



June 22, 2023

The Honorable Darrell Issa
Chairman, The Subcommittee on Courts, Intellectual Property, and the Internet
House Judiciary Committee

The Honorable Hank Johnson
Ranking Member, The Subcommittee on Courts, Intellectual Property, and the Internet
House Judiciary Committee

Dear Chairman Issa and Ranking Member Johnson,

Thank you for holding the upcoming hearings on the anniversary of the Music Modernization Act (P.L. 115-264). We applaud the Subcommittee's review of the MMA and how it is working five years out, especially as it relates to the cost and efficiency of enabling participation in the streaming marketplace by a diverse range of providers, small and large.

I write on behalf of the small interactive classical music streaming service I own and operate called Classical Archives. Established in 1994 and incorporated in 2001, Classical Archives is the world's best curated (and oldest) classical music site in the world. We have grown steadily from our early days and now have over 1,200,000 tracks from over 750 labels, representing the works of close to 20,000 composers. A core of our service is the care we put in to ensure that our music is "expertly and lovingly curated for all audiences."

Classical Archives, by the very nature of its focus, concentrates on older classical music compositions. Consistent with that mission, roughly 80% of the tracks that are streamed on Classical Archives are musical works in the public domain, no longer protected by copyright and not subject to any licensing requirements.

We write separately from other letters to raise an important concern about the current treatment of public domain works under 17 U.S.C. § 115 and 37 C.F.R. § 385.21. We, like other streaming services, rely on the statutory blanket license administered by the Mechanical Licensing Collective (MLC), which was created by the MMA and implemented by the Copyright Office.

Unfortunately, over the last few years, the MLC has adopted interpretations of the blanket royalty provisions of the MMA that have resulted in the MLC charging digital streaming providers like Classical Archives for streams of *public domain musical works*. We believe those interpretations are not consistent with the statute or fundamental copyright policy interests.

This issue implicates critical policy concerns about the use and availability of public domain works. Free access to public domain works is the bedrock of creative industries in the United States, and it is enshrined in the Copyright Clause as a core constitutional value. Classical Archives firmly believe that creators and copyright holders should be fairly compensated. But they should not profit from – and streaming services should not be forced to pay to provide -- public domain musical works that we, as a society, own collectively.

In particular, the MLC has interpreted a per-play allocation rate for instances when a provider streams musical works whose compositions are in the public domain in a way that requires payment of royalties for such streams. Sadly, this interpretation and the extra royalty charges impose a huge burden and cost – many thousands of dollars of extra, unwarranted payments over the last two years -- for a small service like ours. This is genuinely a matter of life and death for us and our mission.

Classical Archives and I have raised these concerns with the MLC beginning in June 2021, but the MLC declined to act in response. We are continuing to advocate for what we believe is a fair and legally and policy grounded interpretation of the MMA, but thus far the MLC has not revised its interpretations.

Classical Archives provides a valuable educational and cultural experience for its users, and this matter is critical for us. We hope the Subcommittee will consider the public domain royalty issue as part of its hearings and its review of what is and is not working with the MMA. Attention to this issue will protect the rights of all listeners to freely enjoy works that are in the public domain and ensure that Classical Archives and other services that stream public domain music are treated fairly and are able to continue their missions.

Again, thank you and the Subcommittee for holding these hearings and for working to ensure that the MMA is working well to advance the interests of all stakeholders in the music industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pierre R. Schwob', with a stylized flourish at the end.

Pierre R. Schwob
CEO
Classical Archives, LLC

cc:

The Honorable Jim Jordan
Chairman, House Judiciary Committee

The Honorable Jerrold Nadler
Ranking Member, House Judiciary Committee