concluded that inclusion of these two fields would adequately satisfy the statutory requirement by establishing an avenue for the MLC to include relevant data that is transmitted through the existing digital supply chain, and thus reasonably available for inclusion in the public database.

Regarding labeling, the Office tentatively declined to regulate the precise names of these fields, although the proposed rule precluded the MLC from labeling either the PLine or LabelName field “sound recording copyright owner,” and required the MLC to consider industry practices.

Recording Academy April NOI Comment at 3. Compare ARM April NOI Comment at 5 (stating “there is no single field in the ERN that can simultaneously tell the public who owns a work, who distributes the work and who controls the right to license the work”).

As the MMA also requires “sound recording copyright owner” to be reported by DMs and the mechanical licensing collective in monthly reports of usage, the Office has separately issued an interim rule regarding which information should be included in such reports to satisfy this requirement. Because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, that rule proposes that DMs can satisfy this obligation by reporting information in the following fields: LabelName and PLine. See 37 CFR 210.27(e)(4).

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Regarding labeling, the Office tentatively declined to regulate the precise names of these fields, although the proposed rule precluded the MLC from labeling either the PLine or LabelName field “sound recording copyright owner,” and required the MLC to consider industry practices.
when labeling fields in the public database to reduce the likelihood of user confusion. The Office also expressed appreciation that the MLC intends to "make available in the database a glossary or key, which would include field descriptors." The Office specifically encouraged "the MLC to consider ARM’s labeling suggestions with respect to the PLine and LabelName fields." The Office strongly disagreed with the MLC’s notion that "the names or labels assigned to these fields in the public database is not ultimately the MLC’s decision," and that "it is ultimately at DDEX’s discretion." The Office explained that "[w]hile DDEX standardizes the formats in which information is represented in messages and the method by which the messages are exchanged "along the digital music value chain" (e.g., between digital music providers and the MLC), DDEX does not control the public database or how information is displayed and/or labeled in the public database." The Office received no comments in opposition to this aspect of the proposed rule. In response, ARM agreed with the Office’s decision to include LabelName and PL ine in the public database, prohibit the MLC from labeling either field "sound recording copyright owner," and require that the MLC "consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion." ARM also reiterated its labeling suggestions for the PL ine and LabelName fields. Similarly, SoundExchange "welcome[d]" the Office’s approach of prohibiting the MLC from identifying either the PL ine or LabelName field as the "Sound Recording Copyright Owner," and directing the MLC to consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion.

Given the overwhelming support expressed in the comments, and for all of the reasons given in the NPRM, the interim rule adopts this aspect of the proposed rule without modification.

2. Disclaimer

Relatedly, the Office received persuasive comments requesting that the MLC be required to include a conspicuous disclaimer regarding sound recording ownership information in its database. ARM, A2IM & RIAA, CISAC & BIEM, Recording Academy, and SoundExchange agreed that the public 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 ownership information.

The proposed rule would require the MLC to include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording ownership information, and explains the labeling of information in the database related to sound recording copyright owner, including the "LabelName" and "PLine" fields. The proposed rule would not require that the disclaimer include a link to SoundExchange’s ISRC Search database.

The proposed rule was largely supported, and is now adopted without modification. Because the MLC intends to populate the public musical works database with sound recording information from reports of usage (discussed below), ARM did suggest that the disclaimer "explain that the sound recording data displayed in the database has been provided by users of the sound recordings, not by the owners or distributors of the sound recordings," and that "MLC require users to click on the disclaimer to acknowledge that they have seen and accepted it." SoundExchange agrees, noting that it is "critically important the MLC’s disclaimer concerning sound recording information be clear and prominent, and perhaps linked to a more detailed explanation of the issue, because this design decision carries a significant risk of confusing the public, which needs to understand what the MLC Database is and what it is not." For its part, the MLC believes having the disclaimer state that sound recording information has been provided by users of the sound recordings "may be confusing to the public, as sound recording information reported by DMPs will largely be the data provided by the respective record labels.”

Given that the proposed rule requires the MLC to include a conspicuous disclaimer that states that the database is not an authoritative source for sound recording ownership information, and explain the labeling of information related to sound recording copyright owner, including the "LabelName" and "PLine" fields, the Office adopts this aspect of the proposed rule without modification. The Office endorses SoundExchange’s suggestion that the MLC consider providing a more detailed explanation of the issue, and also notes that the rule does not prohibit the MLC from linking to SoundExchange’s ISRC Search database.

3. Populating and Deduplication of Sound Recording Information in the Public Musical Works Database

The statute requires the MLC to "establish and maintain a database containing information relating to musical works (and shares of such works) and, to the extent known . . ., the sound recordings in which the musical works are embodied." As noted above, for both matched and unmatched musical works, the public database must include, to the extent reasonably available to the MLC, "identifying information for sound recordings in which the musical work is embodied." As discussed in the NPRM, throughout this and parallel rulemakings, "commenters have expressed concern about the MLC using non-authoritative sources to populate the sound recording information in the public database." Some commenters, including several representing recorded music interests, maintained that sound recording data in the public database should be taken from copyright owners or an authoritative source (e.g., SoundExchange) rather than DMPs. MLC Ex Parte Letter #11 at 5.

160 The same limitation applies if the MLC elects to include DPIID information.

161 85 FR at 58180 (quoting MLC Ex Parte Letter #7 at 4).

