

**FIVE YEARS LATER:  
THE MUSIC MODERNIZATION ACT**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COURTS, INTELLECTUAL  
PROPERTY, AND THE INTERNET  
OF THE  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
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## **FIVE YEARS LATER: THE MUSIC MODERNIZATION ACT**

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**Tuesday, June 27, 2023**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND  
THE INTERNET

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to notice, at 10 a.m., at Belmont University, Gabhart Student Center, 1930 Belmont Blvd., Nashville, Tennessee, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

*Present:* Representatives Issa, Fitzgerald, Cline, Johnson of Georgia, and Nadler.

Chair ISSA. The Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses at any time.

We welcome everyone here today to a hearing on the now five-year tendered Music Modernization Act. We are joined by several of our colleagues today who could not sit on the dais but may be joining us, and without objection they will be allowed to sit and participate as time permits.

I will now recognize myself for a short opening statement.

Today we are taking a look at the MMA, the Music Modernization Act, as it approaches its fifth-year anniversary. Just five short years ago, the still-active, still-performing, still-entertaining Sam Moore and Mike Love of the Beach Boys stood at a signing ceremony and enjoyed the fact that their music, 50 years after a reform that covered everyone post-'72, would now cover them.

That portion of the act is settled law, and today we will likely not speak much about it. Much of the other reform in music modernization involved trying to get stakeholders who had agreed to enhance, modernize, and more quickly solve the critical problems of licensing musical works. Today we will explore what has worked and what has not.

Music is important to America for many reasons, including it is, in fact, a multibillion-dollar business that employs millions of American. People around the world have been inspired by our music, have learned the English language as a result of our music, and we have enjoyed music from around the world and for decades

have rewarded artists enough that some of them are not washing dishes.

Recording artists, musicians, sound engineers, producers, and other professionals have, in fact, entertained the billions of people around the world since time immemorial. Five years ago, we knew that navigating the complex music licensing ecosystem was too difficult for many of the creators to do on their own, and legacy certainly impossible for the songwriters to do without congressional action. Too many creators were unable to collect the royalties they deserved because of legal and logistical obstacles, and the digital music revolution was proving to be too much for our outdated copy laws to handle.

So, both parties came together to pass the MMA. I want to thank my fellow Members of the House and the Senate, many of whom are here today, for the work they did. I also want to thank and reward the stakeholders, some of whom did so without direct financial benefit, but in fact knowing that their industry could only thrive if they could improve that. Stakeholders came from all parts of it to help make a decision that was a compromise, and, in fact, an experiment into whether or not we could make the system work efficiently enough to reward the creators.

We are here today to listen to some of those creators and other key stakeholders about whether the system we set up is working properly and what more needs to be done. We are here in Music City, home of The Mechanical Licensing Collective, to see if The MLC is solving the problems it was intended to solve. We are also here to further the work of this Committee and especially the needs of the creators. Our Constitution makes it clear that the rights that we statutorily give out come from the benefit we receive. The fact is, inventions, works of art, creative music, and, of course, our library of knowledge come from the copyrights and patents that this Committee has for decades caused to be available.

If it is to succeed, we cannot just grant a right. We have to, in fact, make sure that right is rewarded in a predictable way that allows for two business plans: The business plan of those who take the license and the business plan of those who create the music we will be talking about today.

With that I yield to the gentleman from Georgia for his opening statement.

Mr. JOHNSON of Georgia. I thank the gentleman from California for having this hearing and for bringing the Judiciary Committee, the Subcommittee on Courts, Intellectual Property, and the Internet to Nashville, Tennessee, the heart of the music industry. The panel before us today is comprised of individuals from many sectors crucial to the creation and dissemination of musical works. I am looking forward to hearing what they have to say about the State of the music economy five years after the passage of the Music Modernization Act.

Music can be both an expression of culture shared across every member of a community and a deeply personal experience unique to the listener. It can come from both symphonies in marble concert halls and lone performers on city streets, and it can both lull us to sleep and inspire us to action. Music can be many things to many people, and this centrality to the human experience makes

it even more important that the music industry is and remains healthy for every link in the production chain.

Many music creators call my district home. Atlanta, Georgia, is the capital of hip-hop and R&B, with a vibrant network of creators, writers, music labels, recording studios, and music venues. That is just the beginning. Creators in Georgia are making music in everything from rap to bluegrass to gospel to classical music.

Georgia Tech found that in 2016, the music industry in Georgia generated \$3.5 billion and employed over 16,000 people. Today, Georgia's music industry supports an estimated 45,000 jobs, with over 13,000 royalty recipients, and over 91,000 songwriters.

Five years ago, I joined Ranking Member Nadler and Chair Issa as an original co-sponsor on the Music Modernization Act, which passed the House unanimously in 2018. The MMA replaced an antiquated, inefficient licensing system that was not able to respond to advancements in technology where creators were not fairly compensated for their works and publishers, labels, and streamers were constrained by unclear licensing guidelines. By creating The Mechanical Licensing Collective, or The MLC, Congress sought to make it easier for digital services to obtain licenses and creators to collect royalties by creating a blanket license and coordinating royalty payments when a song is streamed online.

The MMA would not have been successful if the entire music industry had not united in agreement that something needed to be done. That does not mean that we believe the solution to be perfect. I am looking forward to hearing from our witnesses about how The MLC is working and what improvements they believe might be necessary.

In addition to creating The MLC, the Music Modernization Act also sought to pay artists fairly for their work by expanding the circumstances in which copyright royalty judges apply a willing buyer, a willing seller rate-setting standard and extending Federal copyright protections to works created before 1972. Creators should be able to make a living, and I am looking forward to hearing from our witnesses about their experiences under the new standards.

The MMA would not have been possible without the participation of nearly every sector of the music business, and it is a success story that is instructive for how industries can adapt to changes in technology that completely revolutionize their medium. We cannot and should not want to stop innovation. So, the question before us is how Congress can work together with industries to protect intellectual property rights even as technologies advance.

Finally, for the music industry, the challenges of the modern era are not limited to technological innovation. When COVID-19 made it unsafe to gather in large groups, many members of my community who were dependent on live music performances were left with no way to feed their families. In the Spring of 2020, I fought for the inclusion of Pandemic Unemployment Assistance to help freelancers, gig workers, and others not traditionally covered by unemployment insurance gain access to those benefits, and later that year I co-sponsored a bill to Save our Stages, which was incorporated into a COVID-19 relief package and made \$15 billion in grants available to live venues struggling to make ends meet during the pandemic.

I am looking forward to hearing from the creators on this panel as to how the pandemic affected their business and what Congress can do going forward to keep their part of the industry going strong.

Thank you again to all the witnesses for being here today, and I am looking forward to hearing what you have to say, and with that I yield back.

Chair ISSA. Thank you. The gentleman from Wisconsin.

Mr. FITZGERALD. Thank you, Chair Issa, for hosting and calling this field hearing. I always tell people being a Member of the House of Representatives sometimes is tedious and a little overwhelming because of the scope of issues, but every once in a while you get to do something really cool, and that is what this is here today. So, thanks to Belmont University as well for hosting us, and I yield back.

Chair ISSA. The gentleman from New York.

Mr. NADLER. Thank you, Mr. Chair, for holding this hearing and for bringing the Subcommittee to Nashville, one of the great music cities of the world. Music nourishes the soul. It expresses powerful ideas and emotions, and it connects us across cultures. It is also an important driver of economic activity. According to one estimate, the music industry contributes \$170 billion a year to the American economy, and it supports, directly or indirectly, \$2.7 million jobs.

It is clear that artists, consumers, and businesses all depend on a healthy music industry to thrive, and that is why I was proud to join with my colleagues five years ago to sponsor and pass the landmark Music Modernization Act.

Prior to the MMA, the copyright laws governing music licensing had not been meaningfully updated in decades, with laws that, in some cases, were written when piano rolls were the dominant form of music, and that certainly did not contemplate the rise of digital streaming services.

While music licensing remains a complex web of rights and responsibilities administered and enforced by a variety of different entities under a variety of different rules, the MMA helped address some of those glaring inequities and efficiencies in the music marketplace. I am pleased that we have the opportunity today to examine how the law is operating five years later.

The MMA contained three main sectors, each aimed at a different segment of the music industry. The first part, the Musical Works Modernization Act, addressed concerns expressed by songwriters, music publishers, and digital streaming platforms related to the efficiency and fairness of the mechanical license for the reproduction and distribution of musical works. This measure created the blanket licensing system through the Mechanical Licensing Collective, based here in Nashville, to coordinate payment for these rights when a song is streamed online. This not only helped ensure that proper payment is made to songwriters and publishers, but it also helped provide certainty to digital platforms that they would not face liability for failing to acquire all the necessary licenses so long as they pay into the collective and follow its rules. I am interested to hear from our stakeholders here today whether The MLC is operating as intended and whether any improvements are needed.

The law also changed the standard for calculating royalty rates for songwriters by eliminating barriers that kept rates artificially low and made it difficult for songwriters to earn a living. I hope to learn more from our distinguished songwriters here today about the impact of this change.

The second part of the MMA addressed an enduring inequity on the sound recording side. The CLASSICS Act, a bill that I originally introduced with Chair Issa, resolve the longstanding dispute over payment to artists for works recorded before 1972. In many cases, these legacy artists were collecting no royalties at all when their works were played on streaming platforms, a fundamental unfairness. The CLASSICS Act addressed this problem by bringing these pre-'72 works, which had been protected previously only by State laws, within the Federal copyright system. I hope that we will learn today whether this provision has benefited these legacy artists as we had hoped.

Finally, the MMA contained a provision to help ensure that music producers and engineers receive, in an efficient manner, the royalties that they are owed for their important contributions to the creation of music. Each of these provisions was the product of debate and compromise by the many stakeholders involved, forged over the course of many years of tireless work.

Although we are here today observing the passage of the MMA nearly five years ago, it was another moment 10 years ago that is also worth recognizing. That is when former Chair Bob Goodlatte first launched the Committee's comprehensive copyright review. Over the course of five years we held numerous hearings, roundtables, and listening sessions, and heard from dozens of stakeholders. It was this exhaustive bipartisan process that helped foster an environment in which the music industry could reach consensus on many important issues. Only then was critical legislation like the MMA possible.

I hope that this hearing will serve as a reminder that meaningful change is possible when we all work together. One area in which I hope that agreement is possible is ensuring fair compensation for artists when their work is played on terrestrial radio. I consider this to be unfinished business, and I look forward to continuing to work with Chair Issa on this issue, but that is a matter for another day.

We have much to be proud of in passing the MMA, but no legislation is perfect, and I appreciate the opportunity to hear from our distinguished witnesses today on whether any refinements are needed.

I thank the Chair for convening this important discussion. I look forward to hearing from all our witnesses, and I yield back the balance of my time.

Chair ISSA. I thank the gentleman. We will now go to the gentleman from Virginia, Mr. Cline.

Mr. CLINE. Well thank you, Mr. Chair, for bringing the Subcommittee to Music City. It is great to be here, and it is great to be with my colleagues. I thank the witnesses for appearing. I look forward to their testimony and to a great discussion about the MMA five years later.

I came into Congress five years ago, so I have watched with interest how the MMA has been implemented, how The MLC has been developed and unfolded as well. There are many challenges that remain. I look forward to discussing those today, but these are challenges that we can meet, as former Chair Nadler said, if we work together. Bipartisanship exists on this Committee. It is one of the few areas we are an oasis, if you will, of bipartisanship in a sea of partisan rancor. So, I am glad to be here with all my colleagues and look forward to the discussion.

Thank you, Mr. Chair. I yield back.

Chair ISSA. Thank you, Gentleman.

We will now introduce our distinguished panel of witnesses.

Mr. Kris Ahrend is the Chief Executive Officer of Mechanical Licensing Collective. The MLC is a nonprofit organization designated by the Copyright Office pursuant to the Music Modernization Act to administer blanket mechanical licenses for copyrighted musical works and collect and distribute the royalties.

Prior to joining The MLC, he worked for 20 years in the music industry, and is a former Warner Music Group and Sony/BMG music entertainment alum.

Mr. David Porter is an award-winning songwriter, producer, and singer. He was introduced into the Songwriters Hall of Fame in 2005, and Rolling Stone magazine named him one of the 100 Greatest Songwriters of All Time. That award is still elusive to me.

Mr. Porter has written more, and co-written more hits, including "Soul Man" by Sam and Dave, a favorite of mine, and he continues to write, produce, and perform music for over 60 years, with his credits spanning music from Aretha Franklin to today, the most modern and current stars. Mr. Porter is also the founder of a consortium known as MMT, a nonprofit organization designated to fostering the music industry in his hometown of Memphis, Tennessee, another hometown of another well-known artist.

Mr. Daniel Tashian has been a songwriter, producer, and musician for nearly three decades, a short time by comparison to Mr. Porter. He has written or co-written songs for numerous artists, including Lee Ann Womack, Tim McGraw, my favorite, McBride, Josh Turner, and a host of others. His songwriting and producing talents were recognized by not one but two GRAMMY awards and an ACM award, and a CMA award, for his work on Kacey Musgraves' album, "Golden Hour."

Mr. Garrett Levin is the President and Chief Executive Officer of the DiMA, or the Digital Media Association, as we also know it, and has been an association leader, particularly in the streaming and streaming innovation. Mr. Levin previously served as Senior Vice President and Deputy General Counsel for intellectual law and policy at the National Association of Broadcasters. Before that time, he served as the Senior Counsel for one of my all-time favorites and patent innovator, Senator Patrick Leahy, and as a copyright attorney at the PTO.

Mr. Michael Molinar is the General Manager at Big Machine Music, the publishing arm of Big Machine Label Group. He has nearly 30 years of experience in the music industry and has recently been elected to a third term on the Board of the National

Music Publishers Association. He also serves on the Board for The MLC, and as a result will get a lot of questions today.

Last, and certainly not least, we have Ms. Abby North. Ms. North is the President of North Music Group, which is an independent music rights administrator, and she is a Co-Founder of Unclaimed Melody Publishing. She has also nearly 30 years of experience in music publishing catalog management. Ms. North also serves on the board of the Association of Independent Publishers and serves on the Los Angeles Chapter.

We welcome all our witnesses, and pursuant to the rules of this Committee if you could please all rise to take the oath. Your photo moment, even if you do not work for Big Tobacco is now.

Please raise your right hand. Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you will give today will be the truth and correct to the best of your knowledge and information, so help you God?

Thank you. Please be seated. Let the record reflect that all witnesses answered in the affirmative.

As you probably have heard or seen on C-SPAN over the years, all your exhaustive written statements, and quite candidly, additional ideas and information you want us to receive afterwards, will be placed in the record. It will be left open for at least five days after this hearing. Which means that your five minutes, your precious first five minutes, should be used for those things that may not fit neatly within your opening statement, but you want to get them out before we begin our line of questioning.

So, with that, Mr. Ahrend. I have got these things in backward order. Mr. Ahrend.

#### **STATEMENT OF KRIS AHREND**

Mr. AHREND. Good morning. Chair Issa, Ranking Member Johnson, and Members Cline, Fitzgerald, and Nadler, my name is Kris Ahrend. I am the Chief Executive Officer of The MLC, and it is my pleasure to share with you today the progress we have made toward fulfilling the vision and statutory mandates set out in the MMA, which as several of you have already noted this morning, Congress passed unanimously in 2018, with the support of an historically broad coalition of industry stakeholders.

The creation of The MLC was a key part of Congress' vision to modernize the compulsory licensing system for musical works in the United States and to usher in a new era of more effective, accurate, and transparent royalty administration. That system assigned specific responsibilities to each of our key stakeholder groups. The MLC often refers to this framework of shared responsibility as "playing your part," and reflects a key tenet of the MMA, that improving the system would depend on the continued participation by, and collaboration among all stakeholders.

So how are things working? Happily, I can report that after only 2½ years of full operations The MLC is making things better, just as Congress intended. Here are just a few of the metrics that evidence our progress to date.

We have enrolled more than 28,000 members, the large majority of whom are smaller, independent publishers and administrators,

as well as self-administered songwriters, many of whom were likely not participating in the system before the MMA was passed.

We have established and maintained a public data base that contains ownership information for more than 31 million musical works.

We have helped nearly 60 digital services secure the blanket license.

We have completed 27 monthly royalty distributions on time or early, and we have never missed a distribution.

We have distributed well over \$1 billion in royalties, and we have achieved historically high match rates and high distribution rates while providing this unprecedented level of transparency.

We have accomplished all this while seeking to engage as many stakeholders as possible, and we have done that in a variety of ways, including by hosting or attending hundreds of virtual and in-person events, which have enabled us to reach nearly 30,000 stakeholders from every State in the country, by providing one-on-one support through our support team, which has responded to nearly 60,000 inquiries to date, by regularly meeting with songwriters, publishers, administrators, and other CMOs of all kinds to help them better understand how our processes work and how to use the tools we have created for them more effectively. Finally, by meeting regularly with a wide variety of groups that represent the many different stakeholders we serve, to ensure that we are always receiving direct and unfiltered feedback from the broadest possible cross-section of our industry.

That said, by no means are we done. Each month we continue to work hard to enhance and improve our existing operations based on the feedback we receive directly from our members. We are also actively preparing to tackle two significant challenges that involve the streaming rates for the five-year period between 2018–2022. These rates are just now being finalized by the Copyright Royalty Board and the Copyright Office. Once these final rates take effect, digital services will have six months under the existing regulations to deliver any new data and adjusted royalties required by the final rates. Once The MLC has received that new data, the first thing we will be able to do is begin distributing matched historical royalties from 2018–2020, plus interest from the date we received those royalties from the services. That is because we have already matched nearly 70 percent of the historical royalties reported to us for those years. Taken together with the historical uses from earlier periods, we have already matched nearly 300 million of the historical royalties that DSPs were not previously able to pay, and we will continue our efforts to try to match even more of the remaining historical royalties in the months to come.

At the same time, our members can continue to search that data themselves and propose matches to the works they have registered. This is possible because The MLC has fully illuminated the black box of digital audio mechanicals for the first time in history by making all the data for both the remaining unmatched historical royalties and the remaining unmatched blanket royalties that we have received available for any of our members to search and act on, using our matching tool.



The second thing The MLC will be able to do is start processing adjustments for the blanket royalties from 2021–2022 that we previously distributed at the lower interim rates. Once this very complex reconciliation process is completed, we expect to be able to distribute a substantial amount of additional blanket royalties to rights-holders for those two years.

I will close my remarks by saying it has been both the privilege and the challenge of my lifetime for me to have played a part in helping build The MLC. Please know that our entire team, our board, our advisory committees, and countless others have worked tirelessly and in good faith over the past few years to try to make your vision for The MLC a reality, and we remain equally committed to building on the milestones we have achieved as we continue to support work in the future and make The MLC better.

Thank you for inviting me here today, and I look forward to answering your questions.

[Prepared statement of Mr. Ahrend follows:]

Written Testimony of  
Kris Ahrend  
CEO of the Mechanical Licensing Collective (The MLC)

Before the  
Subcommittee on Courts, Intellectual Property, and the Internet  
of the Committee on the Judiciary  
U.S. House of Representatives

“Five Years Later – The Music Modernization Act”  
Field Hearing, Belmont University, Nashville, TN  
June 27, 2023

Chairman Issa, Ranking Member Johnson, and members of the Subcommittee, thank you for inviting me to testify today. My name is Kris Ahrend, and as Chief Executive Officer of the Mechanical Licensing Collective (The MLC), I am privileged to share with you the progress we have made to fulfill the vision and the specific statutory mandates of the MMA. It will also be my pleasure to answer any questions you may have about The MLC and its work.

#### **Introduction**

The MLC is truly a child of Congress. The role of The MLC was created by the MMA, alongside the blanket license that The MLC administers. The MMA sets forth powers and functions of The MLC, and the full funding of The MLC comes through a licensee assessment that is set pursuant to the MMA by the Copyright Royalty Board of the Library of Congress.

