



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

**[Docket No. 2019-6]**

#### **Unclaimed Royalties Study: Announcement of Public Symposium**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of public symposium.

**SUMMARY:** As directed by the Music Modernization Act, the U.S. Copyright Office is conducting a study to evaluate best practices that the Mechanical Licensing Collective should implement in the following areas: (1) to identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; (2) to encourage musical work copyright owners to claim the royalties of those owners; and (3) to reduce the incidence of unclaimed royalties. To initiate this effort, the Office is holding a one-day symposium to provide an educational foundation and facilitate public discussion on issues relevant to the study. Following this symposium, the Office will separately issue Notices of Inquiry soliciting written comments and announcing roundtables, both of which will provide opportunities for public input on the Unclaimed Royalties Study.

**DATES:** The symposium will be held on December 6, 2019. Registration will start at 8:30 a.m. and the event will run all day ending at 6:00 p.m. Additional information is available on the Copyright Office website at <https://www.copyright.gov/policy/unclaimed-royalties/>.

**ADDRESSES:** Library of Congress Madison Building, 101 Independence Avenue SE, Washington DC 20540.

**FOR FURTHER INFORMATION CONTACT:** John R. Riley, Assistant General Counsel, by email at [jril@copyright.gov](mailto:jril@copyright.gov) or Cassandra Sciortino, Barbara A. Ringer Honors Fellow, by email at [csciortino@copyright.gov](mailto:csciortino@copyright.gov). Each may be reached by telephone at 202-707-8350. Requests for ADA accommodations should be made five business days in advance at [ada@loc.gov](mailto:ada@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”).<sup>1</sup> Title I of the MMA substantially modifies the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.<sup>2</sup> Prior to the MMA, licensees obtained a section 115 compulsory license on a song-by-song basis by serving a notice of intention on the relevant copyright owner (or filing it with the Copyright Office if the Office’s public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.<sup>3</sup>

The MMA amends this regime most significantly by establishing a new blanket license that digital music providers may obtain to make digital phonorecord deliveries (“DPDs”) of musical works, including in the form of permanent downloads, limited

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<sup>1</sup> Pub. L. 115-264, 132 Stat. 3676 (2018).

<sup>2</sup> See S. Rep. No. 115-339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), [https://www.copyright.gov/legislation/mma\\_conference\\_report.pdf](https://www.copyright.gov/legislation/mma_conference_report.pdf); see also H.R. Rep. No. 115-651, at 2 (2018) (detailing the House Judiciary Committee’s efforts to review music copyright laws).

<sup>3</sup> See 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, *Copyright and the Music Marketplace* 28–31 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> (describing operation of prior section 115 license).

downloads, or interactive streams (referred to in the statute as “covered activity”).<sup>4</sup> The blanket licensing structure is designed to reduce the transaction costs associated with song-by-song licensing by commercial services striving to offer “as much music as possible,” while “ensuring fair and timely payment to all creators” of the musical works used on these digital services.<sup>5</sup> The new blanket license will become available upon the statutory license availability date (*i.e.*, January 1, 2021).<sup>6</sup> In the interim, the MMA “creates a transition period in order to move from the current work-by-work license to the new blanket license.”<sup>7</sup>

This blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (“MLC”), which has recently been designated by the Register of Copyrights.<sup>8</sup> As previously detailed by the Office,<sup>9</sup> the MLC, through its board of directors and task-specific committees,<sup>10</sup> is responsible for a variety of duties under the blanket license, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim

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<sup>4</sup> 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115-651, at 4–6 (describing operation of the blanket license and the mechanical licensing collective); S. Rep. No. 115-339, at 3–6 (same).

<sup>5</sup> S. Rep. No. 115-339, at 4, 8.

<sup>6</sup> 17 U.S.C. 115(d)(2)(B), (e)(15).

<sup>7</sup> H.R. Rep. No. 115-651, at 10; S. Rep. No. 115-339, at 10; *see* 17 U.S.C. 115(b)(2)(A), (d)(9), (d)(10). The Copyright Office has separately issued regulatory updates related to digital music providers’ obligations during this transition period before the blanket license is available. *See* 84 FR 10685 (Mar. 22, 2019); 83 FR 63061 (Dec. 7, 2018).

<sup>8</sup> 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

<sup>9</sup> *See generally* 84 FR 32274; 83 FR 65747 (Dec. 21, 2018).

<sup>10</sup> By statute, the MLC board must establish three committees: an operations advisory committee, 17 U.S.C. 115(d)(3)(D)(iv), an unclaimed royalties oversight committee, *id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii), and a dispute resolution committee, *id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K).

ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.<sup>11</sup> The MLC is also tasked with distributing unclaimed accrued royalties following a proscribed holding period.

As the legislative history explains, these responsibilities are intended to fill a gap in the music licensing marketplace:

[F]or far too long, it has been difficult to identify the copyright owner of most copy-righted 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. . . . [T]here is no reliable, public database to link sound recordings with their underlying musical works. Unmatched works routinely occur as a result of different spellings of artist names and song titles. . . . The Committee believes that this must end so that all artists are paid for their creations and that so-called “black box” revenue is not a drain on the success of the entire industry.<sup>12</sup>

In designating the MLC, the Copyright Office accordingly noted that it is the MLC’s “core project [to] encourag[e] musical work copyright owners with unclaimed accrued royalties to come forward and claim such monies” after identifying them based on the data ingested through uses of the license.<sup>13</sup>

In recognition of the significant duties involved with respect to the potential distribution of unclaimed, accrued royalties for which the creators of such works will not be paid,<sup>14</sup> the MMA also directs the Copyright Office to undertake a study that recommends best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties. The resulting Unclaimed Royalties Study

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<sup>11</sup> *Id.* at 115(d)(3)(C).

<sup>12</sup> H.R. Rep. No. 115-651, at 7–8.

<sup>13</sup> 84 FR at 32279, 32289.

<sup>14</sup> *See* H.R. No. 115-651, at 13.

recommending best practices for the collective must be submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives by July 8, 2021. The Register is directed to solicit and review comments and relevant information from music industry participants and other interested parties, and consult with the Comptroller General of the United States. The MLC is required to carefully consider, and give substantial weight to, the recommendations that will be set forth in the Unclaimed Royalties Study.<sup>15</sup> Separately, the MMA also directs the Copyright Office to engage in education and outreach activities to educate songwriters and other interested parties about the new law, including the processes by which a copyright owner may claim ownership in accrued royalties and the MLC may distribute unclaimed, accrued royalties.<sup>16</sup>

While the statute, legislative history, and indeed, prior Copyright Office policy studies are highly informative with respect to various aspects relevant to the policy study,<sup>17</sup> the Office appreciates the keen interest of interested members of the public with respect to the MLC's functions. For example, the recent designation of the MLC resulted in over 600 comments, including many submitted by individual songwriters, expressing views with respect to the MLC's forthcoming activities matching uses to musical works and ownership information, locating copyright owners with accrued royalties, and ultimately reducing the amount of unclaimed royalties.<sup>18</sup>

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<sup>15</sup> Pub. L. 115-264, sec. 102(f), 132 Stat. at 3722–23.

<sup>16</sup> *Id.* at sec. 102(e), 132 Stat. at 3722.

<sup>17</sup> See generally U.S. Copyright Office, *Copyright and the Music Marketplace* (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>; H.R. Rep. No. 115-651, at 2 (citing same).

<sup>18</sup> See 84 FR at 32283–84 (discussing ways in which the statute addresses issues with respect to smaller independent songwriters, including the Unclaimed Royalties Study).

Because the section 115 license and the MLC’s statutory duties are a relatively complex area of copyright that affects many in the music licensing ecosystem, the Copyright Office is electing to initiate its study with an educational public event. The public process for this study will roughly track that of the Office’s recently-completed study on attribution and integrity rights.<sup>19</sup> To launch the Unclaimed Royalties Study, the Office is holding a symposium on December 6, 2019. A transcript and video of the event will be made available on the Copyright Office website, and interested members of the public will have a subsequent opportunity to comment on statements or topics raised during the symposium, to aid the Office in its analysis of the issues. In 2020, the Office will separately issue a Notice of Inquiry soliciting written comments from the public, and also expects to announce public roundtables. These subsequent steps in the study process are intended to provide ample opportunities for the public to provide input on the Unclaimed Royalties Study.

## **II. Subjects of Discussion**

The symposium will consist of three core panel discussions regarding: (1) creating comprehensive databases (including discussions of past efforts); (2) matching musical works to sound recordings; and (3) education on unclaimed royalties across the industry. The symposium is also expected to include representatives from the MLC and the Digital Licensee Coordinator, as well as a breakout session to solicit artists’ perspectives on relevant issues. The Office will also provide participants and observers with an opportunity to offer additional comments for the record, following the panel discussion.

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<sup>19</sup> U.S. Copyright Office, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States* (2019), <https://www.copyright.gov/policy/moralrights/full-report.pdf>.

The Office is currently finalizing its list of panelists. The finalized agenda for the symposium will be made available through the Office's website in the weeks prior to the event. The symposium hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the symposium.

**Regan A. Smith,**

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*Associate Register of Copyrights.*

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