162 Id.

163 Id. (quoting MLC Ex Parte Letter #7 at 4).


165 ARM NPRM Comment at 3–4.

166 Id. at 4.

167 SoundExchange NPRM Comment at 4.

168 A2IM & RIAA Reply September NOI Comment at 9; CISAC & BIEM Reply September NOI Comment at 8; SoundExchange Initial September NOI Comment at 12; RIAA Initial September NOI Comment at 10; ARM April NOI Comment at 6–7; Recording Academy April NOI Comment at 3–4.

169 MLC Reply September NOI Comment at 12; DLC Reply September NOI Comment at 10; DLC Ex Parte Letter #3 at 2. During this proceeding, RIAA designated SoundExchange as the authoritative source of ISRC data in the United States. RIAA, RIAA Designates SoundExchange as
Though raised in the context of data collection by DMPs, as opposed to populating the public database, the DLC supported the MLC obtaining sound recording information from a single, authoritative source, such as SoundExchange, because “[w]ith record labels acting as the primary and authoritative source for their own sound recording metadata, the MLC could then rely on only a single (or limited number of) metadata field(s) from licensees’ monthly reports of usage to look up the sound recordings in the MLC database (e.g., an ISO or digital music provider’s unique sound recording identifier that would remain constant across all usage reporting).” The DLC further maintained that “the MLC’s suggestion to obtain disparate sound recording data from every digital music provider and significant non-blanket licensee is far less efficient than obtaining it from a single source like SoundExchange.”

By contrast, the MLC stated that while it intends to use SoundExchange as one source of data about sound recordings, it intends to primarily rely on data received from DMPs to populate sound recording information in the database. The MLC added that receiving unaltered sound recording data from DMPs, as it sought to have required in a separate proceeding, would “both improve the MLC’s ability to match musical works to sound recordings” and “better allow the MLC to ‘roll up’ sound recording data under entries that are more likely to reflect more ‘definitive’ versions of that sound recording data.”

The NPRM invited the MLC to reassert how it will populate sound recording information in the public database, noting commenters’ concerns about using non-authoritative sources, and that adopting a requirement for DMPs to report unaltered sound recording data fields need not drive display considerations with respect to the public database. The Office stated that “the MMA anticipates a general reliability of the sound recording information appearing in the public database,” and that “[w]hile it may be true that reports of usage are the better indicators of which sound recordings were actually streamed, the public database is not necessarily meant to serve that same function.” The statute requires the public database to contain information relating to “the sound recordings in which the musical works are embodied,” which can reasonably be read as information to identify the sound recordings in which musical works are embodied, regardless of whether they were streamed pursuant to disparate attendant metadata or not. In the NPRM, the Office also noted the potential that by passing through inaccurate or confusing sound recording information received by DMPs in the database, such inaccuracies or confusion in the public database could translate into inaccuracies in royalty statements to musical work copyright owners. Further, because the statute requires the MLC to grant free bulk-access to digital music providers, such access “seems less meaningful if it were to mean regurgitating the same information from reports of usage back to digital music providers.” While the proposed regulatory language did not address the manner in which the MLC populates sound recording information in the database or the deduplication of sound recording records (i.e., eliminating duplicate or redundant sound recording records), the Office invited further comment on these issues.

In response, though commenters did not express additional concerns about the MLC’s plans to populate sound recording information in the database, SoundExchange did note that “the MLC’s reluctance to include and organize its data around authoritative sound recording information...represents a missed opportunity to develop a resource with authoritative linkages between sound recordings and musical works that would be of significantly greater value for participants in the ecosystem.” The MLC stated that because the database is at 11 (record labels “anticipate making frequent use of the MLC database”), it will work to use unaltered data “after it begins to receive it in September 2021” as “keys to ‘roll up’ into one set of "musical works-driven.”” It should be populated in such a way to assist owners of musical works in identifying uses of their works by DMPs so they can be paid royalties to which they are entitled.” The MLC maintains that “normalizing” sound recording data “may be useful to sound recording copyright owners, but that neither serves the primary purpose of the MMA nor necessarily helps musical work copyright owners.” Rather, the MLC asserts, “there could be hundreds of different recorded versions of a popular musical work . . . including cover versions, live versions, and remastered versions,” and the musical work copyright owner “wants to see in the database all of those hundreds of different recordings associated with its musical work when it searches for that musical work, and it also wants to see all of the uses by the different DMPs of each of those different recordings because it is to be paid for each such use.” The MLC added that, given the requirement for DMPs to provide data unaltered from what they receive from labels, “that means that the data the MLC receives from the DMPs will itself be ‘authoritative’ because it comes from the labels.”

The Office appreciates comments from the various parties on these issues. The interim rule adopts the proposed flexible approach for the MLC to determine the best way to populate the database and display sound recording information. The Office notes, however, that achieving the purpose of the database (i.e., reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed by DMPs operating under the section 115 statutory license) requires accurate information to be presented to musical work copyright owners (and the public) in a user-friendly and meaningful manner. Should a copyright owner be confronted with thousands of entries of the identical sound recording in the database (as opposed to numerous, but different, sound recordings embodying the musical work) that are not linked or associated, and each entry represents a single use of a sound recording instead of its identity, the Office questions the meaningfulness of such information. The Office is thus encouraged that MLC will work to use unaltered data “after it begins to receive it in September 2021” as “keys to ‘roll up’ into one set of
metadata different sound recording metadata reported by DMPs in usage reports for an identical sound recording.” 194 If, after the MLC starts receiving unaltered data from DMPs, it proves appropriate to develop more specific regulatory guidance, the Office is amenable to reconsideration. As even the MLC has acknowledged, sound recording information may be helpful for matching purposes,195 so its inclusion does not serve only sound recording owners.