Congress created the role of The MLC as part of the MMA’s modernization of the compulsory licensing system for musical works. After years of industry concern, Congress recognized that centralized administration of the compulsory license, along with transparent data on musical work ownership, could usher in a new era of effective and accurate royalty distribution. To that end, Congress provided for a single nonprofit collective to administer the new blanket license and to further establish and maintain a free, publicly-accessible database of musical works ownership information.<sup>1</sup>

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<sup>1</sup> The report of this Committee on the MMA stated that: “The Committee welcomes the creation of a new musical works database that is mandated by the legislation. For far too long, it has been difficult to identify the copyright owner of most copyrighted works, especially in the music industry where works are routinely commercialized before all of the rights have been cleared and documented. This has led to significant challenges in ensuring fair and timely payment to all creators even when the licensee can identify the proper individuals to pay. ... Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.... The collective is required under the legislation to routinely undertake its own efforts to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works so that they can update the database as appropriate. With only the exception of the efficient and accurate collection and distribution of royalties, such actions are the highest responsibility of the collective.” H.R. Rep. No. 115–651, at 7-9 (2018).

The MLC is directly guided by Congress' vision. The MLC's Certificate of Incorporation itself states that it is organized "To perform the functions of the mechanical licensing collective as defined and authorized in Section 115 of Title 17 of the United States Code, or the corresponding provision of any subsequent federal law, with the full authority described therein, and subject to any statutory limitations on activities set forth therein."<sup>2</sup> Since its inception, The MLC has strived to meet Congress' vision of accurate, efficient, and transparent royalty distribution for songwriters and music publishers. And today, I will provide you with data and metrics that reflect the remarkable success to date of that vision.

#### **Startup and Launch of The MLC**

Before looking at the data on our operations, if we are to recap the last five years, I would like to begin by recognizing the extremely ambitious launch that Congress laid out for The MLC. The MMA was passed in October 2018, and provided for the Register of Copyrights to designate which entity would be the collective in July 2019. The MMA also decreed that the collective would assume full administration of the blanket license on January 1, 2021. That statutory timeline gave The MLC less than 18 months after designation to staff, build, and launch a fully-formed and operational national collective. At the time, The MLC described the challenges and potential to the Copyright Office as follows:

The administrative and technological capabilities that will be demanded of the collective in order to fulfill its statutory functions are extensive. On the license administration side, the collective should expect to regularly process hundreds of billions of lines of data comprising trillions of transactions, ultimately administering payments of billions of dollars of royalties to copyright owners around the globe. On the ownership identification side, the collective will need to interface globally with copyright owners large and small, with varying degrees of technological sophistication and using varying data platforms and standards to integrate information that they have in order to create a comprehensive, publicly-accessible database of musical works ownership that can further stay updated through the constant stream of transactions and bequests that change ownership, as well as inputting into the database the new works that are continuously being created. On the matching side, the collective will need to maintain a platform that not only matches millions of known musical works with millions of known sound recordings billions of times over, but also employ improved algorithms and simple human legwork to find the musical works underlying the many sound recordings that have heretofore remained unmatched, as well as keep up with the steady stream of new sound recordings that have missing or incomplete metadata and do not identify their musical work source material adequately.

[The MLC] sees this not as a burden, but an opportunity. This is precisely why the MMA was supported so strongly by both musical work copyright owners and

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<sup>2</sup> Designation Proposal of Mechanical Licensing Collective ("MLC Designation Proposal"), U.S. Copyright Office Docket No. 2018-11, at 10 (March 22, 2019).

licensees. For years, musical works licensors and licensees have known that a better, shared ownership database was needed, and that matching and royalty processing could be improved through a central group that could advance the standardization of data formatting and information flow. It was this opportunity that brought all sides of the songwriting and publishing industries together to lead the MMA to fruition, and it is no coincidence that copyright owners stayed together to form and support this organization—[The MLC]—to be the collective.”

MLC Designation Proposal at 7-8.

This 2019 description accurately captured the breadth of operations that would have to be built by The MLC in Congress’ short window for startup, but it did not accurately capture the full challenge – because less than halfway into the startup period, the COVID-19 pandemic struck, disrupting supply chains and business processes across the world.

It is a testament to the tireless work of The MLC team, along with dedicated support from the Board of Directors and Advisory Committees, that right in the middle of a global pandemic, The MLC was able to build, staff, and launch fully-operational nationwide administration operations on time, and from Day 1 has made every monthly royalty distribution on time or early.

#### **The MLC’s Achievements To Date: MMA Vision In Action**

##### **The Scope of The MLC’s Work**

Pursuant to the MMA, The MLC operates in a narrow but critical area of music licensing: audio-only interactive streaming and digital downloads. This area of the industry includes well-known streaming services like those from Spotify, Apple, Amazon, and Google, as well as numerous other offerings from large and small enterprises. The license that The MLC administers is a “blanket license,” which gives the licensee the “mechanical” right to use any and all musical works eligible to be licensed under Section 115 of the Copyright Act.<sup>3</sup> The MLC administers this blanket license to nearly 60 digital music providers operating in the U.S., and aggregate royalty collections for 2023 are on track to approach \$1 billion. This is a critical revenue stream for songwriters and music publishers, and The MLC takes very seriously its statutory mission to ensure efficient and accurate distribution of these royalties.

As noted above, the MMA also charged The MLC with another related but distinct task: to establish and maintain a database on U.S. mechanical rights ownership information<sup>4</sup> that is

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<sup>3</sup> The “mechanical” right at issue here is not a distinct exclusive right under the Copyright Act. Rather, “mechanical right” is used to mean the right to reproduce and distribute copies of a musical work *in the form of* sounds fixed in material objects that are readable by a machine or device. This right can be contrasted with the non-mechanical rights involved in distribution of sheet music (which is a reproduction but not one that is in the form of fixed sounds) or terrestrial radio (which is in the form of sounds but is a performance rather than a reproduction and distribution of copies). 17 U.S.C. §§ 101, 106, 115. Under the Copyright Act, the compulsory mechanical license also explicitly excludes audiovisual works, which must be licensed directly from the copyright owner.

<sup>4</sup> While The MLC’s data concerns the ownership of rights to use works in the United States, the database covers all musical works regardless of where they may have been created, and includes information on many foreign works that are available on digital music providers operating in the U.S. market.

publicly-accessible without charge. Pursuant to the MMA, this database is also to be made available to anyone in bulk, machine-readable form for no more than a small fee to recoup marginal cost of provision. This database reflects the exact data used by The MLC to match and distribute royalties, and therefore provides full transparency to the public as to who is registered to receive royalties for every musical work.<sup>5</sup>

#### Metrics to Measure The MLC's Success To Date

In keeping with our commitment to effectiveness and transparency, The MLC keeps track of many metrics measuring our performance, and we regularly share such metrics with our governance, membership, and the public in many forums, including in:

- Monthly member newsletters, sent to our full membership and available to the public on our website<sup>6</sup>
- Quarterly industry newsletters, sent to our full membership and available to the public on our website<sup>7</sup>
- Detailed annual reports and financial disclosures, available to the public on our website<sup>8</sup>
- Hundreds of in-person events, virtual events, webinars and other outreach and educational events<sup>9</sup>

We believe the metrics reflect The MLC's broad success in meeting the goals of the MMA to date, which I credit to the skill and dedication of our extraordinary staff and governance partners. Here is an overview of some of these metrics, any of which I would be happy to discuss in further detail:

#### Royalty Collection and Distribution

The MLC has assisted nearly 60 digital music providers in setting up the blanket license and the related monthly usage reporting and royalty payment obligations.

The MLC has now completed 27 monthly royalty distributions to members, all on-time or early, even throughout the COVID-19 pandemic.

The MLC has distributed more than \$1.1 billion in royalties to rightsholders, without deduction of any fees or costs, since the MMA provided for the operational funding of The MLC

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<sup>5</sup> Confidentiality regulations promulgated by the Copyright Office prohibit disclosure to the public of how much in royalties are paid for a particular work or to a particular copyright owner. 37 C.F.R. § 210.34.

<sup>6</sup> Available at <https://www.themlc.com/newsletters>.

<sup>7</sup> Available at <https://www.themlc.com/newsletters>.

<sup>8</sup> Available at <https://www.themlc.com/governance>.

<sup>9</sup> Event listings available at <https://www.themlc.com/event-calendar>.

through a separate assessment on licensees.<sup>10</sup> Based on the months to date this year, we are on track to process royalty pools of approximately \$1 billion in 2023 alone.

The MLC's success in royalty distribution has also exceeded the results in the pre-MLC era, even as the number of new sound recordings available on U.S. streaming services and the amount of the total royalty pools that digital music providers report to The MLC have dramatically increased since the blanket license became effective. The MLC achieves exceptional "match rates" from the start, meaning the percentage of royalties that The MLC is able to match to the correct musical work with confidence. The MLC now regularly achieves initial match rates of around 85%, and after reprocessing has achieved match rates in excess of 90% for most months, which are excellent results by industry standards. The MLC's royalty distribution rates have also exceeded the rate that the industry had achieved in the years prior to The MLC.

While we have waited for finalized royalty rates from the Copyright Royalty Board for the 2018-2022 period, we have already made meaningful progress on distributing historical unmatched royalties from previous years. These are the royalties that the digital music providers were unable to match and distribute, and which they turned over to The MLC in 2021 pursuant to the MMA. The MLC has already distributed 80% of the historical unmatched royalties from the period before 2013, and 45% of the historical unmatched royalties from the 2013-2017 period. Given that these pools are comprised of only the hardest cases – only the uses that were not matched or claimed despite many years of processing prior to The MLC – we are optimistic in having continued success matching the remaining historical unmatched pools and distributing them to the proper copyright owners.

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<sup>10</sup> The MLC has further matched even more royalties than this, more than \$1.5 billion. The difference between the royalties matched by The MLC and the royalties distributed directly by The MLC is comprised of three buckets of royalties:

- (1) Royalties paid through voluntary licenses: The MMA provides that voluntary licenses take precedence over the blanket license, and explicitly requires The MLC to identify any royalties matched to copyright owners who have granted voluntary licenses and not collect those royalties, since they are to be paid out directly by the digital music provider pursuant to the voluntary license. The MLC thus matches this usage, but does not collect or distribute the associated royalties. Royalties paid through voluntary licenses have steadily decreased, making up approximately 14% of total royalties in 2021 and only approximately 5% of total royalties in 2022.
- (2) "Unclaimed" royalties: These are royalties where The MLC has identified the correct musical work, but the copyright owner has either not registered their ownership interest or has not provided The MLC with information on where to send royalty payment. In the meantime, The MLC holds the royalties in an interest-bearing account, and as soon as we can get the details for payment, we pay out the accrued royalties with associated interest at the federal short-term rate. At no time does The MLC use the royalties or the interest for its operational budget. The MLC devotes significant resources to reaching copyright owners who have not claimed their royalties, in order to assist them with getting their royalties. The share of unclaimed royalties has been decreasing. Unclaimed royalties for 2021 were close to 9.5%, dropping to 9.0% in 2022, and in our last monthly distribution were close to 8.5%.
- (3) Royalties "on hold": These are royalties that are being held from distribution pending the resolution of legal claims, ownership disputes or other review over eligibility for payment. The MLC also devotes substantial resources to addressing member disputes and other royalty questions, and our royalties on hold amount to less than 1% of total royalties reported since inception.

Among our many initiatives to reduce unmatched and unclaimed royalties, we have recently deployed the industry's first Distributor Unmatched Recordings Portal (DURP) – a new platform for music distributors that allows them to see the publicly-available data in The MLC's database for any unmatched recordings that originated from customers of those distributors. This visibility allows participating distributors to see which of their customers may be owed mechanical royalties from The MLC so they can help their customers connect with The MLC in order to collect their royalties. These distributors often work with the “long tail” of independent artists and songwriters, so this platform is helping The MLC reach this segment of the industry and educate them on how to claim their royalties. Already more than 60 distributors have signed up to receive access to the portal, and collectively they now have access to the data for nearly 2 million unmatched recordings, which feature musical works associated with nearly \$80 million in unmatched mechanical royalties.

#### Musical Works Ownership Database

As the MMA envisioned, The MLC established and maintains a publicly-accessible database of musical works ownership data. We now provide ownership data for more than 31 million musical works, and have been receiving more than 500,000 new registrations each month in recent months. Further, we source ownership data only from the copyright owners and their agents, adding to the authority and reliability of the data.<sup>11</sup> The commitment we have made as an organization to building strong relationships and trust with our members has facilitated our ability to obtain so much ownership data from these authoritative sources.

As a testament to the accuracy of our data and the unprecedented transparency that Congress established through the MMA, many major industry institutions utilize our bulk ownership data feed for their business purposes. At least 170 entities have subscribed to receive weekly, updated copies of the ownership information and sound recording data in The MLC's database, and nearly 90 have now signed up to use our API to send musical works ownership search queries directly from their internal systems to The MLC's database. The provision of this level of access to the ownership and sound recording data in The MLC's database is unprecedented among collective management organizations globally. To our knowledge, no other collective management organization in the world provides this level of access to their data.

I would like to take a moment here to acknowledge Congress' vision on this particular aspect of the MMA. We regularly hear from our members how much it means to them to have transparent ownership data. Yet it is precisely the value of this data that is what prevented this level of transparency by other entities in the past. The entities recognized how valuable the data was and treated it as a proprietary asset to be guarded, not disclosed. Without the MMA's mandate, this data may never have come to the full benefit of the whole industry. We see every day how much transparency means to stakeholders throughout the industry, and we will continue to make information available as widely and easily as we can.

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<sup>11</sup> Pursuant to the MMA, we administer an Ownership Dispute Policy to allow copyright owners to challenge claims of ownership, and while The MLC does not decide competing claims, our policy includes a mechanism to hold disputed funds pending resolution of the dispute. <https://www.themlc.com/dispute-policy>; 17 U.S.C. § 115(d)(3)(K).

### Member Outreach and Support

The MMA explicitly tasks The MLC with engaging in “diligent, good-faith efforts to publicize, throughout the music industry” information concerning its operations and the ability to claim royalties, including through appropriate participation “in music industry conferences and events.”<sup>12</sup> The MLC has taken that to heart and has cast a wide net across the global<sup>13</sup> music industry.

We now have more than 28,000 members, a number that has more than doubled in the past two years. So far in 2023, we are adding more than a thousand new members each month.<sup>14</sup> We are further committed to partnering with all of our stakeholders, without exception. We do not just work closely with the stakeholders who serve on our Board of Directors and Advisory Committees; we have also made a concerted and successful effort to regularly engage with a wide variety of other stakeholders in the industry, to ensure we are receiving input and feedback from the broadest possible cross-section of stakeholders.

We have dedicated member support staff that proactively work to provide information to assist members, and also assist members with any specific inquiries. Members of The MLC team have participated in more than 350 webinars to date, which reached more than 28,000 attendees, and our support team has handled almost 60,000 inquiries.<sup>15</sup> Our website is filled with information to assist members, including instructions, forms, infographics, and other data.

The MLC has also built and deployed specific tools to assist our members in getting their musical works matched and claimed. We make a Matching Tool available to all our members, so that they can provide first-hand information on recordings that utilize their musical works. Nearly 2,000 members have utilized this tool to date, and collectively they have submitted – and The MLC has approved – more than 800,000 new matches between groups of previously unmatched recordings and musical works registered in The MLC’s database. Our Claiming Tool allows members to search all of the musical works registered with The MLC that have unclaimed shares, so that members can find their musical works and claim their missing shares, which then allows The MLC to release any unpaid royalties for their share that were previously being held, with interest.

We have established direct or indirect membership relationships with more than 100 collective management organizations (CMOs) around the world, which represent rightsholders in

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<sup>12</sup> 17 U.S.C. § 115(d)(3)(J)(iii).

<sup>13</sup> While The MLC administers royalties only for uses of musical works in the U.S., the copyright owners of such works can be located anywhere in the world, and indeed a number of The MLC’s members are located outside of the U.S.

<sup>14</sup> A member is a copyright owner (or their authorized agent) who registers with The MLC and provides us with musical works information and information on where/how to remit royalties. Note that this number is not the number of distinct songwriters whose works we administer. A single member could be a music publisher who represents hundreds or thousands of songwriters. Our 28,000 members thus represent substantially more songwriters.

<sup>15</sup> We also survey satisfaction with our support team, and they receive high marks. More than 5,500 surveys have been completed, with an average score for our team of nearly 90 out of 100 on each of Resolution, Ease and Confidence.



120 countries. These connections have helped us reach rightsholders around the world and disseminate important information to them about how they can collect their U.S. mechanical royalties from The MLC through their affiliations with those CMOs. That, in turn, has allowed us to distribute significant additional mechanical royalties generated in the U.S. market to songwriters and music publishers located around the world.

#### Operational Efficiency

The MLC has also quickly become a historically cost-effective collective management organization. If you measure our operational budget as a percentage of the total royalty pools we process – which is the most standard industry method for assessing efficiency – our administrative costs in 2022 represented less than 4% of total royalty pools that we processed. To my knowledge, no other collective management organization has ever reported an administrative cost percentage less than 5%, and most similar organizations around the world report percentages between 10% and 20% or more. By this measure, The MLC is the most efficient collective management organization in the world, and I expect that our efficiency will continue to improve in the coming years.

We have relied on a strong organizational culture of training and mentorship to build in just three years a team of 125 employees that can manage the administration of a royalty flow that is now on pace to be more than \$1 billion annually, and which requires matching many tens of millions of sound recording usages reported each month to more than 30 million musical works. That this has occurred in such a short time and at historic efficiency reflects the ambitious demands of the MMA to bring the whole industry together to make it happen.

#### Looking to the Future

Our operational planning is now focused on continuing to enhance and grow the capacity of our existing operations, while also preparing to tackle two new, major administrative challenges over the next year.

##### Enhancing our Existing Operations

The work of The MLC will never be done. It is reported that over 120,000 new music tracks are uploaded to streaming services each *day*.<sup>16</sup> The advent of AI tools to assist in creation may even continue to increase that rate. In the face of such increasing scale, The MLC continues to enhance its existing internal processes while also enhancing our suite of member tools and developing new tools that meet the more nuanced needs that our members share with us.

##### Awaiting Final Royalty Rates From The CRB For 2018-2022

In addition to continuing to enhance The MLC's core operations and functions, The MLC is preparing to administer two significant adjustments to royalties for uses that took place between 2018 and 2022. The CRB, which sets the mechanical royalty rates for the blanket license that The

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<sup>16</sup> Stassen, M., *There are now 120,000 new tracks hitting music streaming services each day*, Music Business Worldwide. (May 25, 2023) (retrieved from <https://www.musicbusinessworldwide.com/there-are-now-120000-new-tracks-hitting-music-streaming-services-each-day/>).

MLC administers, is about to retroactively change royalty rates for this five-year period from 2018-2022. This change comes after an appeal and remand of those rates back to the CRB for further consideration. The CRB just issued last week its final determination of royalty rates for this five-year period. The industry now awaits the publication of this final determination in the Federal Register, which will begin a 6-month period within which blanket licensees must report retroactive adjustments related to royalties for the activities that took place during this period.

#### Distribution of Retroactive Higher Royalties For 2021-2022

The new, retroactive rates are understood to be higher than the interim rates under which The MLC collected royalties for uses that took place during the first two years the blanket license was effective. The MLC expects the new rates will require blanket licensees to report hundreds of millions of dollars in additional royalties for songwriters and music publishers to The MLC for those two years of previously-reported usage. Once the determination is published and blanket licensees send The MLC adjusted reporting, The MLC will begin processing adjustments to the blanket royalties initially reported for those 2021 and 2022 uses, and then distributing the additional royalties to rightsholders.

#### Distribution of “Historical Unmatched” Royalties from 2018-2020 That The MLC Has Now Matched

The finalization of rates by the CRB will also allow digital music providers that had transferred historical unmatched royalties to The MLC pursuant to the MMA, for uses that took place between 2018 and 2020, to calculate the final value of the royalties that they owe for that period, and then report those adjustments to The MLC. This, in turn, will allow The MLC to begin distributing matched historical royalties for the uses from those three years to members – uses that by far represent the largest portion of the historical unmatched royalties that were transferred to The MLC. Despite the long delays involved in the finalization of these rates, The MLC has been working diligently for more than a year now to match as many of the historical unmatched uses reported to us to the growing number of musical works registered with us. We have already matched more than half of the total pool of historical unmatched royalties we received, which should put us in a position to begin distributing a significant amount of matched historical royalties within a matter of months after the digital music providers report the adjustments reflecting the final rates for these three years.

