

U.S. COPYRIGHT OFFICE  
LIBRARY OF CONGRESS

Designation of Mechanical Licensing  
Collective and Digital Licensee  
Coordinator

Docket No. 2018-11



**DESIGNATION PROPOSAL OF  
MECHANICAL LICENSING COLLECTIVE,  
*a Delaware nonprofit corporation***

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March 21, 2019

Karyn A. Temple  
Acting Register of Copyrights and Director of the U.S. Copyright Office  
Library of Congress  
101 Independence Ave SE  
Washington, DC 20540

Dear Ms. Temple,

We the undersigned are the Board of Directors (the “Board”) of Mechanical Licensing Collective (“MLC”), a Delaware nonstock nonprofit corporation that was created by musical work copyright owners to carry out the responsibilities of the mechanical licensing collective (the “collective”) under the Music Modernization Act (the “MMA”).

We submit this proposal for the designation of MLC as the collective. We are committed to faithfully serving all copyright owners and the entirety of the songwriting and music publishing industries. We take our positions of leadership at MLC seriously, and are honored to serve. We appreciate the importance of the work of the collective, and we do not underestimate what will be required of us. We understand and acknowledge that we each have duties of care, loyalty and obedience to the statutory mission of the collective. We understand that we must disclose all actual or potential conflicts of interest, and we will promulgate and abide by written policies addressing conflicts and ensuring best practices in governance. We appreciate that in serving MLC, we act not in our personal interests or the interests of related parties, but rather solely in the interests of MLC.

As instructed by the MMA, four of us are professional songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to Section 115 covered activities (i.e., the making of digital phonorecord deliveries of musical works) for musical works we have authored. Ten of us are representatives of music publishers to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to Section 115 covered activities. Two of us are non-voting board members representing music publishing and songwriter trade organizations. (A representative of licensees will join as a third nonvoting board member pursuant to Section 115(d)(3)(D)(i)(IV).)

MLC can be contacted through our legal counsel on this proposal, and we are available to answer questions or provide additional information at your request.

Respectfully submitted,

The Board of Directors of MLC

*(signature page follows)*



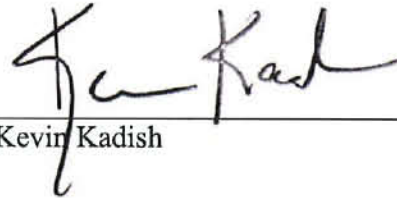
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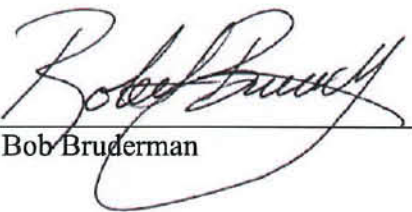
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Peter Brodsky



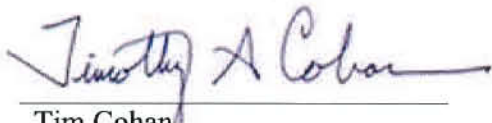
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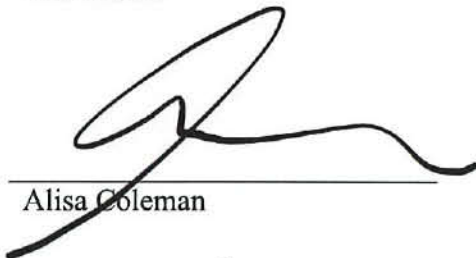
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Tim Cohan



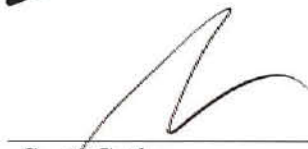
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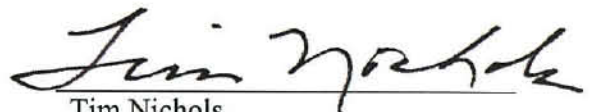
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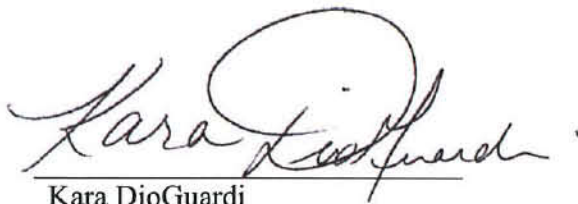
Mike Molinar



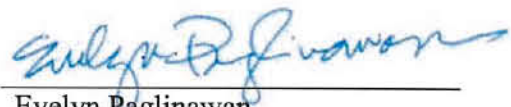
Scott Cutler



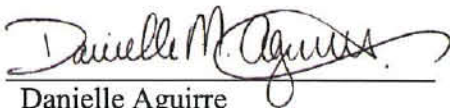
Tim Nichols



Kara DioGuardi



Evelyn Paglinawan



Danielle Aguirre



Bart Herbison

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1	Certificate of Incorporation & Statement of Organization
2	Unanimous Written Consent of Board of Directors Establishing Committees and Appointing Members
3	Request for Information (RFI)
4	Request for Proposals (RFP) & Appendix of Detailed Functional Requirements
	<i>Declarations and Letters of Songwriter Support</i>
5	<ul style="list-style-type: none"> <li>Declaration of Bart Herbison of Nashville Songwriters Association International (NSAI)</li> </ul>
5-A	<ul style="list-style-type: none"> <li>List of over 2,400 endorsing songwriters</li> </ul>
6	<ul style="list-style-type: none"> <li>Declaration of Michelle Lewis of Songwriters of North America (SONA)</li> </ul>
7	<ul style="list-style-type: none"> <li>Letter from Aimée Allen</li> </ul>
8	<ul style="list-style-type: none"> <li>Letter from Steve Bogard</li> </ul>
9	<ul style="list-style-type: none"> <li>Letter from Kara DioGuardi</li> </ul>
10	<ul style="list-style-type: none"> <li>Letter from Tim Nichols</li> </ul>
	<i>Declaration and Letters of Copyright Owner Support</i>
11	<ul style="list-style-type: none"> <li>Declaration of David Israelite of National Music Publishers' Association (NMPA)</li> </ul>
11-A	<ul style="list-style-type: none"> <li>Letter of Support from Over 130 Copyright Owners, including: <ul style="list-style-type: none"> <li>ABKCO</li> <li>AdRev</li> <li>Alfred Music Publishing</li> <li>Altadena</li> <li>Angry Mob Music</li> <li>APM Music</li> <li>Atlas Music Publishing</li> <li>Bethel Music</li> <li>Bienstock Empire, Inc.</li> <li>Big Deal Music</li> <li>Big Machine Music</li> <li>Big Yellow Dog Music</li> <li>Black River Entertainment</li> <li>Blanjie Records Entertainment</li> <li>BMG</li> <li>Bocephus Music</li> <li>Bourne Co.</li> <li>busbee</li> <li>Canticle Distributing</li> <li>Casablanca Media Publishing</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ Co Co Head Music Publishers</li> <li>▪ Combustion Music</li> <li>▪ Concord Music</li> <li>▪ Curb   Word Entertainment</li> <li>▪ Demi Music</li> <li>▪ Disney Music Publishing</li> <li>▪ Domino Music Publishing</li> <li>▪ Downtown Music Publishing</li> <li>▪ Duchamp, Inc.</li> <li>▪ Earth Mama/Rouse House</li> <li>▪ Emack Music Publishing</li> <li>▪ Emily Music</li> <li>▪ Entity Productions</li> <li>▪ ECS Publishing</li> <li>▪ Featherbed Music</li> <li>▪ Flea Market Music, Inc.</li> <li>▪ Fluid Music Revolution</li> <li>▪ Fox Music</li> <li>▪ Glassbeat Music</li> <li>▪ Great Big River Music</li> <li>▪ HD Music Now</li> <li>▪ HoriPro Entertainment</li> <li>▪ Hurewitz and Company</li> <li>▪ Indigi Music</li> <li>▪ Integrity Music</li> <li>▪ Italian Book Corp.</li> <li>▪ Jamaica Marlana Music</li> <li>▪ Kobalt Music</li> <li>▪ Leeds Music</li> <li>▪ Levosia</li> <li>▪ Linfaldia</li> <li>▪ Linz Music</li> <li>▪ Linzer Music</li> <li>▪ Lipservices</li> <li>▪ Lost Square Music (A Division Of Brasstacks)</li> <li>▪ Major Bob Music</li> <li>▪ M'Bubba Music</li> <li>▪ Materia Collective</li> <li>▪ Maxwood Music</li> <li>▪ Me Gusta Music</li> <li>▪ Megatrax</li> <li>▪ Melodic Gold Music</li> <li>▪ Midnight Syndicate</li> <li>▪ Missing Link Music</li> <li>▪ Money Made Publishing</li> <li>▪ MorningStar Music</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Morris Music, Inc.</li> <li>▪ MPL</li> <li>▪ Music Asset Management</li> <li>▪ Music Copyright Consultant Group, LLC</li> <li>▪ New Au Courant Music</li> <li>▪ North Music Group</li> <li>▪ Notable Music</li> <li>▪ Notewrite Music</li> <li>▪ Nunn Publishing Company</li> <li>▪ Okin Music</li> <li>▪ ole</li> <li>▪ Pavane Publishing</li> <li>▪ peermusic</li> <li>▪ PEN Music Group</li> <li>▪ Polido Lake Publishing</li> <li>▪ Position Music</li> <li>▪ Pulse Music Group</li> <li>▪ Raleigh Music Publishing</li> <li>▪ Rarespark Media</li> <li>▪ Reach Music Publishing</li> <li>▪ Reel Muzik Werks, LLC</li> <li>▪ Reservoir</li> <li>▪ Rio Nuevo Entertainment</li> <li>▪ Roryn Parti Music</li> <li>▪ Ross Golan</li> <li>▪ Round Hill Music</li> <li>▪ Sea Gayle Music</li> <li>▪ Sean C Smith Music</li> <li>▪ Secret Road Publishing</li> <li>▪ Shapiro Bernstein &amp; Co.</li> <li>▪ Sickface Music</li> <li>▪ Soljak Publishing</li> <li>▪ Somerset Songs Publishing, Inc.</li> <li>▪ Songtrust</li> <li>▪ Sony/ATV, EMI</li> <li>▪ Sound Oasis Productions</li> <li>▪ Spirit Music Group</li> <li>▪ Spobs Music, Inc.</li> <li>▪ SSGM Records</li> <li>▪ Superior Music Corporation</li> <li>▪ Talbot Music Publishing, Inc.</li> <li>▪ Ten Ten Music Group</li> <li>▪ The Administration MP, Inc.</li> <li>▪ The Royalty Network</li> <li>▪ Third Side Music</li> <li>▪ Thorpe Music Publishing</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ TKO Artist Management &amp; Tokeco Tunes</li> <li>▪ Tresóna</li> <li>▪ Triad Productions</li> <li>▪ Trillanium Music Company</li> <li>▪ TRO Essex Music Group</li> <li>▪ tunecore</li> <li>▪ Tyranny Ink Music</li> <li>▪ U2X Productions</li> <li>▪ United Methodist Publishing House</li> <li>▪ Universal Music Publishing Group</li> <li>▪ Victoria N Music LLC</li> <li>▪ Vox Tigris Publishing</li> <li>▪ Walter Kent Music</li> <li>▪ Warner/Chappell</li> <li>▪ Warp Publishing</li> <li>▪ Watershed Music Group</li> <li>▪ Whooping Crane Music, Inc.</li> <li>▪ Wixen Music Publishing</li> <li>▪ Wonderlous Music</li> <li>▪ Wrensong</li> </ul>
11-B	• Letter from Peter Brodsky of Sony/ATV Music Publishing
11-C	• Letter from Bob Bruderman of Kobalt Music Group
11-D	• Letter from Teri Nelson Carpenter of Reel Muzik Werks
11-E	• Letter from Michael Closter of Reach Music
11-F	• Letter from Tim Cohan of peermusic
11-G	• Letter from Alisa Coleman of ABKCO Music & Records, Inc.
11-H	• Letter from Joe Conyers III of Songtrust
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11-T	• Letter from Evelyn Paglinawan of Concord Music Publishing
11-U	• Letter from Lawrence Richmond of TRO Essex Music Group

11-V	<ul style="list-style-type: none"> <li>• Letter from Richard Stumpf of Atlas Music Publishing</li> </ul>
11-W	<ul style="list-style-type: none"> <li>• Letter from Randall Wixen of Wixen Music Publishing</li> </ul>
11-X	<ul style="list-style-type: none"> <li>• Letter of Support from Music Industry organizations, including: <ul style="list-style-type: none"> <li>▪ A2IM</li> <li>▪ AIMP (NY, Nashville, LA)</li> <li>▪ American Composers Alliance</li> <li>▪ Americana Music Association</li> <li>▪ AMRA</li> <li>▪ “And the Writer Is”</li> <li>▪ ASCAP</li> <li>▪ believe</li> <li>▪ BMI</li> <li>▪ California Copyright Conference</li> <li>▪ CMPA</li> <li>▪ Copyright Alliance</li> <li>▪ Creative Future</li> <li>▪ Exploration</li> <li>▪ GMR</li> <li>▪ Gospel Music Association</li> <li>▪ LaPolt Law</li> <li>▪ MPA</li> <li>▪ NMPA</li> <li>▪ NSAI</li> <li>▪ PMA</li> <li>▪ RIAA</li> <li>▪ SESAC</li> <li>▪ SONA</li> <li>▪ Sony Music</li> <li>▪ SoundExchange</li> <li>▪ Strategic Music Partnerships</li> <li>▪ Universal Music Group</li> <li>▪ Warner Music Group</li> </ul> </li> </ul>

## **SECTION A**

# Summary Memorandum

Mechanical Licensing Collective (“**MLC**”), a Delaware nonprofit corporation, submits this proposal for designation as the mechanical licensing collective (the “**collective**”) pursuant to Section 115 of the U.S. Copyright Act (the “**Act**”),<sup>1</sup> as amended by the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, codified at 17 U.S.C. § 115(d), et seq. (the “**MMA**”), in response to the Copyright Office’s notice of inquiry requesting such proposal, published in the Federal Register, 83 Fed. Reg. 65747 (Dec. 21, 2018), at 65747-54 (the “**Notice**”).

The MMA was the product of years of negotiation and legislative efforts bringing together stakeholders from all areas of the music industry to modernize the statutory licensing scheme for mechanical uses of musical works. It began when a broad coalition of songwriter and publisher copyright owners empowered their trade organizations—the National Music Publishers’ Association (NMPA), the Songwriters of North America (SONA), Nashville Songwriters Association International (NSAI), and the performing rights organizations ASCAP and BMI—to begin to craft a solution that would work for the whole industry, and then to support the legislation to move forward. That coalition then bloomed into a full industry consensus supporting the eventual MMA. Under the leadership of Congressmen Collins and Goodlatte and Senators Alexander and Hatch, the industry compromises and consensus became a legislative reality with unanimous support in both houses of Congress for the MMA.

The coalition of songwriter and publisher copyright owners that nurtured the creation and passage of the MMA has now created MLC to serve as the collective and to fulfill the extensive requirements of the law. MLC and its designation proposal represent the input and combined effort of experienced professionals and stakeholders across the music industry, including songwriters, major and indie music publishers, music industry trade groups, digital streaming

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<sup>1</sup> Except where otherwise stated, all Section references herein refer to sections of the Act.

services, and technology vendors, all coming together to respond to the directive created by the MMA and to solve the challenges of mechanical licensing in the digital era.

MLC was created by musical work copyright owners, and will be governed by professional songwriters and representatives of music publishers. MLC's board and committees are composed of diverse groups of people of integrity, who understand every aspect of the business and bring to the enterprise decades of relevant experience and varied skills, backgrounds, and viewpoints. They include many of the industry's experts and thought leaders in music licensing, operations, royalty distribution, and technology. The individuals selected to serve on MLC's initial board and statutory advisory committees were chosen in an open, competitive process. The music publisher board and committee members were selected by a panel of well-respected individuals in the independent music publishing community; the songwriter board and committee members were selected by a panel of highly-respected professional songwriters that included two songwriters from each of NSAI, SONA, Songwriters Guild of America, ASCAP, and BMI. The panels vetted the candidates to ensure that those selected have the requisite expertise and experience to govern MLC; will, individually and collectively, faithfully reflect the entirety of the songwriter and music publisher communities; and are motivated to serve and understand and do not underestimate the serious responsibilities entrusted to them. (*See Section C, Governance, infra.*)

MLC, through board and committee members with substantial technology expertise, assisted by leading-edge musical works royalty administration technology consultants and with the feedback and participation of numerous publishers, songwriters, and digital services, are working tirelessly to develop the collective's operations on the statutory deadline and to fulfill its statutory mandates, including through an intensive technology and vendor selection process. A

comprehensive RFI/RFP process is ongoing to identify the best technology and development process to meet statutory operational deadlines while creating the most comprehensive rights database, and the most effective rights (or “claiming”) portal, matching systems, and royalty payment platforms. Participants in the process include the best in class technologies and vendors who together operate the largest and most sophisticated royalty database matching and processing platforms in the global market. MLC’s goal is to improve on the current market, and usher in a new era of data access, sharing, standardization, accuracy, and completeness. MLC is working with a leading independent business consulting firm to identify the optimal organizational, technological, executive, and leadership structure to ensure MLC’s efficiency and success. This proposal includes a detailed analysis of the administration and technology landscape, the operational development necessary, and the combination of plans and concrete steps taken so far along the path to being fully operational. (*See Section B, Administrative and Technological Capabilities, infra.*)

MLC is supported and endorsed by songwriters and music publishers of all sizes that own the relevant mechanical rights in musical works of all genres and from all eras, as well as by all major U.S. music organizations and associations. MLC is, and is the only entity that is, “endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.” Over one hundred and thirty musical work copyright owner entities and individuals, owning the relevant rights to millions of musical works and representing the vast majority of the licensor market, and over twenty-four hundred individual songwriters have confirmed that they endorse, and have pledged to provide (or have already begun providing) substantial support to MLC.