D. Access to Information in the Public Musical Works Database

As noted above, the statute directs the Office to “establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [public] musical works database.” 196 The database must “be made available to members of the public in a searchable, online format, free of charge.” 197 The mechanical licensing collective 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 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.” 198 The legislative history stresses the importance of the 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.” 199 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.” 200 And “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.” 201

1. Method of Access

The proposed rule required the MLC to “make the musical works database available to members of the public in a searchable, real-time, online format, free of charge.” 202 The Office agreed that the MLC should—especially initially, due to its start-up nature—have some discretion regarding the precise format in which it provides bulk access to the public database.203 Given, however, “the overwhelming desire for the MLC to provide bulk access through APIs from a broad swath of organizations representing various corners of the music ecosystem,” the Office proposed that the MLC must begin providing bulk access to the public database through APIs starting July 1, 2021. 204

The proposed rule was applauded by commenters.205 The MLC stated its intention to provide bulk access through an API as proposed, but raised concerns regarding implementation by July 1, 2021. 206 It noted in particular that it “will not be able to commence the work to develop the API until after it has begun issuing royalty statements in the Spring of 2021” and requested that the deadline be extended to December 31, 2021 “to ensure sufficient development time.” 207 The MLC asks for the extension “to allow time to conduct proper consultation with stakeholders throughout the industry regarding their requirements, gather their feedback, and then design, test and implement, so as to provide the most useful API,” but did indicate that “it will aim to implement API access sooner in 2021 where that is reasonably practical.” 208 In the meantime, the MLC will be “providing access through Secure File Transfer Protocol (SFTP) on a weekly basis,” which is “expected to be available by January 2021.” 209 Because the proposed rule requires the MLC to provide bulk access in a “real-time” format, the MLC asks that the rule be adjusted to delete the words “real-time.” 210

After carefully considering this issue, the Office agrees that having time to seek industry feedback while developing an API increases the chances of developing one that meets the needs of industry participants. Accordingly, the interim rule provides the MLC until December 31, 2021 to implement bulk access through an API. The Office declines, however, to remove the words “real-time” from the rule. The Office raised the issue of “real-time” access in response to the DLC’s initial proposal that bulk access be provided through a weekly file, and multiple commenters objected, asserting that real-time access to the public database is necessary to meet the goals of the statute and avoid industry reliance upon stale data.211 Given the regulation, the Office thus encourages the MLC to consider offering bulk access via SFTP on a more frequent basis until the API is available.

Next, MAC requests that the regulations require the MLC to provide songwriters with “access to the same level of certain data as . . . publishers, digital music providers, labels, etc., free of charge.” 212 Specifically, MAC proposed that any songwriter who has authored or co-authored any musical work should have access “to the following information at the same time it is provided to the publisher or administrator of record”: (1) The amount of revenue each DSP has paid to the MLC for the work, (2) the amount of revenue the MLC has paid to the respective publisher or administrator, and (3) the total stream count of each work per DSP.213

When asked about songwriter access, the MLC made some overtures towards ensuring songwriter access for purposes of correcting data. The MLC confirmed that “the public musical works database will be viewable by the general public.” 214

194 MLC NPRM Comment at 6. The MLC asked that it be able to defer development on this project until at least October 2021, after it has started receiving and can review unaltered data, to provide it with time to complete development of the database’s core functionality. Id.

195 See MLC Letter July 13, 2020 at 7 (stating “[a]ll of the metadata fields proposed in §210.27(e)(1) will be used as part of the MLC’s matching efforts’’); see also 85 FR 22518, 22541 (Apr. 30, 2020) (sound recording information fields proposed in §210.27(e)(1)).


197 Id. at 115(d)(3)(E)(vi).

198 Id.

199 Id.


202 85 FR at 58189; see Muzzey NPRM Comment at 1 (“It is crucial that the MLC database be searchable and completely public-facing . . . .”). The MLC has advised that “[i]n the initial version [of the database], the searchable fields are planned to be: (a) Work Title; (b) Work MLC Song Code; (c) ISWC; (d) Writer Name: (e) Writer IPI name number; (f) Publisher Name; (g) Publisher IPI name number; and (h) MLC Publisher Number.” and that “additional searchable fields may be added in the future.” MLC Ex Parte Letter #11 at 3.

203 85 FR at 58183.

204 Id. at 58188.

205 Recording Academy NPRM Comment at 3; SONA NPRM Comment at 7–8; SoundExchange NPRM Comment at 5; ARM NPRM Comment at 4.

206 MLC NPRM Comment at 7.

207 Id.

208 MLC Ex Parte Letter #11 at 2.

209 Id.

210 Id.

211 85 FR at 58182–83 (citing A2IM & RIAA Reply September NOI Comment at 7, FMC Reply September NOI Comment at 3, MAC Initial September NOI Comment at 2. Recording Academy Initial September NOI Comment at 4. SoundExchange Reply September NOI Comment at 9).