#### **Conclusion**

In conclusion, five years later, I think the blanket mechanical licensing system that Congress created when it unanimously passed the MMA, along with its vision to create a collective to administer that system and establish an associated musical works database, has gotten off to a successful start. While there is much to be proud of, know that The MLC is committed to building on this successful foundation by continuing to seek ways to improve our operations, provide even more benefits to our stakeholders, and continue to play a leading role in transforming the U.S music industry for the better in this ever-evolving digital age.

It has been an honor to speak with you today about The MLC, and I look forward to your questions.

Chair ISSA. Thank you. Mr. Porter.

# **STATEMENT OF DAVID PORTER**

Mr. PORTER. Thank you, Chair Issa, Ranking Member Johnson, and Members of the Subcommittee. Thank you for inviting me to speak to you today. I will skip over the credit information that you said about me and get to the guts of—

Chair ISSA. You have only got five minutes. You would never make it all.

Mr. PORTER. I will not even try.

Thank you for coming to Nashville for this important field hearing. It is a great place, Music City, to hear firsthand what is happening in music from songwriters, musicians, executives, and experts. I would like you to check out my hometown, Memphis, Tennessee, as well.

I understand one of the purposes of your visit is to learn more about the impact of the Music Modernization Act. Thank you for passing that landmark bill. Like a great song, the MMA benefits so many people in so many unique ways, many of whom have no idea just how much work it took to create. Whether you are a music creator or a legislator, the goal is to make something worthwhile that will endure and change lives, and that is exactly what the MMA has done.

For recording artists, including many of the greats I have worked with early in my career at Stax Records, the key provision is found in Title 2 of the MMA, also known as the CLASSICS Act. Because of a quirk in copyright law, recording artists were generally denied streaming royalties for music recorded before February 15, 1972. That includes some of the classic music of all time—Motown greats like Smokey Robinson, Stax greats like Otis Redding, Al Green of Hi Records, country giants like Johnny Cash and Patsy Cline, and rock and roll legends like Chuck Berry and Wilson Pickett. It was totally arbitrary and unfair.

In the mid-60's, I wrote a song called "Soul Man." Sam and Dave recorded it and won a GRAMMY in 1968. When that classic recording was streamed before the MMA passed, neither Sam Moore nor Dave Prater's estate received any royalties. Even crazier, when later covers of that song "Soul Man"—like the John Belushi/Dan Ackroyd Blues Brothers recording made in 1978—when that was streamed there was a royalty payment for those performers. The CLASSICS Act section of the MMA changed that, protecting legacy artists, and ensuring they get paid when their timeless music is streamed.

MMA made other changes benefiting artists and songwriters. It created the Mechanical Licensing Collective that is streamlining digital royalties for songwriters and making life a lot easier for streaming services too. It brought more music under fair market rate standards, replacing outdated standards that paid below-market royalties for satellite radio and other uses of music. Though that was needed, more still needs to be done. It certainly paved the way for producers to get their fair share of royalties, creating a process for artists to instruct SoundExchange to pay them directly.

I do not have to tell you that the MMA's success was in no way assured. As we all know, copyright law, when not looked into, be-

comes permanent. It took the entire industry—artists, songwriters, labels, publishers, producers, collecting societies, digital platforms, and others—working together to make this historic change. It is testament to the fact that when the music community comes together, and Congress acts with certainty and strength it can make a real difference.

That experience may serve us all well facing the upcoming challenges of artificial intelligence.

Today, huge AI computer models are copying and analyzing virtually all the music ever made to generate what they are calling “new” songs from the music of yesterday. Hopefully, courts will see that copyright law does not allow this. AI platforms and services must get permission before rightsholders’ work can be copied and used in this way though. So far, very few have done so. No one at any AI company has spoken to me, my label, or my publishing company. This is wrong.

Our concerns extend beyond copyright. There is no greater honor than to have an audience enjoy my music. Key to that appreciation is that it is MY music. To have someone—or something—take my voice, my sound, my persona without permission and manipulate it or mimic my work is a personal violation and a threat to the good I have built up over the years. How can this be “new” when this has been taken from songs written years ago? How is that new? I know I speak for a great many songwriters who feel this way.

I do believe there is a place for AI. We appear to be going down a path of appropriation, exploitation, and dehumanization. I have been the benefactor of a great number of people who have taken my songs and sampled them. They have my permission, they pay a royalty, and they create something that adds a fresh intention of my original work. This is not currently the case for the majority of AI-generated songs. It is not just a threat to existing works but to future generations of artists and to culture itself. If all we have is machine-made music copied from existing works there will be less and less creativity, artistry, and soul to go around. What a penalty that would be for future generations. What a shame.

Congress and the courts must assure that guardrails are in place to protect creators’ rights and their control over their own work.

You have a model in the MMA process to make things right, bringing the music family together with your own policy and legal expertise to shape strong rules for healthy uses of AI.

Thank you for inviting me to speak to you today.

[Prepared statement of Mr. Porter follows:]

STATEMENT OF DAVID PORTER  
BEFORE THE  
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
ON  
“FIVE YEARS LATER – THE MUSIC MODERNIZATION ACT”  
JUNE 27, 2023

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for inviting me to speak to you today. I am David Porter, a songwriter, musician, producer, and entrepreneur. I have over 1700 songwriting credits for songs performed by artists from John Belushi & Dan Ackroyd (The Blue Brothers) to the Wu-Tang Clan, and many more across all styles and genres. I was named one of the 100 Greatest Songwriters of All Time by Rolling Stone magazine in 2015. And I was honored to be inducted into the Songwriters Hall of Fame in 2005. And I’m still recording, producing, songwriting, and working on the next generation of superstars.

Thank you for coming to Nashville for this important field hearing. It’s a great place, Music City, to hear firsthand what’s happening in music from songwriters, musicians, executives, and experts. I’d like you to check out my hometown, Memphis, TN as well!

I understand one purpose of your visit is to learn more about the impact of the Music Modernization Act. Thank you for passing that landmark bill. Like a great song, the MMA benefits so many people in so many unique ways – many of whom have no idea just how much work it took to create. But whether you’re a music creator or a legislator, the goal is to make something worthwhile, that will endure and change lives. And that’s exactly what the MMA has done.

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In the mid-60s, I wrote a song called “Soul Man.” Sam and Dave recorded it and won a GRAMMY in 1968. But when that classic recording was streamed before the MMA passed, neither Sam Moore nor Dave Prater’s estate received any royalties. Even crazier: when later covers of that song “soul Man” – like the John Belushi/Dan Ackroyd Blues Brothers recording of made in 1978 – when that was streamed, there was a royalty payment for those performers. The CLASSICS Act section of the MMA changed that, protecting legacy artists and ensuring they get paid when their timeless music is streamed.

MMA made other changes benefiting artists and songwriters. It created the Mechanical Licensing Collective that is streamlining digital royalties for songwriters – and making life a lot easier for streaming services too. It brought more music under fair market rate standards, replacing outdated standards that paid below market royalties for satellite radio and other uses of music. Though that was needed, more still needs to be done. It certainly paved the way for producers to get their fair share of royalties, creating a process for artists to instruct SoundExchange to pay them directly.

I don’t have to tell you that the MMA’s success was in no way assured. As we all know, copyright law, when not looked into, becomes permanent. It took the entire industry – artists, songwriters, labels, publishers, producers, collecting societies, digital platforms, and others – working together to make this historic change. It is testament to the fact that, when the music community comes together and Congress acts with certainty and strength, it can make a real difference.

That experience may serve us all well facing the upcoming challenges of artificial intelligence.

Today, huge AI computer models are copying and analyzing virtually all of the music ever made to generate what they are calling “new” songs from the music of yesterday. Hopefully, courts will see that copyright law does not allow this. AI platforms and services must get permission before rightsholders’ work can be copied and used in this way though. So far, very few have done so. No one at any AI company has spoken to me, my label, or my publishing company. This is wrong.

But our concerns extend beyond copyright. There’s no greater honor than to have an audience enjoy my music. But key to that appreciation is that it’s MY music. To have someone – or something – take my voice, my sound, my persona without permission and manipulate it or mimic my work is a personal violation and a threat to the good I’ve built up over the years. How can this be “new” when this has been taken from songs written years ago? How is that new? I know I speak for a great many songwriters who feel this way.

I do believe there is a place for AI. But we appear to be going down a path of appropriation, exploitation, and dehumanization. I have been the benefactor of a great number of people who have taken my songs and sampled them. They have my permission; they pay a royalty; and they create something that adds a fresh intention of my original work. This is not currently the case for the majority of AI-generated songs. It’s not just a threat to existing works but to future generations of artists and to culture itself. If all we have is machine-made music copied from existing works, there will be less and less creativity, artistry, and soul to go around. What a penalty to put on future generations. What a penalty.

Congress and the courts must assure that guardrails are in place to protect creators’ rights and their control over their own work. But if AI moves too fast, it will leave today’s laws in the dust.

You have a model in the MMA process to make things right, bringing the music family together with your own policy and legal expertise to shape strong rules for healthy uses of AI.

Just like writing a great song, it’s hard work that will pay off for generations to come.

And I thank you so very much for your time.

Chair ISSA. Thank you, with one second to spare, Mr. Porter. Mr. Tashian.

#### STATEMENT OF DANIEL TASHIAN

Mr. TASHIAN. Hello, Chair Issa, Ranking Member Johnson, Ranking Member Nadler, Mr. Fitzgerald, Mr. Cline, and Members of the Subcommittee.

Thank you for the opportunity to speak about the Music Modernization Act. My name is Daniel Tashian, and I am a songwriter, producer, musician, and artist. As you mentioned, I have worked with Tim McGraw, Demi Lovato, and the legendary Burt Bacharach. I won two GRAMMY awards for my work with Kacey Musgraves. I am also a member of the Recording Academy, which represents thousands of music creators like me.

The MMA was a landmark piece of legislation that reflected years of work by Members of Congress, stakeholders, and individual music creators, and I have personally benefited by all aspects of the law.

As a songwriter, I am grateful that the MMA changed the way that we are paid by streaming services. This bill reformed a previously unreliable and opaque system into one that provides transparency and accountability. Since 2021, the Mechanical Licensing Collective, The MLC, has paid out over \$1 dollars in royalties, as you mentioned, and has achieved a matching rate of nearly 90 percent. These are remarkable outcomes that should encourage every songwriter. I am personally grateful for the work of The MLC. Even with this incredible progress there are still opportunities improve.

First, The MLC is still holding on to hundreds of millions of dollars in historically unmatched royalties. They must continue their outreach efforts to identify every songwriter who has money owed to them. The MMA requires that any unmatched money will eventually be paid out by market share, but importantly it gives The MLC the flexibility to take the time necessary to match royalties to the correct songwriter, including those who may be unidentified because they are independent or unaffiliated with a publisher.

Second, now that we have finally resolved the dispute over the Copyright Royalty Board's "Phonorecords III" rate decision, The MLC must work expeditiously to collect and distribute the back pay owed by the streaming services to songwriters. The law is clear that once the final ruling is published in the **Federal Register**, the DSPs have six months to pay the additional royalties they owe. Songwriters have waited long enough.

Third, Congress should remember that the MMA contemplated a robust oversight role for Congress and the U.S. Copyright Office over the operations of The MLC. The MLC is an administrative body, not a policymaking body. Recent disputes over songwriter termination rights illustrate that Congress and the Copyright Office must continue to stay engaged to protect the rights and interests of songwriters.

The MMA does more than reform royalty payments for songwriters. I am grateful to have "letters of direction" in place under the or "LOD" process under the AMP Act, which recognized the important role of producers, engineers, and mixers in copyright law.



This provision codified the LOD process by which producers can collect their share of digital royalties directly through SoundExchange, an important partner and friend to our community.

To make it easier for producers and engineers who do not have management teams to help them navigate the paperwork, the LOD application process should be streamlined and improved, and additionally the artist community should be encouraged to more widely adopt these agreements and the payments SoundExchange facilitates.

Finally, I want to briefly mention the last part of the MMA, the, the CLASSICS Act, authored by Chair Issa, which provides for the payment of digital royalties for recordings created prior to 1972. I have a personal connection because my father, Barry Tashin, led the epic records act, Barry and The Remains, who opened for the Beatles on their 1966 U.S. tour. I applaud Congress for ensuring that my family and other legacy artists are now fairly compensated for their tracks.

In conclusion, the MMA represents a generational reform of music law. It also represents a sea change in the relationship between the music community and Congress. For music makers like me, we saw that you were willing to take the time to learn about our complicated and often messy business. I hope this work serves as a foundation, and we can continue to work together to solve the challenges that still face us. Whether it is resolving the historic inequity of performance royalties for artists on broadcast radio or ensuring a fair CRB rate-setting process for songwriters, I am hopeful for what we can achieve together.

On behalf of the songwriters, producers, and artists like me, we are counting on you to look out for our interests.

Thank you.

[Prepared statement of Mr. Tashian follows:]

Written Testimony of

**Daniel Tashian**

**GRAMMY-Winning Artist, Songwriter, and Producer**

Before the

United States House of Representative Committee on the Judiciary

Subcommittee on Courts, Intellectual Property, and the Internet

Hearing On

“Five Years Later – The Music Modernization Act”

June 27, 2023

Chairman Issa, Ranking Member Johnson, and members of the Subcommittee.

Thank you for the opportunity to speak with you today about the Music Modernization Act. My name is Daniel Tashian, and I am a songwriter, producer, musician, and artist. Throughout my career I've released music of my own and collaborated with artists ranging from Tim McGraw to Demi Lovato to the legendary Burt Bacharach. In 2019, I received two GRAMMY Awards for my work with Kacey Musgraves on her Album "Golden Hour," which won the GRAMMY for Album of the Year. I am also a voting member of the Recording Academy, the organization behind the GRAMMY Awards, which represents thousands of music creators like me here in Nashville and across the country.

The Music Modernization Act was a landmark piece of legislation that reflected years of work by Members of Congress, stakeholders across the music industry like the Recording Academy and others, and direct activism by individual music creators. The MMA addressed many issues that impact music makers in different crafts, and I've personally benefited by all aspects of the law.

As a songwriter, I am grateful that the MMA changed the way songwriters are paid for mechanical licenses by streaming services. The MMA reformed an unreliable and opaque system into one that provides transparency and accountability. Since beginning payments in April of 2021, The Mechanical Licensing Collective has paid out over a billion dollars in royalties and has achieved a matching rate of nearly 90 percent. These are remarkable outcomes that should encourage every songwriter. I am personally grateful for the work of The MLC to ensure songwriters receive the payments they are due. But even with this incredible progress and the good work of The MLC, there are still opportunities on the horizon to improve.

First, The MLC is still holding on to hundreds of millions of dollars in historically unmatched royalties. The MLC must continue to match this money to the appropriate songwriters. To its credit, The MLC has made all its data related to unmatched money publicly available and searchable. But they must also continue their outreach efforts to the songwriter community to identify every songwriter who has money owed to them. The MMA requires that any unmatched money will eventually be paid out by market share, but importantly it gives The MLC the flexibility to take the time necessary to make every effort to match royalties to the correct songwriter. I know that my works are registered with The MLC, and I have a team around me that ensures my data is correct. But I know not every songwriter is so fortunate—these unidentified songwriters are most likely to be those who are independent and unaffiliated with a publisher, and the most in need of receiving those royalties.

Second, now that we have finally resolved the dispute over the Copyright Royalty Board's "Phonorecords III" rate decision that determined royalty rates for the 2018-2022 period, The MLC must work expeditiously to collect and distribute the backpay owed by the streaming services to songwriters. The law is clear: once the final ruling is published

in the federal register, the DSPs have six months to pay the additional royalties they owe. Imagine if you were told you were finally receiving a raise after being underpaid for your entire career, only to have to wait another five years before receiving any of it. Songwriters have waited long enough.

Finally, Congress should remember that the MMA contemplated a robust oversight role for Congress and the U.S. Copyright Office over the operations of The MLC. The MLC is an administrative body, not a policymaking body. Recent disputes over the impact of The MLC's policies on songwriter termination rights illustrate that Congress and the Copyright Office must continue to stay engaged to protect the rights and interests of songwriters.

But the MMA did much more than reform royalty payments for songwriters. As a producer, I am grateful for the provisions of the MMA known as the "AMP Act." For the first time, the AMP Act recognized the important role of producers, engineers and mixers in copyright law, and codified the "letters of direction" or "LOD" process by which producers can collect their share of digital royalties directly through SoundExchange. A featured artist can use a LOD to instruct SoundExchange to pay a percentage of their royalties to a producer, engineer or mixer who participated in creating a recording, pursuant to their contract. Without a LOD, studio professionals must collect their royalties from the artist, which can be inefficient and burdensome for everyone involved. I personally have an LOD in place with SoundExchange and benefit from this practice.

To fully realize the potential of the AMP Act to help producers and other studio professionals collect their royalties, more needs to be done. SoundExchange, which has been an important partner and friend to our community, should continue to improve and streamline the LOD application process to make it as easy as possible for individuals, especially those producers and engineers who don't have management teams to help them navigate the necessary paperwork. In addition, industry stakeholders should increase awareness of the LOD process to both the producer community and especially the artist community to normalize the widespread adoption of these agreements and the payments SoundExchange facilitates.

Finally, I want to briefly mention the last part of the MMA, the "CLASSICS Act," authored by Chairman Issa, which provides for the payment of digital royalties for sound recordings created prior to 1972. As I mentioned earlier, I had the great privilege of collaborating with the late Burt Bacharach in 2020 on the EP *Blue Umbrella*, which was recognized with a GRAMMY nomination. Many of Burt's most famous songs were recorded by Dionne Warwick, who herself was a vocal advocate for fixing what was known as the pre-72 loophole. But I have a more personal connection to this issue. My father, Barry Tashian, led the epic legacy act Barry and The Remains, who opened for the Beatles on their 1966 U.S. tour. His music is still streamed and listened to today. It's incredible to think that he was not paid royalties for years because of an arbitrary gap in the law. I applaud Congress for fixing this quirk and ensuring that my family and other legacy artists are now fairly compensated for their classic tracks.

Artists like Dionne aren't done fighting; she continues to be a fierce advocate for finally establishing a public performance right for artists and sound recordings on AM/FM radio. The radio performance right remains the biggest unresolved issue in music that can only be fixed by Congress. I applaud this Committee's work to pass the American Music Fairness Act last December, and I hope we can work to find a solution to pass this bill into law.

In conclusion, the Music Modernization Act represents a generational reform of music law. It also represents a sea change in the relationship between the music community and Congress. For Congress, you saw stakeholders from all sides of our industry come together to solve real, longstanding problems. And for music makers like me, we saw that the decision-makers in Washington actually care about us, and that you were willing to take the time to learn about our complicated and oftentimes messy business to try to help make our lives a little better. My hope is that the MMA serves as a foundation of how we can work together to solve the challenges that still face us. Whether it's resolving the historic inequity of the lack of performance royalties for artists on broadcast radio or ensuring a fair CRB rate-setting process for songwriters, I am hopeful the MMA will continue to be an example of what we can achieve.

For the professional songwriters, producers, and artists like me who are working everyday in anonymity to create new music for the world, we are counting on you to look out for our interests.

Thank you.

Chair ISSA. Thank you, Mr. Tashian.  
We will now go to Mr. Levin.

#### STATEMENT OF GARRETT LEVIN

Mr. LEVIN. Chair Issa, Ranking Member Johnson, Ranking Member Nadler, and Members of the Committee, thank you for the opportunity to testify before you today at this important hearing on the Music Modernization Act at five years. My name is Garrett Levin, and I am the President and Chief Executive Officer of the Digital Media Association, or DiMA, which represents the world's leading audio streaming services.

The MMA was, and continues to be, necessary for today's music ecosystem. The key provisions of the law, including the blanket mechanical license, the centralized authoritative data base, limitation on liability, and extensive reporting requirements create efficiency in licensing and royalty payments and provide legal certainty. The law is fundamentally working.

Five years is a key moment to step back, acknowledge the extraordinary resources and cooperation that went into creating The MLC and this new licensing system, and to examine where challenges remain. My written testimony provides more detail, but I hope to leave the Committee with two key takeaways.

First, I applaud Kris Ahrend and the entire team at The MLC, as well as my colleagues across the industry, including my fellow The MLC board members here today, like Mike Molinar, who have been and remain committed partners to the success of this improved system. The results Kris cited in his testimony are truly impressive, and the MMA is a model of how together we can solve hard problems for the benefit of all.