The individuals and entities who endorse and have pledged to support MLC recognize that MLC is not just the best, but is the only entity qualified to be designated as the collective. They recognize that MLC is the entity that is uniquely and best equipped and positioned to carry out the duties and requirements of the collective and a primary purpose of the MMA—identifying owners of rights in musical works and getting digital royalties into the hands of those to whom those royalties rightfully belong. MLC is truly the music industry consensus collective, and its submission is the music industry consensus proposal. (*See* Section D, Indicia of Endorsement and Support, *infra*.)

MLC fulfills all of the requirements for designation set forth in the MMA. Indeed, for the reasons discussed herein, MLC is the only entity that meets the statutory requirements. On any metric, and no matter how measured, MLC best represents the entire songwriting and music publishing industries, and uniquely possesses the breadth of experience, resources, understanding, and commitment necessary to address the serious mandates of the MMA.

## **SECTION B**

# Administrative and Technological Capabilities



MLC will, prior to the license availability date, have the administrative and technological capabilities to perform all of the required functions under the statute. As laid out herein, MLC has already begun the process of assuring the timely acquisition of these capabilities, has meticulously researched and outlined a process for exceeding operational performance deadlines and goals, has assembled governance and advisory bodies of unparalleled expertise, and as such is the only entity that can meet the standard of Section 115(d)(3)(A)(iii).

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.

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 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—MLC—to be the collective.

The collective cannot function properly without having support and cooperation throughout the songwriting and publishing industries for many reasons. Building an end-to-end mechanical royalty administration entity for the largest global market in less than two years simply cannot be done from scratch. The amount of information that needs to be sourced and integrated is staggering. But based on the support that it alone has in the songwriting and publishing community, MLC is not working from scratch. It has already built the most difficult part of the process—connection and trust. MLC is seeded not merely with the endorsement but with the active support of the vast majority of both the licensor and licensee market. This support has already manifested itself through sharing knowledge, issue spotting, and identifying, assessing, and accessing resources. This support is also what will allow MLC to grow at the necessary speed, including by expediting the gathering and exchange of data (some confidential) from the many parties in the process, expediting the funding of the collective through voluntary support and fund advances, and tapping the unparalleled resources of a community that includes

nearly all of the licensor and licensee markets, as well as the vendors with the scale, experience and data assets to assist with the collective's comprehensive infrastructure demands.

With respect to administrative and technological capabilities, the Copyright Office's Notice requests business plan information, as well as numerous categories of "more granular information" that would not exist in a typical business plan. (Notice at 65751-52.) MLC here responds with general information typical of a business plan in subsection (1), and then supplements with direct responses to the many categories of granular information requested by the Office in subsection (2).

With respect to the information submitted throughout this proposal, the timing of the submission and designation process must be considered. While MLC has been extremely proactive in developing leadership, resources, information, plans, and structures for operations, of course designation has not occurred yet, and it is premature to reach any prescriptions or conclusions about many of the operational details ahead. MLC here endeavors to answer the Copyright Office's questions transparently and as best as it can, providing current thinking, intention, planning, and insights, while remaining available to answer additional questions from the Office and reserving rights to supplement this proposal with additional details.

## **1. General: Business Plan Information**

The Notice requests a business plan including a statement of purpose or principles, proposed schedule, and available budgetary projections. This and other operational development information follows.

**a. Statement of Purpose**

MLC serves the statutory purposes set forth in Section 115. As its Certificate of Incorporation (Exhibit 1) states, 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 (“Section 115”), 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.

These functions are discussed in detail in Section 115(d)(3)(C), and include the following (subject to more particular requirements described in Section 115):

- (I) Offer and administer blanket licenses, including receipt of notices of license and reports of usage from digital music providers.
- (II) Collect and distribute royalties from digital music providers for covered activities.
- (III) Engage in efforts to identify musical works (and shares of such works) embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works (and shares of such works).
- (IV) Maintain the musical works database and other information relevant to the administration of licensing activities under this section.
- (V) Administer a process by which copyright owners can claim ownership of musical works (and shares of such works), and a process by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners.
- (VI) Administer collections of the administrative assessment from digital music providers and significant nonblanket licensees, including receipt of notices of nonblanket activity.
- (VII) Invest in relevant resources, and arrange for services of outside vendors and others, to support the activities of the mechanical licensing collective.
- (VIII) Engage in legal and other efforts to enforce rights and obligations under this subsection, including by filing bankruptcy proofs of claims for amounts owed under licenses, and acting in coordination with the digital licensee coordinator.
- (IX) Initiate and participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment under this subsection.

- (X) Initiate and participate in proceedings before the Copyright Office with respect to activities under this subsection.
- (XI) Gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section.
- (XII) Maintain records of the activities of the mechanical licensing collective and engage in and respond to audits described in this subsection.
- (XIII) Engage in such other activities as may be necessary or appropriate to fulfill the responsibilities of the mechanical licensing collective under this subsection.

17 U.S.C. § 115(d)(3)(C)(i).

#### **b. Operations Development**

Developing the operations necessary to fulfill the substantial responsibilities of the collective under a pressing statutory timeframe requires not just a deep reservoir of expertise and collaboration, but also in-depth planning, the flexibility to adapt its strategy and the ability to run many development tracks concurrently. Operational development will necessarily evolve as the data and technology pieces come together, including precisely which tasks will be outsourced to vendors versus built in house in the early stages. As discussed in detail below, MLC has already taken considerable steps to analyze and prepare the development path.

This first stage calls foremost for clear review of the core processes and workflows required, and then a penetrating evaluation of all resources that can be tapped to implement those processes. Importantly, the architecture and process flows laid out herein are not static, but will continue to be refined as the development process matures.

*i. Process Architecture*

A process architecture is useful to outline and structure central jobs to be handled by the collective. This model differentiates between three categories of capabilities/processes:

**Strategic Processes** – the management processes that empower the operational capabilities of the collective;

**Core Processes** – capabilities and processes in the core tasks, how the MLC performs the central ownership and license administration responsibilities; and

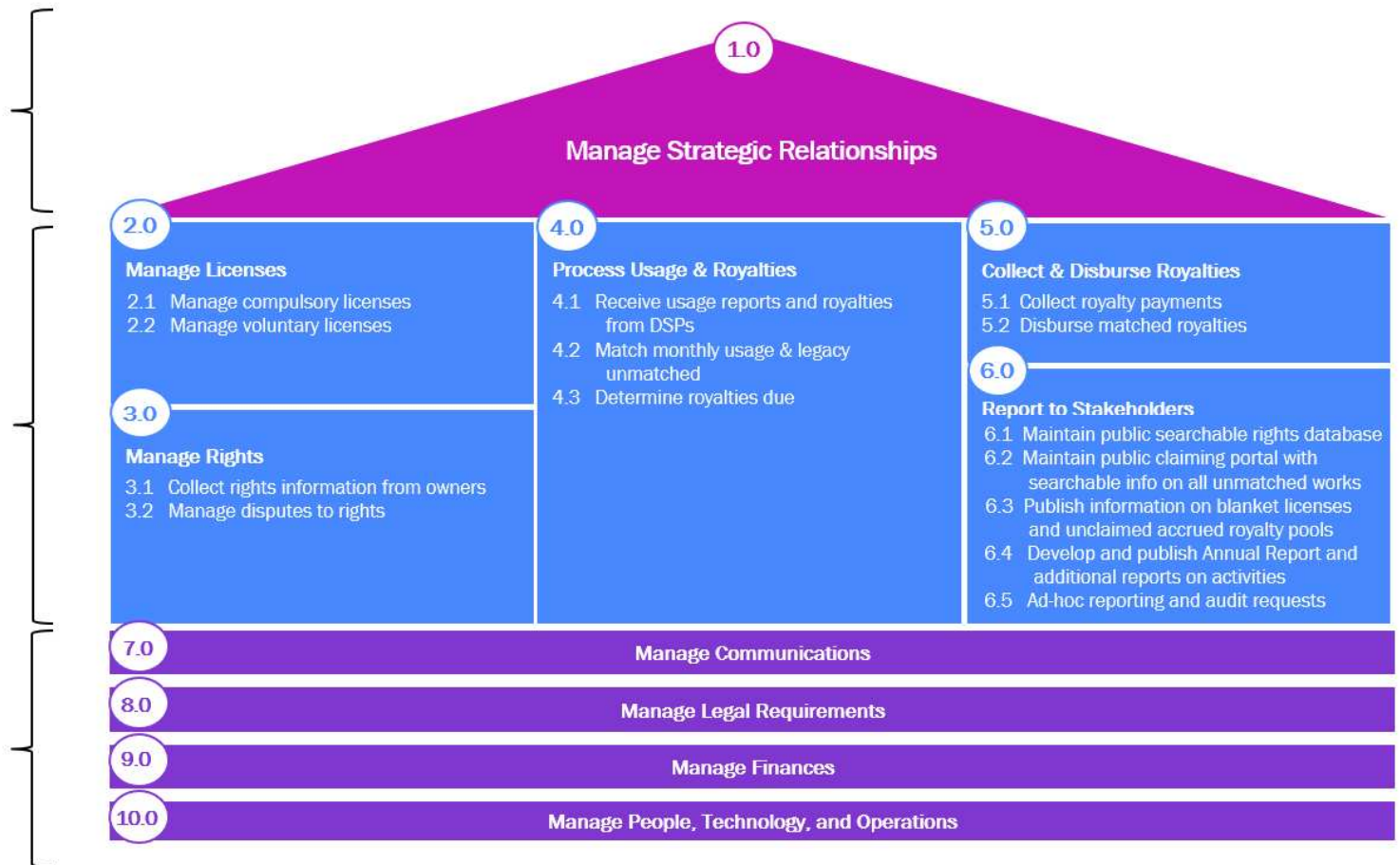
**Foundational Processes** – necessary support capabilities and processes, usually typical of most businesses (payroll, legal, etc.).

An overview of the architecture rendered in graphical form is presented on the next page, followed by explication of the categories and core processes.

**STRATEGIC PROCESSES**  
Processes and activities that help shape the future of the organization

**CORE PROCESSES**  
The core set of activities that deliver value to the organization's "customers"

**FOUNDATIONAL PROCESSES**  
Capabilities required to support the day-to-day operations of the organization



## ii. *Process Descriptions and Flows*

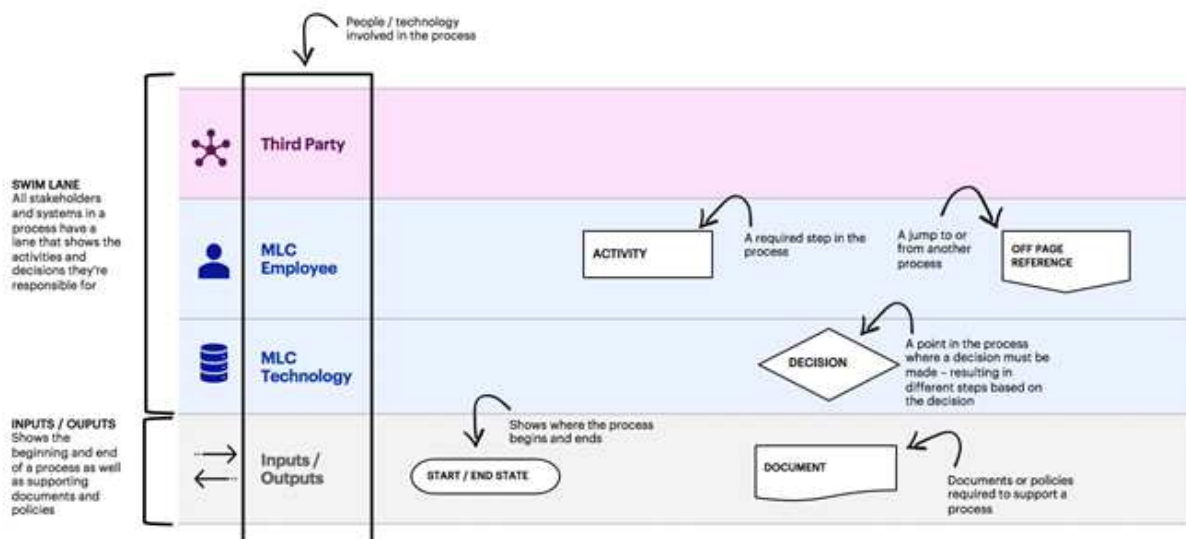
### Strategic Processes

#### *1.0 Manage Strategic Relationships*

The importance cannot be overstated of the collective having and maintaining strong relationships with stakeholders and their respective resources. This includes not just copyright owners and licensees, but also international bodies that maintain data formats and standards; performance rights organizations, record labels, and other entities that have critical data assets; vendors and technology sources that can be utilized; music industry trade groups, institutes, societies, and media sources necessary to maximize the outreach and education of the public necessary to gather the most remote details of ownership information; and many others. As the consensus organization of the music industry, MLC already has these relationships, and is already drawing on this support to build the core processes of the architecture.

### Core Processes

Description of some of the core process of the collective benefits from a graphical workflow depiction. As a result, some of the below summaries are supplemented by a process flow chart. This legend shows how to read these graphics:



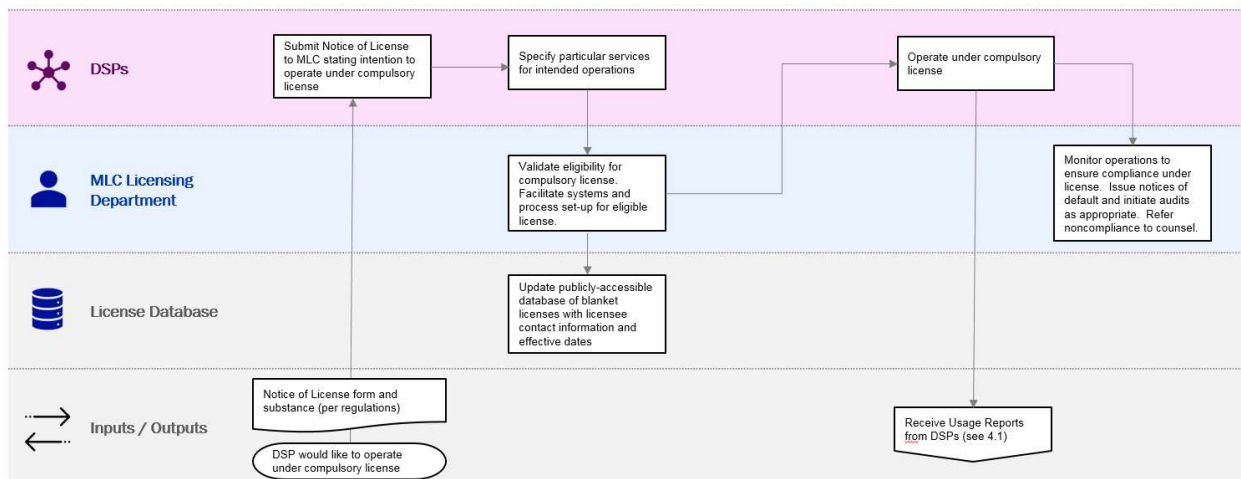


## 2.0 Manage Licenses

Manage and maintain licenses administered by MLC. The Board of MLC brings together individuals with decades of experience managing and maintaining mechanical licenses, and a commitment to leveraging technology to improve license administration. This work goes beyond technology, however, as it calls for sophisticated understanding of license terms, reporting requirements, and offering details of Digital Service Providers (or “digital music providers,” as defined in Section 115(d)(e)(8)) (“**DSPs**”), and then the ability to apply that knowledge to the data to ensure full compliance with license requirements, or else to take steps to enforce compliance, as instructed by the statute.

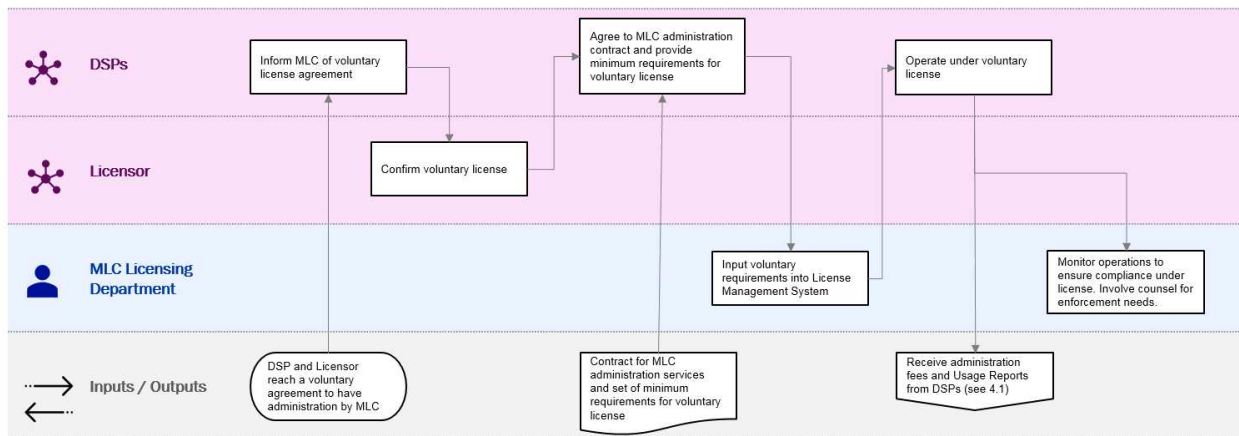
### 2.1 Manage Compulsory Licenses

Capture the information necessary to manage compulsory licenses issued to DSPs, update public blanket license database, and monitor and enforce license compliance.



## 2.2. Manage Voluntary Licenses

Capture the information necessary to manage voluntary license activity (for a reasonable administrative fee), and monitor and enforce license compliance.