212 MAC NPRM Comment at 3.

213 Id. at 4. The Office notes that to the extent such information is provided in royalty statements to musical work copyright owners from the MLC, as noted above, there are no restrictions on the use of these statements by copyright owners.
without any need to register for the MLC Portal," as the portal "is the platform for copyright owners and administrators of musical works used in covered activities, where they can register their works, claim their shares and provide the necessary information so as to receive royalty distributions." 214 The MLC also noted that "everyone, including songwriters, may participate in the DQI." 215 Finally, the MLC said that it intends "to develop user-friendly methods for songwriters to access information about their musical works and writers, specifically, to access administrators of a possible issue with a work's data or registration." 216

Providing songwriters with the ability to review and correct information about their works is important, but the Office also believes that transparency militates in favor of affording songwriters (including those who are not self-published) easier access to information about use of their works. The Office appreciates the MLC's commitment to developing user-friendly methods for songwriters, specifically, to access information about their works. The Office further notes that nothing prevents the MLC from working with publishers and administrators to offer non-self-administered songwriters permissions-based access to view stream count and revenue information for their musical works, and encourages the MLC to explore such options.217

2. Marginal Cost

The Office proposed to allow the MLC to determine the best pricing information in light of its operations, so long as the fee does not exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity, which shall not be unreasonable.218 In rejecting comments suggesting that the cost of gathering data should be factored into these costs, the NPRM stated "it [was] difficult for the Office to see how Congress intended third parties to offset the larger cost of the collective acquiring the data and aggregating, verifying, deduping and resolving conflicts in the data." 219 The Office also noted that the legislative history emphasizes the importance of accessibility to the public database, and that requiring third parties to pay more than the "marginal cost" could create commercial disadvantages that the MMA sought to eliminate.220

In response, an anonymous commenter stated that the term "marginal cost" is vague and should be defined "by either establishing a monetary limit or a method for the mechanical licensing collective to determine the amount." 221 The MLC expressed concern that the phrase "which shall not be unreasonable" "is inconsistent with the requirement that access be provided at 'marginal cost' because, if access is provided at 'marginal cost,' such cost can never be 'unreasonable,'" and that "the qualifier opens the door to a third party argument that what is, in fact, marginal cost is nevertheless 'unreasonable' cost." 222 The MLC does not believe "marginal cost" "authoriz[es] fees to recoup the overhead costs of design and maintenance of the SFTP or API," but rather would "be set at an amount estimated to recoup the actual cost of provision of the bulk data to the particular person or entity requesting it." 223 Currently, it estimates the SFTP bulk access to cost approximately $100 "to cover one-time setup and a single copy of the database, and a monthly standard fee of $25 which offers access to all weekly copies" (though "these expected fees may change, as [the MLC] has no precedent for this access and [associated costs])." 224 The MLC also confirmed that "it intends to charge the same fee to all members of the public (who are not entitled to free access) for SFTP access," though "it expects API access would be under a different fee structure and amounts than SFTP access, since the marginal costs will be different." 225

After considering the MLC's comments, including its stated plans, the Office agrees that the phrase "which shall not be unreasonable" can be deleted from the rule.226 This aspect of the proposed rule is otherwise adopted without modification.

3. Abuse

The legislative history states that in cases of 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." 227 The MLC and DLC suggested providing the mechanical licensing collective discretion to block third parties from bulk access to the public database after attempts to bypass marginal cost recovery.228

In light of these comments, the NPRM proposed that the MLC shall establish appropriate terms of use or other policies governing use of the database that allows it to suspend access to any individual or entity that appears, in the collective’s reasonable determination, to be attempting to bypass the MLC’s right to charge a fee to recover its marginal costs for bulk access through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database), or misappropriating or using information from the database for improper purposes. To ensure transparency regarding who persons or entities have had bulk database access suspended, the Office also proposed to require the mechanical licensing collective to identify such persons and entities in its annual report and explain the reason(s) for suspension.229
In response, while ARM “wholeheartedly support[s] giving the MLC the authority to suspend database access for individuals or entities that appear to be engaging in unlawful activity,” it expresses concern about terms of use or restrictions “inadvertently disadvantaging” bona fide users of the database or creating unintended barriers to legitimate uses of the data,” and encouraged the Office to consider an appeals process for those whose access the MLC seeks to suspend or restrict, or “some sort of graduated sanctions regime, whereby repeat offenders are subjected to increasingly stringent penalties while inadvertent, or one-time, offenders are subjected to less stringent penalties.”229 On the other hand, the MLC “strongly opposes any change to the rule that would prevent the MLC from restricting access to users who have violated the terms of use, which could impede the MLC’s ability to prevent fraud and abuse.”230 The MLC stated “that it will have terms of use for the website, the Portal, and the bulk access to the musical works database,” noting that the “current version of the website Terms of Use is accessible at https://www.themlc.com/terms-use.”231

After considering this issue, the Office has largely adopted this aspect of the proposed rule without modification. The Office agrees that the MLC should have flexibility to block third parties where persons have engaged in unlawful activity with respect to the database and that in the cases of fraud the MLC may need to take immediate action. The Office encourages the MLC, however, in developing its terms of use for the database, to create an appeals process for those who have had access suspended to reduce the likelihood of good-faith users being denied access. Should the MLC fail to create an appeals process and the Office learns of or entities being unreasonably denied access to the database, the Office is willing to consider whether further regulatory action on this issue is warranted.

4. Restrictions on Use

The MMA directs the Office to issue regulations regarding “usage restrictions” with respect to the database.232 Comments have been mixed in response to the Office’s solicitations on this issue, generally centering around whether the Office should specify conditions the MLC should or should not include in its database terms of use.