Second, we should continue to diligently identify areas for improvement to reach the full potential and intention of the MMA, including two I will focus on today—ensuring that regulatory and statutory positions reflect the MMA's critical balance, and ensuring that The MLC's budget is reasonable and cost effective.

The MLC sits at the heart of the MMA's blanket mechanical license system. In its best form, The MLC can serve as a neutral, level seat of a three-legged stool, administering the blanket license system in an effort to balance the interests of three sets of stakeholders—songwriters, music publishers, and digital streaming services—a neutral administrator and best-in-class back-office service provider that processes massive amounts of data provided by digital music services, provides a one-stop, authoritative shop for rights-holders to register their works in a centralized public data base, matches more works to sound recordings than previously possible, and effectively and efficiently pays out hundreds of millions of dollars in royalties every year to publishers who, in turn, pay songwriters.

In the first year of operations, in particular, The MLC worked bilaterally with services to ensure they successfully transitioned to the new system. Unfortunately, on broad interpretations of the statute and regulations, we have seen several instances where The MLC has acted not as a neutral partner but rather as arbiter or advocate on behalf of the music publishers, just one leg of the stool.

Instead of siding with any one stakeholder, The MLC should seek clarification from the Copyright Office and rely on the authority the MMA granted to the office. To do otherwise is contrary to congressional intent and produces results that distort the necessary balance of the statutory licensing regime in light of The MLC's power over all stakeholders. Guidance from this Committee to ensure that The MLC acts as a neutral administrator will help to advance the goals of the MMA and improve the system for all.

This need for neutrality is paramount given the unique funding structure of The MLC, which requires that licensees pay for the costs of The MLC's operations on top of their royalty obligations. This structure has actually led to the absurd circumstances that the services are paying for both their own advocacy costs and The MLC's costs in advancing arguments indistinguishable from the music publishers. That was not the intention of the MMA.

Twice now the services have agreed to fund the cost of The MLC at the amount requested, even as those costs increase significantly. The MMA explicitly provides that the services are responsible only for the reasonable costs of running the collective. The MMA did not hand The MLC a blank check.

The true measure of reasonableness will be material improvements in efficiency and effectiveness in The MLC's core functions—are more royalty-bearing works registered, are more works matched, are more royalties paid through to the rights owners, and is all of that done with increasing efficiency and effectiveness over time.

Regular review by Congress of budgeting and spending against ongoing performance improvements will help ensure that the law lives up to its full potential and help the parties avoid inefficient and expensive litigation over costs before the Copyright Royalty Board.

The MMA was a major stride forward in improving music licensing for the digital market. DiMA and its members were proud to be a central part of the law's passage, and we continue to support the law. Our member companies interact with The MLC on a near constant basis, and we believe that they, like us, fundamentally want to improve the system. DiMA's members want The MLC to succeed. More than that, they need The MLC to succeed.

When the MMA passed Congress, it was described on multiple occasions as a once-in-a-generation measure to improve the licensing system for all stakeholders. Five years in, we continue to believe that is true.

I thank you and look forward to your questions.

[Prepared statement of Mr. Levin follows:]

**Statement of Garrett Levin  
President and Chief Executive Officer  
Digital Media Association (DiMA)  
before the House Judiciary Committee  
Subcommittee on Courts, Intellectual Property, and the Internet  
Hearing on: “Five Years Later – The Music Modernization Act”  
June 27, 2023**

Chairman Issa, Ranking Member Johnson, and Members of the Committee, thank you for the opportunity to testify before you today at this important hearing examining the Music Modernization Act at five years.

My name is Garrett Levin and I am the President and CEO of the Digital Media Association, or DiMA. DiMA represents the world’s leading audio streaming companies, whose innovations are the economic engine that have revitalized the music industry. DiMA and its members – Amazon, Apple Music, Feed.fm, Pandora, Spotify, and YouTube – advocate for policies that ensure that music fans have legal access to music anytime, anywhere they want it, and that artists and songwriters can connect with old fans and make new ones around the world.

Nashville is a fitting host for today’s hearing, a city that reflects the modern music industry and that is home to the Mechanical Licensing Collective (“MLC”) which we will be discussing at length. DiMA’s members have strong relationships in this vitally important music city and just recently, we launched a brand-new report about the connection between streaming and country music here in town. I’m honored to be here testifying.

DiMA’s members have revolutionized the music industry. In 2017, digital music providers paid the recorded music industry approximately \$7 billion in royalties. By 2022, that number had nearly doubled to \$13.3 billion. Streaming royalties comprise 84% of the recorded music market in the United States. And recently, streaming services reached an agreement with music publishers and songwriters to pay higher mechanical royalty rates while also increasing certainty in the system. Streaming services pay approximately 70% of revenues to rightsholders in the form of royalty payments, operating on the remaining 30%. These margins are lower than any other distribution model, but streaming services are doing more with less. They are providing tools and data for artists and songwriters; allowing fans to discover and rediscover music; constantly innovating; and providing access to the world’s music at fans’ fingertips.

***I. The Music Modernization Act – Fixing a Broken System for All Stakeholders***

Music licensing has always been complex. Streaming accelerated those challenges, particularly for licensing musical works created by songwriters and composers. Musical works are generally licensed by music publishers, and they are incorporated into the sound recordings that are commercially distributed on



streaming services. Because of outdated licensing frameworks, it was impossible for services to license the rights they needed in an efficient manner. And because of longstanding challenges in ensuring that accurate music publishing data is included with released sound recordings, significant volumes of royalties could not be processed and paid to the correct publishers and songwriters, despite the best efforts of streaming services.

At the time of the Music Modernization Act (“MMA”), there was widespread recognition that digital mechanical licensing—one of the suite of licenses that streaming services need to operate—was fundamentally broken, harming streaming services, music publishers, and songwriters alike and threatening the very foundation of the new music economy. Legislation was needed to solve this set of shared problems and bring licensing into the 21<sup>st</sup> century.

DiMA was at the center of the negotiation, drafting, and passage of the MMA, offering support from its earliest stages through it being signed into law nearly five years ago. At the time, streaming services, music publishers, and songwriters came together, compromised, and found solutions to the licensing challenges that had plagued this segment of the industry, for the mutual benefit of all three groups.

The Music Modernization Act accomplished that goal by making a number of important changes. It established a blanket license available for qualifying digital audio services, replacing the broken work-by-work system of the past. It provided for a single collective organization (with oversight from the Copyright Office and Congress) to administer that license by receiving extensive usage reporting from streaming services, matching sound recordings to musical works, and distributing royalties to copyright owners, replacing the patchwork of multiple service providers that existed previously.

Critically, the MMA also created a statutorily required authoritative database of musical works information populated with data from copyright owners—those closest to the data—incentivizing rights holders to register their works in a single database that would be used to facilitate their royalty payments from *all* digital services. Finally, the MMA provided a clear pathway for resolving all the old disputes that had stemmed from the historic challenges of matching, identification and payment, by creating a limitation on liability for potential past infringement for services that transferred their historic unmatched royalties and usage reporting to the MLC, so that the MLC could attempt to use its new database to match those works and pay those royalties.

All of those features clearly represent Congress’s recognition that it was critical for the new system to provide solutions to the problems of the past for all stakeholders. The legislative history of the MMA makes clear that key stakeholders, as well as Members of Congress, viewed the legislation as a grand compromise, meant to improve the system for all. It was a fact stated repeatedly in Committee work on the bill and in Floor statements.

For example, then-Congressman Doug Collins, one of the lead sponsors of the bill, stated in a press release that “Passage of the Music Modernization Act was the product of years of negotiations and stakeholders — from Congress to songwriters to digital services — who came together to make the system better for the music industry as a whole ...”<sup>1</sup>

Another lead sponsor, then-Senator Lamar Alexander, stated on behalf of then-Chairman Grassley, “The Music Modernization Act will really help songwriters, artists, publishers, producers, distributors, and other music industry stakeholders. This bill is the product, said Senator Grassley, of long and hard negotiations and compromise.”<sup>2</sup>

DiMA continues to support the goals and objectives of the MMA, and we believe that, on a fundamental level, the law is working. Members of this Committee explicitly established many of the most critical features in the law, such as the blanket license itself and the centralized, public, authoritative database. That is not to say that this new system is without challenges. As the MMA approaches its fifth anniversary as a law, it is appropriate and necessary to evaluate how it is operating and to what extent it is meeting Congress’s goal of fixing a broken system for songwriters, music publishers, and streaming services alike.

## *II. My Role and Perspective on the MMA and MLC*

I started at DiMA in March of 2019, and over the past 4 plus years, I have been deeply involved in virtually every facet of the implementation and operation of the MMA’s blanket mechanical license. In testifying today, I bring a perspective shaped by my extensive experience, including:

- The formation of the digital licensee coordinator (“DLC”), the representative of digital music providers under the MMA;
- The Copyright Office’s initial designation of both the MLC and the DLC;
- Appointment to and service on the MLC Board of Directors as the non-voting representative of the licensees;
- Negotiation and settlement of the initial agreement to fund the MLC;
- Active participation in nearly a dozen rulemakings and related regulatory proceedings at the U.S. Copyright Office to establish the full scope of requirements under the law, starting in early 2019 and continuing to the present day;
- The formal launch of the blanket license (or “license availability date”) on January 1, 2021 and the transition to the blanket license system, as well as

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<sup>1</sup> *Rep. Collins (R-Ga) - Press Release*

<sup>2</sup> <https://www.c-span.org/video/?c4750195/senate-passed-orrin-g-hatch-music-modernization-act>

the transfer of hundreds of millions of dollars in previously unmatched royalties from the services to the MLC;

- Over two years of operation under the blanket license;
- Most recently, a second voluntary agreement regarding the MLC's budget, providing for a significant increase in the funding that the licensees will be providing to the MLC over the coming years; and
- In the middle of all of that, last year, I also had a lead role in negotiating and executing the landmark rate settlement of the most recent Copyright Royalty Board proceeding that established the rates and terms for the MMA's blanket license.

I have had a front row seat to the incredible work that has been undertaken by a wide range of stakeholders, including dozens of music services that rely on the blanket mechanical license, to turn the MMA from many, many words in a statute into operational reality.

### *III. The MLC—Successes and Challenges*

The MLC sits at the heart of the MMA's blanket mechanical license system. It maintains the database of musical works information, it receives monthly usage reporting and royalty payments from digital music services, it matches the reported sound recordings to the registered musical works to find the right publishers, and it pays the applicable royalties to those publishers (who in turn pay songwriters their share). Moreover, the MLC is charged with making information publicly available and using its database to attempt to match and pay out historical royalties that could not previously be matched and paid under the prior system. These core tasks provide multi-faceted benefits to all three key stakeholder groups.

The MLC has had a significant job to do since the MMA became law, and success was not in any measure guaranteed. An already short timeline to transition to the blanket license became more challenging with the onset of the Covid-19 pandemic, and regulatory and statutory questions arose throughout the process that required creative solutions and, sometimes, Copyright Office intervention. Throughout that initial period the MLC, publishers, and services worked diligently, with services undertaking the work of engineering new reporting workflows and critically, providing the MLC the funding it requested to begin its operations.

And beginning on January 1, 2021, hundreds of millions of dollars of unmatched royalties were transferred, dozens of services began submitting monthly reports with more data than had ever been reported, and the MLC began matching sound recordings to musical works and paying mechanical royalties to publishers, in large part based on the influx of data provided by publishers to the database. This shared success should be commended.

Credit should be given to Kris Ahrend and his team, who I have seen firsthand devote untold hours to building the MLC. I also want to acknowledge the dedicated

members of the MLC Board, including my colleague testifying today, Mike Molinar, who have played a crucial role to date.

The MMA sets out the makeup of the MLC Board, and Congress decided that the voting membership should comprise 10 publishers, 4 self-published songwriters, and three non-voting seats. It has been my privilege to serve on the Board for nearly my entire time at DiMA, as the non-voting representative of the digital services. The Board's statutory composition does not alter the actual purpose of the MLC, and the Board members are there to govern this quasi-governmental agency through the use of their industry expertise. This is clear from both the legislative history and the Presidential signing statement, which designates the voting Board members as inferior officers of the United States appointed by the Librarian of Congress. Moreover, the statute provides for a robust set of MLC committees for operations, dispute resolution, and unclaimed royalties, all of which are intended to advise the MLC and feature broader representation.

While we mark the MLC's successes, today's hearing is an important opportunity for this Committee to understand and evaluate challenges that have arisen since the MMA's passage. Congress should continue to exercise oversight of this new system to ensure that all facets are operating consistent with the MMA.

In its best form, the MLC should serve as the level seat of a three-legged stool, administering the blanket license system in an effort to balance the interests of three sets of stakeholders—songwriters, publishers, and streaming services—that are not always aligned. The MLC can and should be a neutral administrator and best-in-class back-office service provider that processes massive amounts of data, provides a one-stop authoritative shop for rightsholders to register their works, matches more works than previously possible, and effectively and efficiently pays out hundreds of millions of dollars in royalties to publishers every year.

The potential power that the MLC wields over the music streaming market is massive, particularly its ability to terminate a service's blanket license in the event of a material breach. Such termination would be an effective commercial death sentence for an interactive streaming service in the United States, and that power (or even the threat of using that power) must therefore be wielded in extremely rare and expressly prescribed situations. Within the proper scope of the MLC's enforcement authority, it should police misuses of the Section 115 blanket license in a manner that is nondiscriminatory, independent, neutral as between permissible readings of the statute, and efficient.

Today's hearing is an important step in the oversight necessary to achieve that goal, and I want to draw attention to two areas of concern for DiMA's members, the MLC's approach to regulatory and statutory interpretation and the MLC's budget.

#### *a. Regulatory & Statutory Interpretations*

Because of the newness of the system, and the extremely complicated nature of music licensing law, the Music Modernization Act intentionally gave the Copyright Office significant regulatory authority to promulgate necessary regulations and

provide guidance to the MLC to ensure that the law would operate as intended once applied in a commercial setting. Over the past four-plus years, the dedicated staff of the Copyright Office has conducted more than a dozen rulemakings and played an essential part in implementing the law.

As can be expected when complicated statutory and regulatory frameworks impact commercial issues, different stakeholders may have different interpretations of the MMA and its implementing regulations or Copyright Royalty Board regulations. This has unsurprisingly been the case with the MMA. In these instances, it is important that the MLC acts as intended – as an administrator – rather than as an arbiter or advocate on behalf of any one party. In the first year of the MLC's operations in particular, the MLC did a commendable job of working bilaterally with services to ensure they successfully transitioned to the new system.

Unfortunately, on broadly applicable interpretations of the statute and regulations, we have seen several instances where the MLC has acted more as arbiter or advocate on behalf of just one leg of the stool – namely, the music publishers. While DiMA may disagree with the publishers or songwriters on certain regulatory and statutory interpretations, it is their prerogative to voice their perspective, as it is the services' to voice ours. The issue arises when the MLC consistently takes substantively identical positions to any one party.

In those circumstances where fundamental disagreements arise between stakeholders about interpretations of the law or regulations, the MLC's role can and should be to seek clarification from the Copyright Office consistent with the Office's broad authority under the MMA, rather than seek to unilaterally impose an interpretation, especially one that favors some stakeholders over others. To do otherwise is contrary to Congressional intent and produces bad results that distort the necessary balance of the statutory licensing regime, particularly considering the MLC's inherent statutory powers over all stakeholders.

The MLC should consistently seek to focus its efforts squarely on its core statutory functions on behalf of all three implicated stakeholder groups and allow those parties to advocate for resolution of statutory or regulatory disputes with the Copyright Office or, as a last resort, through the courts. This is particularly true given the unique funding structure of the MLC, which requires the licensees to pay for the reasonable costs of the MLC's operations and has led to the absurd circumstance that the services are paying for both their own advocacy costs and the MLC's costs in advancing arguments indistinguishable from the music publishers. Moreover, it limits the ability of services to challenge MLC interpretations because of the prospect of continuing to pay the costs of both sides of the dispute. That was not the intention of the MMA.

The MLC *can* (and should) sit in the middle of the partnership between services, publishers, and songwriters and ensure the full benefits of the MMA are realized. But to fully do so, it must act and be seen to act independently and from the middle.

i. *Late Fees for Estimated Payments*

One current example relates to late fees and when they should apply. This is the subject of an ongoing proceeding at the Copyright Office and relates to estimates that services must make when submitting monthly royalty payments. The specific royalties that the MLC collects are based on a complicated formula that depends on amounts that the services pay for other royalties, specifically, the royalties they pay to record labels for sound recording rights and to PROs for public performance rights in musical works.

Those latter categories of royalties, which are part of commercial agreements the terms of which the services cannot unilaterally dictate, are often not precisely known and in some cases are literally unknowable at the time of monthly reporting to the MLC for a variety of reasons, including that they might be on different payment schedules, that they might be subject to renegotiation and are therefore interim rates that will be adjusted, and that they might be subject to minimum annual payments that are not triggered until the end of a year. All of these have been features of the streaming rate formula for well over a decade, as well as precursor rate structures that predate streaming. The reasons for these estimates and adjustments are well understood by both services and rightsholders.

The need to estimate royalties existed before the Music Modernization Act and continues to exist after it. Industry practice has long been to make an initial estimated payment, and, when all the information is available, to adjust the payments as needed and the statute and regulations have accommodated that practice. Late fees have never been required on these adjustments.

The Copyright Office issued interim regulations in 2020 reflecting this long-standing industry practice and the Copyright Office's own principle that licensees should make adequate payments but not overpayments. As the MLC began to operate and collect royalties and receive annual adjustments, it became clear that there was a disagreement about whether and how late fees might apply to estimated payments and subsequent adjustments. The Copyright Office recognized this disagreement existed and issued a Notice of Inquiry to examine the issue.

The music publishers have submitted comments to the Copyright Office seeking to overturn historic practice and the clear intention of the regulations. We disagree with their interpretation of the statute, but their action is not the primary issue. Rather, we are concerned that the MLC submitted substantively similar comments to the Copyright Office, taking the same position as the NMPA. Moreover, the MLC did this using the same attorneys that the NMPA uses for CRB ratesetting proceedings (and often for copyright infringement litigation) and advancing arguments about the regulations that are indistinguishable from arguments made by the NMPA in the most recent ratesetting, but not included in the final regulations. This bizarre scenario, in which the services are paying for the MLC to hire the same lawyers who litigated the ratesetting proceeding against them and

resurrect arguments that did not carry the day in that proceeding, could not have been intended by the MMA.

ii. *Treatment of Pre-MMA Liquidation Agreements*

Another example related to the treatment of certain agreements regarding historic royalties and that were executed before the MMA's passage. Prior to the MMA, the lack of authoritative and centralized musical works ownership data led to significant challenges finding and paying the proper copyright owners.<sup>3</sup> Services therefore accrued royalties that they were prepared to pay but could not do so because the recipients could not be identified.

Recognizing this problem, several services entered into voluntary agreements with the NMPA to compensate publishers and their affiliated songwriters when the works could not otherwise be matched. These agreements featured claiming portals that allowed publishers to review and identify unmatched works for payment and then also receive unmatched royalties after a period in exchange for releasing any claims to further compensation. These agreements ultimately became the template for the structure of the MMA.

But the agreements also led to a dispute regarding the MMA's requirement for services to transfer their unclaimed historic royalties to the MLC in order to receive the limitation on liability for past failures to pay that money out under the previously broken system.

Despite the fact that the publishers who participated in the liquidation agreements had released claims for any additional royalties from the relevant time period and had distributed money to their songwriters consistent with their private agreements, the MLC took the position that services should double pay those very same royalties to the MLC and potentially receive it back if publishers sent in letters of direction directing the MLC to do so.

The MLC's wholly inefficient and overly complicated proposal prevented the parties from negotiating a workable solution and the Copyright Office had to intervene under its regulatory authority. The Copyright Office agreed with the services, and the issue was resolved through regulations, but not before significant time and resources were needlessly expended—and again, the MLC's expenses were shouldered by the services, in addition to their own expenses.