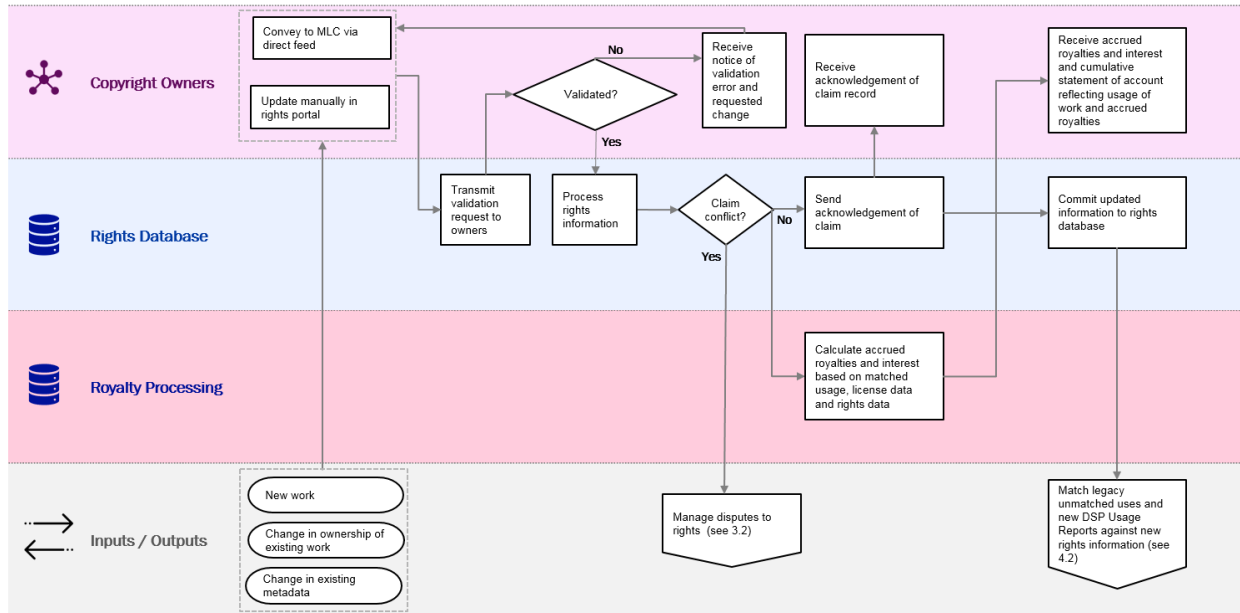


## 3.0 Manage Rights

Provide the tools and processes for copyright owners of all sizes and sophistication to claim ownership and provide ownership data, and address license administration with respect to disputed ownership claims. An output of this process is also the maintenance of an accurate, authoritative database of musical work copyright information (*see* 6.1).

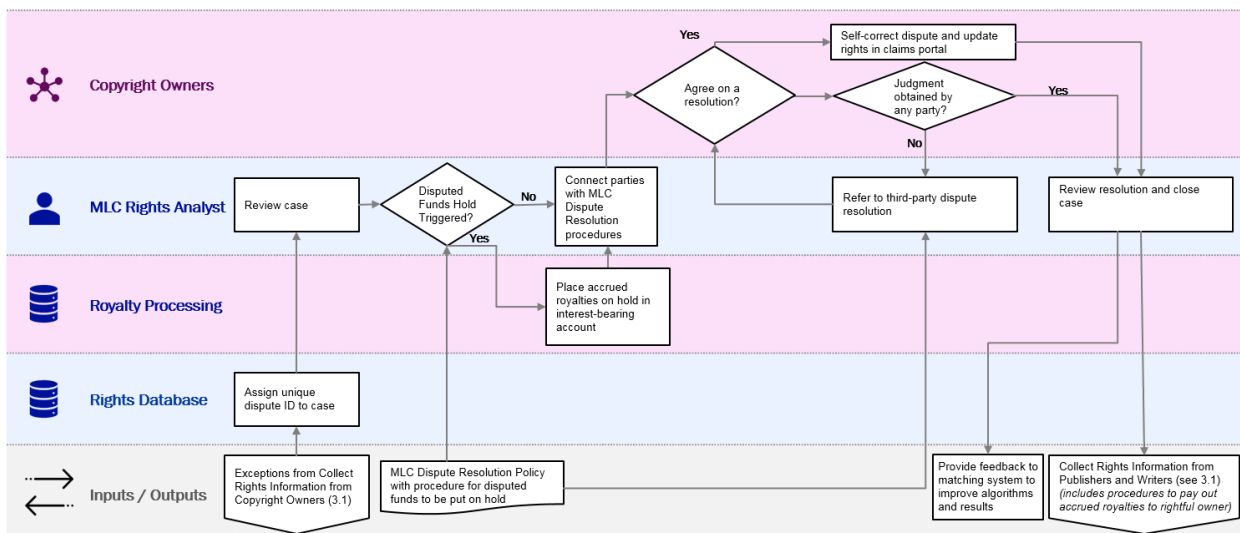
### 3.1 Collect Rights Information from Copyright Owners

Collect and catalog rights information from copyright owners. New ownership claims may trigger dispute resolution procedures and also payment of accrued unmatched royalties.



### 3.2 Manage Disputes to Rights

Facilitate resolution of disputed claims, address accrued royalties for disputed works, and ensure that knowledge from dispute resolution activities is used to improve matching systems to reduce unmatched works.

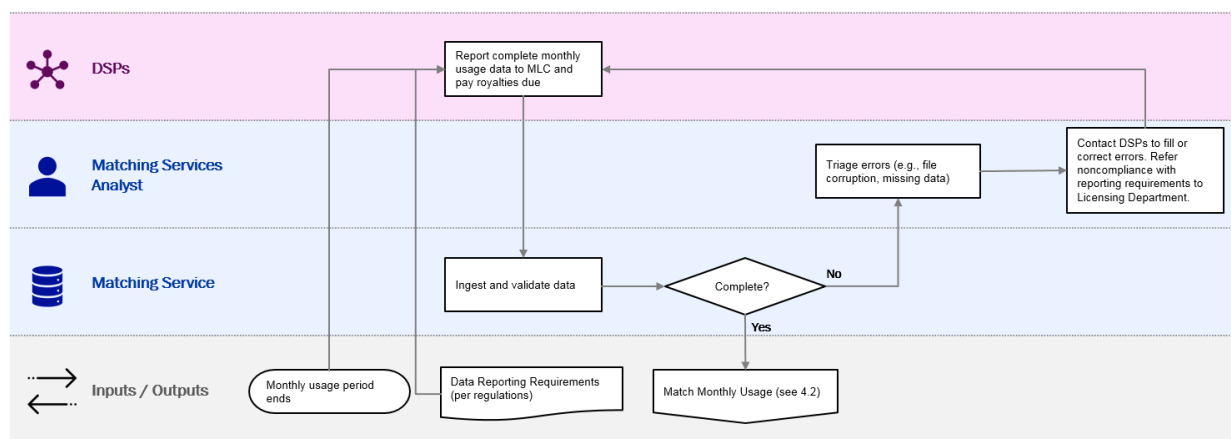


#### 4.0 Process Usage & Royalties

Digital usage from DSPs and royalty pool data is collected, validated and processed with rights information to match to works and recordings, identify correct copyright owners and calculate royalties due to rightsholders. Works that are not initially matched remain in the circuit for increased automated matching efforts as well as engaging procedures for adding manual matching efforts. The public, searchable claiming portal (*see* 6.2) is fed by this process, and also feeds new ownership claims into the system to reduce unmatched works (*see* 3.1)

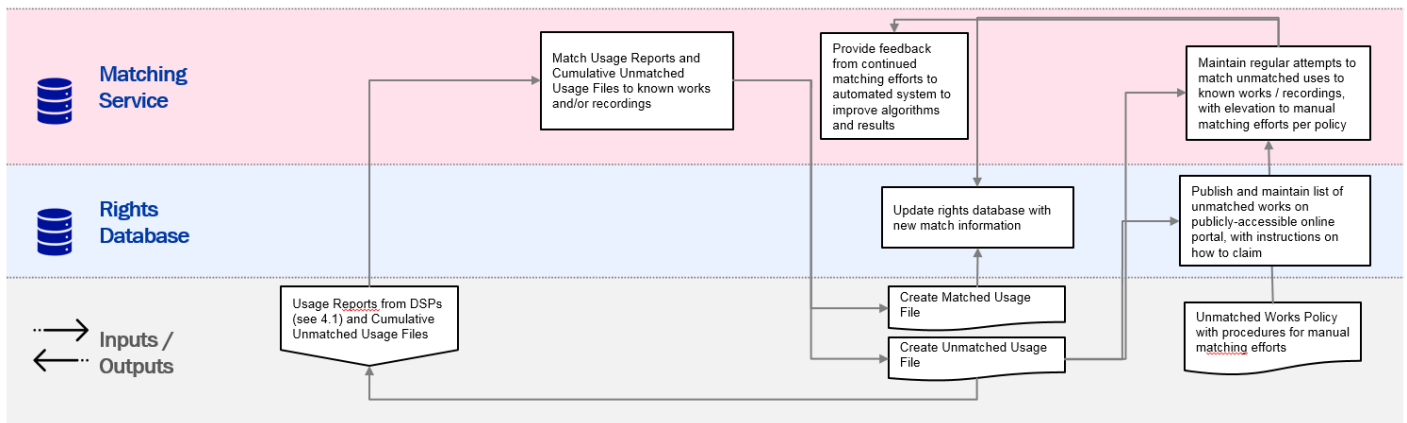
#### 4.1 Receive Usage Reports from DSPs

Collect, validate and process usage reports from services as an input to matching and royalty processing. Enforce DSP compliance with data reporting requirements to ensure complete reporting of information on usage, ownership, work metadata, recording metadata and other data pursuant to Section 115(d)(4)(A) and (B) and related regulations.



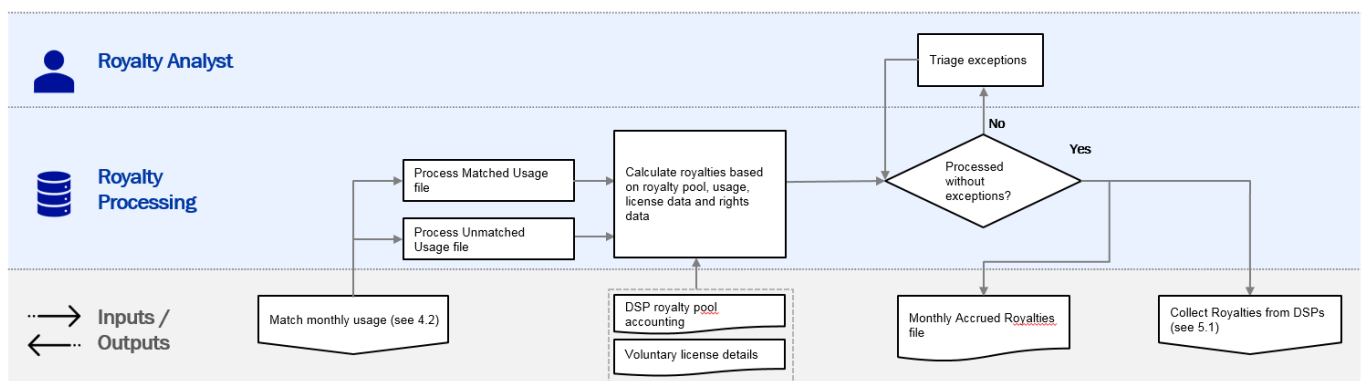
#### 4.2 Match Monthly Usage and Legacy Unmatched Uses

Process all new monthly digital Usage Reports, as well as continued processing of all legacy unmatched uses, to identify the associated works and copyright owners. Utilize rights database and required DSP data reporting on ownership, works and recordings. Engage automated and manual matching efforts, and feed results from manual matching efforts into automated systems to continually improve matching algorithms.



#### 4.3 Determine Royalties Due

Collect royalty pool accounting data and usage files, analyzed alongside any voluntary agreements, and determine royalties due for each work for matched and unmatched usage.

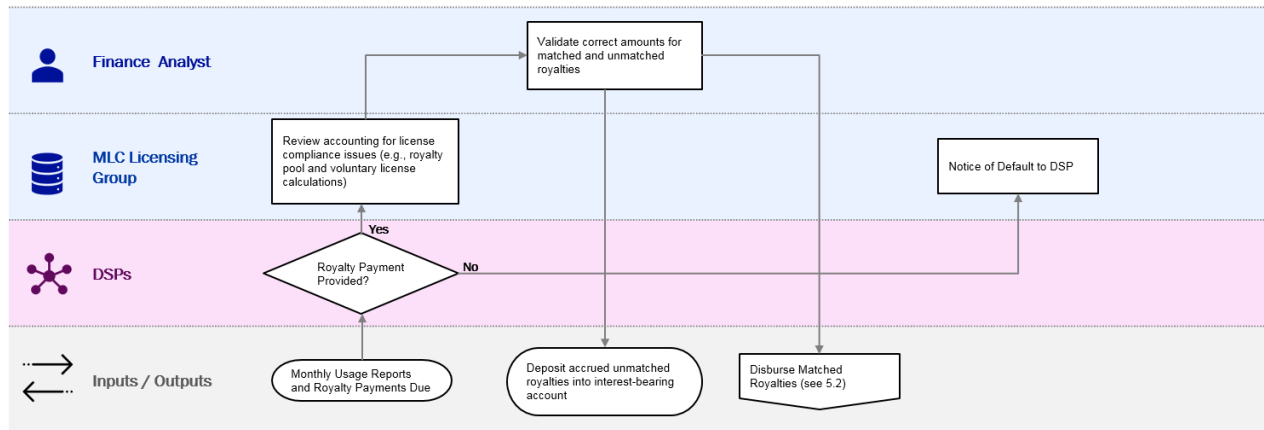


## 5.0 Collect & Disburse Royalties

Collect and disburse royalties due from DSPs. Accrue unclaimed royalties in interest-bearing account while continuing efforts to identify and locate rightful copyright owners.

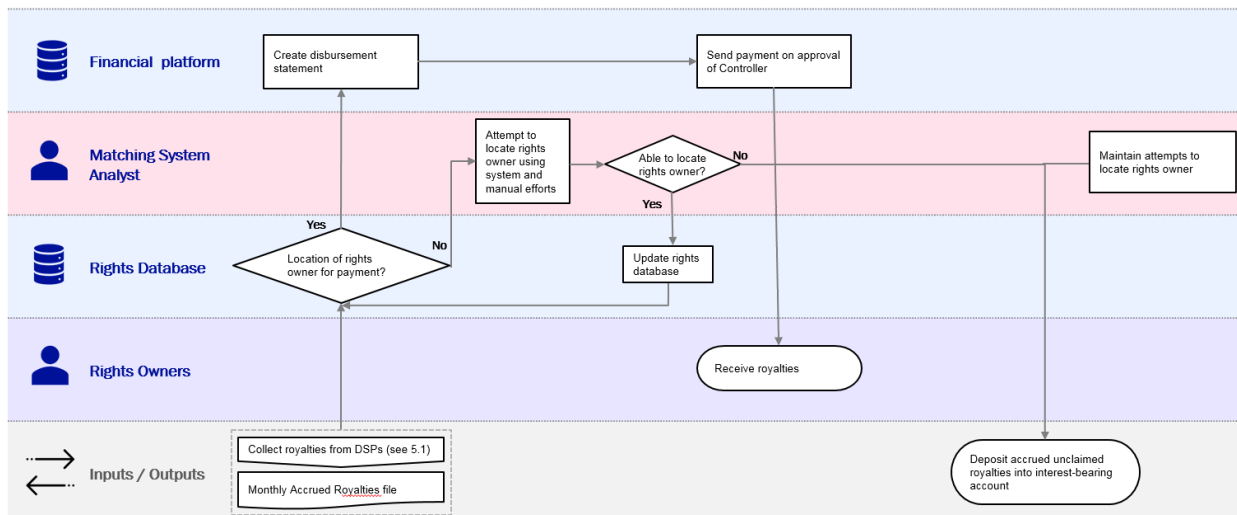
### 5.1 Collect Royalties from DSPs

Collect royalties due from DSPs for each period, monitor and enforce compliance.



### 5.2 Disburse Matched Royalties

Disburse matched royalties to the respective rightsholders. Engage automated and manual efforts to locate copyright owners who have not registered with MLC and provided information to allow for payment. Deposit royalties for copyright owners who have not been located in interest-bearing account.



## *6.0 Report to Stakeholders*

A critical function of the collective is to act as a clearinghouse to provide the public access to data about ownership of musical works, unmatched works, and the administration of blanket licenses. The collective must also provide extensive reporting and public access to records of the collective's own activity. MLC embraces this role to bring transparency and disseminate knowledge about mechanical licensing and musical works ownership.

### *6.1 Maintain Public Searchable Rights Database*

The rights database is a cornerstone of the collective's mission. MLC sees it as an opportunity to bring all stakeholders together and substantially advance the fair, accurate and complete payment of royalties to copyright owners. The rights database is discussed in more detail below in response to a number of the Copyright Office's specific questions.

### *6.2 Maintain Public Claiming Portal with Searchable Information on all Unmatched Works*

Tied to the rights database, the public claiming portal is a core part of MLC's purpose. As discussed in detail below in response to specific questions, MLC is dedicated to maintaining a user-friendly, ADA-compliant portal for claiming works, and to publicizing and provide outreach, education and strong technical support for this portal.

### *6.3 Publish Information on Blanket Licenses and Unclaimed Accrued Royalty Pools*

Ensure that this information is promptly posted and updated. MLC's broad network of supporters throughout the industry will help ensure that this information is widely disseminated.

### *6.4 Develop and Publish Annual Report and Additional Reports on Activities*

Develop and publish an Annual Report containing key financial information, information on operations, industry royalties, and detail on matching efforts.

### *6.5 Ad-Hoc Reporting and Audit Requests*

Promptly respond to ad-hoc information requests from stakeholders and audit requests from copyright owners.

### *7.0 Manage Communications*

Raise awareness and understanding of the MLC, the claiming portal, unmatched works, and the MLC mission through communications, media and events.

### *8.0 Manage Legal Requirements*

Manage all legal and regulatory requirements, filings and commitments, including subpoenas, audits, document requests, assessment proceedings, dispute resolution issues, and license enforcement proceedings, bankruptcy claims and other legal actions and counsel needs.

### *9.0 Manage Finances*

Manage and maintain accounts, budgets, and finances of MLC.