The DLC argues that “licensees should be able use the data they receive from the MLC for any legal purpose,”233 and that “abusive access can be adequately addressed by empowering the MLC to block efforts to bypass marginal cost recovery.”234 By contrast, CISAC & BIEM seek “regulations defining strict terms and conditions, including prohibition for DMPs to use data for purposes other than processing uses and managing licenses and collaborating with the MLC in data collection,” and generally “prohibiting commercial uses and allowing exclusively lookup functions.”235 FMC is “inclined to want to see some reasonable terms and conditions” regarding use of the public database, and suggests that “[i]t’s entirely appropriate for the Office to offer a floor.”236 The MLC agrees that “there should be some reasonable limitation on the use of the information in the MLC database to ensure that it is not misappropriated for improper purposes,” and intends to “include such limitation in its terms of use in the database.”237 To avoid abuse by bad actors, the MLC “does not intend to include in the public database the types of information that have traditionally been considered PII, such as Social Security Number (SSN), date of birth (DOB), and home address or personal email (to the extent these are not provided as the contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III))” and “further intends to protect other types of PII.”238 But the MLC also asks that “it be afforded the flexibility to disclose information not specifically identified...

229 ARM NPRM Comment at 5.
230 MLC Ex Parte Letter #11 at 5.
231 Id.
233 DLC Initial September NOI Comment at 21.
234 DLC April NOI Comment at 5.
235 Music Reports April NOI Comment at 7.
236 CISAC & BIEM NPRM Comment at 4; see CISAC & BIEM Initial September NOI Comment at 4; CISAC & BIEM April NOI Comment at 3.
237 FMC April NOI Comment at 3.
238 MLC April NOI Comment at 15; see MLC Reply September NOI Comment at 37.
239 MLC April NOI Comment at 16; CISAC & BIEM contend that “the Regulations [should] include clear language on the MLC’s full compliance with data protection laws, and in particular with the European General Data Protection Regulation, as the MLC will process personal data of EU creators.” CISAC & BIEM NPRM Comment 3. As noted by the Office in the September NOI, the MLC has “committed to establishing an information security management system that is certified with ISO/IEC 27001 and meets the EU General Data Protection Regulation requirements, and other applicable laws.” 84 FR at 49972; see Proposal of Mechanical Licensing Collective, Inc. at 50, U.S. Copyright Office Dkt. No. 2018-11.

240 MLC April NOI Comment at 16 n.9.
241 85 FR at 58186.
242 MLC Ex Parte Letter #11 at 5.

244 Id.
works database. Accordingly, while the Office is adopting its proposed approach of providing the MLC flexibility to develop reasonable terms of use, the interim rule clarifies the Office’s expectation that the MLC’s terms of use or other policies governing use of the database must comply with the Office’s regulations.

E. Transparency of MLC Operations; Annual Reporting

The legislative history and statute envision the MLC “operating in a transparent and accountable manner” and ensuring that its “policies and practices . . . are transparent and accountable.” The MLC has expressed its commitment to transparency, both by including transparency as one of its four key principles underpinning its operations on its current website, and in repeated written comments to the Office. The Office has noted that one main avenue for MLC transparency is through its annual report. By statute, the MLC must publish an annual report “not later than June 30 of each year commencing 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) its projected annual budget; (6) aggregated royalty receipts and payments; (7) expenses that are more than ten percent of the annual budget; and (8) its efforts to locate and identify copyright owners of unmatched musical works (and shares of works). The MLC must deliver a copy of the annual report to the Register of Copyrights and make this report publicly available.

The MLC itself has previously recognized that its annual report is one way in which it intends to “promote transparency.” Although the phrase “[n]ot later than June 30 of each year commencing after the license availability date” could be read as requiring the first annual report to cover the first year of operations after the license availability date (i.e., issued in June 2022 for year 2021), as discussed below, a number of reasons compel the Office to adjust the interim rule to require the MLC to issue a written public update in December 2021, albeit shortened, regarding its operations. In response to overwhelming desire for increased transparency regarding the MLC’s activities expressed by commenters, and the ability of the annual report to provide such transparency, the proposed rule required the MLC to disclose certain information in its annual report besides the statutorily-required categories of information. In response to comments suggesting the creation of a “feedback loop” to receive complaints, the Office noted that the statute already requires the mechanical licensing collective to “identify a point of contact for publisher inquiries and complaints with timely redress.” The proposed rule emphasized this responsibility by codifying the requirement and expanding it to include a point of contact to receive complaints regarding the public musical works database and/or the collective’s activities. The name and contact information for the point of contact must be made prominently available on the MLC’s website.

In addition, the Office noted that it “always welcomes feedback relevant to its statutory duties or service,” and that “[m]embers of the public may communicate with the Office through the webform available for inquiries or comments with respect to the MLC or MMA. Commenters overall approved of the proposed rule. The MLC “generally agree[d] with the proposed rules as they concern annual reporting, and believes that the Office’s additions to what is required in the statute will aid in providing the transparency that the MMA envisions and that the MLC is committed to providing.” The DLC similarly voiced support, adding, “[i]t will be critical, however, for the Office to enforce not just the bare letter of the regulations, but the spirit of full transparency that animates those regulations.” Two commenters commended the Office for requiring disclosure of any application of unclaimed royalties on an interim basis to vendors, any application of unclaimed accrued royalties on an interim basis to defray MLC costs, and any application of unclaimed royalties on an interim basis to defray current collective total costs, as permitted under the MMA, “subject to future reimbursement of such royalties from future collections of the assessment.” MAC and the Recording Academy welcomed requirements to disclose the appointment and selection criteria of new board members, and the Recording Academy also applauded disclosure requirements for average