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<sup>3</sup> The creation under the MMA of the centralized, authoritative database of musical works information coupled with more extensive reporting from services has allowed for significant improvements on this issue. Music publishers now have one, authoritative location to register their works for the payment of mechanical streaming royalties in the United States. And the data shows that millions of works have been newly registered since the MLC launched its database, leading to improved matching and payments. The database alone does not solve for all of the data challenges, including delayed identification of writing splits, but DiMA and its members are committed to continuing to work toward cross-industry solutions to the shared metadata challenges.

iii. *Treatment of Public Domain Works*

The royalty formula used to calculate and pay mechanical royalties is highly complex. One of the MLC's statutory duties is to confirm services' royalty obligations based on the formula and the services' reporting. The result of the MLC's calculations is a "per-work" distribution of a service's overall royalty payments that is paid to copyrighted non-dramatic musical works.

In undertaking these calculations, the MLC has adopted an interpretation related to the treatment of public domain musical works, those that are not protected by copyright, that charges the services royalties for those works, and then allocates those royalties among the works that are protected by copyright. The services believe that this position is inconsistent with the rate regulations set by the CRB. The services have raised these concerns to the MLC, but the MLC has shown no willingness to alter its approach and services lack ways to seek recourse.

This approach by the MLC has an outsized effect on services that rely heavily on public domain works, such as classical music specialty services. Moreover, the MLC's approach to public domain works may also result in unintended outcomes in other scenarios involving works that might sit outside the statutory license, such as solely AI-generated music.

iv. *Statutory Termination Rights*

The MLC has also acted as an extension of the publishers on matters that impact songwriters. The treatment of statutory termination rights is one example. This issue does not directly impact DiMA members, except insofar as it affects the songwriters who are ultimately the ones who create the works that services perform. Here, the Copyright Office implementing regulations noted that the MLC should simply operationalize instructions from the relevant copyright owners, rather than adopt a position on what the law should be.<sup>4</sup> The Office has indicated that the 2020 rule was adopted out of shared concerns by the Office and many groups representing songwriter interests that the MLC's initial proposal would adversely affect songwriter interests.<sup>5</sup> Nonetheless, the MLC subsequently adopted a policy that was clearly tilted in the publishers' favor, essentially allowing a publisher to continue to collect blanket license royalties even after a songwriter has terminated their grant of rights to that publisher. This issue is the subject of an ongoing Copyright Office rulemaking, but notably in its October 2022 Notice of Proposed Rulemaking, the Copyright Office said that "the MLC's termination dispute policy is inconsistent with the law."<sup>6</sup>

<sup>4</sup> 85 Fed. Reg. 58114, 58133-58135, available at <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-20077.pdf>.

<sup>5</sup> 87 Fed. Reg. 64405, 64406 available at <https://www.govinfo.gov/content/pkg/FR-2022-10-25/pdf/2022-23204.pdf>.

<sup>6</sup> 87 Fed. Reg. 64405, 64411 available at <https://www.govinfo.gov/content/pkg/FR-2022-10-25/pdf/2022-23204.pdf>.



*b. Congress's Role in Ensuring That the MLC Costs and Budget Are Reasonable*

DiMA's members are directly invested in the MLC's success. Not only do the services pay for the MLC's operations in addition to their royalty obligations, but they have also made significant investments in changing their own reporting practices and workflows. In short, the transition to the blanket license system has been expensive, but the benefits are also clear. Congressional oversight of the budget of the MLC, as a quasi-governmental entity that exists solely to administer the statutory license that Congress created, is not only proper, it is essential.

The MLC has a unique financial structure, under which the music streaming services (users of the Section 115 license) pay directly for the MLC's costs, rather than the MLC's expenses being deducted from royalties collected, as happens with other collectives all over the world. This funding structure is a feature of the statute, and the services have repeatedly agreed to the MLC's funding requests, which have increased steadily over time and represent significant increases over the total costs that were collectively spent on license administration by the services before the MMA.

As noted, there have been clear improvements in the matching of works and payment of royalties—the core goal of the MLC's mandate. But DiMA's members also believe, based on their years of experience in license administration, that the centralization of more, higher quality data in the MLC database as required by the MMA, has been the primary driver of that improvement.

The MMA explicitly provides that the services are responsible only for the *reasonable* costs of running the collective. Reasonableness inherently includes the principles of cost-benefit and responsible financial stewardship, which should be central to the MLC's budgeting and spending approach. For other collectives, which must use the royalties they collect to cover their operations, these concepts are implicitly and explicitly incorporated in their financial planning. Just as those organizations must justify their expenses as a share of the royalties that would otherwise get paid to rightsholders, the MMA did not hand the MLC a blank check.

The true measure of reasonableness should be clear improvements in efficiency and effectiveness in the MLC's core functions—are more royalty-bearing works registered, are more works matched, are more royalties paid through to the right owners, and is all of that done with increasing efficiency over time. And along with that increase in efficiency and effectiveness, we should ultimately expect to see costs *improve* over time, rather than simply continue to increase.

Reasonable budgeting becomes particularly important in the context of overreaching statutory and regulatory interpretations and resulting disputes in which the services are being asked to pay for advocacy that is both adversarial and outside the scope of the MLC's statutory remit, as I discussed above.

Regular review by Congress of budgeting and spending, measured against ongoing performance improvements and key performance indicators will help ensure that

the law lives up to its full potential and help the parties avoid inefficient and costly Copyright Royalty Board litigation over costs.

#### *IV. Conclusion*

While challenges remain in music licensing, the MMA was a major stride forward. DiMA and its members were proud to be a central part of the law's passage, and we continue to support the law. Our member companies interact with the MLC on a near constant basis, and we believe that they, like us, fundamentally want to improve the system, ensuring that songwriters get paid and fans can legally access music anytime, anywhere that they want.

When the MMA passed Congress, it was described on multiple occasions as a once-in-a-generation measure to improve the licensing system for all stakeholders, and to update our music licensing laws. Five years in, we continue to believe that is true. We will continue to do our part, working with our music industry partners, to promote a healthy music ecosystem.

DiMA's members want the MLC to succeed. More than that, they *need* the MLC to succeed. There is a tremendous opportunity for the MLC to sit at the center of a robust partnership between songwriters, music publishers, and digital music services, assisting all parties to realize the full commercial potential of this modern music marketplace. Guidance from this Committee to ensure that the MLC acts as a neutral administrator will help to advance the goals of the MMA and improve the system for all.

Thank you again for the opportunity to appear before you today, and I am happy to answer any questions.

Chair ISSA. Thank you. Mr. Molinar.

**STATEMENT OF MICHAEL MOLINAR**

Mr. MOLINAR. Good morning, Chair Issa, Ranking Member Johnson, and Members of the Subcommittee. My name is Mike Molinar, and I am the President of Big Machine Music, a leading independent music publisher based here in Nashville. I am also a current and founding board member of the Mechanical Licensing Collective designated by the U.S. Copyright Office.

I am honored to appear before you today to provide my perspective as an independent music publisher on the Music Modernization Act. As a music publisher, I am responsible for representing songwriters, the authors of musical works, and helping to develop their careers, exploit their songs, and then collect and pay them royalties when those songs are used.

It was during my college internship 27 years ago, just down the street, where I discovered what a job in music publishing entailed. I was immediately hooked at the idea of working with the musical magicians who write the soundtrack of our lives and whose hits are the bedrock of the entire music industry. That fall, I began my first job in publishing as a catalog manager and worked my way up to a creative publishing executive, eventually starting my own independent music publishing companies.

For the past 11 years, I have been proud to serve as the head of Big Machine Music, which I launched at the request of music industry titan, Scott Borchetta. Thanks to Mr. Borchetta, our dedicated staff, and most importantly, a roster of songwriter partners that are among the very best in the world, Big Machine Music has thrived and prospered.

While developing songwriters and generating opportunities for their songs is a big part of the equation, ensuring that our songwriters receive royalties when their songs are used and reporting to our writers on a timely and accurate basis remains our core function.

That is where the MMA and The Mechanical Licensing Collective that it created come into play. Musical work rights are complicated and many of our rights are regulated by the government. Prior to the passage of the MMA, the collection of royalties under Section 115 of the Copyright Act at times felt like an Easter egg hunt in a carnival funhouse maze of mirrors. The process required sending paper licenses, called NOIs, for every licensed composition. This worked when ten songs were licensed for a record or CD, but it became impossible to administer once ten million songs or more were licensed by digital music providers such as Spotify.

Attempting to collect royalties meant registering with multiple third-party vendors. There was no transparency, so the system was ripe for abuse and unlicensed uses of our works were frequent. There was no guarantee of song data being correct, of timely payment of royalties, and virtually no recourse unless we were willing to bring a costly legal action. For an independent company, the administrative burden was stressful for us and harmed the financial welfare of our writers.

Thanks to Congress' leadership and unanimous support, our industry was provided with historic changes in the MMA, including

necessary reform to the way our rights are licensed, administered, and paid through the creation of The MLC. In exchange for a blanket license for all works played on their platforms, digital music providers now fully fund a centralized, transparent, and rightsholder-run collective that allows music publishers and songwriters assurance that they receive compensation for uses of their songs.

As a publisher, I am here to tell you today that The MLC you helped to create is working and working well. Despite an aggressive timeline set by the statute and through a global pandemic, The MLC was developed from scratch and launched on time.

Since April 2021, rightsholders have received monthly payments of our mechanical royalties, and these payments have been on time every month. With a fully public data base, we have critical transparency into song ownership data, song uses, and income sources for the first time. Through a centralized claiming portal, we can claim and match our works, giving us the control we need. Through their engaged customer service, we have help to guide us through the process.

Finally, The MLC's right to audit to ensure proper payments and to bring legal action to enforce rights benefits all publishers, but especially independent publishers such as Big Machine Music.

Make no mistake, there is effort necessary from each publisher and administrator to make The MLC and its new blanket license work. It is why The MLC promotes the slogan of "Play Your Part." Through the onboarding process, publishers like me can maintain the fidelity of their ownership information, make corrections where necessary, and discover discrepancies. In short, it has made our data better and more reliable, which means better payments to our songwriters. I can attest that Big Machine Music has seen an increase in royalty collection due to the direct efforts of The MLC.

As a founding board member, I am here to tell you that being a small part of building The MLC is one of greatest privileges of my career. It is rare to have an opportunity to start an entity of this magnitude from scratch and get it right, which is a responsibility felt by everyone involved.

The MLC's board is a mix of songwriters, independent and major publishers, representing all genres of music and from across the United States. The contributions from all board members have been robust and respectful, in line with the statute passed by Congress and with recognition of the importance of the success of The MLC for the entire ecosystem of our industry.

Thank you again for passing the MMA five years ago, and for your attention to it today.

[Prepared statement of Mr. Molinar follows:]

**Testimony of Michael Molinar  
President, Big Machine Music  
Before the House Judiciary Committee, Subcommittee on  
Courts, Intellectual Property, and the Internet  
“Five Years Later – The Music Modernization Act”  
June 27, 2023**

Good morning, Chairman Issa, Ranking Member Johnson, and members of the Subcommittee. My name is Mike Molinar, and I am the President of Big Machine Music, a leading independent music publisher based here in Nashville. I am also a current and founding board member of The Mechanical Licensing Collective (The MLC) designated by the U.S. Copyright Office nearly four years ago.

I am honored to appear before you today to provide my perspective as an independent music publisher on the Music Modernization Act (MMA). As a music publisher, I am responsible for representing songwriters, the authors of musical works, and helping to develop their careers, exploit their songs, and then collect and pay them royalties when those songs are used.

But I began my musical journey as a trained musician, music lover and liner note junky. It was during my college internship twenty-seven years ago just down the street, where I first discovered what a job in music publishing entailed. I was immediately hooked at the idea of working with the musical magicians who write the soundtrack of our lives and whose hits are the bedrock of the entire music industry. That fall, I began my first job in publishing as a catalog manager and worked my way up to a creative publishing executive, eventually starting my own independent publishing companies.

For the past eleven years, I have been proud to serve as the head of Big Machine Music, which I launched at the request of music industry titan, Scott Borchetta. Thanks to Mr. Borchetta, our dedicated staff, and most importantly, a roster of songwriter partners that are among the very best in the world, Big Machine Music has not only stayed afloat, it has thrived and prospered. We are on the cusp of celebrating our 50<sup>th</sup> #1 song in eleven years and with a catalog of thousands of released songs.

While #1 parties can be fun, they certainly don't pay the bills of "America's smallest small business" to quote Nashville songwriter, Lee Thomas Miller. So, while developing songwriters and generating opportunities for their songs is a big part of the equation, ensuring that our songwriters receive royalties when their songs are used and reporting to our writers on a timely and accurate basis remains our core function.

And that is where the MMA and the Mechanical Licensing Collective that it created come into play. Musical work rights are complicated and many of our rights are regulated by the government. In particular, the right to license and collect royalties when someone copies and distributes a song, which is governed by a statutory license under Section 115 of the Copyright Act.

Prior to the passage of the MMA, the collection of Section 115 royalties at times felt like an easter egg hunt in a carnival funhouse maze of mirrors. The process required sending paper licenses, called NOIs, for every licensed composition. This worked when ten songs were licensed for a record or CD, but it became impossible to administer once ten million songs or more were licensed by digital music providers such as Spotify. Attempting to collect royalties meant registering with multiple third-party vendors which each reported in their own manner. There was no transparency, so the system was ripe for abuse and unlicensed uses of our works were frequent. There was no guarantee of our song data being correct, of timely payment of royalties, and virtually no recourse unless we were willing to bring a costly legal action. For a fledgling independent company, the administrative burden was stressful for us and harmed the financial welfare of our writers.

Thanks to Congress's leadership and unanimous support, our industry was provided with historic changes in the MMA, including necessary reform to the way our rights are licensed, administered and paid through the creation of The MLC. In exchange for a blanket license for all works played on their music platforms, digital music providers now fully fund a centralized, transparent, and rightsholder-run collective that allows music publishers and songwriters assurance that they are receiving compensation for uses of their songs.

As a publisher, I am here to tell you today that The MLC you helped us to create is working and working well. Despite an aggressive timeline set by the statute and through a global pandemic, The MLC was developed from scratch, stood up and launched on time. Since April 2021, rightsholders have received monthly payments of our mechanical royalties, and these payments have been on-time every month. With a fully public database, we have critical transparency into our own song ownership data, song uses and income sources for the first time. Through a centralized claiming portal, we can claim and match our works, giving us the control we need and an engaged customer service available to guide us through the process. Finally, the ability of The MLC to audit to ensure proper payments and to bring legal action to enforce rights benefits all publishers, but especially independent publishers such as Big Machine Music.

Make no mistake, there is effort necessary from each publisher and administrator to make The MLC and its new blanket license work. It is why The MLC promotes the slogan of "Play Your Part." Through the onboarding of our own song data with The MLC, we have maintained the fidelity of our ownership information, made corrections where necessary, and discovered discrepancies. In short, it has made our data better and more reliable – which means better payments to our songwriters. I can attest that Big Machine Music has seen an increase in royalty collection due to the direct efforts of The MLC.

As a founding board member, I am here to tell you that being a small part of building The MLC is one of greatest privileges of my career. It is rare to have an opportunity to start an entity of this magnitude from scratch and get it right – which is a responsibility felt by everyone involved.

The MLC's board is diverse in every way – a mix of songwriters, independent and major publishers, representing all genres of music and from across the United States. It is a working board, particularly so in the days prior to the hiring of MLC staff. The contributions from all board members have been robust and respectful, in line with the statute passed by Congress and with recognition of the importance of the success of the MLC for the entire ecosystem of our industry.

Thank you again for passing the MMA five years ago, and for your attention to it today. As an independent publisher, I truly appreciate Congress working with us to improve how our industry operates, so we can support the creators who write the songs we all love. I greatly appreciate the opportunity you've provided me to speak today.

### **Appendix A**

#### **Background on Mike Molinar**

With over 25 years of professional, music industry experience, Mike Molinar is a songwriter advocate, popular music tastemaker and seasoned voice in American copyright. He currently serves as the President of Big Machine Music (BMM), an independent, full-service music publishing company where he has lead operations since launching in 2012. He oversees all aspects of BMM which has ranked Top 10 in both *Billboard's* Year-End Hot 100 Publishing Corporations (2017-2021) and Top Country Publishing Corporations year-end list (2015-2022).

Under Molinar, BMM has scored nearly 50 No. hits and over a dozen additional Top 20 singles on the Country Airplay Charts, as well as multiple hits on Top 40 and Hot AC charts. The BMM catalog includes songs recorded by superstars across genres such as Ariana Grande, Kelly Clarkson, Steven Tyler, Tim McGraw, Maren Morris, Dan + Shay, Blake Shelton, Christina Aguilera, and hundreds more.

Molinar currently sits on the Boards of the National Music Publishers Association (NMPA), the trade association representing American music publishers and The Mechanical Licensing Collective (The MLC). He also serves on the boards for Music Health Alliance, the Association of Independent Music Publishers Nashville, and the Country Music Hall of Fame Education Council.

He is an alum of Leadership Music (2015) and was named a Rider Scholar while attending Westminster Choir College in Princeton, N.J. He graduated from Middle Tennessee State University in 1998 where he was named a Distinguished Alumni in 2013 and inducted into the College of Media and Entertainment's Wall of Fame. He was also chosen to be a member of the 2021 cohort of the Harvard Young American Leaders Program. He is a member of the Country Music Association, Academy of Country Music, CCMA and The Recording Academy.

Molinar's industry experience dates to 1997 as a Songplugger with Starstruck Writer's Group where he pitched the catalogs of Nashville Songwriters Hall of Fame inductee Mark D. Sanders and BMI Writer of the Century David Malloy, among others. As Creative Director at Cal IV Entertainment, he managed 2007 Billboard/ASCAP Country Songwriter of the Year Dave Berg, as well as Jim Collins and Odie Blackmon, to career heights. Molinar later opened his own boutique publishing and artist development companies, including Effusion Entertainment.



### **Background on Big Machine Music**

A division of HYBE America, Big Machine Music (BMM) is a full-service independent music publisher with a dynamic catalog of over 14,000 songs, nearly 50 No. 1's and dozens of hits from the Top 40, AC, Country and Rock charts.

Founded in 2011 as a sister company under the Big Machine Label Group umbrella, BMM is headquartered in Nashville, Tennessee with an office in Santa Monica, California.

BMM songs and songwriters have earned coveted awards including CMA Awards *Song of the Year* (2X), ACM Awards *Song of the Year* (2X) and BMI Pop and Country *Song of the Year* as well as numerous GRAMMY® Awards nominations for *Song of the Year* and *Best Country Song*. BMM was named AIMP Nashville's *Publisher of the Year* in 2020 and ranked on Billboard's Year End Top Ten Hot 100 Publisher Corp for five consecutive years and Billboard's Hot Country Songs every year since 2017.

Hit songs in the Big Machine Music catalog include the RIAA DIAMOND-certified "Beautiful Crazy" (Luke Combs), 9X PLATINUM "In Case You Didn't Know" (Brett Young), 6X PLATINUM "Speechless" (Dan +Shay) and "Heartless" (Diplo feat. Morgan Wallen), 5X PLATINUM "10,000 Hours" (Dan + Shay feat. Justin Bieber), 4X PLATINUM "The Bones" (Maren Morris) and 3X PLATINIUM "abcdefu" (GAYLE), among many others.

BMM's current roster includes *Billboard's 2022 Songwriter of the Year* Laura Veltz, Brett Young, Ryan Hurd, Jessie Jo Dillon, Matt Dragstrem, Geoff Warburton, Eric Paslay, Justin Moore, Maddie & Tae, Sara Davis, Dalton Mauldin, Matt Roy, Ayrton Jones, Callista Clark, Tyler Rich, Laci Kaye Booth, Daniel Ross, Mike Eli, Anna Vaus, and Troy Cartwright. Catalog writers include Luke Combs, Brandy Clark, Jonathan Singleton, and Josh Thompson.

Superstar artists across genres such as Combs, Bad Bunny, Ariana Grande, Diplo, Monsta X, Thomas Rhett, Kelly Clarkson, Blake Shelton, Reba McEntire, Idina Menzel, GAYLE, Demi Lovato, Seventeen and hundreds more have recorded BMM tracks.

For film, BMM songs have been featured in major motion pictures with Lovato's "Still Alive" for *Scream 6* and Menzel's "Dream Girl" for the Amazon adaptation of *Cinderella*, with the latter making the Oscar's short list in 2022.

