

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.¹

¹ 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."² 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

² 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.³ 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 information⁴ that is

³ 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.

⁴ 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.⁵

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 website⁶
- Quarterly industry newsletters, sent to our full membership and available to the public on our website⁷
- Detailed annual reports and financial disclosures, available to the public on our website⁸
- Hundreds of in-person events, virtual events, webinars and other outreach and educational events⁹

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

⁵ 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.

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

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

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

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

through a separate assessment on licensees.¹⁰ 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.

¹⁰ 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.¹¹ 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.

¹¹ 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.”¹² The MLC has taken that to heart and has cast a wide net across the global¹³ 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.¹⁴ 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.¹⁵ 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

¹² 17 U.S.C. § 115(d)(3)(J)(iii).

¹³ 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.

¹⁴ 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.

¹⁵ 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*.¹⁶ 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

¹⁶ 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.