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247 The MLC, Mission and Principles, https://themlc.com/mission-and-principles (last visited Dec. 18, 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.”). See also The MLC, The MLC Process, https://themlc.com/how-it-works (last visited Dec. 18, 2020) (“The MLC is committed to transparency. The MLC will make data on unclaimed works and unmatched uses available to be searched by registered users of The MLC Portal and the public at large.”).
248 See, e.g., MLC Reply September NOI Comment 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.”).
249 85 FR at 58186; 85 FR at 22572.
252 The MLC, Transparency, https://themlc.com/faq/categories/transparency (last visited Sept. 1, 2020) (web page no longer available) (noting that the MLC will “promote transparency” by “[p]roviding an annual report to the public and to the Copyright Office detailing the operations of The MLC, its licensing practices, collection and distribution of royalties, budget and cost information, its efforts to resolve unmatched royalties, and total royalties received and paid out.”).
253 85 FR at 58187. This information included selection of board members, selection of new vendors, any application of unclaimed accrued royalties on an interim basis to defray MLC costs, average processing and distribution times for distributing royalties, and any suspension of access to an individual or entity attempting to bypass the MLC’s right to charge a fee for bulk access to the public database. 85 FR at 58187.
254 Castle April NOI Comment at 16 (contending the Office should create “a complaint webform with someone to read the complaints as they come in as part of the Office’s oversight role”); Lowery Reply September NOI Comment at 11 (stating “regulations should provide for a feedback loop that songwriters can avail themselves of that the Copyright Office must take into account when determining its re-designation”).
processing and distribution times for distributing royalties, stating it ‘will promote accountability and hopefully give songwriters confidence in the new system.’”

A number of commenters sought broader disclosure requirements regarding the MLC’s vendors hired to help administer the statutory license, expressing concern about their potential commercial advantage. For example, FMC stated that “Congress intended to encourage a healthy competitive marketplace for other kinds of licensing business,” and this intent would be frustrated “[i]f the MLC’s vendors were to receive an unfair advantage in the music licensing marketplace through means such as preferred access to digital music providers or referrals by the MLC for extrastatutory business opportunities in a manner not available to their competitors.”

SoundExchange similarly expressed concern about potential commercial advantage of MLC vendors, noting that Congress “intended to preserve a vibrant and competitive marketplace for intermediaries [besides the MLC] who provide other license administration services,” and this intent would be frustrated “[i]f the MLC’s chosen vendors not be able to leverage their status with the MLC to advantage themselves in other business activities not covered under the MMA.”

The Office appreciates the overwhelming desire from commenters to have the MLC’s annual report include information about the performance and selection of its vendors. The Office accepts the MLC’s representation that vendor performance reviews may include sensitive or confidential information. The interim rule thus retains the requirement that the MLC disclose the criteria used in deciding to select its vendors to perform materially significant technology or operational services related to the [MLC’s] matching and royalty accounting activities.

The MLC contains that “performance reviews might include sensitive or confidential information, including about individuals who work for any such vendor,” and requests that the rule instead “permit the MLC to summarize or extract the key findings of any reviews, and to include such summaries or extracts in the annual report rather than the verbatim reviews themselves.”

The Office recommends that the proposed rule not reflect its request for the MLC annual report to include “an independent report by the board’s music creator representatives on their activities in support of songwriter and composer interests, the handling of conflict-related problems by the board and its various controlled committees, and the issues of conflict that remain to be addressed and resolved.”

Commenters recommended certain additional disclosures. CISAC & BIEM suggest requiring publication of the MLC Dispute Resolution Committee’s rules and procedures, as well as disclosure of the amount of unclaimed royalties received by the MLC and any audits and their results of the MLC or blanket licensees. SoundExchange proposes that the annual report “include a certification by the MLC that it is in compliance with the statute’s limitation that the collective may only administer blanket mechanical licenses and other mechanical licenses for digital distribution.”

Marginal cost to acquire bulk access to the information in the musical works database for purposes other than the ordinary course of their work for the MLC. Beyond the requirements codified in this interim rule, the Office encourages the MLC to consider the commenters’ requests for additional disclosure, including information about soliciting and choosing vendors in advance of any vendor selection, and engaging in the highest level of transparency consistent with operational realities and protection of confidentiality that the collective may only administer blanket mechanical licenses and other mechanical licenses for digital distribution.”

The Office understands the overwhelming desire from commenters to have the MLC’s annual report include information about the performance and selection of its vendors. The Office recommends that the proposed rule not reflect its request for the MLC annual report to include “an independent report by the board’s music creator representatives on their activities in support of songwriter and composer interests, the handling of conflict-related problems by the board and its various controlled committees, and the issues of conflict that remain to be addressed and resolved.”
suggests that the Office “invit[e] comments on the MLC’s annual reports, to get insight from a broad range of stakeholders both about whether the report fulfills the MLC’s transparency obligations and whether it raises (or fails to raise) any issues related to the sound functioning of the mechanical licensing system.” 279