BMM tracks have also served as theme songs for major brand campaigns such as General Mills' Outnumber Hunger, Crown Royal's Your Hero's Name Here, the 2016 U.S. Women's Olympic Gymnastics team and the National Association for Music Education's Music In Our Schools Month.

Chair ISSA. Thank you. Ms. North.

#### STATEMENT OF ABBY NORTH

Ms. NORTH. Mr. Chair, Members of the Subcommittee, I am an independent music publisher, songwriter advocate, and technologist.

My husband's father was a composer named Alex North. With Hy Zaret, Alex wrote the 1955 standard, "Unchained Melody." When our families had a worldwide recapture of rights in "Unchained Melody" we joined various foreign collectives, and I learned global music publishing. I was able to view and correct data and increase our royalty collections. Soon other legacy songwriters and their families asked if I would administer their works as well.

When I first heard about the MMA and blanket mechanical license I was pleased and hopeful. I believe, and was promised, that the intention of the MMA for a new, authoritative, gold-standard data base to be engineered, with aggressively vetted musical work and sound recording data.

The MLC, Inc., became the first The MLC and engaged the Harry Fox Agency as its data and operations vendor. HFA has been integral to the music because since 1927, but one dataset is not enough. The MLC must license data from many providers.

To my knowledge, the promised new The MLC data base and new dataset do not exist. The MLC uses slogans like "Play Your Part" to drive music publishers to sign up with The MLC and confirm The MLC's data. It seems that playing our part means doing The MLC's job and devoting our own resources to the tasks that DSPs pay The MLC to do.

A major part of The MLC's mandated role is to match sound recordings to musical works. If a recording is not correctly matched, the publisher and songwriter do not receive mechanical royalties. Per The MLC, "Unchained Melody" has been recorded by more than 30,000 artists. To perform due diligence, I asked The MLC for a list of those recordings but was told it was not possible to export. I was told if I had access to The MLC's data dump then I could go find the information.

Well, fortunately I do have access to that data dump. I paid thousands of dollars to create a data base that allows me to analyze that data to identify gaps and errors. I review matches on behalf of my clients. For one well-known legacy song, 11 percent of the sound recording-to-composition matches were wrong. For another, 20 percent were wrong.

After the MMA passed, the DSPs transferred roughly \$424 million in unallocated, black box royalties to The MLC. If I register my works with The MLC my money should not be in that black box, but sometimes I have co-publishers who deliver different data about our shared work that might overwrite my data. Sometimes I do not know about a recording of the work, and foreign and domestic songwriters, they may not know about The MLC.

All CMOs have data gaps and errors, but by statute, The MLC is mandated to aggressively apply its resources to reduce that black box. We must prevent the wrong parties from receiving Phonorecords III royalties, which apparently will soon be distributed.

Some U.S. publishers are even engaging the Canadian collective, CMRRA, for a fee, to fix their problems at The MLC. I have never heard of one collective cleaning another collective's data.

Another problem I have with The MLC involves misclaimed copyright shares by independent artists who distribute music and deliver data through aggregators. At least on a monthly basis, I must play Whack-A-Mole, searching The MLC's portal to find new registrations of our work that make no mention of Alex North, not Hy Zaret, and not our publishing entities. When I cleaned these infringing registrations at The MLC, my underlying registration goes into suspense. To make the above even more complicated, there is no claim overlap or dispute resolution portal within The MLC's website.

The MLC has the opportunity to create truly innovative products, including at least a basic claim and overlap portal.

The MLC must stop creating unilateral business rules. The terminations decision made by The MLC to ignore that the derivative work exception does not apply in the context of Section 115 would have benefited the major publishers, who control the bulk of legacy copyrights. It would have harmed songwriters and their families. Fortunately, the Copyright Office stepped in to correct.

The MLC has made unilateral decisions regarding how it treats public domain works. It invoices the DSPs for streams of these public domain works, but no publisher is entitled to these royalties.

I want The MLC to succeed, and we all need it to succeed. The MLC must perform its mandated duty to create an authoritative data base that is best gold standard. The MLC must stop making unilateral decisions that affect the lives of songwriters and music publishers. If there is a question regarding a law, regulation, or internal policy, the Copyright Office must be consulted.

Until we have our gold standard authoritative data base, songwriters are being harmed. Thank you.

[Prepared statement of Ms. North follows:]

**HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

Select Subcommittee on Courts, Intellectual Property, and the Internet  
June 27, 2023

Testimony of Abby North

**SUMMARY STATEMENT**

Mr. Chairman, Members of the Subcommittee:

My name is Abby North. I am an independent music publisher and publishing administrator. I am a songwriter advocate. I am a technologist. I am a small business owner.

I began my career writing music, engineering and mixing recordings and ultimately created a production music library. The library introduced me to music publishing.

My husband's father was a film composer and songwriter named Alex North. When our family had a worldwide reversion of rights in Alex's song "Unchained Melody," I wanted to learn about global music publishing. "Unchained Melody" is a "standard" that has been recorded by thousands of artists but is best known as a recording by The Righteous Brothers in 1965. It is an "American Songbook" composition: one of the great songs of the 20<sup>th</sup> Century. Together, my family and the family of "Unchained Melody" lyricist Hy Zaret formed Unchained Melody Publishing LLC in 2013, and I began to administer our jointly owned copyright.

Unchained Melody Publishing then joined various foreign collective management organizations (CMOs) and in doing so, I was able to identify incorrect or missing work and party metadata. By correcting that metadata, I significantly increased our royalty collections. This is partly because once I corrected our CMO registrations, our metadata *stayed* corrected over time.

Soon, other legacy songwriters and their families asked if I would administer their works as well.

As a music publishing administrator, I am responsible for accurately and comprehensively maintaining metadata related to the musical works owned and created by my songwriter and composer clients, their families and heirs. I must accurately and comprehensively register their works with collective management organizations around the world.

These global CMOs rely on their music publisher affiliates to deliver works registrations that clearly identify information about the musical works, about the songwriters and their publishing entities, about the shares of the works that we own and collect, and about sound recordings that embody these songwriter's works.

If we publishers do not register our works, we do not get paid and neither do our songwriters. It's a simple equation: accurate, comprehensive metadata equals accurate, comprehensive royalty distribution.

### THE MUSIC MODERNIZATION ACT

When I first heard about the Music Modernization Act and the possibility of a mechanical blanket license administered by one central CMO, I was pleased and hopeful.

The previous method of one-off mechanical licensing was inefficient, unscalable, and absolutely not meant for the digital distribution of music and the limitless supply of sound recordings being delivered to the Digital Service Providers. Blanket licenses can create efficiencies if based on authoritative and complete metadata.

In fact, every other CMO I am aware of outside of the United States has been blanket licensing mechanical rights for years. How exciting to see the United States catch up to the rest of the world's CMOs!

That the Music Modernization Act was wholeheartedly supported by every sector of the music business: songwriters, publishers, labels, artists and producers seemed like a modern-day miracle. We all have competing interests, but we came together, and the Music Modernization Act passed.

I believed (and was promised) that the intention of the MMA was for a *new* authoritative database to be engineered and created, with closely interrogated and vetted, accurate, authoritative, comprehensive musical work, songwriter, publisher, performer and even sound recording data. The music industry was told that The MLC's data set was going to be the gold star standard that every global CMO could access and rely on.

Songwriters need this, and that's what we were promised.

And, we were promised that the DSPs would pay for The MLC to perform this fundamental obligation.

### THE MECHANICAL LICENSING COLLECTIVE

The MLC Inc. won the assignment to be the first Mechanical Licensing Collective as created by the MMA. We were told that after interviewing many competitors, The MLC, Inc. opted to engage the Harry Fox Agency as its data and back-end operations and administration vendor for an "unprecedented and truly revolutionary project."

HFA has been integral to the music business since 1927. But the industry is well-aware that like every other collective, HFA's data is incomplete and sometimes inaccurate. Incomplete accounting by HFA was one driver of the push for the MLC in the first place.

One data set is not enough for the Herculean task of creating the best-in-class musical works database. Based on my experience as a publishing administrator and technologist, I think that The MLC must license data from many providers, including HFA, Music Reports, SX Works/CMRRA, Xperi, and others.

Thus far, to my knowledge, the promised newly-created MLC database and new data set do not exist.

When The MLC launched, it used slogans like “Play Your Part” to drive music publishers and self-administered songwriters to sign up with The MLC, register their works and confirm the completeness of The MLC’s data, often manually and on a song-by-song basis. But, it seems that “Playing Our Part” means doing The MLC’s job and devoting our own resources to the tasks the DSPs pay The MLC to do. Publishers have to go to The MLC to search for their works, one-by-one to see if the data and shares are correct. Publishers have to slowly and painstakingly search through the MLC’s Matching Tool to find unmatched recordings of their works.

### **MATCHING SOUND RECORDING TO MUSICAL WORK**

Publishers and songwriters receive statutory mechanical royalties when recordings of their works are streamed or downloaded.

A significant part of The MLC’s mandated role is to match sound recordings to musical works in its database. If a sound recording is not matched to a musical work, the publisher and songwriter do not receive mechanical royalties for that recording’s streams and downloads.

As an example of one kind of problem I’ve experienced with The MLC’s data, per The MLC, “Unchained Melody” has been recorded by more than 30,000 performers. I would like to diligence those recordings by comparing The MLC’s data to my own data to confirm and track payments.

As part of my due diligence, I asked The MLC for a list of those sound recordings that The MLC claims to have matched to the “Unchained Melody” composition. That type of list should be exportable by The MLC for copyright owners and is available from other CMOs. However, The MLC told me it was not possible for The MLC to export such a list. I was told if I had access to the MLC’s vast data dump, then I could go find the information for my one song.

In order for publishers to perform mechanical royalty income tracking exercises, we must know the International Standard Recording Code (ISRC) of the sound recording so we may confirm we have accurately been paid for the correct number of streams or downloads.

With a song like “Unchained Melody” and other very important and iconic American Songbook songs, there are possibly hundreds, or thousands of new cover recordings released every year. Publishers use various sources to identify and track royalties received (or not received) for streams and downloads of those recordings.

Fortunately, I do have access to The MLC’s data dump. I paid tens of thousands of dollars to create tech that allows me to compare data from The MLC and other sources in order to identify data gaps and errors. In order to get a sense of the quality of The MLC’s data, I queried The MLC data on behalf of various clients. For one well-known legacy song, 11% of the sound recording to composition matches were incorrect. For another, 20% of the sound recording to composition matches were incorrect. This is why I wanted to export a list of sound recording matches made by

The MLC. I can't be the only publisher who needs a streamlined, efficient way to access, view and analyze The MLC's data.

### **THE BLACK BOX**

Prior to the inception of The MLC, the DSPs held approximately \$424,000,000—that we know of—in unallocated royalties, otherwise known as Black Box money. After the MMA passed, the DSPs transferred that money to The MLC, which has held those monies and even more unallocated sums for years.

If I licensed my works to DSPs pre-MMA and if I now register my works with The MLC, my money should not be in that Black Box. But sometimes I have co-publishers who deliver different data about our shared works that overwrites data I delivered. Sometimes I am unaware of a recording of my work, perhaps because it's in a foreign language, or perhaps because as in Jamaica where "Unchained Melody" is popularly known as "Unchanged Melody" the recording has a known title permutation inconsistent with the US song title.

Foreign songwriters or songwriters from within the United States who are not affiliated with established CMOs and/or who are unfamiliar with the registration process undoubtedly have money in that Black Box. This is especially likely for songwriters who create in languages other than English, such as Spanish-language songwriters.

Foreign language characters such as accents or tildes often come across as jumbled data on reporting statements from The MLC. Asian characters may be extremely difficult to translate.

It is understandable that all collectives have some unidentified works and parties from time to time, but by statute, The MLC is mandated to aggressively work and create technology to reduce that Black Box significantly. The world is experiencing rapid growth and development of Artificial Intelligence talent and technology. AI and machine learning technology utilized and trained well could assist in making composition to sound recording matches and identification of works and their parties.

Some of the money that is referred to as "Black Box" is actually claimed and matched but has been held as The MLC awaits the final decision regarding CRB Phonorecords III rates and terms. These 2018 – 2022 royalties apparently will soon be distributed by The MLC. We must prevent the wrong parties from receiving these royalties. As per above, my own research showed recordings matched to the wrong musical works.

The MLC must develop or license and utilize the best technology, the best and most comprehensive data and extremely attentive human beings to improve its quality of data.

### **AGGREGATORS OPENING FLOODGATES OF BAD DATA**

Another example of a recurring problem I have with the MLC involves misclaimed copyright shares by independent, DIY artists, of which there are thousands.

Sound recording distribution aggregators such as TuneCore and CDBaby have lowered the barrier for delivery to DSPs in a dramatic way. Today, approximately 100,000 recordings per day are distributed to the various DSPs.

However, in creating the unfettered opportunity for anyone to distribute a sound recording, these aggregators have also flooded the CMOs with incorrect musical work data.

It is an honor and a blessing to control a song that so many performers choose to record. However, it is time-consuming to constantly police the erroneous data provided by so many of these performers. This is particularly frustrating when I have already corrected the same data.

In order to deliver a sound recording via an aggregator, the label or independent artist is required to provide information regarding the musical works embodied in the sound recordings to be distributed. Even if that artist has no idea who the writer or publishers are, that artist must provide some data.

Giving them the benefit of the doubt, many of these independent artists are unfamiliar with the fact that the sound recording copyright is different from the composition copyright, and they regularly identify themselves as writer and copyright owner when they are neither, and then falsely assign publishing administration to the aggregator's publishing services. The aggregator's publishing administration provider then executes its administrative role and attempts to collect this infringing share.

At least on a monthly basis. I must play whack-a-mole, searching The MLC's portal to find new registrations of "Unchained Melody" that make no mention of Alex North as composer, Hy Zaret as lyricist, or of our publishing entities.

We, as an industry, must force some vetting and validation mechanism in between the aggregators and The MLC (and other CMOs) and the DSPs. Musical work data must not be delivered into the music ecosystem until it has been vetted and validated.

Every American Songbook and most frequently covered song I have reviewed at The MLC has the same problem with infringing data delivered on behalf of unknowing independent artists, and we need a solution.

When I claim these infringing registrations at The MLC, my underlying registration of "Unchained Melody" goes into suspense. Meaning, "Unchained Melody" is iconic and well-known worldwide, and our data is easily searchable at other CMOs who do know who the writers and publishers are. Unfortunately, music publishers have to repeatedly fight for our rights and our data at The MLC. This is not the gold standard. With all the promise and hope of The MLC, I expected that the US collective would be at least as good as, if not better than, the best foreign CMO.

I suggest that some iconic musical works should have flags preventing the wrong parties from making claims. For example, if the song was a hit written and performed by a band, that song's writers are widely known, and no other person should be able to submit a registration claiming



that work. If I try to claim I am a writer of the Mancini/Mercer composition, “Moon River,” The MLC should be aware I have no rights to that work. Our precious American Songbook treasures and their songwriters must be protected.

The MLC was presented as a savior to songwriters. With the passing of the MMA, songwriters were promised they’d finally receive all the mechanical royalties they are entitled to. Protecting the works created by songwriters is a powerful step in this direction.

It’s been three years and the MLC is a long way from best in class. In fact, US publishers are engaging the Canadian collective CMRRA, *for a fee*, to fix their data problems at The MLC. In my experience, I have never heard of one CMO cleaning another CMO’s data. And, the publishers are paying for this service despite promises to the contrary.

#### **CLAIM OVERLAP/DISPUTE RESOLUTION**

To make the above even more complicated, there is no claim overlap/dispute resolution portal within The MLC’s website.

With tens of millions of dollars paid by the DSPs to The MLC for operations and technology development, The MLC has the opportunity to create truly innovative products, including at least a basic claim overlap/dispute resolution portal. Other collectives, such as SoundExchange and CMRRA have functional claiming portals.

A claiming overlap/dispute resolution tool could allow the parties to upload documents substantiating claims, could allow the parties to directly communicate via the portal and facilitate resolution.

In the “Moon River” example above, this claiming portal could have information about “Moon River” and its writers and parties that alerts others they have no right to claim this work, and also indicates to The MLC that it must block the infringing new claim. Preventing the infringing claims from occurring in the first place would also prevent “Moon River’s” mechanical royalties from going into suspense.

#### **MLC CREATING BUSINESS RULES THAT CONTRADICT EXISTING LAW AND REGULATIONS AND CREATE DOUBLE STANDARDS**

The US copyright law permits authors or their heirs, under certain circumstances, to terminate the exclusive or non-exclusive grant of a transfer or license of an author’s copyright in a work.

The ability to recapture rights via the United States copyright termination system truly provides composers, songwriters and recording artists and their heirs, a “second bite of the apple.” Many of my clients exercise this right and subsequently become the original publisher in the United States.

The unilateral decision made by The MLC that rights held at the inception of the new blanket license might remain, in perpetuity, with the original copyright grantee was frightening. Not

recognizing that the derivative work exception does not apply in the context of the mechanical blanket license would unquestionably have benefited the major publishers who control the bulk of legacy copyrights. It would have harmed songwriters and their families.

Fortunately, the US Copyright Office stepped in clarify that the appropriate payee under the mechanical blanket license to whom the MLC must distribute royalties in connection with a statutory termination is the copyright owner at the time the work is used.

The MLC has made unilateral decisions regarding how it treats public domain works. It invoices the DSPs for streams of recordings that embody these public domain works, but no publisher is entitled to these royalties. That means the MLC may collect money it may not pay out. This makes little sense.

## CONCLUSION

Music publishing administration and collective management of rights are very challenging businesses. I control one of the most iconic of all of the American Songbook works, but I am truly an independent publisher. I work for my family and the other heirs who use the royalties we receive from our musical works to pay for mortgages, college educations, and food. I realize that The MLC considers me to be annoying and difficult, but I am responsible for the livelihood of others, and I am responsible for keeping alive the legacies of Alex North, Hy Zaret and the many other legacy songwriters I represent.

As such, I will continue to push for The MLC to meet the promises made by the MMA.

As a songwriter advocate, it is so important to me that songwriters collect every penny they are due. Without songwriters and the songs they create, there is no music business. Songs connect people, define eras and bring joy.

The MLC must use its resources to perform its mandated duty to create a truly authoritative, accurate, comprehensive database. It must use its resources to identify unidentified works and parties. And it must make sure the wrong parties do not receive songwriter royalties.

The MLC must not make unilateral decisions that affect the lives of songwriters and music publishers. If there is a question regarding a law, regulation or internal policy, the US Copyright Office must be consulted and must participate in the decision- or rule-making process to take corrective action or refer a matter to someone who can.

The MMA does not authorize The MLC to make legal decisions. The MLC is not judge, not jury, and not arbiter. Rather, it was created to be a neutral mechanical royalty pass-through entity.

On behalf of songwriters who were told The MLC was going to get them paid, The MLC must engage every resource, every data set, every technique and technology available in order to identify the unidentified and the misidentified. The MLC has the money and it has the staffing. The MLC simply must do the job the DSPs are paying it to do. Until these tasks are completed, songwriters are not only being ill-served, songwriters are being harmed.

Chair ISSA. Thank you. We will now go to our first round of questioning, and I will go the gentleman from Wisconsin first, Mr. Fitzgerald.

Mr. FITZGERALD. Thank you, Chair.

Mr. Molinar, I continue, and I think other people continue to believe that more can be done to improve data throughout the music industry, including the public performance rights. It is my understanding that performance and mechanical rights data is typically identical, or near identical, I think, which came up in the opening statements.

From your perspective, do you think having PRO affiliation included in The MLC data base would help companies like Big Machine get accurate payments from the PROs and The MLC, and certainly probably enhance transparency as well?

Mr. MOLINAR. Thank you, Congressman, for the question. I think to touch on what The MLC is doing right, as we can attest, the publishers, as we are entering it in and cleaning up our data, this data base is heading toward being the cleanest data base that exists.

Unfortunately, I think that the complicated landscape of these royalties—I was not around for the decision of when a streaming mechanical royalty was decided to be split into a performance and a mechanical, which just makes things all the more difficult and complicated. I wish I could answer more to the question of could we get that done, do I think that we are on the right path at The MLC of creating a pretty authoritative song data because of the way that publishers can interact with their own data and see what is being claimed.

Much to Ms. North's comments, the reason she can play Whack-A-Mole on issues that come up from new songwriters via aggregators is because she can see it and that we have that ability to act on it.