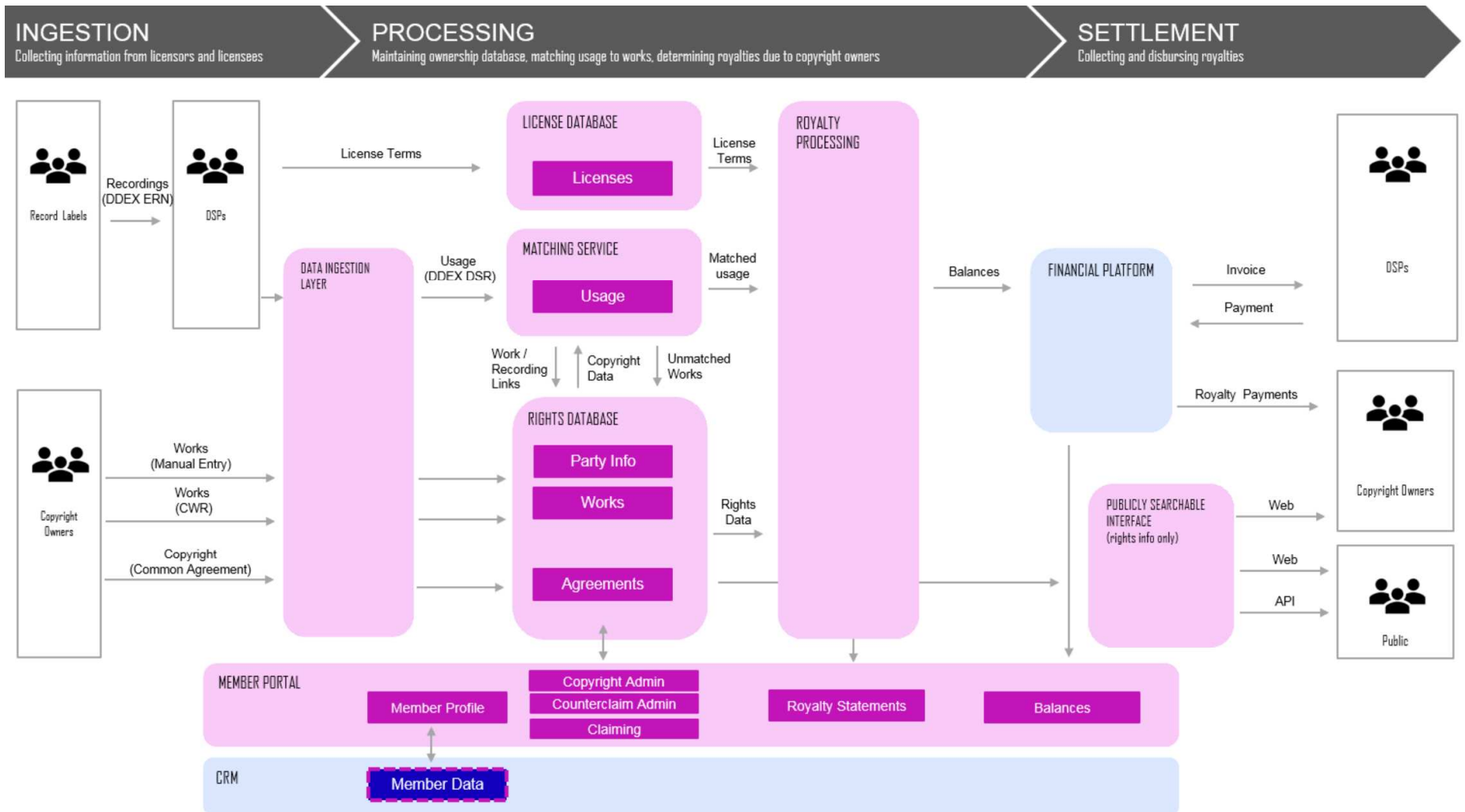
### *10.0 Manage People, Technology and Operations*

Manage recruiting, hiring and staffing of employees within MLC. Manage internal technology and relationships with partners and vendors. Manage ongoing operational activities outside of core MLC processes outlined above.

#### *iii. High Level Outline of Technology and Data Flow*

The chart on the following page provides current thinking on a high-level outline of central technology and data flow, to assist the Copyright Office in understanding some of the operational development tasks that MLC is working to implement.





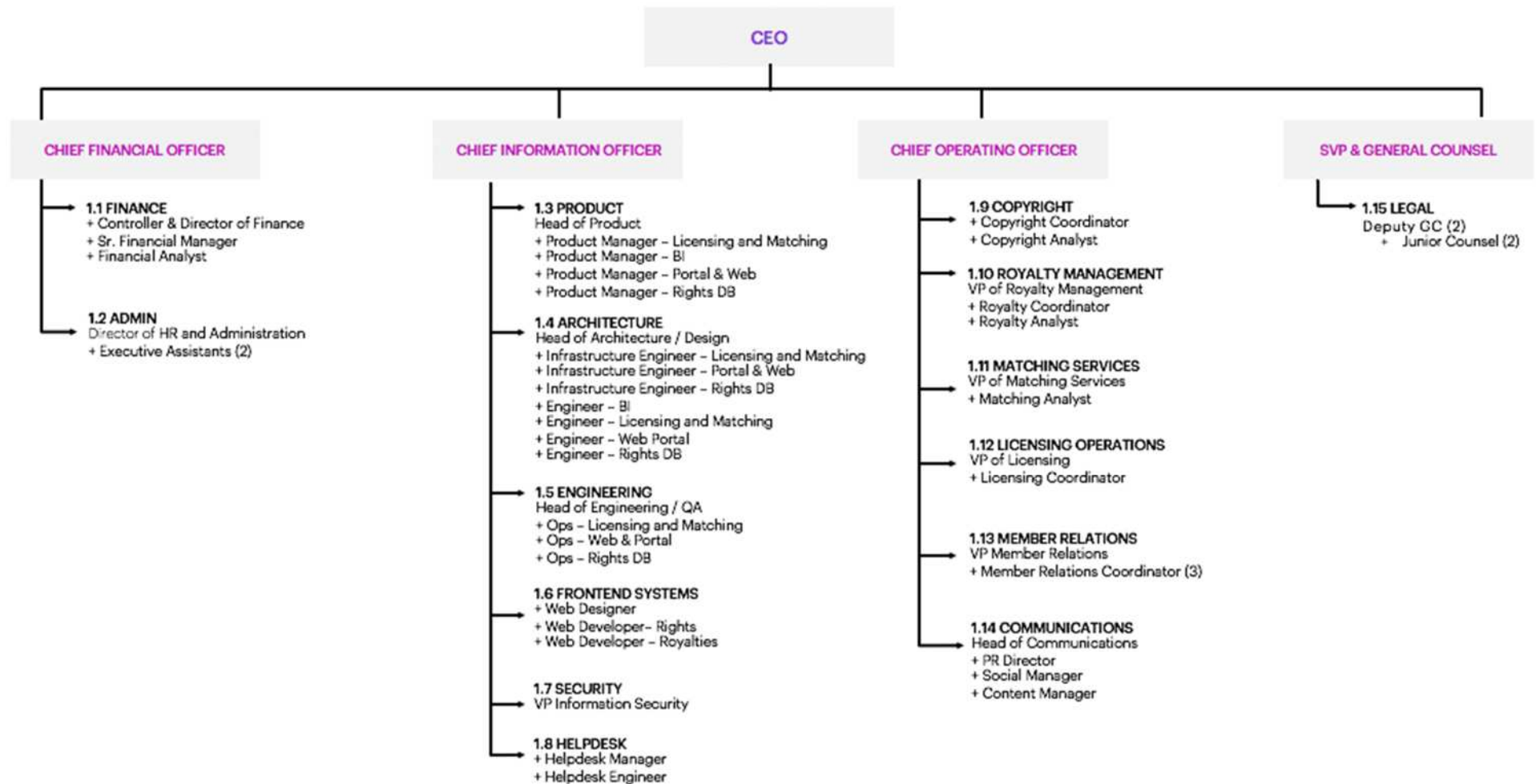
iv. *Organizational Chart*

At this early stage, the MLC Board has not yet determined the precise management structure for daily operations or full staffing. The final organizational chart will depend on multiple inputs that are still to be determined. This includes the precise technology implementation path, and which processes are initially handled by vendors versus in-house, as well as funding details.

These are of course very important decisions for ensuring effective operations, and are premature to make at this stage. The Board understands that a proper organizational structure is the core of MLC operations, and will continue to diligently address what is needed to fulfill the statutory purposes. A decision on management structure for daily operations will be adopted in MLC bylaws and made public well before the statutory deadline (one year from designation).

The following chart and table outlines numerous roles that MLC anticipates would be a part of MLC operations. It must be emphasized that this is not MLC's organizational chart (which has not been determined yet). The ultimate organization chart may be materially different, with both additions and removals of roles, and this chart does not take into account the decisions to be made about which roles are filled by employees versus outside contractors. Nonetheless, this chart is offered, simply as a model chart for planning purposes, to be transparent and depict some current thinking and insights in the planning process for MLC operational development.

## Model Organizational Chart and Role Descriptions To Assist In Planning



### Role Descriptions for Model Organizational Chart

<b>Function</b>	<b>Role</b>	<b>Description (# in role)</b>
Finance	CFO	Executive responsible for overseeing MLC's finances, financial reporting, and royalty payment activities with DSPs. (1)
Finance	Controller and Director of Finance	Responsible for overseeing and executing the invoicing and payment process of royalties from DSPs. (1)
Finance	Senior Finance Manager	Responsible for triaging errors in the royalty payment process with DSPs and ensuring that royalties are paid efficiently, correctly, and on time. (1)
Finance	Financial Analyst	Supports the Senior Finance Manager in day-to-day financial analyses and processes. (1)
Operations	COO	Executive responsible for ensuring that MLC's core business operations, both in-house and with partners and vendors, are efficient, effective, and leveraging the right resources to provide the best services to stakeholders. (1)
Operations	Copyright Coordinator	Responsible for overseeing and evolving the rights (claiming) portal, the claiming process, and the dispute management experience as necessary. (1)
Operations	Copyright Analyst	Responsible for overseeing the claiming process and reviewing disputes (before passing to third party dispute resolution if necessary). (1)
Operations	VP Royalty Management	Responsible for overseeing the collection of royalties from DSPs, the matching of royalties, usage and rights, and the payment of royalties to rights owners. (1)
Operations	Royalty Analyst	Responsible for mediating and correcting errors and exceptions in the royalty processing process. (1)
Operations	VP of Matching Services	Responsible for overseeing the matching of works to DSP usage. (1)
Operations	Matching Analyst	Responsible for triaging and resolving errors in the matching of works to DSP usage. (1)

Function	Role	Description (# in role)
Operations	VP of Licensing	Responsible for engaging with DSPs on licenses and monitoring operations under compulsory and MLC-administered voluntary licenses to ensure compliance, as well as managing significant nonblanket licensee (“ <b>SNBL</b> ”) notices of nonblanket activity and reporting. (1)
Operations	Licensing Coordinator	Reports to VP of Licensing, responsible for assisting in the administration and management of compulsory and MLC-administered voluntary licenses and SNBL notices. (1)
Operations	VP Member Relations	Responsible for communicating with MLC stakeholders, including songwriters, publishers, DSPs and others, including assisting with reporting and informational requests, support requests, education and outreach requests. (1)
Operations	Member Relations Coordinator	Reports to VP of Member Relations, responsible for communications with MLC stakeholders, including songwriters, publishers, DSPs and others (3)
Operations	Head of Communications	Responsible for overseeing reporting and communications with stakeholders and the public. (1)
Operations	PR Director	Responsible for the planning and execution of public outreach and education on MLC mission and operations and claiming portal, including statutorily-mandated publicity operations. Work with supporters on dissemination of information on claiming opportunities through events, media and direct outreach. (1)
Operations	Social Manager	Managing public outreach, education and reporting functions of MLC on social channels. (1)
Operations	Content Manager	Responsible for creating content for all of MLC’s external communication channels (e.g., web, social, news) and working with Head of Communications to deliver it. (1)

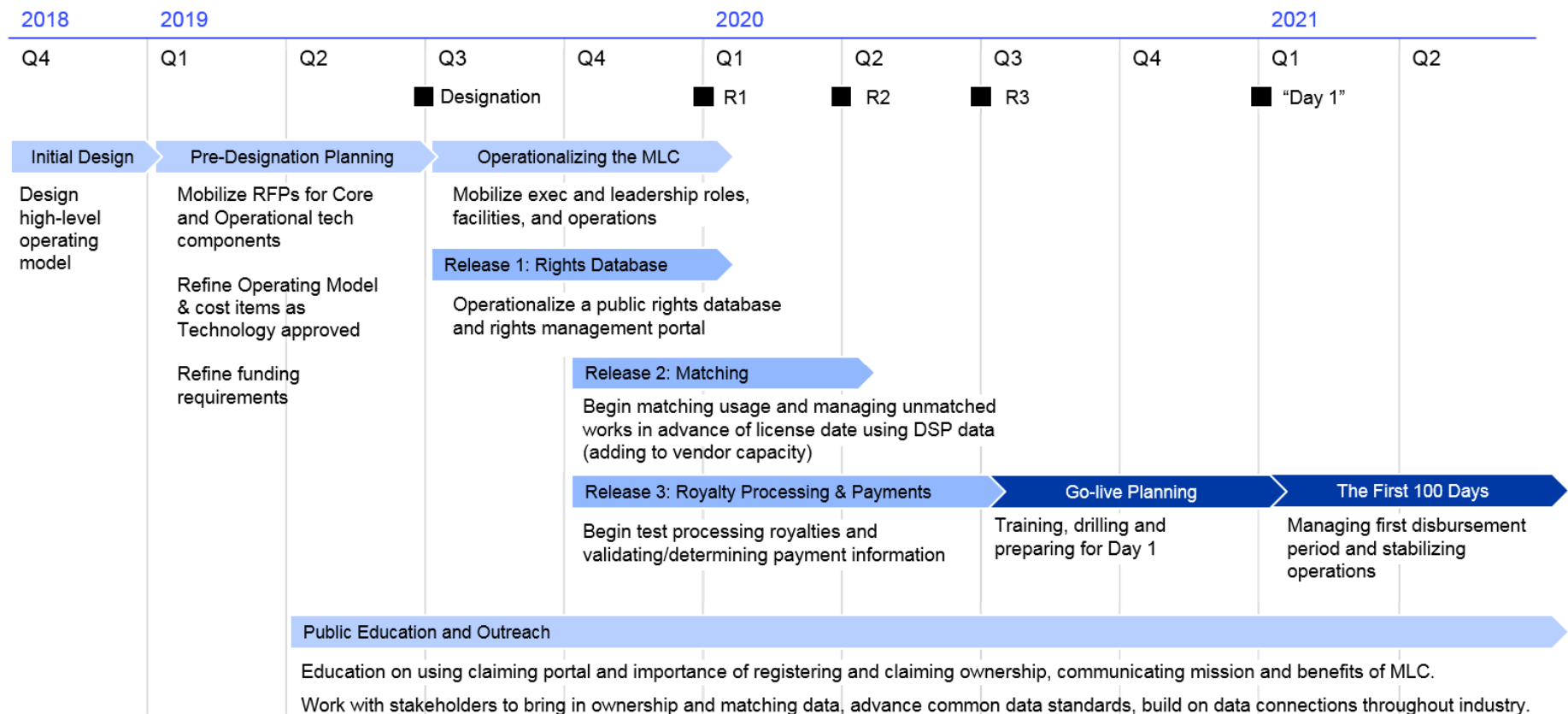
Function	Role	Description (# in role)
Legal	SVP and General Counsel	Responsible for in-house legal activities of MLC, including as to license administration and compliance and enforcement, claim disputes and resolution, responses to subpoenas and other legal communications, coordinating with outside counsel to address MLC legal responsibilities. (1)
Legal	Deputy General Counsel	Reports to SVP and General Counsel. (2)
Legal	Junior Counsel	Reports to Deputy General Counsel. (2)
Technology	CIO	Executive responsible for the development, maintenance, and oversight of MLC's core and supporting technology systems. If outsourcing a system, responsible for the oversight and management of the vendor. (1)
Technology	Head of Engineering / Quality Assurance	Responsible for building and overseeing core and supporting systems technology for the MLC to be built in-house. (1)
Technology	Architect / Head of Design	Responsible for overseeing the development of MLC's core databases and systems. (1)
Technology	Head of Product	Responsible for leading and overseeing product managers responsible for MLC products (Licensing and Matching, BI, Web, and Rights). (1)
Technology	VP Information Security	Responsible for planning and implementing security measures to protect MLC systems, databases, and stakeholder information. (1)
Technology	Product Manager	Responsible for the overall direction and continuous improvement of his/her respective product. (5)
Technology	Web Developer	Develops, tests, and implements code and technology solutions for rights portal and other web applications. (4)
Technology	Quality Assurance	Responsible for developing and executing testing plans and managing environments. (5)
Technology	Web Designer	Responsible for the overall design and usability of web pages and applications. (3)

Function	Role	Description (# in role)
Technology	Engineer (Licensing and Matching)	Responsible for running and troubleshooting backend technology systems. (1)
Technology	Infrastructure Engineer	Manages storage, network, and compute Infrastructure. (3)
Technology	Helpdesk Manager	Provides first line support for Office IT services. (1)
Technology	Helpdesk Engineer	Provides second line support for Office IT services. (1)
Technology	Engineer (BI)	Manages reporting technology platforms and develops reports and dashboards. (2)
Technology	Engineer (Web)	Manages web technology components supporting rights portal and other web applications. (1)
Technology	Engineer (Royalties)	Manages components supporting Royalty processing. (1)
Technology	Engineer (Rights)	Manages rights database and all associated interfaces. (1)
General	Executive Assistants	Support calendaring, travel, and communications for executives. (2)

### c. Current Planning Schedule

The below timeline provides a broad overview of the current MLC timeline for license administration operations development, with operations ready by the license availability date of January 1, 2021. Note there are many other target and milestone deadlines that MLC has outlined in its planning, such deadline dates will be promptly finalized as operational development matures.