After carefully considering these comments, the Office concludes that some suggestions are already addressed by the statute, and some may not need to be addressed by regulation. For example, the Office already requires the MLC to submit to periodic audits, which must be made publicly available. 280 Likewise, the MLC’s database will provide insight into the amount of unmatched usages reported to the MLC, as well as a mechanism for claiming such works. Similarly, as the statute prohibits the MLC from administering licenses apart from the mechanical license, requiring the MLC to certify that it is in compliance with the law appears unnecessary. The Office agrees it could be beneficial to the rules and procedures for the MLC’s Dispute Resolution Committee to be made publicly available, and encourages their publication as soon as practicable given the MLC’s obligation to have “transparent and accountable” policies and procedures. 281 Though the interim rule, like the proposed rule, does not require an independent report from the board’s music creator representatives, the Office reiterates its expectation that “the MLC . . . give voice to its board’s songwriter representatives as well as its statutory committees, whether through its annual reporting or other public announcements.” 282 Songwriters on the MLC’s board of directors are not a separate entity and should participate with other members of the board to represent and collectively address songwriter concerns and interests. For its part, the MLC seeks modification of the proposed requirement to disclose “the average processing and distribution times for distributing royalties to copyright owners,” calling it “somewhat confusing.” 283 The MLC argues that “there are many different types of averages and methods of calculating averages, leaving room for misunderstanding,” and that “the rule should accommodate the inclusion in the annual report of the actual [ ] dates on which distributions were made to copyright owners during the preceding calendar year, as such information will inform copyright owners and other interest[ed] parties of the timeliness of payment.” 284 The MLC “intends to and will include in the annual report the dates on which distributions were made to copyright owners during the preceding calendar year, which will inform copyright owners and other interest parties of the timeliness of payment” and requests that the rule be modified to permit that information instead of “average processing and distribution times.” 285 The MLC suggests removing the word “average” as one possible solution. 286 The Office believes that the proposed rule would allow the MLC to determine and explain the metrics it relies upon when reporting processing and distribution times. Indeed, the Office itself reports a variety of average processing times for copyright registration, with accompanying explanatory registration methodology. 287 The MLC’s core function is to collect and distribute royalties for covered activities; simply reporting the months in which the MLC distributes royalties—without disclosing how long the process of matching and distribution of royalties takes—provides limited meaningful insight into how the blanket license is functioning under the MLC’s administration (including for example, by identifying external dependencies that may be contributing to delays in the MLC’s ability to identify musical works embodied in particular sound recordings and identify and locate corresponding musical work copyright owners). 288 Accordingly, this aspect of the interim rule retains the general requirement, but in order to avoid any confusion, clarifies that the MLC has discretion as to the metrics it measures when reporting average times by stating that the MLC must disclose the manner in which it calculates processing and distribution times.

Finally, as noted above, while the phrase “[n]ot later than July 30 of each year commencing after the license availability date” could be read as not requiring the first annual report until June 2022 (to cover year 2021), a number of reasons compel the Office to adjust the interim rule to require the MLC to issue a written public update regarding its operations in December 2021, in a potentially abbreviated version. Because the MLC was designated in July 2019, 289 if the first annual report is issued in June 2022, that could mean three years without a formal written update on the MLC’s operations. This may frustrate the noted desire from commenters for transparency regarding the MLC’s operations. 290 The Office is also mindful of the statutory five-year designation process for periodic review of the mechanical licensing collective’s performance. 291 Additional written information from the MLC may help inform both the Office’s and the public’s understanding with respect to that period of the MLC’s performance. Finally, for musical works for which royalties have accrued but the copyright owner is unknown or not located, the

289 84 FR at 32274.

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works database prescribed by 17 U.S.C. 115(d)(3)(E), and to increase usability of the database.

(b) Matched musical works. With respect to musical works (or shares thereof) where the copyright owners have been identified and located, the musical works database shall contain, at a minimum, the following:

(1) Information regarding the musical work:
   (i) Musical work title(s);
   (ii) The copyright owner(s) of the musical work (or share thereof), and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;
   (iii) Contact information for the copyright owner of the musical work (or share thereof), which can be a post office box or similar designation, or a “care of” address (e.g., publisher);
   (iv) The mechanical licensing collective’s standard identifier for the musical work; and
   (v) To the extent reasonably available to the mechanical licensing collective:
      (A) Any alternative or parenthetical titles for the musical work;
      (B) ISWC;
      (C) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for matched musical works;
      (D) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;
      (E) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter, and administrator;
      (F) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and
      (G) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied, to the extent reasonably available to the mechanical licensing collective:
   (i) ISRC;
   (ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;
   (iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party’s name may be included, but not the numerical identifier;
   (iv) Featured artist(s);
   (v) Playing time;
   (vi) Version;
   (vii) Release date(s);
   (viii) Producer;
   (ix) UPC; and
   (x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works.

(c) Unmatched musical works. With respect to musical works (or shares thereof) where the copyright owners have not been identified or located, the musical works database shall include, to the extent reasonably available to the mechanical licensing collective:

(1) Information regarding the musical work:
   (i) Musical work title(s), including any alternative or parenthetical titles for the musical work;
   (ii) The ownership percentage of the musical work for which an owner has not been identified;
   (iii) If a musical work copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;
   (iv) The mechanical licensing collective’s standard identifier for the mechanical work;
(vi) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for unmatched musical works;

(vii) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(viii) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter and administrator;

(ix) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(x) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party’s name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.

(d) Field labeling. The mechanical licensing collective shall consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion, particularly regarding information relating to sound recording copyright owner, Field Name, Displaying PLine, LabelName, or, if applicable, DPID, information may not on their own be labeled “sound recording copyright owner.”

(e) Data provenance. For information relating to sound recordings, the mechanical licensing collective shall identify the source of such information in the public musical works database. For sound recording information received from a digital music provider, the MLC shall include the name of the digital music provider.

(f) Historical data. The mechanical licensing collective shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time. The mechanical licensing collective shall determine, in its reasonable discretion, the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database.

(g) Personally identifiable information. The mechanical licensing collective shall not include in the public musical works database any individual’s Social Security Number (SSN), taxpayer identification number, financial account number(s), date of birth (DOB), or home address or personal email to the extent it is not musical work copyright owner contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III). The mechanical licensing collective shall also engage in reasonable, good-faith efforts to ensure that other personally identifying information (i.e., information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to such specific individual), is not available in the public musical works database, other than to the extent it is required by law.

(h) Disclaimer. The mechanical licensing collective shall include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording information, and explains the labeling of information related to sound recording copyright owner, including the “LabelName” and “PLine” fields.