Mr. FITZGERALD. The transparency.

Mr. MOLINAR. The transparency part of this is something that we have not had, particularly when we were, as I mentioned in my testimony, when you had third-party vendors representing each of the different streaming services. We just did not have that transparency into it.

So, I cannot speak to the functions of some of our other organizations such as PROs. The MLC, by statute, is not allowed to collect performance royalties. So, I think we are just concentrated on getting the data right for the purpose that is under the statute.

Mr. FITZGERALD. Very good. Thank you for that.

Mr. Ahrend, I think we are aware that the different stakeholders may have different interpretations of the statute or regulations, and that, at times, The MLC has weighed in, obviously, on that. Rather than weigh in on those specific circumstances, has The MLC considered identifying, for the Copyright Office, that there are stakeholders with differing views, and asking the Copyright Office to share its position?

Mr. AHREND. Thank you, Mr. Fitzgerald, for the question. We speak regularly with the Copyright Office, and we talk with them about the operational challenges we face and the issues that we see and hear from our members. The terminations issue was a great

example. The MLC raised that issue in regulatory proceedings the Copyright Office held in 2019 and 2020, and we pointed out that we did not see that issue addressed by the MMA and that there was not a clear answer on the law. We asked the Copyright Office to weigh in on that issue at the time. They declined to do so. We then sought a rule that would give us a data point that we could use to implement a policy. We ultimately did.

So, I think we do try to flag issues for the office, and we welcome their guidance, where they are willing to give it. In the meantime, we try our best to put in place operational processes that do not decide questions of legal rights but simply serve to come up with an operational plan in the interim that will work for our members.

Mr. FITZGERALD. Very good. Thank you.

Mr. Tashian, how do record labels compensate their artists, and how does the money flow in and out of what can be seen, like the black box, that we were talking about earlier? Are artists receiving kind of reciprocal increases in their streaming and also in the digital service deals that currently exist?

Mr. TASHIAN. Thanks for the question. I am really here as a producer and a songwriter. I am also an artist. The level of my streaming is not on the level of some of the artists that you might be more interested to see how it has benefited them financially. Does that answer your question?

Mr. FITZGERALD. Yes. Look, I think what we are trying to establish is just the streaming portion of this functioning correctly.

Mr. TASHIAN. I think in some ways. I think there is that five-year, 2018–2022, that I know, as a songwriter, I am still sort of waiting on the difference between what the rate was and what it is agreed on now. So yes, I am still waiting on that.

Mr. FITZGERALD. Very good. Thank you. I yield back.

Chair ISSA. Thank you. The gentleman from Georgia is recognized for five minutes.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair. The COVID–19 pandemic was devastating for many Americans, but artists were some of the hardest hit in this country because live venues all shut down. This meant that artists had to rely largely on their royalties from streaming services to stay afloat.

Mr. Porter, can you describe what this experience was like and whether artists can earn a living on streaming royalties alone?

Mr. PORTER. Presently, I do not feel that they can. I mean, the numbers clearly are not as fair as I feel that they should be as it relates to the contribution that artists make to the well-being and the balance that people feel about their daily lives. I think that there certainly should be much, much, much done to bring that kind of income level up to a point where people can feel comfortable with wanting to do it tomorrow, and the next day. So no, I do not feel that we are there yet.

Mr. JOHNSON of Georgia. Mr. Tashian, what can you add to that?

Mr. TASHIAN. Yes, I think it is a good thing to be, well, a producer and a songwriter because the combined income of both of those things makes it possible for me to have a family. I think to be only a songwriter you would have to be in the top 5–10 percent, wouldn't you say, to really make a living. So yes.

Mr. JOHNSON of Georgia. Thank you. What would you say has been the biggest success of the MMA, and what has been the biggest challenge that you have faced since the law came into effect. Ms. North?

Ms. NORTH. The success is really, in my opinion, to the blanket mechanical license. The previous method of one-by-one licensing absolutely did not work. So, the blanket license brings us in parity with the rest of the world licensing model. That was excellent.

The MLC is doing many things right, but the statute requires it, or promises it, to be the gold standard, best in class. So, it is good, but we need better.

The CLASSICS Act, no question that was a huge, huge benefit to performance and owners of those pre-1972 recordings, and the codification of the LOD process at SoundExchange unquestionably is a true benefit.

Mr. JOHNSON of Georgia. Thank you. Mr. Molinar?

Mr. MOLINAR. Yes, I would agree with Ms. North that The MLC has provided this opportunity to have one stop, one place for your data for all these services. Again, as we have repeated, being able to be in control of your data and having that transparency to it.

Honestly, our challenges, as has been mentioned here, was the timing of the statute. We had a very short window. This is a technology company that meets creators. It is such a unique institution, and we put it up in a 1–2 years, through a global pandemic. So, it will continue to get better, but the fact that it is doing the match rates that it is doing—and Mr. Ahrend can speak to this a little bit more—in some reprocessing they are getting over 90 percent match, and this just started in April 2021. It is an incredible job that has already been done.

I think the other challenge is just, as has been touched on, is the timing of the CRB, waiting for five years and 130-plus days to get final rates, which came in last Thursday after the period of time that this should have covered. We can spend more time on that if you prefer, but that is incredibly frustrating and incredibly disruptive to my business.

Mr. JOHNSON of Georgia. All right. OK, thank you. Mr. Levin?

Mr. LEVIN. Thank you for the question. Let me just note, for 1 second on the streaming compensation question, if I might, that the services pay roughly 70 percent of their revenue out to their rightsholder partners across labels and publishers, and those entities then pay songwriters and recording artists. We are very proud to have been part of the settlement reaching the highest rates ever for mechanical rates going forward for this period and the next, and moving forward. So, the conversations around streaming economics are important to have, and have on a holistic level.

From an MMA perspective, I think from the services I would join with Mr. Molinar's comments about the data base and the benefits of the data base. From the services perspective it is really that legal certainty of being able to know that you have that blanket license. The prior system simply did not work.

Mr. JOHNSON of Georgia. OK, and the challenges?

Mr. LEVIN. On the challenges front I really do think—sorry to steal a line from Mr. Tashian's testimony—I think it is navigating that line for The MLC between administering the license and set-

ting policy and rules. One is what the MMA intended and the other actually goes beyond what they are supposed to do.

Mr. JOHNSON of Georgia. All right. Thank you. Mr. Ahrend, if I might, Mr. Chair?

Mr. AHREND. Thank you for the question. Like the other panelists, I think the fact that we have been able to set up The MLC, begin operations, and to do that without missing deadlines, consistently month after month, is a huge accomplishment, and it is a huge shared accomplishment. Hundreds, thousands of people have been a part of that.

On the challenges side there are many. You have heard already from other witnesses here today there are lots of areas where we can continue to do more to improve the system. We, as an organization, are committed to improving. That is why we talk so regularly with so many stakeholders. We want to understand what works and what does not so we can continue to make the organization better and to make it function more effectively for the benefit of those members.

Mr. JOHNSON of Georgia. Thank you. I yield back.

Chair ISSA. I thank the gentleman. We will go to the gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chair. I am going to followup on this last line of questioning. Mr. Ahrend, we were talking about the data base error rates. Can you say, with certainty, over the last couple of years since you have started that the error rates have gone down or are they consistently in the 11 percent range that Ms. North was talking about, and what steps are you taking to address those?

Mr. AHREND. Thank you for the question. Our ability to match data, we are matching at a higher rate, a higher percentage than ever before. There are errors in the data that we receive, and there are sometimes errors in the matches we make, and we monitor that actively. We give our members tools that allow them to see where those may exist, and then we do our best to fix them quickly.

We manage a massive amount of data, 31 million works and data from well over 100 million sound recordings, and many, many more millions of products derived from those sound recordings. So, it is a massive undertaking, and we do monitor it to try to make it better.

Mr. CLINE. How do you respond to Ms. North's comments about needing to be that gold standard and having to utilize the Canadian system to address problems within our own system?

Mr. AHREND. We absolutely aspire to be the gold standard, no doubt, and that is not easy. One of the benefits of making our data so widely available—and we do that not only through the public search, the matching tool, but the bulk data subscription program that the MMA required us to set up. Close to 200 organizations around the world now regularly download a full snapshot of all the ownership data on the musical works side that we make available and the sound recording data. So, they essentially get all the information they need to look for errors and then to help people find and act on them.

Those companies are using that access to create businesses where they can offer services to other companies that may prefer to utilize those services, as opposed to doing it themselves. So, organizations like the one that Ms. North mentioned are taking advantage of the very transparency that you sought to create to provide a richer, more vibrant marketplace where people have access to services like that. That is not a negative comment on The MLC. That just means that more people are involved in the process of making the data better, and that is, in fact, what is happening.

Mr. CLINE. Switching gears, I understand that royalty funds may be invested, but have royalty funds actually been used for this purpose, and if so, how will The MLC handle any profits or losses stemming from investments?

Mr. AHREND. Royalties are never used to fund our operations. One hundred percent of our operating costs are funded separately by the DSPs through an assessment process. The unpaid royalties that we have accrued we hold, and we hold them until we are able to pay out the underlying royalties, and then we pay those royalties with interest.

The moneys that we hold are invested conservatively through institutional financial firms in financial investments intended to deliver the rate of return the statute requires while minimizing risk as much as possible. That is not an easy task, but it is one that we have undertaken. We monitor it carefully. We work with outside fee-based advisors who have no financial benefit in the process either, to ensure that we are doing that as effectively as possible.

Mr. CLINE. Are the board members participating in that process, in that decisionmaking process, or is that a decisionmaking process that you are solely in charge of?

Mr. AHREND. No. The board is fully involved in that process. They adopted a policy, an investment policy, that guides how we hold those moneys, and we update them regularly on our progress, as do the advisors that we have hired.

Mr. CLINE. Do you make public that information as well?

Mr. AHREND. We have not made public the investment policy because the policy contains not only the parameters that I just described but also the specific guidance that our advisors have given us on where to rest the money, and they have advised us that it is not good for security purposes or for market manipulation purposes to make public the information about where we are investing the money.

Mr. CLINE. Mr. Levin, I understand there is no mechanism other than litigation to resolve conflicts or adjudicate a substantive resolution or disputes. From DiMA's perspective, is there a legislative solution that Congress should be looking to resolve this issue?

Mr. LEVIN. Thank you for the question. You mean disputes as between a service and The MLC?

Mr. CLINE. Mm-hmm.

Mr. LEVIN. It is a great question. I do not know that there are legislative improvements that need to be undertaken here. I think if there is guidance to The MLC about where there might be policy disputes as between the copyright owners, on the one hand, and the services, on the other hand, or between the publishers and the songwriters, that rather than impose kind of a unilateral decision

that they instead seek guidance from the Copyright Office, which has broad regulatory authority under the MMA, explicitly granted to effectuate the purposes of the statute.

We think that the tools are already there to avoid some of that costly litigation, particularly in a scenario where the services are funding The MLC's operations and might find themselves potentially in a litigation where they are paying for both sides of the litigation. That does seem to be contrary to what Congress intended through the MMA.

Mr. CLINE. Thank you. I yield back.

Chair ISSA. Thank you. Mr. Nadler.

Mr. NADLER. Thank you. My question I would like to address to as many of the witnesses as can address it in the five-minutes I have. New technologies like artificial intelligence can present great opportunities for creative industries to innovate, but they also present a set of challenges. Can you talk about how AI and other burgeoning technologies are affecting the music industry, and what do you think Congress can do to address these issues?

We will start with Ms. North.

Ms. NORTH. Thank you for the question. I believe that there are tremendous opportunities with AI for creators—for songwriters, for performers—but there also are deep, deep challenges, and there is the threat of decimating their careers.

To me, the greatest challenge, and maybe opportunity, we have right now is to come up with a compensation model that is different from anything that we have ever seen before, and I what is we all have works and sound recordings that are used in the ingestion to train these machine learning and AI generative tools. We need to make sure that not just the IP but the creators, that they are going to be paid for any derivative uses or any derivatives that are generated by this technology.

Mr. NADLER. Mr. Molinar?

Mr. MOLINAR. Thank you. I think we need to prioritize human creators as we look at everything. AI is still early, early days, but it is moving fast. AI training should not be considered fair use, should not be presumptively considered fair use.

I saw an operation that had spit out songs in the style of Songwriter Hall of Fame Liz Rose. To be able to write like her the computer must have been fed her songs. That should not go unlicensed, nor should it be uncompensated to Ms. Rose. We need to make sure that where those examples happen that it is considered infringement, and we need to preserve this direct licensing market.

Mr. NADLER. Thank you. Mr. Levin?

Mr. LEVIN. Thanks for the question. It is such a massive topic right now, and obviously a top of mind for everyone in the industry. From the DiMA perspective, a lot of our focus is on what happens on the output side, less on the kind of input side of the training models and ensuring that whatever rules are put into place and developed that we make clear that there is an important data element to this. We have talked a lot about data on this panel already today, and the music industry has long struggled with metadata challenges. MLC is actually bringing a lot of improvement in that area.



One of the things that we hear talked about sometimes in AI is the idea that services like DiMA's members should somehow differentiate between AI-generated works and other works. I think absent information about what is AI generated, absent information about clear lines as between what truly counts as AI versus what counts as human conversations that we are seeing at the Copyright Office around registrability, all those things are fundamentally going to necessitate clear information that is available and included within the works as they arrive at the services.

I think this is an ongoing conversation in the industry, and it is important that as we move forward that we are very clear about the elements of this massive topic that we are talking about and try to address them serially along that continuum.

Mr. NADLER. Thank you. Mr. Tashian?

Mr. TASHIAN. Yes. I have been using AI for a long time. I mean, Cher's "do you believe in life after" was a first sort of AI hit because it asked the computer to specify what pitch she was on, which it did. It said, well, I think it should be on this, which is an algorithm that is built into the Antares software. So, AI has been assisting musicians for decades, and now we are sort of kind of wringing our hands a little bit and saying what do we do about it.

Without taking too much time I have yet to sort of experience an artwork created by a computer that gives me goosebumps or gives me chills because it is so beautiful. So, until that happens, I am just going to keep my head down and keep doing my best at organic music and using computers when they can help.

Mr. NADLER. Thank you. Mr. Porter?

Mr. PORTER. I can only speak for creators whose main emphasis is to try to do what they feel is a positive impact on the public at large about emotions that they do not know how to express through music, but these people do. Creators do not want to have to try to figure out what the mechanics are that would be correct for the fairness that they should receive in doing what they do. They rely on others. That is why the relationships that they have with companies, people who say they are the business side of what they do.

I think that the fact that if we cannot safeguard the fact that this process can compromise the future generations, their creative motivations to feel that it can be appreciated, respected, and done in a way that will not be compromised by someone else's interpretation or what they feel it should have been, then it can become extremely risky to the value of what this whole process if AI can be. Because you want to have the next generation motivated to want to take a path to do this, and if you have a method that compromises the real legitimacy of that, based on what that creator feels, then you are doing something that is counter to what you may perceive as the good that it does.

Mr. NADLER. My time has expired, but I would ask the Chair if he would allow Mr. Ahrend to answer the question.

Chair ISSA. Absolutely, Mr. Chair.

Mr. AHREND. Thank you, Mr. Nadler. I will say briefly that I agree with the other witnesses. It is imperative that we ensure that whatever technological developments come down the pipe that we are always protecting the rights of the human creators from which all these works originate. Certainly, from our perspective we

see a growing correlation between the use of technologies and fraudulent activities, so I think it is important that Congress be monitoring that and to make sure that we have clear and stiff penalties in place for people who choose to use technology for fraudulent or other inappropriate purposes rather than to elevate creative works.

Mr. NADLER. Thank you, Mr. Chair. I yield back.

Chair ISSA. Thank you, and because of all the good work done so far, as long as I do not blow it, we will have a second lightning round. I want to announce for everyone to get your questions ready.

This has been a good process so far, but I think Ms. North pointed out a number of deep concerns, and I want to cover a couple of them because I think in baseball if you hit a .700, they do not have a place in the Hall of Fame for somebody who is doing that well. A .900, amazing. If you are part of those hundreds of millions of dollars stranded, or you are finding yourself frustrated because you are entitled to money and not getting it, then the batting average does not matter.

I want to start with one point, Mr. Ahrend. You are a neutral arbitrator. You are designed to be not in anyone's pocket but, in fact, to fairly match up the places where the dollars should go and getting them there. So, I have one question, which is you are currently using the same outside counsel as the NMPA. Do you think that, at least from a visual standpoint, that this was a good choice, and do you think that the appearance of not being in any one side's pocket needs to be taken further?

Mr. AHREND. Thank you for your question. We have relied on outside counsel with strong experience in this area to build the organization. That was imperative. The number of lawyers and law firms that work in this particular part of the business is very small. Outside the lawyers we use, there are a handful of others that digital services use. So, I think it would be very difficult for us to find lawyers with that level of knowledge and experience who were not already aligned with one group of stakeholders.

That said, we do strive to implement the MMA in every day, to the best of our ability, in a way that serves the need of all our stakeholders, and I constantly talk with the digital services about that. We want this to work for them as well as for all the other rightsholders involved. So, I think we have done our best to, I guess, stay toward the middle of that road, recognizing, though, that there are times, and MMA does envision, that our job is to advocate for the process and to make sure that the digital services are living up to their obligations under the law.

So, I do not think it is accurate to suggest that we should never be in a situation where we are averse to the services. I would like to think we are helping them meet the very high bar you have set, and we do that, in part, by being transparent with them about expectations and also making sure that where a few of them are doing things differently from the others that those outliers come into the fold and perform in the same way that the other services in the market are performing.

Chair ISSA. Ms. North brought up a point that I will key in on, and that is that when someone is doing what substantially you are

doing, which is data base management, the accuracy of a data base and the fact that there will be—if we go back 1,000 years to when I was writing software the first time, when the card pops out of that IBM and it says this did not work, and the whole thing shuts down, as fast as you can get it corrected and back in is important.

Overwriting rather than showing a pairing error and a resolution process that is communicating back to both parties would seem to be the standard. Ms. North, if I see it correctly, that is not happening. They are not coming back with an error check saying we have a double claim and each of you knowing who the other is and a resolution process, but rather you can be overwritten. Is that correct?

Ms. NORTH. So, I think there are two parts. First, is that currently that process is entirely human, meaning there are emails, there is an email chain, and there is a timeframe. There is no actual software.

Chair ISSA. At high administrative cost.

Ms. NORTH. Correct, but also functionality. In terms of reducing friction, it takes too long because we could do it so much faster.

Second, yes, if I have my registration and somebody—we test 30,000 sound recordings, right—and then somebody else comes in with their one sound recording, claiming that composition, mine goes into suspense and that just does not make sense.

Chair ISSA. It does not make sense. Can you make it make sense here, in 30 seconds?

Mr. AHREND. I will try. We are in the process of developing a disputes and over-claims module in the portal that will allow members to interact directly, in a more systematized way around disputes. That is something that we began developing more than a year ago, but based on the feedback we got from members we place the priority on continuing to enhance the matching tool, in particular, because that was a tool that members saw as most directly allowing them to improve data for the benefit of higher payments. We are going to complete, build, and launch this portal hopefully before the end of this year.

In terms of the mechanism, if a work has been registered with us for more than, I believe, 90 days, and a new registration comes in that is not consistent with that, we do not automatically override that, and we do give a preference to the registration that has been in place.

Ms. North is correct. We do seek the view of both rightsholders in that situation because we do not automatically know which of those views is correct. In the case of a song like “Unchained Melody” that is incredibly popular and is covered tens of thousands of times, that process can be quite challenging. So, I do appreciate that Ms. North has some very unique challenges in managing a legacy work like that.

Chair ISSA. OK. I will wait for the second round for myself, and I will back to the gentleman from Wisconsin, Mr. Fitzgerald.

Mr. FITZGERALD. Mr. Ahrend, I do not think we touched on this. When foreign-owned record labels collect royalties on music when it is played abroad do artists see their share of the money on that right now? How is that working?

Mr. AHREND. If you are talking the sound recording side of the business, you said record labels?

Mr. FITZGERALD. Yes, right.

Mr. AHREND. That is not a part of the business that The MLC is involved in. I know there are other organizations that work on the sound recording side, like SoundExchange. They do go and collect sound recording payments for rightsholders around the world. They would probably be in a better position to speak to how that works and where there are opportunities to improve it.