#### Major Phases of Current Timeline For License Administration Operations Development





#### **d. Current Budgetary Planning and Estimates**

Technology services represent the largest component of the collective's budget. Specific budget projections are still being developed alongside the RFP process and discussions with vendors. MLC here identifies a range of estimated costs to fulfill all of the functions assigned to the collective under the statute, based upon extensive analysis of industry comparables and vetted through substantial industry feedback.<sup>2</sup> As is apparent, there remains significant variability surrounding technology costs, largely due to the broad and unique mandate here that is still being evaluated from a technology perspective.

The tables provide category breakdowns for estimated ranges of total collective costs. The estimated total startup costs through the license availability date of January 1, 2021 are between \$26 and \$48 million. The large spread in the range is a factor of the variability surrounding overall technology costs as well as the variability in the options for the functional and contractual structure of the technology development, which can lead to significantly higher or lower up-front costs. Thereafter, annual operating costs of the collective are estimated at between \$25 and \$40 million.

For comparison, the Congressional Budget Office Cost Estimate for the MMA concluded that, "[u]sing information from industry experts and the administrative costs to operate entities that engage in similar activities, CBO estimates that expenditures by the MLC would average \$30 million annually."<sup>3</sup> While MLC hopes to operate at a budget below the CBO estimate, and the lower end of estimates represents such, the collective also faces regulatory mandates far beyond entities currently administering licenses in the market. MLC

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<sup>2</sup> These estimates assume that MLC operations will be based out of Nashville, TN.

<sup>3</sup> Reported on April 25, 2018, <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr5447.pdf>.

cannot choose to only administer preferred contracts, as entities in the market can, but must administer all blanket licenses, even for licensees that create excessive burdens. MLC must also maintain the central rights database for the entire industry, must maintain an extensive public outreach program, and is tasked with engaging in legal and other actions to enforce every blanket license in the country. MLC will undertake to discharge these duties as efficiently as possible and with full transparency as to costs.

ESTIMATED RANGES FOR STARTUP PHASE BUDGET (in thousands)	
People Costs	\$14,475 - \$15,250
Recruitment costs	\$775 - \$800
Executive (incl. benefits)	\$5,500 - \$5,850
Non-executive (incl. benefits)	\$8,200 - \$8,600
Technology Costs	\$1,250 - \$21,350
Core Technology Implementation	\$0 - \$20,000
Rights Portal Implementation	\$1,250 - \$1,350
Operational Costs	\$10,950 - \$11,525
Premises	\$650 - \$675
Office IT setup	\$450 - \$475
Communications & member onboarding	\$600 - \$650
PMO, strategy and operations support	\$4,200 - \$4,400
External legal counsel support	\$4,000 - \$4,200
Finance & insurance	\$425 - \$450
Other costs	\$625 - \$675
<b>Total Budget</b>	<b>\$26,675 - \$48,125</b>

ESTIMATED RANGES FOR ANNUAL OPERATING BUDGET (in thousands)	
People Costs	\$9,590 - \$10,110 39-27%
Executive (incl. benefits)	\$3,300 - \$3,500
Non-executive (incl. benefits)	\$6,290 - \$6,610
Technology Costs	\$7,420 - \$20,450 30-53%
Core Technology Services	\$7,000 - \$20,000
Office IT	\$420 - \$450
Operational Costs	\$7,780 - \$8,180 32-22%
Premises	\$320 - \$340
Office expenses	\$110 - \$120
Communications & member engagement	\$260 - \$270
Accounting Services	\$110 - \$120
Legal Support	\$2,000 - \$2,100
Other Professional Services	\$2,350 - \$2,470
Finance & Insurance	\$290 - \$310
Conferences & Conventions	\$400 - \$420
Travel	\$280 - \$290
Other costs	\$1,660 - \$1,740
<b>Total Budget</b>	<b>\$24,790 - \$38,740 100%</b>

## 2. Copyright Office Specific Requests

The following section tracks the specific issues posed by the Copyright Office in the Notice (at 65751-52), with each request broken out for response in its own subsection. The specific language from the Notice is quoted in italics, followed by a response.

### a. **Ownership Identification, Matching, and Claiming Process**

- i. *“The proposed MLC’s plan for matching sound recordings and musical works, including plans for developing or acquiring initial sets of data”*

Details on the process flow and high-level technology and data flow for matching operations are included above (Section B.1.b, *supra*). It is important to differentiate here between initial and target matching operations. Even with MLC’s depth of experience, broad coalition support, and demonstrable capability, a fully scaled, end-to-end system for processing usage data through royalty payments built from scratch could not be ensured to be 100% reliably operational by the statutory license availability date of January 1, 2021. It is therefore much more prudent to leverage existing platforms by the most experienced and capable vendors at the start, and build the collective’s own capabilities on a viable schedule.

MLC’s RFI/RFP process, as fully explained in Section B.2.d, *infra*, has identified the foremost vendors in the world with demonstrated capability to provide a comprehensive interoperable database for matching. Practically, this would be accomplished by vendors in one of two paths. The first would be by quality incumbent domestic vendors, who should already have data and integrations. A quality matching platform requires live, ongoing connections with rightsholders. Quality domestic vendors will already have a wide network of contacts with rightsholders throughout the market, and processes for keeping their database current, as this is a requirement for their existing operations just as it is a requirement for the collective. Due diligence would confirm the comprehensiveness and quality of this database.

The second path would be taken by vendors without substantial domestic operations, who would have to undertake a significant initial aggregation of data. Notably, foreign vendors at the necessary scale to be considered should already have contacts and processes with the bulk of the U.S. publishing market, which, in a global music business, has ex-U.S. operations as well. Nonetheless, this aggregation is a substantial task, and demonstrating that capability is a big part of the due diligence in MLC's RFP process.

In either scenario, MLC would undertake targeted activities to clean and improve the initial ownership and matching data using independent data assets (as noted above, drawing on MLC's unparalleled access to data resources from its industry supporters) prior to the license availability date.

That is the ramp-up phase. Ultimately, MLC targets its rights database evolving into a central pillar in a new era of music licensing in which the potential of technology is finally leveraged to make both the copyright database and royalty processing work for all sides of the industry. Once the rights database, claiming portal, and license administration are fully operational, the industry will have a single, transparent, publicly-accessible resource for establishing and identifying ownership of mechanical rights. MLC is excited to support the industry in moving to a future where knowledge will no longer have to be extracted from multiple discrete, limited and/or proprietary systems.

MLC database updating should then evolve to be a product of the industry itself. Database updating could be built into industry deals that involve assignment of copyright interests as a condition of closing. Initial registration of interests should be standard operating procedure for musical work copyright owners, with a simple, user-friendly web portal to update ownership information, along with Application Programming Interfaces (APIs) to allow bulk

processing. MLC hopes that, much as songwriters and publishers understand the registration processes at the PROs, they will embrace registration with MLC, and MLC will diligently educate and facilitate access for this purpose. MLC will even impress upon sound recording copyright owners the value and importance of providing to the rights database associated musical works information for all new sound recordings. At full speed, the MLC rights database has the opportunity to sustain and be sustained by the music industry, and be, like the MMA itself, a model for bringing all industry stakeholders together for common benefit.

It may be useful as well to explain some data formatting issues behind building a comprehensive, central rights database. One can think of data in rights databases as falling into a few main categories: (1) data on works; (2) data on matching sound recordings; (3) data on ownership agreements; and (4) data on claims/disputes/conflicts. From a data formatting perspective, the first two categories are fairly straightforward. The consensus format for communicating works information is the Common Works Registration (CWR) format, which contains such information as the work title, a unique International Standard Work Code or “ISWC” (if one was obtained for the work), and the names, roles, and shares for the authors/composers and rights owners.<sup>4</sup> Data on matched sound recordings is also relatively straightforward, as the unique International Sound Recording Code (ISRC) is widespread.<sup>5</sup>

The latter two categories (data on ownership agreements; and data on claims/disputes/conflicts) are far less straightforward. There is no standard format for modeling musical works ownership agreement information in databases. One reason for this is that

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<sup>4</sup> These are only examples, the CWR format has other fields of information relating to work identification and ownership. There are also other formats that are used in a minority of cases, such as DDEX’s Musical Works Notification Message Suite Standard (MWN).

<sup>5</sup> MLC is committed to advancing common data standards and formats that will best facilitate easy, open, and accurate information flow, whether such standards are existing or emerging.

agreements have many terms, and there is no common agreement on which terms are important to capture in the database. Some entities try to capture as many agreement term details as feasible, while others adopt a less detailed description of the agreement. Likewise, there is no consensus on how much detail is to be provided as to chain of title. Chains of title can stretch through numerous legal entities between original copyright owners and royalty payees. Further, pre-termination and post-termination musical work copyright owners need to be associated with sound recordings with the same ISRC released pre- and post-termination. This data is all modeled differently (and sometimes incompletely) by stakeholders, and so merging information between databases is not as simple as mapping fields from one to another, but rather can require complex reformatting of data. Data as to claims, conflicts, and disputes is perhaps the least standardized category of data. Merging data from multiple sources on conflicts will require significant manual processing and will be very resource-intensive.

Complexities notwithstanding, there are precedents for merging databases, and there can be tremendous value to integrating multiple data sources. In Europe, there have been multiple instances over the past decade of CMOs merging and integrating rights databases into a single consolidated database. Nonetheless, this is hardly a trivial process, and one that needs to be approached with due respect for the intricacies and time involved, as an exercise which has historically been measured in years. However, it will be a part of the evaluation of options to meet ultimate goals for providing a vastly improved and comprehensive rights database.

In addition to the rights database are the matching systems themselves—the systems for processing licensee sound recording usage data and matching it with musical works ownership data. MLC may draw on multiple vendors to meet the initial statutory deadlines. Specialized vendors will likely be utilized to address specific data subsets or to properly control data from

other vendors. In the end, MLC aims to build matching systems of unparalleled accuracy and completeness. The Operations Advisory Committee and the Board of Directors will oversee these operations through the RFI/RFP process, and determine the precise technologies that are utilized and the vendors that are engaged both initially and over time.

- ii. *“An explanation of how ownership information may be populated, corrected or updated by various stakeholders and how the proposed MLC will accommodate submission of information that may vary by scale and scope depending upon the technical or business sophistication of the submitter”*

The question of technologically how ownership information can be received by the collective is a simple one in comparison to the matters of building the global network and outreach to motivate stakeholders to integrate their data. MLC will provide a claiming portal that is accessible by the public, user-friendly, ADA-compliant, and can be used by stakeholders of any sophistication to provide ownership information to MLC.<sup>6</sup> MLC intends to employ tools to allow submission of data in a variety of different formats to accommodate copyright owners who are unable to convert data to standard formats themselves. MLC will further have APIs and data transfer processes and formats to allow for bulk submission and updating of rights data for entities with more technical sophistication. Also, as noted above, the MLC rights database will present a tremendous opportunity for the industry to utilize the database in a real-time manner by contracting parties as a deal step before closing on assignment of rights, as well as adopted as standard procedure for creators of new works.

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<sup>6</sup> If it turns out that there is a material community of stakeholders who are unable to access and utilize even an ADA-compliant, user-friendly web portal, MLC is committed to finding ways to ensure access to the rights database. MLC further intends to have staff capable of personally assisting copyright owners with troubleshooting and submission of ownership information.

If there is one point that is worth emphasizing on the submission of rights information, it is the importance of common data standards and formats. As explained more fully in the subsection (iii) immediately below, MLC intends to support the adoption and proliferation of common standards and formats that allow for full and free exchange of metadata that uniquely and clearly identifies musical works and associated sound recordings, contractual rights, and conflicts.

- iii. *“Best practices, methodologies or expertise (including manual processes), that the proposed MLC may employ for identification of copyright owners and matching of copyrighted works”*

Standardization is again critical to any best practices models in data aggregation. MLC will support adoption of common standards through its own modeling and influence, as well as through public outreach. MLC will participate actively in national and international societies that work to improve common standards, and will use its platform for public outreach to educate the industry on the value of using common standards that allow information to be shared with greater ease and accuracy. MLC is hardly alone in this focus, as the music industry in general supports more universal adoption of common standards, as it is truly to the benefit of all stakeholders.

Specifically as to identification of copyright owners, proper working of the CWR standard is perhaps most fundamental at the present, as this is the standard that most copyright owners use to identify themselves to license administrators.<sup>7</sup> Broader adoption of unique musical works identifiers such as ISWC is also an important target. Currently, use of ISWC codes are far from universal, and more widespread adoption has the potential to aid significantly

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<sup>7</sup> A description of the CWR format is available as part of its user manual at <https://members.cisac.org/CisacPortal/consulterDocument.do?id=22272>. The CWR standard and the associated processes around it provide the framework for copyright owners to provide their information to licensing entities, and for those entities to provide notices of confirmation or conflict to be returned.



in the integration of disparate data sources.<sup>8</sup> In the larger picture, the business plan of MLC aims for an industry in which a shared, comprehensive format for ownership identification is implemented and maintained throughout the industry, allowing all stakeholders access to verify and update rights data.

Specifically, with respect to matching of copyrighted works, the most important best practice at this time is probably to utilize systems that are tested, while remaining engaged with new and cutting-edge systems. There are constantly new developments in algorithms, machine learning, and what is often described as artificial intelligence, as applied to matching musical works. Technologies for matching based on audio content are improving, adding to the robust and competitive market for matching based on metadata. MLC is excited to support the development of these promising technologies.

In its role in the center of musical works royalty processing in the largest market in the world, MLC is positioned to stay informed on the most effective technologies, and intends to utilize all useful technologies to assist in keeping matching systems as accurate as possible, including by using multiple matching platforms, whether in combination as bolt-on software, integrated solutions, independent quality controls, or whichever approach is most effective to fulfill the statutory purposes. MLC's usage of technologies will also evolve over time as options change and improve, and so its choices will be subject to constant oversight and reevaluation by its Board of Directors and Operations Advisory Committee.

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<sup>8</sup> Whereas sound recordings tend to have a single copyright owner (usually the record label), musical works frequently have multiple fractional copyright owners. Further, distributors and retailers of sound recordings often require unique ISRC codes for distribution, whereas ISWC codes are not so required. As a result of these and other factors, ISWC codes are far less universally used, and multiple overlapping ownership records for the same musical work are much more likely to exist.

- iv. *“Intended approaches to prioritization of matching efforts (including whether and how factors such as usage, royalty amounts, genre and vintage of usage of works may guide prioritization choices)”*

It is useful here to examine what prioritization might mean in the context of matching systems. Matching software ingests large data sets of sound recording usage and utilizes various algorithms to attempt to match each sound recording use against a set of musical works rights data. This has historically been done based solely on metadata analysis, although audio content analysis is a growth area for matching technology as well. Prioritization is not an issue as to matching software operations. All usage data is run through matching software, and all unmatched uses would regularly be rerun through matching software.

The issue of prioritization is a question of which partial matches then get moved to manual review and in what order. Prioritization of what gets moved to manual review must take into account the confidence level of the automated system’s match. Matching software will then typically return a confidence level as to a match for each use, such as a match percentage. For example, the metadata associated with a use might produce what the system calls a 90% match, a 50% match, or a 0% match to a known musical work. A vendor might not send a 90% match to manual review because it simply deems it a conclusive match (subject to someone disputing that match).

Tuning the confidence levels of a matching system is critical to proper functioning. For example, vendors can easily increase their claimed “match percentage” by simply dropping the confidence level at which they call something a match.<sup>9</sup> This is not preferable, as it reduces the qualities of matches and increases the likelihood of improper payouts and disputes. Tuning

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<sup>9</sup> This would be akin to improving one’s “success” at filling out crossword puzzles by being less concerned about whether one’s entries are correct.

confidence levels and policies for manual review so that manual review is effective is critical to using finite resources effectively. As a nonprofit, one of whose primary purposes is better matching, rather than a for-profit vendor marketing itself based on claimed “match percentage,” MLC will ensure that confidence levels are appropriately tuned for results, not press releases.

Once confidence levels are properly calibrated, MLC can turn to the question of prioritizing within confidence levels based on other factors. Policies to govern this will be analyzed by the Operations Advisory Committee and overseen by the Board of Directors. For reference, total royalties accrued has been a common metric for prioritization, simply because it aims to minimize the total amount of unmatched royalties. Usage and vintage of usage are metrics that are related to total royalties.<sup>10</sup> It is unclear why something like genre of usage would ever be a factor in prioritization.<sup>11</sup> Specific policies addressing prioritization of manual review of unmatched uses are something to be determined in the context of the specific unmatched pool, and is a topic that will receive significant attention. MLC is aware that certain interest groups have voiced concern about publishers receiving distributions from unmatched royalty funds. The statute mandates that any ultimately distributed unclaimed accrued royalties be distributed based on market share, and so distributions to both large and small publishers would be required of the collective. The statute also mandates that “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by

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<sup>10</sup> The current statutory mechanical royalty rates for streaming divide each offering’s total royalty pool on a *pro rata* basis based upon usage, while the statutory royalty rate for permanent downloads is a penny rate. A metric based on usage would thus be closely tied to a metric based on royalties accrued. Vintage of usage also relates to royalties accrued, as royalties accrued will only increase over time until a match, hence an accrued royalties metric would proxy at least some of the principle of a prioritization based on vintage of usage.

<sup>11</sup> That said, the classical music genre has posed unique challenges for matching due to the divergent metadata sets associated with such works. MLC will ensure that all appropriate steps are taken to maximize the quality of matching result for classical music, even if that requires utilizing additional processes for this genre.

the copyright owner attributable to usage of musical works (or shares of works) of that songwriter,” (Section 115(d)(3)(J)(iv)) to ensure that songwriters receive an equal or greater share of any distributions. The initial members of MLC’s Unclaimed Royalties Oversight Committee have already been appointed, and they are all songwriters or representatives of independent publishers. (See Section C, *infra.*) MLC is attuned to the importance of the proper treatment of unmatched royalties and is committed to ensuring that fairness and transparency guide their handling in all instances.

- v. *“The proposed MLC’s target goals or estimates for matching works in each of the first five years, and in the aggregate, expressed both in terms of a percentage of the market share of musical works in covered activities, and in terms of a percentage of the works licensed for use in covered activity”*

The target goal for accurately matching sound recording usage to underlying musical works is, and will always be, 100% success. Analysis of historical matching performance is a strong priority in the MLC RFP process to identify vendor systems for initial operations, and building a system that improves on past industry matching performance is a guiding principle of MLC.

