

Submitter Name: Jonathan Singer
Submitter Company: Spirit Music Group

November 8, 2023

Re: Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act

Dear Sir/Madam:

I refer to the Supplemental Notice of Proposed Rulemaking (SNPRM) of Sept. 26, 2023 extending the scope of the Notice of Proposed Rulemaking (“NPRM”) under the Music Modernization Act (“MMA”). Lyric Capital LLC and its administrator Lyric Copyright Services d/b/a Spirit Music Group, respectfully submit our comments.

We commend the US Copyright Office (USCO) for its highly regarded work in protecting rightsholders and their intellectual property rights. Your efforts have achieved great strides to prevent the misuse and abuse of music copyrights.

Although the NPRM’s original intent was to address the ambiguity in certain aspects of the Termination Right, the USCO’s extension of the scope beyond Termination Rights disrupts standard practices that have been long tested and put into practice by rightsholders. The administrators of copyrighted material are best suited to understand the most current and pragmatic business practices. As such, the administrators should be the ones to establish the day-to-day standards of copyright administration and to make the recommendations pertaining to the administration of copyrights and their respective payments at the MLC.

We believe the administrators’ standard practices and pragmatic solutions must be considered.

DISTRIBUTING ROYALTIES TO THE OWNER AT THE TIME OF PAYMENT

Idealistically, the USCO’s intent in the SNPRM is to “...address additional matters relevant to identifying the proper payee to whom the MLC must distribute royalties.”

Though Sections 115(c)(i)(c), 115(d)(4)(E)(ii)(II), and 501(b) contain language that arguably entitle the copyright owner compensation when blanket licenses are issued, most agreements transfer all rights, titles, and interest to the acquiring party. This is certainly true in acquisition agreements of music copyrights, which include the right to remuneration and the right to litigate for such remuneration.

When a music publisher or other rightsholder acquires or enters into an administration agreement with a copyright holder, the lack of payment due to unmatched uses from a DSM and the MLC is factored into fees, advances, and/or the purchase price of the copyright. It is considered part of the value of a musical composition. The USCO's position to pay the interested party at the time of use achieves the opposite result of the intent of the SNPRM, which is to pay the correct rightsholder.

The USCO itself acknowledges that paying the owner at the time of use "may result in lower match rates and low payouts", and that "...Congress' clear interest is in "reducing the incidence of unclaimed royalties".

We believe the USCO does not have the authority to establish the various recommended distribution and administrative approaches. By doing so, the USCO is not only exercising authority over the MLC oversight but also inhibiting free commerce between rightsholders.

EXTENSIVE NOTICE REQUIREMENTS

Current standards associated with the Letters of Direction and its accompanying documents, applied by MLC and other payors, have proven to be efficient. Although the USCO outlines similar requirements, the USCO chooses to impose additional requirements, which will increase the administrative burden on the rightsholders and the MLC. The processing and review of such requirements will slow the process of properly directing royalties. Of course, everyone wants the correct rightsholder to be paid. In most cases, the rightsholder at the time of payment is the entitled party. Therefore, the cost to achieve 100% compliance is greater than the occasional payment that may go awry. We believe that more payments will be misappropriated if the USCO's recommendations are adopted.

From a pragmatic point of view, we are also concerned the proposed changes will require significant changes in the MLC's infrastructure, which will result in substantial delays in payment of future royalties during the building phase.

ROYALTY DISCLOSURE

We do agree with the USCO's position to disclose earnings and to provide royalty statements that are in suspense due to conflicts and disputes. We also agree the MLC portal should make this information visible.

The USCO's recommendation for handling disputes is problematic. Requiring all parties to submit a jointly signed notice every six (6) months, and to have the MLC administer such notices will be a drain on MLC and rightsholder resources, which is trying to operate in a cost-effective manner. We believe the MLC is currently handling disputes in a pragmatic fashion that should not be disrupted.

OVERPAYMENTS AND ADJUSTMENTS



We agree with the USCO position that the MLC has an obligation to process adjustments, which is common practice among payors in the music industry.

However, we question the USCO's recommendations for recouping debt from erroneously paid parties and compensation to entitled parties. There have been instances where the MLC matched our recordings to the incorrect songs. In some cases, the rightsholder, who mistakenly received the royalties, could not ever repay the erroneous payments because of their lack of earnings. In these cases, the MLC is not paying Spirit Music Group, the entitled party, for an error that we did not commit.

Additionally, applying 50% of the debt to the erroneous party, who may be earning only a few dollars, will result in never ending debt for the erroneously paid party. We realize the USCO is concerned with the financial impact to the incorrect party, but it is at the expense of the entitled party. We strongly disagree with your position. The incorrectly paid party's debt should not be the entitled party's burden.

Lastly, the USCO does not believe income from unmatched should be used to compensate the entitled party who was underpaid due to a matching error by the MLC. There will always be a constant flow of unmatched income. The USCO will allow for allocations of unmatched on a pro-rata basis, which is not an exact science. However, the USCO disagrees with using the income to compensate parties entitled to credit adjustments. We strongly recommend that the USCO establish an equitable solution to compensate under payments.

The MLC has been doing an excellent job in distributing the DSM income and may require minor operational changes that it always takes in consideration when it receives comments from rightsholders. In contrast, the substantial changes that the USCO recommends will result in increased resources, greater costs, incorrect payments, and delayed royalty payments.

We appreciate your consideration of our comments.

Sincerely,

Jonathan Singer
Chairman