(i) Ownership. The data in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E) is public data not owned by the mechanical licensing collective’s employees, agents, consultants, vendors, or independent contractors.

§ 210.32 Musical works database usability, interoperability, and usage restrictions.

This section prescribes rules under which the mechanical licensing collective shall ensure the usability, interoperability, and proper usage of the public musical works database created pursuant to 17 U.S.C. 115(d)(3)(E).

(a) Database access. (1)(i) The mechanical licensing collective shall make the musical works database available to members of the public in a searchable, real-time, online format, free of charge. In addition, the mechanical licensing collective shall make the musical works database available in a bulk, real-time, machine-readable format through a process for bulk data management widely adopted among music rights administrators to:

(A) Digital music providers operating under the authority of valid notices of license, and their authorized vendors, free of charge;

(B) Significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and their authorized vendors, free of charge;

(C) The Register of Copyrights, free of charge; and

(D) Any other person or entity, including agents, consultants, vendors, and independent contractors of the mechanical licensing collective for any purpose other than the ordinary course of their work for the mechanical licensing collective, for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.

(ii) Starting December 31, 2021, the mechanical licensing collective shall make the musical works database available at least in a bulk, real-time, machine-readable format under this paragraph (a)(1) through application programming interfaces (APIs).

(2) Notwithstanding paragraph (a)(1) of this section, the mechanical licensing collective shall establish appropriate terms of use or other policies governing use of the database that allows the mechanical licensing collective to suspend access to any individual or entity that appears, in the mechanical licensing collective’s reasonable determination, to be attempting to bypass the mechanical licensing collective’s right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or
misappropriating or using information from the database for improper purposes. The mechanical licensing collective’s terms of use or other policies governing use of the database shall comply with this section.

(b) Point of contact for inquiries and complaints. In accordance with its obligations under 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb), the mechanical licensing collective shall designate a point of contact for inquiries and complaints with timely redress, including complaints regarding the public musical works database and/or the mechanical licensing collective’s activities. The mechanical licensing collective must make publicly available, including prominently on its website, the following information:

(1) The name of the designated point of contact for inquiries and complaints. The designated point of contact may be an individual (e.g., “Jane Doe”) or a specific position or title held by an individual at the mechanical licensing collective (e.g., “Customer Relations Manager”). Only a single point of contact may be designated.

(2) The physical mail address (street address or post office box), telephone number, and email address of the designated point of contact.

§210.33 Annual reporting by the mechanical licensing collective.

(a) General. This section prescribes the rules under which the mechanical licensing collective will provide certain information in its annual report pursuant to 17 U.S.C. 115(d)(3)(D)(vii), and a one-time written update regarding the collective’s operations in 2021.

(b) Contents. Each of the mechanical licensing collective’s annual reports shall contain, at a minimum, the following information:

(1) The operational and licensing practices of the mechanical licensing collective;

(2) How the mechanical licensing collective collects and distributes royalties, including the average processing and distribution times for distributing royalties for the preceding calendar year. The mechanical licensing collective shall disclose how it calculated processing and distribution times for distributing royalties for the preceding calendar year;

(3) Budgeting and expenditures for the mechanical licensing collective;

(4) The mechanical licensing collective’s total costs for the preceding calendar year;

(5) The projected annual mechanical licensing collective budget;

(6) Aggregated royalty receipts and payments;

(7) Expenses that are more than 10 percent of the annual mechanical licensing collective budget;

(8) The efforts of the mechanical licensing collective to locate and identify copyright owners of unmatched musical works (and shares of works);

(9) The mechanical licensing collective’s selection of board members and criteria used in selecting any new board members during the preceding calendar year;

(10) The mechanical licensing collective’s selection of new vendors during the preceding calendar year, including the criteria used in deciding to select such vendors, and key findings from any performance reviews of the mechanical licensing collective’s current vendors. Such description shall include a general description of any new request for information (RFI) and/or request for proposals (RFP) process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP. In connection with the disclosure described in this paragraph (b)(10), the mechanical licensing collective shall not be required to disclose any confidential or sensitive business information. For the purposes of this paragraph (b)(10), “vendor” means any vendor performing materially significant technology or operational services related to the mechanical licensing collective’s matching and royalty accounting activities;

(11) Whether during the preceding calendar year the mechanical licensing collective, pursuant to 17 U.S.C. 115(d)(7)(C), applied any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs, including the amount of unclaimed accrued royalties applied and plans for future reimbursement of such royalties from future collection of the assessment; and

(12) Whether during the preceding calendar year the mechanical licensing collective suspended access to the public database to any individual or entity attempting to bypass the collective’s right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. If the mechanical licensing collective so suspended access to the public database to any individual or entity, the annual report must identify such individual(s) and entity(ies) and provide the reason(s) for suspension.

(c) December 31, 2021 Update. No later than December 31, 2021, the mechanical licensing collective shall post, and make available online for a period of not less than three years, a one-time written report that contains, at a minimum, the categories of information required in paragraph (b) of this section, addressing activities following the license availability date. If it is not practicable for the mechanical licensing collective to provide information in this one-time report regarding a certain category of information required under paragraph (b) of this section, the MLC may so state but shall explain the reason(s) for such impracticability and, as appropriate, may address such categories in an abbreviated fashion.

Shira Perlmutter,
Register of Copyrights and Director of the U.S. Copyright Office.
Approved by:
Carla D. Hayden,
Librarian of Congress.
[FR Doc. 2020–28958 Filed 12–30–20; 8:45 am]