However, as noted above, it is critical to understand that a self-reported percentage “match rate” says very little about whether the actual problem of unmatched works has been addressed. Match rate alone is not a useful metric for success because it is highly manipulable. Vendors running matching software each use their own definition of what counts as a match (while having a business interest in calling more things matches), which may include inaccurate matches. Moreover, the size of self-reporting bias is unclear because incorrect matching and payouts are not self-correcting. If a vendor seeks to puff up its statistics by lowering its confidence level threshold and “matching” uses to works incorrectly, it may be a long time

before anyone identifies errors, as the incorrect payee may retain the incorrect distributions, while the correct payee may remain unaware of them. The vendor may continue sending unearned checks to the wrong people for years, all the while self-reporting a high “match rate.”

In short, the critical question is not match rate, but the quality of matches. Rather than focus on empty proclamations of match rates, MLC will focus on actual quality control of matching systems, with a constant target of matching all works accurately. Algorithms need to be fine-tuned based on system complaints, feedback, and inevitable disputes. Inaccurate matches should not only be marked, but investigated to determine why the system matched incorrectly. MLC will have the largest stream of claim feedback into its rights database of any entity in history, and intends to use that feedback to build systems to have the highest-quality matching in history.

- vi. *“With consideration of the statutory timeframes regarding distribution of unclaimed royalties that accrued before the license availability date, an explanation how the proposed MLC will provide adequate opportunity to engage in requisite identification and matching efforts and for copyright owners to search and claim ownership of musical works (or shares thereof)”*

MLC interprets Section 115(d)(3)(J)(i)(I) to provide that the first distribution of unclaimed royalties shall not occur prior to 2023, and MLC is committed to this limit. Moreover, MLC interprets the statute as providing discretion to retain unclaimed accrued royalties beyond the statutory holding period to allow for additional efforts at matching and claiming, and MLC is committed to ensuring diligent and extensive efforts to match uses and works, even if that means holding unclaimed accrued royalties beyond eligibility for distribution in order to obtain more matched and distribute more royalties (plus interest) to rightful owners.

Thus, there will be at least two years beyond the license availability date, and perhaps longer, for uses to be matched and owners identified, even for works that accrued more than

three years before the license availability date. During this time, any such previously accrued unmatched uses will be analyzed by the full matching systems that MLC will employ and available on the rights portal for claiming by the public. MLC intends and expects to match a substantial amount of heretofore unmatched uses based on its deployment of increased knowledge and resources to the task.

To be clear, MLC intends to keep any and all inherited unmatched usages in the matching pool for repeated attempts to match until such time as the Unclaimed Royalties Committee and the Board of Directors analyze and determine that a distribution of those unmatched royalties is fair and appropriate under the statute. There is no intention to remove data on unmatched uses from the matching systems (including any referrals for manual review based on matching system reports) prior to the authorization of distribution of the royalties associated with such uses under the statute.

MLC also intends, consistent with its statutory functions, to make information on its unmatched works available to the public on its rights portal, and to do significant outreach to educate the public on accessing this information and making claims.

- vii. *“Intended approaches to address fraudulent claims, including any planned policies or procedures of the dispute resolution committee noted below, relevant institutional knowledge of its board members or prospective vendors, and intended documentation regarding claims of ownership of works or intended technological processes”*

At this early stage prior to designation, the Dispute Resolution Committee has not promulgated planned policies or procedures. With respect to potential fraud, however, there are numerous standard measures used in the industry. Audit trails are perhaps the most valuable. Claiming portal users will need to set up and authenticate unique accounts and provide identification to enable the disbursement of royalties to them. Full audit trails of claims are tied

to user account activity, and tracked and analyzed using algorithms to detect fraud. Notarized documents, including court documents, are commonly required to verify claimed estate transfers. Full audit trails would apply to changes by MLC employees as well, tracking each employee that makes rights database changes, and requiring outside review and approval for changes where appropriate.

Typically, with respect to initial claims of ownership in new works, claims can be made by *authenticated users* without additional documentation. With regard to unilateral claims to changes in rights, such as by Letters of Direction, in addition to having a clear review process for the appropriate documentation of claimed changes, typically the existing claimant would have to relinquish rights before a change is made.

With respect to dispute resolution procedures, the Dispute Resolution Committee will have numerous industry examples to work from. The decisions will necessarily include precisely when royalties are put on hold, what priorities are applied to competing claims when royalties are not put on hold, when and how adjustments would be made by MLC for past royalty payments, and how to address users that accumulate repeated incorrect claims. As operations mature, the Dispute Resolution Committee will have to assess implementation of these types of policies, and make recommendations to the Board of Directors. Consistent with its mandate to serve the public, MLC will ensure that all claims and disputes are addressed and handled fairly on their merits.

Importantly, the members of the Dispute Resolution Committee and the Board of Directors have tremendous experience in dealing with issues of ownership claims and conflicts. This experience encompasses all of the above matters of typical claiming and dispute policies, but also extends to such matters as how escheatment and abandoned property laws interface

with musical works royalty distributions; processes for validating copyrighted arrangements of public domain works; public domain fraud; and implementation of legal holds. The collective's functions will involve significant dispute resolution, and the MLC governance's broad-ranging experience in handling claims and conflicts from all sides of the songwriting and publishing industries will be indispensable to fulfilling these functions.

- viii. *“Any views regarding how the proposed MLC intends to interact with and address ownership information with collective management organizations that represent owners of comparable and/or associated rights.”*

As discussed above, MLC fully expects stakeholders throughout the industry to embrace its publicly available rights database, as it will benefit the entire industry. Unsurprisingly, all of the major collective management organizations (CMOs) in the U.S. are supporters of MLC. (See Section D.3, *infra*.) It is premature to know fully the details of precisely how the databases of these organizations will interact, but all CMOs benefit from more complete ownership information, and MLC is confident that its strong relationships and support from CMOs throughout the industry will accelerate collaboration towards this common goal.

**b. Maintenance of Musical Works Database**

- i. *“How the proposed MLC will approach interoperability of existing or future external databases, systems and applications, including the extent to which it may adopt or engage with existing and future frameworks, standards or formats (including open standards)”*

As discussed above, MLC will strongly support the adoption of standards, formats, and frameworks that allow information to be easily and accurately shared throughout the industry. The MLC's musical works database will be publicly accessible consistent with the statute and regulations promulgated by the Register pursuant to Section 115(d)(3)(E)(vi), both via the portal



and in bulk, machine-readable format. MLC expects its rights database to be a model and force for better information exchange throughout the industry.

Beyond data standards and formats, good systems functioning and architectural practices instruct that components should have proper APIs, and MLC intends to employ systems with well-functioning APIs to further support data exchange.

- ii. *“The proposed MLC’s plans to utilize and interact with existing and emerging methods or standards for identification of parties and works (including hashes and fingerprint technologies)”*

This question appears to address two distinct topics, namely participatory and non-participatory identification practices. The global music industry uses multiple standards for participants to identify themselves using unique numbers to expedite transactions. For example, the Interested Party Information (IPI) system is the most universally used standard for identifying *parties* associated with the creation and licensing of musical works. Unique IPI numbers are assigned by a database administered by the Swiss copyright society SUISA and standardized according to the Common Information System (CIS) regulations of Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC), an international body that counts as members 239 authors’ societies from 122 countries,<sup>12</sup> and BIEM, an international organization representing mechanical rights societies from 56 countries.

Databases throughout the music industry utilize IPIs to identify songwriters, arrangers, publishers, and other interested parties. There are also calls to advance the use of the International Standard Name Identifier (ISNI), including from CISAC. Whereas IPIs are used primarily within the musical works space, ISNIs are used across many creative disciplines, including for performers, book authors, inventors, etc. Since many creators wear multiple hats,

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<sup>12</sup> See CISAC, <https://www.cisac.org/Who-We-Are>.

there is value to using a single identifier to identify the same individual across disciplines, rather than identifying creators with varying combinations of an IPI, an IPN (International Performer Name) and an ISNI. The topic of which of these standards are advanced is being addressed throughout the industry, members of MLC's Board and Committees are involved in discussions about these formats, and MLC will foster open and common standards that make information exchange easier and more accurate.

Likewise, the industry uses multiple standards for participants to identify works. The ISWC is a common such standard, although as discussed above, its adoption is far from universal. Thus, while the CWR standard for transmitting works information contains a field for the ISWC, all CMOs will also have their own internal proprietary identifier for identifying works where there is no ISWC, and these identifiers will be different. MLC may be able to improve works identification by carrying over proprietary works IDs from stakeholders (who themselves will often have proprietary IDs from other stakeholders, such as where publishers have proprietary IDs from multiple Performing Rights Organizations that are carried along with royalty statements) to better identify oversights, overlaps, or conflicts.

Hashes and fingerprint technologies may be used in tools for matching usage to works, rather than as a standard for participants to identify known works. Audio or acoustic fingerprinting would be a method for identifying unknown sound recordings based upon analysis of their audio signal and comparison against a database of known sound recordings. Hash functions are used in the fingerprinting process. Identifying the particular sound recording at issue is a precursor to matching usage to the underlying musical work. As noted above, audio content analysis is a technology that can assist in the matching process, and MLC is excited to explore how it can be leveraged to reduce unmatched uses.

- iii. *“An explanation of how the proposed MLC will have the capability to accept, maintain, and otherwise handle large data sets, including consideration of the scale of data that the MLC will be responsible for managing”*

MLC does not see the size of data sets as a material hurdle facing the collective. The market for computer processing and storage infrastructure includes turnkey fully scalable and reliable platforms that can easily manage the data sets that the collective will have to process. Redundancy and data backups for repositories that far exceed the expected size of the collective’s systems are equally available in turnkey models. Notably, while the collective will face numerous challenging administration issues, data processing or storage is not one of those. In fact, while the U.S. is the largest market for mechanical royalties in terms of royalty amounts, the size of the data sets in the U.S. is relatively small compared to the data sets CMOs face in Europe, for example, where dozens of different territories may be implicated in a rights management analysis. The collective’s primary data sets would include: licensee data sets (including license and royalty rate information); member/payee data sets (including account, contact and payment information for copyright owners); rights data sets (including information on works, recordings, agreements, claims and disputes); payment data sets (including information on royalties processed); and usage data sets (including services’ monthly reporting of streams and downloads). Of these, the largest data sets would be the usage data sets, and data sets like these are currently handled by numerous vendors without storage or processing problems, including through the use of Amazon Web Services (AWS), a service that is also available for use by the collective.

- iv. *“An explanation of how the proposed MLC intends to approach access and usage restrictions regarding the musical works database, including with respect to digital music providers, significant nonblanket licensees, authorized vendors, and other parties’ timely access to data”*

Policies and procedures for access to information in the databases of MLC will be developed as operations mature. MLC will of course follow the regulations promulgated by the Register pursuant to Section 115(d)(3)(E)(vi) concerning “the usability, interoperability, and usage restrictions of the musical works database.”

- v. *“An explanation of how the proposed MLC will approach other information technology issues, including security, redundancy, privacy, and transparency”*

Information security and data privacy need to be bedrock principles of the collective, which will be both a central public data source for ownership information, and will hold sensitive financial information concerning stakeholders. MLC intends to develop an information security management system (ISMS) that both achieves certification with ISO/IEC 27001 and meets the EU General Data Protection Regulation (GDPR) requirements. Incorporating ISO/IEC 27001 standards and GDPR requirements into the design of the ISMS as it is developed ensures robust protection.

Protection against data loss is of course an essential requirement for the collective. It is also a requirement that is easily met in the current market, as storage platforms offer customizable redundancy levels to meet all needs. MLC will employ high redundancy levels that eliminate the risk of data loss.

**c. Collection and Distribution of Royalties, Including Unclaimed Accrued Royalties**

- i. *“The proposed MLC’s expected competence with efficient and effective payment methods, including addressing tax and other regulatory documentation for various payees and entities”*

MLC’s royalty payment systems will facilitate compliance with its tax obligations as a distributor of royalties to U.S. and foreign copyright owners, including collection of valid documentation (e.g., IRS Forms W-8 and W-9), administration of information statements and other reporting requirements (e.g., IRS Forms 1099 and 1042), and, where applicable, the accurate withholding and depositing of U.S. tax payments. MLC’s Board has extensive experience overseeing royalty payment processing, including all attendant tax and regulatory issues. MLC’s Board is also experienced with procedures for addressing judicial intervention in royalty payment processing, such as court-ordered garnishment of royalty income.

- ii. *“Any planned approaches with respect to the collection and distribution of royalties collected through bankruptcy proceedings”*

Ensuring that accurate, up-to-date, and high-quality usage data is provided by licensees and maintained by the collective is an essential prerequisite for the collective to fulfill many of its statutory requirements, including carrying out collection efforts in a bankruptcy or other legal proceeding. Stale data should be eliminated by the collective’s required regular monthly reporting. MLC will strictly enforce the monthly reporting requirements under Section 115(d)(4)(A), and will promptly issue notices of default and terminations of licenses where applicable under Section 115(d)(4)(E). MLC policies and procedures promoting the integrity and quality of usage data will supplement the regulations promulgated by the Register concerning records requirements under Section 115(d)(4)(A)(iv). MLC will also zealously discharge its duties to investigate usage data and oversee licensee compliance, including through audits of usage and royalty calculation data on a regular basis under Section 115(d)(4)(D).

In the cases where MLC must enforce copyright owners' rights to royalties through bankruptcy or other legal proceedings, it would work with outside counsel to ensure all legal rights and remedies are vindicated, including through pre- and post-petition claims, seeking a seat on the official creditor's committee where applicable, and facilitating cures. Royalty pools obtained through legal proceedings would be distributed to the correct respective copyright holders based on usage of their works.<sup>13</sup> To the extent that the amount of any legal award differs from the calculated royalties due, MLC expects that royalties would be distributed on a *pro rata* basis so that any difference is equally distributed across copyright owners whose works were used based upon respective usage.

iii. *“Information about the proposed MLC’s approach to scheduling royalty payments to identified copyright owners, including whether the entirety of unclaimed royalties is intended to be distributed simultaneously”*

A schedule for royalty payments to copyright owners will be determined as the royalty payment processing system matures. MLC’s goal will always be prompt, complete, and accurate payments to all copyright owners.

MLC does not intend to ever distribute the entirety of unclaimed royalties simultaneously. The Unclaimed Royalties Committee has not yet made recommendations as to policies and procedures for distribution of unclaimed royalties, as MLC interprets Section 115(d)(3)(J)(i)(I) to provide that the first such distribution cannot occur prior to 2023. MLC also interprets Section 115(d)(3)(J) to grant discretion to MLC to retain unclaimed accrued royalties beyond the year that they become eligible for distribution, to allow diligent attempts to

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<sup>13</sup> In the event of a legal award against a licensee that had violated all record keeping requirements and maintained no usage data, distributions to copyright holders would have to be addressed in another manner. However, each such situation would have to be analyzed on its own to reach the most fair result. It may be that the legal proceeding itself determines or informs how distribution should occur, or there may be analogous or informative data that assists. There is no single prescriptive method that would apply to all contexts and ensure the most fair result.

match all uses and works, no matter the vintage, to continue. MLC intends to implement policies allowing use of that discretion to retain unclaimed accrued royalties and continue matching efforts in situations where there is reasonable evidence that this will result in material increases in matching success.

- iv. *“Views regarding whether the proposed MLC may consider holding reserve funds to address claims that may only reasonably be identified after the statutory holding period, and what if any criteria might be used to implement any such reserve practices”*

It is unclear what exactly is meant by reserve funds here. As described above, all royalties received by the collective are directly associated with the use of particular sound recordings. There should be no material unallocated or floating pools of royalty funds coming into MLC, and MLC does not intend to divorce royalties from associated uses (whether matched or unmatched) to create a floating pool of money that is unconnected to specific royalty-bearing uses. As digital uses are matched to musical works, payment of associated royalties are made to copyright owners (or held for distribution upon receiving payment details). Where digital uses are not matched at first, the records of use will be maintained in the matching system and matching attempts would continue unless and until the policies promulgated through the Unclaimed Royalties Committee and the Board dictate that the associated royalties should be distributed pursuant to the statute. As noted above, MLC interprets the statute to provide discretion to MLC to retain unclaimed accrued royalties beyond the year they become eligible for distribution, in order to continue matching efforts.

- v. *“Any policies that the proposed MLC intends to implement with respect to undertaking a fair distribution of unclaimed royalties”*

The statute dictates how unmatched and unclaimed royalties would be distributed to copyright owners. It is to be “based on data indicating the relative market shares of such

copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question,” which shall include usage data under compulsory and voluntary licenses. Section 115(d)(3)(J). Additionally, the statute requires that songwriters receive a portion of unclaimed accrued royalties “allocated in proportion to reported usage of individual musical works by digital music providers during the reporting periods covered by the distribution from the mechanical licensing collective;” and “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner attributable to usage of musical works (or shares of works) of that songwriter.” Section 115(d)(3)(J)(iv). The Unclaimed Royalties Committee has not made any recommendations as to policies and procedures for when eligible unclaimed royalties should be distributed, as under Section 115(d)(3)(J)(i)(I) the first such distribution would not occur prior to 2023.

- vi. *“Any other considerations that may be relevant with respect to the distribution of claimed and unclaimed accrued royalties”*

MLC reiterates what has been stated repeatedly herein. It is fully committed to building the strongest and most effective matching system to date, including automatic and manual processes, traditional and emerging technologies, and input from its unparalleled network of industry stakeholder. MLC is also committed to deploying that system robustly and relentlessly to attempt to match all uses, and to utilizing its discretion to delay distribution of unclaimed accrued royalties where appropriate to allow encouraging matching results to run their course.

**d. Investment in Resources and Vendor Engagement**

MLC has already begun a two-stage Request For Information and Request For Proposal process to enable a clear comparison of all of the vendors in the global marketplace with the potential infrastructure and experience to meet MLC’s demands in building end-to-end



databases and systems for ownership identification, matching and claiming, and royalty collection and distribution.