Mr. FITZGERALD. OK. Very good. Does anybody else have a comment on that? Yes, Ms. North.

Ms. NORTH. That is completely outside of the realm of The MLC, but I do want to raise AMFA, the American Music Fairness Act, and the opportunity. Currently, our performers, sound recording owners, do not receive a performing right for terrestrial radio and other broadcasts, of a sound recording. We are one of a few territories, like I think Saudi Arabia, that do not have this right.

Mr. FITZGERALD. I think it is just Cuba and Iran.

[Laughs.]

Mr. NADLER. So, because you provided this opportunity, I do have to plug AMFA, sound recording owners, and performers need to have that right.

Mr. FITZGERALD. Very good. Thank you.

Mr. Levin, can you talk about how public performance rights fit into what MMA did and did not do, and what remains to be done to keep music simply affordable for consumers?

Mr. LEVIN. Thank you for the question. The MMA did very little in the public performance licensing space. There are some adjustments to how the dispute process can play out in the rate courts that govern the BMI and ASCAP consent decrees. There was also a provision about should the Department of Justice ever seek to do away with those consent decrees, some notice to Congress.

In general, there was very little kind of at the heart of that licensing system, and it is one where, from the service perspective, it is one of the many rights that DiMA's members need to license to operate. The U.S. is unique in its number of performing rights organizations. I think we are up to about six now. That is not actually generally the way it works around the world.

It is also, to kind of actually piggyback on Ms. North's comment, while there are entities that do not pay for the public performance of sound recordings, essentially anywhere in the United States that publicly performs music, from bars and restaurants to DiMA's members, need licenses from the PROs. So, it is certainly a marketplace and a licensing space where it is important to make sure that it is functioning properly.

I know Congressman Fitzgerald and Congressman Issa, along with Representative Ross sent a letter last year to the Copyright Office about the potential improvements on transparency in this space. I think that remains an area—again, we have talked a lot about data. It comes up all the time in the music industry. Every licensee wants to know what they are licensing. Every rightsholder deserves to get their money efficiently and effectively.

So, finding improvements to make licensing more efficient through improved data I think is a real area for shared undertaking by the licensees, the PROs, and others.

Mr. FITZGERALD. Very good. Thank you.

Chair ISSA. Thank you. Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you. My last question had to do with successes and challenges, and thank you all for your answers to all our questions today. I would like to ask you, as our challenges that you noted, what do you see Congress' role being in meeting those challenges. Ms. North?

Ms. NORTH. I think the first one is oversight. We brought up a couple of things. One is there have been unilateral business rules applied regarding issues that are already defined by statute. Section 115 is clear about the derivative works exception. That should not have ever been an issue. We know how public domain works, are controlled, or not. That should never be an issue.

So, I think that Congress and the Copyright Office need to pay attention to how The MLC is functioning, and most importantly, create guardrails so that The MLC remains a neutral, pass-through entity. That is what it is supposed to be. It is not supposed to be a judge or arbiter.

Mr. JOHNSON of Georgia. Thank you. Mr. Molinar?

Mr. MOLINAR. Yes. I think in terms of improvements my comments are less about The MLC but more about The MLC cannot pay out and the streaming services cannot pay the royalties if we do not know what the rates are and if we do not come to some market definition quicker and earlier. So, my improvements would be focused on CRB reform and looking where we can support the CRB system, whether that is more funds or more resources for them so that we can have these decisions for our rates timelier, smoother, and quicker for the entire process.

Mr. JOHNSON of Georgia. Thank you. Mr. Levin?

Mr. LEVIN. Just to followup on Mr. Molinar's comment, the great news is that because of the settlement reached last year that the rates are set for 2023 and going forward, which allows for, I think, a more robust conversation about whether and where improvements might be needed in the CRB process.

In terms of the challenges that we see with The MLC, I think that oversight and ongoing engagement from Congress around MMA and The MLC's operations, as well as from the Copyright Office, are vital. This hearing is an incredible opportunity to talk about it, to check in, to hear about the incredible progress, and to also identify where challenges exist. So, I hope this is not the last time that this Committee continues to engage, whether it is in a hearing or otherwise. I think The MLC exists solely as a creature of the Music Modernization Act and solely to effectuate the license that was created in that, so ongoing engagement is vital.

Mr. JOHNSON of Georgia. Thank you. Mr. Ahrend?

Mr. AHREND. Thank you. I agree with Mr. Levin. I think the ongoing engagement is imperative. We have sought that out whenever we can. As a number of you know, we were up on the Hill earlier this spring, providing updates to staffers. We did a virtual update at the end of last year. Right before COVID I came up at the very beginning of the process. So, we welcome the engagement with

Congress, we seek it out, and we enjoy regular conversations with the Copyright Office, and as I said in my remarks, we speak regularly with a number of groups in the industry that represent a large number of stakeholders so that we are constantly receiving as much feedback as we can. Then we take that back and we undertake the immense challenge of trying to reconcile all that feedback, from all the people that have been interested in what we do, and try to come up with policies and practices that meet the needs of as many of those stakeholders as possible. Thank you.

Mr. JOHNSON of Georgia. Thank you. Mr. Porter and Tashian.

Mr. PORTER. I do not have comments. I think challenges have already been addressed. I applaud this Committee and what you are doing, because for the future generations who have aspirations to do music, their whole thrust is doing what they feel is a contribution coming from their heart that hopefully will have an impact with people who listen to it. They do not go into the analytics of what the business process will be and all those kinds of things. They have hopes, the future generation would be, that there will be committees such as this and others who would have sensibilities to want to be sure they are treated fairly with their gifts, in a world that recognizes their value and would adhere to that.

Mr. JOHNSON of Georgia. Thank you.

Mr. TASHIAN. Echoing what a lot of people have said, but it is just great to work together, and I hope that all of you will take your passion for music. You mentioned, Mr. Issa, Mike Love, and your enjoyment of the music of the Beach Boys. I am sure everybody has their own version of that.

Mr. JOHNSON of Georgia. I am good with Tim McGraw too.

Mr. TASHIAN. Tim McGraw. Yes. I hope you will think about your favorite artists, writers, and songwriters and then stay engaged with the community, and listen and hear people out. I think it is a good thing to just kind of stay connected to that. Thank you.

Mr. JOHNSON of Georgia. Thank you, and kudos to Chair Issa for bringing the hearing on the road, to Nashville.

Chair ISSA. Thank you. Mr. Cline.

Mr. CLINE. I echo those comments. Thank you, Mr. Chair.

Ms. North, I want to go back to the statement you made, how we want The MLC to be a neutral pass-through entity and not an arbiter. The MMA mandates that The MLC board of directors consist of 10 publisher representatives and four songwriters. Can you comment on whether you think The MLC is able to achieve that neutrality with its current makeup, and the interests of songwriters are balanced against those of publishers when they disagree?

Ms. NORTH. Well, I think the interests of songwriters are not balanced, just simply by makeup of that board. It should be more equal. It should be an equal number of songwriters to that number of publishers.

More importantly, the major publishers, they have voluntary direct licenses with the services, so they do not even use The MLC in the same way that an independent music publisher does, who does not have the opportunity to enter into voluntary licenses. So, to me, we need fewer majors and more indies, and included in the

Indies are self-administered songwriters. I think we do not have enough.

Mr. CLINE. Thank you. Mr. Ahrend, do you want to comment on how The MLC balances the interests of stakeholders, and given the imbalance in its membership?

Mr. AHREND. Yes, thank you. I think as Ms. North just noted, independent publishers represent a unique set of stakeholders who often have interests that are very different from the largest publishers. So, our board is, in reality, divided among those three stakeholder groups. We have representatives of songwriters, independent publishers, and the larger publishers. In that respect I think we hear from all three of those stakeholder groups, and I do think the views that we receive from those reps reflect and effectively represent the interests of those three groups.

I also would just note that the amount of royalties flowing through direct licenses now is only a few million dollars each month. It has dropped dramatically since the first distribution we did. So very little of the royalties that we administer flow through direct licenses. The overwhelming amount of royalties flow directly through The MLC. Several of the largest ESPs ended the practice of entering into voluntary licenses when The MLC began operation. So, again, voluntary licenses are a very small part of what we do today.

Mr. CLINE. All right. Let's talk about the termination rights. Can you explain The MLC's stance on termination rights and the payment of royalties to a publisher after its rights are terminated by the songwriter?

Mr. AHREND. As of today, we are holding royalties pending the outcome of the Copyright Office's rulemaking process, so that is where we stand at this moment.

Mr. CLINE. What has The MLC done now that the Copyright Office issued its proposed rule contradicting The MLC's view, and what are MLC's plans with respect to getting involved with the Copyright Office's process for issuing a final rule?

Mr. AHREND. The Copyright Office did not contradict our rule so much as it weighed in and offered a proposed rule that would clarify what previously the law had not clarified, which was the answer to the ultimately question. In doing so we recognized that the best thing for us to do right now is to hold moneys pending that outcome. We participate in the process. Our only view in participating in the process now is to ensure that the office has the operational perspective that we can provide so that whatever rule they ultimately issue we can effectively implement it.

Mr. CLINE. The Copyright Office has issued a notice of inquiry regarding when late fees are triggered for payments by DSPs. What is The MLC's position with respect to whether late fees should be paid when a DSP's estimated royalty payments turn out to be short, and how did The MLC go about deciding that?

Mr. AHREND. Our view is that late fees should be paid, and we based that, in part, on the fact that there are digital services that have already been paying late fees on that basis. So, again, this is an area where we provided a perspective of what the current practices are, and our belief for how those practices should be normalized so that all DSPs are adhering to a consistent standard.

Mr. CLINE. OK. I yield back.

Chair ISSA. I thank the gentleman. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Tashian and Mr. Porter, one of the changes contained in the MMA was to require the Copyright Royalty Board to use a willing buyer or willing seller standard in determining royalty rates for songwriters. Can you explain what it means to you to be recognized for the value of your music and why it is important to artists that they are paid on a free market basis?

Mr. TASHIAN. This landscape is changing all the time. I listened in on the call a little bit yesterday. Mr. Issa, you were talking about how hard it is to determine the value and for stakeholder to make those decisions.

I think it is something that we just have to stay on top of, but was the question about how do you do that? What was the question about, how do you do that?

Mr. NADLER. No. The question was sort of the balance of money of willing buyer, willing seller. Is it making a difference to you?

Mr. TASHIAN. Yes. Well, I have not sold my catalog yet. It is something that I hope to do, but I know a lot of people who have. So, at that point I will let you know.

Mr. NADLER. Mr. Porter?

Mr. PORTER. Well, I feel that—to be honest, I have sold my catalog—I think for the future generations—I am 80 years old, so for me, I am more concerned about what happens to the next set of creatives who have a passion to be in this business called music, and to do it from their heart, and to be sure that what they are going to be given in the future will be comparable to the lifestyle should be for those times.

I just feel like it is an ongoing process. For me, I always feel that the writers and artists have never gotten the kind of fair royalties that they should have gotten from the beginning. It is always a positive change that is happening, and what this Committee is doing and what you are doing is so vitally needed for people to be motivated to want to continue to do this. I applaud you for doing that, and I think it is an ongoing process for the next generation to see examples of this, such as sensitivities to what they are doing and being compensated in a fair and equitable way.

Mr. NADLER. Thank you. Mr. Porter, the CLASSICS Act, which provided protection under the Federal copyright laws to music recorded prior to 1972 was an important component of the MMA, obviously. Can you talk about the impact this provision has had on legacy artists, and has it made a difference in your ability to be fairly compensated for your work?

Mr. PORTER. Without a doubt. I know of Sam Moore, who is an artist that I worked with, he and Dave. I know what this feeling is about, and I know, Chair Issa and others, he has made this point known.

Chair ISSA. I hear from his wife.

Mr. PORTER. I can understand. It is just so, so important that artists who—I remember years ago, artists were happy to be the star singing up on the stage, and they did not realize that the songwriter was getting royalties, and royalties would happen when someone else would record the song in an ongoing way. That was



a plus for the writer whose name was in small print on a record. They wanted to continue to do that.

If you are going to do this you want to be sure that everybody is treated fairly, and prior to 1972 that was not the case. The fact that so many artists have suffered because of that, and this is a means of correcting and making some amends to make a positive change for that in what you have done. It has to be a better feeling, and in only five years for people, in an ongoing way, to see what it is going to do for those people that are still around to appreciate it, and certainly for their estates, that they will be able to evaluate it.

It has been such a suffering of talents for many, many years prior to this happening, that I applaud you for taking a step to correct it.

Mr. NADLER. Thank you. Mr. Ahrend, The MLC is responsible for distributing statutory royalties at rates that are set by the Copyright Royalty Board. Can you discuss the importance of those rate determinations being made on a timely basis?

Mr. AHREND. Thank you for the question, Mr. Nadler. It is imperative. Quite simply, we cannot pay out royalties correctly, if at all, if we do not have the rates. It is a fundamental component to the process. So, the lack of finality around the rates for the 5-years leading up to the launch of The MLC and the blanket license has been incredibly challenging. We will spend hundreds of thousands of dollars and countless hours of time putting together processes that we will need to reconcile the rates when they are finalized with the work that we have already done. I hope that we do not have to do that again, so it is imperative.

Mr. NADLER. Thank you. My time has expired. I yield back.

Chair ISSA. Thank you. Mr. Cline, you had a followup of one of your questions.

Mr. CLINE. Oh, I just wanted to give Mr. Levin the opportunity to respond to Ahrend's comments. Mr. Levin, do you want to respond to the question I asked Mr. Ahrend about late fees?

Mr. LEVIN. Yes, I would be happy to. Thank you.

I think at heart this is a great example of what exactly I have been talking about, about The MLC seeking guidance from the Copyright Office rather than imposing a view. While I think Mr. Ahrend raised the point that some services have paid late fees, that actually does not answer the question of whether statute and the regulations require them. The publishers and songwriter advocates are fully within their rights and prerogative to raise those concerns to the Copyright Office and argue for a position on it.

I know some Members of this Committee, including yourself, have weighed in with the Copyright Office on the substance of the issue. What we actually saw in that scenario was The MLC submitting comments that were essentially identical to the comments submitted by the publishers, which does not actually add value to the conversation, necessary.

To the extent that there are operational questions about how to actually facilitate late fee payments, make sure those payments go through, that seems squarely within The MLC's wheelhouse. On the actual substance of what the statute requires, that is something that the office actually does have the authority to weigh in

on and engage with the stakeholders on, and for The MLC to subsequently operationalize.

Mr. CLINE. Thank you.

Chair ISSA. OK. Now a couple of closing questions from me. Ms. North, you opened by talking about the fact that the PROs are outside the original legislation. In your opinion, and we will go through others, do you believe that is action that Congress should take to bring them underneath this act, and now that it is up and running, for benefit, either compulsory or an opt-in?

Ms. NORTH. That is such a difficult question.

Chair ISSA. I saved the best for last.

Ms. NORTH. So, here is what I think. Mr. Fitzgerald had asked about whether including information about the PRO would be helpful or which should be data that The MLC includes. Personally, I think yes, because knowing the PRO of the songwriter and/or publisher helps us disambiguate data. It might tell me that one song called, I don't know, "Just the Way You Are" is this song and not this set of parties.

However, the PROs function pretty well, and I do not think they need additional regulation, and I would like to keep them out of it.

Chair ISSA. OK. Mr. Ahrend, one of the administrative items, you are holding currently how much in hold-back money for unmatched? Rough number.

Mr. AHREND. I can be specific. We have \$321 million in pending blanket royalties, \$403 million in historical unmatched royalties.

Chair ISSA. OK. Do you currently believe that you have the authority to make a partial distribution, holding back sufficient funds to assure that anticipated future matches would still be paid fully? In other words, rather than being forsaken, which Ms. North brought up, that the moment you issue that money that it is no longer available to a future match-up, and Mr. Porter and others that may come up with them, do you believe you can currently split the baby, if you will, do a disbursement which is to the benefit of rightsholders who have come forward and hold back a sufficient amount for anticipate future, or is that outside your purview?

Mr. AHREND. I think it is an interesting question. I think as a practical matter, were we to do that it would delay significantly our ability to process and pay the back half of that because we would have to build a separate, similarly complex reconciliation process to then calculate the difference between what we had initially paid out and what we would finally owe for the historical moneys, and that would work differently, in many respects, from the blanket reconciliation we will have to do for 2021 and 2022.

So, in looking at that—

Chair ISSA. So, it is fair to say that the act did not give you specific guidance, which would be the reason that you would not be able to split it and do a future one, as though you were starting again.

Mr. AHREND. I think it is fair to say that the MMA did not contemplate this possibility because, of course, at that time it was past the appeals.

Chair ISSA. We thought you would be perfect and match every single song. That is just the way it is in Congress.

Mr. AHREND. Well, the CRB process that we have alluded to before was five years earlier, and so I do not think we knew, any of us knew that we would be where we are today, back then. Of course, for us, we have been doing a significant amount of work on all the historical royalties since we received that data.

So, at this point, sitting here today, what I believe is the best course is for us to allow the office and the CRB to finalize the rates, something that we believe is imminent, for the services, and then deliver the revised data, and then we can begin paying out all the matched royalties accurately, hopefully first thing in 2024.

Chair ISSA. The CRB has rulemaking authority. Do you believe that you have superior, concurrent, or simply separate rulemaking authority under the act?

Mr. AHREND. The MLC?

Chair ISSA. Yes.

Mr. AHREND. We are not a rulemaking body.

Chair ISSA. You have been making rules, and that has been Ms. North's complaint is that you have not sought the CRB, which does have rulemaking authority, to make those decisions. No question at all—what you have been making looks a lot like rules.

Mr. AHREND. With respect, I think we have put in place policies that describe our operations, and we have sought from the Copyright Office guidance where we think the Copyright Office would be in the best position to weigh in. I think it is the Copyright Office's role to ultimately issue regulations that answer questions of policy, and they have done so, to their great credit, in a myriad of ways, and, also, in a relatively short period of time. So, we consult regularly with the Copyright Office. I think they are the primary place where we would look for that guidance where we need it, and we do.

Chair ISSA. Do you believe you have authority under the act to—you do believe you have authority under the act to issue late fees. Do you believe that you have the authority to issue, or should you have the authority to issue late fees that would be sufficient to be used in excess of the fair reimbursement to the person who did not receive their royalty in a timely fashion, to also allow for general operations or other uses by your organization?

Mr. AHREND. No. The late fees that we collect are passed on to members entirely. We do not use those for operating costs. They are set by the regulations or the statute.

Chair ISSA. So, the second half of the question was do you think you should? In other words, the business of late fees is not just statutory interest. It is intended to be, at least partially, in a fair way, partially punitive, sufficient that it causes people to be dissuaded from using you as a bank. If you do not have that authority to collect essentially an amount in excess, is that something you would like the authority?

One of the reasons we are out here is to look for ways that we can enhance compliance, enhance the percentage of matchups. Of course, when you are talking about revenues sufficient to be able to do your job better, we are also looking at it not coming out of necessarily the hide of the good behavior individuals but perhaps revenue that would allow you to innovate in the long run, service your beneficiaries better.

Mr. AHREND. I certainly think that this is a question that merits more conversation. We do see evidence that there are at least a few DSPs who consistently deliver their usage and royalty payments late, and they appear to be pushing the bounds—

Chair ISSA. I want to see a little anger. I want to see you go, “No, you are right. I really want to stop the bad actors, and I have heard about them.” Because the good actors, they are paying, and quite frankly, it adds to your overhead, does it not, and it adds to the frustration of the people who want to run their businesses and cannot because the revenue is not coming in.

Mr. AHREND. Absolutely, 100 percent. So, if Congress or the Copyright Office would like to give us more tools to ensure compliance, we would gratefully accept them and use them with the passion and vigor that you just expressed.

Chair ISSA. OK. Well, I we have one minute left, and I am going to take a privilege.

Mr. Porter, you are the senior member here. I am kind of one of the senior Members here. Tell me, if you could ask us to go away with one more thing that we should go work on, what would it be?

Mr. PORTER. It would be to continue with the spirit that you are expressing right now. That is the spirit of wanting to do more, wanting to do it right, and wanting to do it because it is the right thing to do. That would be all I could say, sir.

Chair ISSA. Well, with that we stand adjourned.

[Whereupon, at 12 p.m., the hearing was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116155>.