The RFI process was publicly announced in November 2018 and open to the public. All leading vendors were contacted directly for participation, and opportunity to join was promoted to the public on MLC's website. A copy of the RFI that was distributed to those who joined the process is attached as Exhibit 3. Participants to date in the RFI process included:

- ASCAP
- AxisPoint
- BackOffice
- BMI
- BMAT
- Crunch Digital
- DDEX
- Gracenote
- ICE
- Music Reports, Inc.
- Open Music Initiative (OMI)
- Sacem/IBM
- SESAC/HFA
- SOCAN/DataClef
- SourceAudio
- SXWorks

Thorough review of responses to the initial RFI was undertaken beginning in December 2018. RFI participants were broadly vetted by numerous members of the copyright owner community, including the publisher members of the Operations Advisory Committee who as a group have significant experience with each of the vendor's services and capabilities (*see* Section C.3 for information on committee members). Additional input was provided on request by major digital services, including Amazon, Apple, Google, Spotify and Pandora, each of who also have significant experience with vendors in this space. Review was on rigorous standards and in accordance with established criteria.

In February 2019, a smaller group of participants determined to be most likely to meet the high demands of MLC were prioritized for movement into an RFP process, including:

- ASCAP
- BackOffice
- ICE
- Music Reports, Inc.
- SESAC/HFA
- SXWorks
- Sacem/IBM

A copy of the RFP, along with the its Detailed Functional Requirements Appendix, is attached as Exhibit 4. Responses to the advance RFP were received on March 11, 2019.<sup>14</sup> As is apparent, the RFP is a detailed document collecting comprehensive information about each vendor's capabilities to assist MLC in establishing full operations on the statutory timeline. The 72-point appendix of Detailed Functional Requirements and associated Commentary lays out the many components that the vendor(s) must be able to fulfill, as well as the statutory timeframe. (*See Exhibit 4.*)

A self-assessment spreadsheet was also sent to vendors to identify with particularity as to each of the 72 Detailed Functional Requirements whether the vendor provides full support, partial support or no support. Preliminary self-assessment indicates that between the RFP participants, each of the 72 functional requirement is supported, with nearly all of the requirements fully supported.

In the aggregate, the participants remaining in MLC's RFP process have processed nearly 20 trillion lines of sound recording usage and more than \$4.2 billion in royalties for the

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<sup>14</sup> Three of the initial RFP participants—ASCAP, BackOffice and ICE—determined that the aggressive demands of the statutory timeline for the collective conflicted with other business goals and have removed themselves from the process.

U.S. territory over the past 3 calendar years, and have more than 20 million unique works in rights databases and existing connectivity with approximately 50,000 publishers.

MLC is currently undertaking a full and detailed evaluation of the RFP response information, which will include extensive in person meetings and discussion with vendors concerning their capacities and planning. MLC will then proceed to due diligence on selected vendors, examining and testing systems, investigating statements and business history, obtaining additional documentation and other steps to confirm the bona fides of the vendors. MLC is committed to running an inclusive and probing RFP process and bringing in the best vendor to assist MLC in fulfilling the purposes of the MLC.

- i. *“The estimated number of employees the proposed MLC intends to hire and/ or engage through vendors in each of the first five years”*

The information provided in Section B.1.b above address this request. As noted therein, specific determinations have not been made about organizational structure, including precisely which tasks would be handled initially by vendors versus in-house.

- ii. *“The names and resumes of any key employees that the proposed MLC may have engaged to design and operate the statutorily required functions of the MLC”*

As the Copyright Office has not issued its designation yet, MLC has not executed contracts with executives or employees.

- iii. *“The contracts the proposed MLC has engaged in, or any funds or other items of value the proposed MLC has exchanged in anticipation of being designated as the MLC”*

MLC has engaged experienced consultants to assist its Operations Advisory Committee and Board of Directors in overseeing technology strategy, the RFI/RFP process and operations design. Chief among these is Richard Thompson, former CTO of Kobalt Music and current Board Chair of the international standard-setting organization DDEX. DDEX is a consortium of

leading media companies, music licensing organizations, digital service providers, and technical intermediaries, focused on the creation of digital supply chain standards. DDEX standards are near-universally used by mechanical rights license administrators. Mr. Thompson's deep knowledge of the technologies used in mechanical royalty license administration, along with his experience fostering industry-wide collaboration in order to improve communication of information along the digital supply chain, makes him uniquely suited to assist MLC in charting the optimal path forward to fulfill the mandate of the statute. Along with Mr. Thompson, MLC has engaged a highly experienced team from the consulting organization Prophet with specific experience in both digital growth strategies and the music industry. MLC has further engaged Pryor Cashman LLP as legal counsel to assist with organizational setup, as well as to provide general counsel on governance, contractual, regulatory, and other matters, and to assist in the preparation of this proposal.

- iv. *"Information regarding any conflicts of interests, including but not limited to disclosure of common ownership or other direct or indirect economic relationships, or prospective relationships, between board members of the MLC, their associated publishers and/or catalogs, and actual or potential vendors"*

In Section C, MLC discusses in detail the principles and best practices that it intends to implement in a written Conflict of Interest Policy covering all Board members, Committee members, and employees, as well as identifying numerous other planned written policies on conduct, consistent with governance best practices.

- v. *“To the extent unaddressed elsewhere, information regarding any relevant ‘request for information’ or ‘request for proposals’ issued by the proposed MLC and responsive submissions to the extent this information is relevant to the entity’s ability to perform the statutory functions of the MLC.”*

Copies of the RFI and RFP are attached as Exhibits 3 and 4. MLC is committed to keeping all viable options on the table with respect to the use of vendor technologies, to ensure that the best possible systems are developed for MLC to fulfill all of its statutory functions. Thus, MLC does not consider the RFP process closed, and it remains open to additional qualified participants, subject to meeting thresholds of competence and experience as evaluated by MLC’s Board and Operations Advisory Committee.

RFI and RFP responses are subject to nondisclosure agreements, and include trade secrets and confidential information from vendors. MLC does not include copies of RFI or RFP responses in this public filing. MLC will marshal vendor capabilities as needed, from as many vendors as needed. It is not possible at this time to state all of the precise technologies that will be used by MLC, rather these will be determined as the RFP process continues and operations mature.

**e. Funding**

The collective is to be funded by the digital service licensees, 17 U.S.C. § 115(d)(7), and MLC is involved in good faith negotiations with the major licensee services in an attempt to reach agreement on voluntary contributions sufficient to cover the collective’s total costs for at least a preliminary period, and if possible, for a longer period that would form the basis for a settlement of the initial assessment proceeding.

MLC has not deferred the building of its operations pending such voluntary contributions or administrative assessment collections (together “**Licensee Funding**”), but is committed to maintaining operations through negotiated agreements and bridge funding to be

reimbursed by future administrative assessments. MLC has also obtained agreement to defer collection of some of its payables until funding is obtained. In short, MLC has already begun, and intends to move forward unabated with the fulfillment of its functions. MLC's business plan does not call for waiting until Licensee Funding in order to commence operations. On the contrary, MLC feels certain that it would be impossible to meet the statutory deadlines if full operations had to wait for a levied administrative assessment, which under the statutory timeline may not come through until six months or less before the mandated license availability date of January 1, 2021.

With respect to "procedures to guard against 'abuse, waste, and the unreasonable use of funds,'" the collective will ensure that its policies and practices are transparent and accountable, as required by state law (*see* Section C.4.b, *infra*) and the statute, 17 U.S.C. § 115(d)(3)(D)(ix), including engaging in the post-designation audits required by that subsection. Anti-fraud monitoring will be built into the core of MLC, including a written anti-fraud plan; detailed policies and procedures concerning fraud and waste; a corporate standard of conduct/ethics; regularly ratified conflict of interest statements; ongoing training/education of employees, providers, members, vendors and others; clear and effective lines of communication internally and externally; and corrective action procedure.

MLC embraces the position of a nonprofit with uniquely extensive statutory oversight and transparency, and is confident that waste or fraud will not be a problem. Each Board member understands the duties of care, loyalty, and obedience that are owed to MLC, and the Board will ensure that MLC operations are conducted fairly and responsibly in accordance with best practices.

- i. *“The anticipated annual costs of the proposed MLC in each of the first five years (or the anticipated range of costs), itemized to the extent possible”*

The information provided in Section B.2 above addresses this request.

- ii. *“Information related to the planned funding of the MLC operations prior to receipt of administrative assessment funds, including information that may relate to voluntary contributions”*

MLC continues actively to pursue a voluntary agreement with the DSPs for funding. In the absence of that, it will participate in the full assessment proceeding as dictated by the statute. MLC will seek bridge funding to cover any gaps, and is confident that its extensive network of support and trust throughout the industry, and the reputations of its leadership, will assist it in obtaining support for its continued operations.

- iii. *“Information related to whether and to what extent the proposed MLC may take on debt obligations to fund its operations, and what collateral may be used to secure such debt”*

As a Delaware nonprofit, nonstock corporation, MLC understands that it may take on debt obligations to fund its operations. MLC has no intention to use collateral to secure debt at this time, and has not determined whether and under what situations it might do so. MLC’s intention is to bridge any gap to Licensee Funding without needing to secure any debt obligations.

- iv. *“Information regarding whether and how the proposed MLC may apply unclaimed accrued royalties on an interim basis to defray operating costs, as well as any accompanying plans for future reimbursement of such royalties from future collections of the administrative assessment, including relevant legal considerations and guidelines in the event the proposed MLC does intend to apply unclaimed accrued royalties.”*

MLC does not intend to have a shortfall in its budget so as to need to apply unclaimed royalties. Still, the statute is unambiguous as to the rules for applying unclaimed royalties, which are discussed in detail at Section 115(d)(7)(C):

Interim application of accrued royalties. In the event that the administrative assessment, together with any funding from voluntary contributions as provided in subparagraphs (A) and (B), is inadequate to cover current collective total costs, the collective, with approval of its board of directors, may apply unclaimed accrued royalties on an interim basis to defray such costs, subject to future reimbursement of such royalties from future collections of the assessment.

In the event that such an application were made, the Board would also have to address Section 115(d)(3)(H)(i), which requires that unclaimed royalties be maintained in an interest-bearing account that earns interest at the Federal short-term rate for the benefit of the copyright owners entitled to the royalties.

**f. Education and Outreach**

MLC has already pursued, and will continue to pursue, significant education and outreach efforts to inform the relevant industries and the general public about, *inter alia*,

- the existence, purpose and nature of the statutory collective and its duties and functions;
- the nature and existence of the musical works database;
- the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works);
- the procedures by which copyright owners may identify themselves and provide contact, ownership and other relevant information to the collective in order to receive payments of accrued royalties;
- MLC's board and committees;
- MLC's administrative and technological capabilities;
- MLC's ownership identification, matching, and claiming processes; and
- MLC's collection and royalty distribution processes (including its processes and policies with respect to unclaimed accrued royalties and the methods and means by which owners of rights in such royalties may claim them).

MLC will engage in all other efforts to publicize the collective as required by the MMA, including in Section 115(d)(3)(J)(iii).



MLC will continue these efforts throughout the setup and launch of MLC, and after the License Availability Date to provide regular information and updates to the public regarding MLC's claiming portal, unmatched funds, and pending distributions.

MLC's Board consists of sixteen prominent music industry professionals who are deeply involved in the music industry and have a broad sphere of influence. MLC's Board will use its expertise and connections to each part of the music industry to ensure that the message of MLC is spread to all segments of the industry, utilizing various means of communication to reach music industry copyright owners, including press releases, social media, articles and advertisements in trade publications, and speaking engagements at music industry events, conferences, and festivals. MLC is uniquely situated (given the wide support and cooperation it enjoys in and across the industry by and from songwriters, publishers, digital services, and their respective trade organizations) to reach diverse audiences with such information.

The trade groups that have assisted copyright owners in creating MLC have also already engaged in extensive efforts to publicize MLC and to educate relevant industries on the impact of the MMA, and what to expect as MLC is formed, launched and becomes operational and capable of offering blanket licenses under the MMA. In particular, they have spoken at numerous music industry and songwriter-focused events in cities across North America on the topics of the MMA, the establishment of MLC, and its functions and impact on the music industry, and have published or have commented in articles on those topics appearing in major industry trade publications such as *Billboard*, *Variety* and *Music Week*.

## **SECTION C**

# Governance

## 1. Nature of MLC

While MLC is and will be an independent body, MLC was created by copyright owners to carry out the responsibilities of the mechanical licensing collective, as required by and as set forth in Section 115(d)(3)(A) of the Act. MLC was created by musical work copyright owners with the assistance of their trade groups, the NSAI, SONA, and the NMPA, which groups were instrumental in the creation and passage of the MMA, which overhauled Section 115 and required the establishment of MLC. (*See* Exhibit 5 (Herbison Decl.) ¶ 6; Exhibit 6 (Lewis Decl.) ¶ 4; and Exhibit 11 (Israelite Decl.) ¶¶ 4-6.)

In addition to the aforementioned trade organizations, MLC was created with input from experienced professionals and stakeholders across the music industry, including other songwriter groups, major and independent music publishers, performing rights organizations, digital streaming services, and technology vendors (as further discussed in Section C.2 below), all of whom have also expressed their endorsement of and support for the designation of MLC as the statutory collective (as further discussed in Section D below). MLC is the product of collaboration between and among constituencies with unique interests, who came together to create an entity that is uniquely situated to carry out the statutory responsibilities of the collective and to solve the challenges of mechanical licensing in the digital space.

MLC meets all of the organizational and governance requirements of Section 115. MLC's Certificate of Incorporation is annexed hereto as Exhibit 1. As it shows, MLC is a nonstock nonprofit corporation organized under Delaware law to carry out the responsibilities of the collective. Annexed to MLC's Certificate of Incorporation at Exhibit 1 is the Statement of Organization of the Sole Incorporator of MLC setting forth the initial Board of Directors (the "**Board**"). As discussed in detail below, the Board fulfills the requirements of Section

115(d)(3)(D)(i), being comprised of representatives of music publishers to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities, professional songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to covered activities for musical works they have authored, and nonvoting trade group and licensee directors as instructed by the statute. (*See* Section C.2, *infra*.)

Pending designation and establishment of permanent headquarters, which are expected to be located in Nashville, TN, the Register may contact MLC through its legal counsel on this proposal:

Pryor Cashman LLP  
7 Times Square, New York, NY 10023  
(212) 421-4100  
Attention: Frank P. Scibilia ([fscibilia@pryorcashman.com](mailto:fscibilia@pryorcashman.com))  
Benjamin K. Semel ([bsemel@pryorcashman.com](mailto:bsemel@pryorcashman.com))

## **2. Board Composition and Selection Process**

As noted above, MLC is governed by the Board, which is comprised of a mix of voting and nonvoting members as required by Section 115(d)(3)(D)(i). The individuals that comprise MLC's initial Board together bring to the enterprise years of relevant experience, including technological experience and experience in creating musical works, licensing them (including in the digital space), collecting revenue, identifying the relevant royalty payees, and distributing royalties and accounting to those payees.

### **a. Professional Songwriter Members**

As required by Section 115(d)(3)(D)(II), MLC's Board includes four voting members who are professional songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to Section 115 covered activities with respect to

musical works that they have authored.<sup>15</sup> MLC’s songwriter Board members were selected by a panel of respected songwriters (consisting of two professional songwriters from each of NSAI, SONA, Songwriters Guild of America (SGA), ASCAP, and BMI) in an open, competitive process. The songwriter Board member selection panel interviewed and vetted all of the professional songwriter candidates to ensure that the songwriters serving on the Board: (a) have the requisite expertise and experience to govern MLC; (b) individually and together faithfully reflect the entire songwriter community; and (c) are motivated to serve on the Board and understand and do not underestimate the serious responsibilities entrusted to them. The result is a group of songwriter Board members whose knowledge and experience extends well beyond the creation of extraordinary songs; each also has significant experience with regard to, *inter alia*, the licensing of musical works and the collection, distribution, and accounting of royalties for the use of musical works.

The professional songwriters on the Board are:

- **Kara DioGuardi.** Kara DioGuardi is a singer-songwriter, producer, publisher, former Warner Bros. Records A&R executive, former *American Idol* judge, Broadway performer, author, and visiting scholar at Berklee College of Music. Kara is one of the world’s most successful contemporary songwriters, with over 320 songs released by major labels, 150 on platinum selling albums, and over 50 charting singles, and collaborations with artists including Pink, Katy Perry, Celine Dion, Kelly Clarkson, Britney Spears, Christina Aguilera, and Miley Cyrus. Kara is also the co-owner and co-CEO of music publishing company Arthouse Entertainment and leads its creative department. Kara has built five recording studios at Phoenix House, one of the nation’s leading non-profits dedicated to leading individuals, families, and communities affected by addiction from disrupted to productive lives. Kara also co-founded Inspired Nation, a non-profit organization that aims to build a bridge between the talent and dreams of our youth and their hope for a better, more inspired world. Inspired Nation has set out to redefine vocal competitions not just as a way to

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<sup>15</sup> In MLC’s view, the requirement that four voting board members of MLC be “professional songwriters” means that the songwriter board members must be songwriters who earn a living primarily through their songwriting activities. Each of MLC’s songwriter Board members identified below meets this requirement as well.

celebrate talent and foster confidence, but as a conduit for youth appreciation and community activism.

- **Oak Felder.** Oak Felder is a Turkish-American songwriter and producer who has written hit songs with and for Nicki Minaj, Demi Lovato, Alessia Cara, Rihanna, Britney Spears, Jennifer Lopez, Ariana Grande, Jason Derulo, Drake, Miguel, Alicia Keys, Usher, Jessie J, and The Chainsmokers, among others. Oak has a degree in network technologies and artificial intelligence. Oak also runs a publishing joint venture with Reservoir, for which he identifies and nurtures new songwriting talent.
- **Kevin Kadish.** Kevin Kadish is a three-time Grammy nominated, songwriter and producer who has co-written hit songs made famous by Meghan Trainor (including “All About That Bass”, and “Lips Are Movin”), Jason Mraz, Willie Nelson, Miley Cyrus, Morgan Wallen, and Stacie Orrico, among others. Kevin is also a publisher and artist development visionary, helping several artists (including Meghan Trainor) secure deals with major and independent labels. In 2016, Kevin partnered with songwriter / producer, Nathan Chapman (Taylor Swift, Keith Urban, Lady A, etc.) to form Starts With Music, an artist development company. Kevin has also been a prominent and vocal advocate for songwriters, and has testified about copyright and songwriter royalties before the U.S. House Committee on the Judiciary.
- **Tim Nichols.** Tim Nichols is a Grammy-winning songwriter and an inductee of the Nashville Songwriters Hall of Fame. Tim has co-written hits for Tim McGraw (including “Live Like You Were Dying”), Faith Hill, Jo Dee Messina, Dustin Lynch, Chris Young, and Jana Kramer. Tim is a co-owner of leading Nashville-based music publishing company THiS Music and has served on the Boards of Directors of the Country Music Association, NSAI, and the High Hopes Preschool and Pediatric Therapy Clinic.

The songwriter advisory panel that searched for, interviewed, vetted, and selected MLC’s songwriter Board members consisted exclusively of songwriters. No members of the advisory panel were themselves candidates for the Board. The songwriter advisory panel consisted of **Steve Bogard**, President of NSAI, who has written ten number-one country songs and won twenty-two ASCAP, BMI, and SESAC awards; **Dallas Davidson**, a country singer and songwriter and Chair of the Georgia Music Foundation, who has written for top artists such as Luke Bryan, Blake Shelton, Randy Houser, Lady Antebellum, and Tim McGraw; **Chris DeStefano**, songwriter and NSAI board member, who has co-written number-one hits for Jason Aldean, Miranda Lambert, and Carrie Underwood, among others; **Bob DiPiero** a country

songwriter who has written hits for Reba McEntire, Martina McBride, Brooks & Dunn, and many others; **Dan Foliart**, a songwriter, ASCAP board member, and former president of the Society of Composers & Lyricists who has composed theme songs for over 50 television series and lectured at NYU, Columbia, and USC; **Adam Gorgoni**, a film and television score composer who has written music for over 20 films; **Michelle Lewis**, a singer-songwriter and co-founder of SONA, who has written music for Cher, Little Mix, Hilary Duff, and Kelly Osbourne, among others; **Paul Williams**, President and Chairman of the Board of ASCAP and a Grammy, Oscar, Golden Globe, and Ivor Novello award winning lyricist and composer who has written songs recorded by Elvis Presley, Frank Sinatra, Barbra Streisand, Ella Fitzgerald, David Bowie, Diana Ross, and Kermit The Frog; and **Lynn Gillespie Chater**, a songwriter who has served on boards and committees of SGA, NARAS, and NSAI and written songs recorded by Mindy McCready, Anne Murray, Paul Brandt, and Lorrie Morgan, among others.

**b. Music Publisher Members**

As required by Section 115(d)(3)(D)(I), MLC's Board also includes ten voting members who are representatives of music publishers to which songwriters have assigned exclusive rights of reproduction and distribution with respect to Section 115 covered activities, none of which is owned by, or is under common control with, any other Board member. MLC's music publisher Board members were selected in an open, competitive process by a panel comprised entirely of individuals associated with independent music publishers, each of whom are well-respected throughout the music publishing community. The music publisher Board member selection panel carefully vetted candidates to ensure that the representatives selected to serve on the Board: (a) have the requisite expertise and experience to govern MLC; (b) individually and together faithfully reflect the entire music publisher community; and (c) are motivated to serve

on the Board and understand and do not underestimate the serious responsibilities entrusted to them. The result is a diverse group of individuals, ranging from representatives of small, independent publishers like Pulse, a thirty-employee company established and run by creatives with a catalog of approximately 10,000 songs, to representatives of large, global publishers like Sony/ATV Music Publishing, with a catalog of more than three million songs. Each publisher Board member brings to MLC extensive experience, and together they deliver a tremendous diversity of individual insights. The publisher Board members include individuals who, in addition to their decades of music publishing experience, are songwriters, educators, writers, attorneys, business school graduates, board members of independent music publisher trade organizations, digital technology and operations experts, and individuals with deep business experience with record labels, collective management organizations, and technology companies.

The individual representatives of publishers that sit on the Board are:

- **Jeff Brabec (BMG).** Jeff Brabec is Senior Vice President Business & Legal Affairs at BMG. Jeff has decades of experience in music publishing and teaches courses in music publishing, licensing, and contracts for film and TV scoring and song at USC's Thornton School of Music, where he is an adjunct professor, and music publishing at Berklee College of Music, where he has been a guest lecturer. Jeff is a co-author of the best-selling book "Music, Money, And Success: The Insider's Guide To Making Money In The Music Business," the eighth edition of which was published in November 2018, and is also the co-author of the music publishing chapter of the 2018 Juris Publications multiple volume treatise "The Essential Guide To Entertainment Law." Jeff is also a contributing editor to Entertainment Law & Finance magazine and has written articles for *New York Law Journal*, *Advertising Age*, *The Hollywood Reporter*, and *Entertainment and Sports Lawyer*. Jeff speaks at numerous conferences, universities, and law schools about the business of music publishing including for the American Bar Association (ABA), SXSW, Beverly Hills Bar Association, Society of Composers and Lyricists (SCL), California Copyright Conference (CCC), Practising Law Institute (PLI), and many others. Jeff has been awarded the Deems Taylor Award for excellence in music journalism and the Texas Star Award by the Entertainment & Sports Law Section of the State Bar of Texas for Outstanding Contribution and Achievement in the Field of Entertainment Law. Jeff has also worked at Chrysalis Music Group, Polygram Music Group, Welk Music Group, Arista Music, Interworld Music Group, and ASCAP, and is a graduate of NYU School of Law and a former songwriter and recording artist.



- **Peter Brodsky (Sony/ATV Music Publishing).** Peter Brodsky is Executive Vice President of Business & Legal Affairs at Sony/ATV, where he leads all business and legal activities in the U.S., playing a lead role in the company’s digital initiatives (including the licensing of DSPs) and its major catalog acquisitions. Peter also serves as an ASCAP board member and has worked extensively on major copyright initiatives, including advocating for the MMA. Peter testified in the *Phonorecords III* proceeding, in which the Copyright Royalty Board increased mechanical royalty rates to be paid by interactive streaming services to songwriters and music publishers. Peter was recently named by *Billboard* magazine as one of its 2018 “Digital Power Players” and has been involved in the music publishing industry for over twenty years, having previously worked at BMG, where he was hired in 1996. Peter is a graduate of Brooklyn Law School.
- **Bob Bruderman (Kobalt).** Bob Bruderman is Executive Vice President of Global Digital Partnerships at Kobalt. Bob negotiates publishing transactions around the world, including with digital music services, such as a recent pact with Facebook and a multipronged agreement with Chinese streaming service NetEase. Bob is Kobalt’s point of contact with digital music services and has built its marketing posture by developing strategic partnerships with companies like airlines and social media platforms. Bob was also recently named one of *Billboard* magazine’s 2018 “Digital Power Players.” Bob is a central player in the execution of Kobalt’s mission, which is to make the music industry more fair and rewarding for creators, emphasizing freedom and transparency with its innovative technology providing data to creators, and allowing them to manage rights and royalties directly. Bob began his career at Sony Music Entertainment, where he worked for over a decade.
- **Tim Cohan (peermusic).** Tim Cohan is the Senior Vice President of Legal and Business Affairs at independent music publisher peermusic, where he began his career in the 1990s. Tim oversees all legal and corporate matters for peermusic’s U.S. companies, serves as counsel to its Chairman and CEO, and heads all global negotiations for digital agreements. He is a graduate of Columbia Law School and a former board member of the L.A. Chapter of the Association of Independent Music Publishers (AIMP).
- **Alisa Coleman (ABKCO).** Alisa Coleman is the Chief Operating Officer of ABKCO Music & Records, Inc. ABKCO is one of the world’s leading independent entertainment companies, and operates record label, music publishing, and film and video production arms. Alisa oversees ABKCO’s operations, business development, and global licensing. Alisa first joined ABKCO in 1985 and has worked in every division of the company. Alisa is also an accomplished art director with over 30 release designs, and has received recognition from the Clio Awards and New York Art Directors Club, among others. She is the President of AIMP’s NY Chapter.
- **Scott Cutler (Pulse).** Scott Cutler is a songwriter and one of the co-founders and co-CEOs of Pulse Music Group. Pulse is a music publishing, management, and music services company founded by Scott along with producer Josh Abraham and songwriter Anne Preven. As a songwriter and producer, Scott co-wrote “Torn,” made

famous by Natalie Imbruglia, and “Listen” from the film adaptation of Dreamgirls, and has collaborated with Beyoncé, Katy Perry, Sinéad O’Connor, and Kelly Clarkson, among others.

- **Paul Kahn (Warner/Chappell Music Publishing).** Paul Kahn has been the Executive Vice President and Chief Financial Officer of Warner/Chappell Music since 2015. He has two decades of diverse operational and strategic finance experience, and previously held senior roles at Viacom, EMI, Primedia, and Himalaya Capital. Paul is a graduate of Columbia Business School.
- **David Kokakis (Universal Music Publishing Group).** David Kokakis is Chief Counsel to Universal Music Publishing Group. He leads the company’s Business & Legal Affairs department as well as its global digital and business development initiatives. He serves in a dual role with Universal Music Group’s recorded music division as Chief Counsel for Digital Right Management, where he oversees efforts to maximize synergy and digital revenues for publishing and recorded music. During David’s decade at UMPG, he has led its negotiations both with digital licensees such as Amazon, Apple, Facebook, Pandora, Spotify, Google, and YouTube, as well as with leading global artists and songwriters. David was recently named one of *Billboard* magazine’s 2018 “Digital Power Players” and “Top Music Lawyers.” He also serves as a board member of the Canadian Music Publishers Association.
- **Mike Molinar (Big Machine Music).** Mike Molinar is the General Manager of the independent music publisher Big Machine Music. Mike leads operations for BMM and has been with the company since its inception in 2012. Mike has over two decades of experience in music publishing at Starstruck Writer’s Group, Cal IV Entertainment, and Effusion. Mike currently serves as a board member of AIMP Nashville and on the Country Music Hall of Fame Education Council.
- **Evelyn Paglinawan (Concord Music).** Evelyn Paglinawan is Vice President of Business & Legal Affairs at Concord, where she handles business affairs and legal issues for its music publishing division, Concord Music Publishing, including matters that vary from catalog acquisitions to negotiating digital blanket licensing deals with licensees such as Amazon, Pandora and Facebook. Evelyn started at the company in 2007 with Concord’s prior music publishing company iteration, The Bicycle Music Company, and has over two decades of experience having worked previously at Lionsgate, DIC Entertainment, and Famous Music Publishing. She is a graduate of Loyola Law School.

MLC’s music publisher Board members were selected by an advisory panel consisting of music publishing luminaries from the independent music publishing community. This panel was comprised of individuals who are extremely well respected in the music publishing community, each of which is associated with an independent music publisher. The members of the panel,

along with their affiliations, were: **Caroline Bienstock**, the CEO of Bienstock Empire, Inc., who has worked in music publishing for nearly thirty years, has been a board member of ASCAP, NMPA, AIMP, and the Songwriter's Hall of Fame, and was awarded the Abe Olman Publisher Award by the Songwriter's Hall of Fame; **Teri Nelson Carpenter**, the president and CEO of Reel Muzik Werks and the National Chair and President of the L.A. Chapter of AIMP; **Julie Lipsius**, the owner of Lipservices publishing who also serves on the board of AIMP; **Kenny MacPherson**, the founder and President of Big Deal, who also worked in the publishing industry for over thirty years and is considered a passionate advocate for the rights of songwriters; **John Ozier**, the General Manager, Creative at ole (and will be moving to Reservoir later this month), who is himself a songwriter who has penned multiple top ten hits; and **Matt Pincus**, the founder and CEO of SONGS and a leading voice of the independent publishing community and in defining best practices in the evolving digital music business.

All of the music publisher Board members of MLC identified above represent music publishers to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities, as required by Section 115(d)(3)(D)(i)(I). Nevertheless, because the Office has asked for MLC's views as to whether representatives of "music publishing administrators" to which "copyright ownership interests" have not been transferred "but remain with the songwriter(s)" qualify to serve on the board of the collective (Notice at 65752), MLC provides its response to that question, along with its views as to the meaning of a "representative" of a music publisher, in the accompanying Memorandum on Legal

Questions Raised by the Notice (the “**Memorandum on Legal Questions**”) (*see* Section E.2-3, *infra*).<sup>16</sup>

**c. Nonvoting Board Members**

The Board of MLC also includes three nonvoting members, as required by Section 115(d)(3)(D)(i)(III)-(V).

One nonvoting member “shall be a representative of the nonprofit trade association of music publishers that represents the greatest percentage of the licensor market for uses of musical works in covered activities, as measured for the 3-year period preceding the date on which the member is appointed.” 17 U.S.C. §§ 115(d)(3)(D)(i)(III). That trade association is the NMPA, regardless of whether “licensor market” is, as it should be, measured in terms of market value, or by some other metric, such as number of works subject to licensing under Section 115 (*see* discussion at Section D.1.a, *infra*, and in the Memorandum on Legal Questions, Section E.3). **Danielle Aguirre**, Executive Vice President/General Counsel of NMPA, shall represent NMPA as a nonvoting Board member pursuant to Section 115(d)(3)(D)(i)(III). Danielle is in charge of NMPA’s policy, legal, and business affairs, including the negotiation of model industry license agreements and the management of Copyright Royalty Board proceedings. Danielle was instrumental in the creation and passage of the MMA, including in bringing together the many stakeholders to find the common ground that became the final bill.

A second nonvoting board member “shall be a representative of a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of songwriters in the

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<sup>16</sup> The publishers represented by the publisher Board members of MLC all expect to have musical works that they own and administer licensed through MLC. Section 115 does not, however, require that copyright owners represented on the board have their works licensed through the collective, and whether a particular publisher’s works are licensed by one or more particular digital music services through the collective is, to some degree, a decision within the control of those digital music services, who may or may not choose to avail themselves of the blanket license offered through the collective.

United States.” 17 U.S.C. § 115(d)(3)(D)(i)(V). The songwriter advisory panel described above has considered various individuals from songwriter advocacy organizations that meet such definition, and has selected **Bart Herbison**, the Executive Director of NSAI, as the second nonvoting member of MLC’s Board, pursuant to Section 115(d)(3)(D)(i)(V). Bart has been a tireless advocate for songwriters for over twenty years. Among his many accomplishments, Bart played key roles in the passage of the landmark Songwriters Capital Gains Tax Equity Act of 2006, the passage of the MMA, and in multiple CRB proceedings representing songwriters and copyright owners, and also helped create the first-ever copyright infringement group insurance plan for songwriters and music publishers.

A third nonvoting board member “shall be a representative of the digital licensee coordinator, provided that a digital licensee coordinator has been designated pursuant to [17 U.S.C. § 115(d)(5)(B)]. Otherwise, the nonvoting member shall be the nonprofit trade association of digital licensees that represents the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 full calendar years.” 17 U.S.C. § 115(d)(3)(D)(i)(IV). Because the Office has not yet designated the digital licensee coordinator (“**DLC**”), MLC has not identified the third nonvoting Board member at this time.

### **3. Board Committees, Committee Composition, and Selection Process**

MLC has established and appointed members to the three advisory committees as mandated in Section 115(d)(3)(D)(iv)-(vi).<sup>17</sup> Attached as Exhibit 2 is the resolution of the Board by Unanimous Written Consent that formally establishes these committees and appoints as members the individuals described below. The songwriter members of the advisory committees were recommended by the songwriter advisory panel described in Section C.2.a above, the publisher members of the advisory committees were recommended by the publisher advisory panel described in Section C.2.b. above, and those advisory committees' recommendations were approved and ratified by the Board.

#### **a. Operations Advisory Committee**

The Board has established an Operations Advisory Committee that will make recommendations to the Board concerning the operations of MLC, including the efficient investment in and deployment of information technology and data resources. 17 U.S.C. § 115(d)(3)(D)(iv). The statute requires this Committee to include an equal number of members who are musical work copyright owners appointed by the Board and who are representatives of digital music providers appointed by the DLC. As the DLC has not been designated yet, this proposal only addresses the members appointed by the Board.

The Board has appointed to the Operations Advisory Committee representatives of six musical work copyright owners. Each of the members not only has extensive experience with managing substantial license administration and rights management operations, but has such

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<sup>17</sup> In addition to the advisory committees mandated by Section 115 and discussed further below, MLC's Board intends to establish and appoint members to various other committees, including a nominating committee, discussed further at Section C.4.a below, and an audit committee to assist the Board in the oversight of the integrity of MLC's accounting practices and financial reporting, the performance of MLC's independent, qualified auditors, and audits of or by MLC.

experience in the particular musical works licensing space, and has deep understanding of the obstacles and opportunities that MLC must navigate to fulfill the statutory mandates of Section 115. Each of these members understands the technologies that currently underlie systems to manage copyrights and collect and pay royalties, and are also versed in emerging and potential developments in technologies that MLC can utilize to build the most effective mechanical license administration and rights database platforms. The Board's appointments to MLC's Operations Advisory Committee are:

- **Joe Conyers III.** Joe is the co-founder and Chief Strategy Officer of Songtrust and Vice President of Technology for Downtown Music Publishing. Joe oversees Downtown's digital partnerships, new media licensing, and product management and leads the Songtrust rights management platform, which helps music makers and rights holders collect music publishing royalties. Songtrust works with over 40 societies and over 120 territories, making it easy to get publishing royalties from over 20,000 unique income sources worldwide, including YouTube, Spotify, Pandora, radio, movies, TV, and more. Songtrust services over 150,000 creators and 20,000 publishers.
- **Scott Farrant.** Scott is Head of Global Publishing Operations at Kobalt, a company whose mission is to make the music industry more fair and rewarding for creators, emphasizing freedom and transparency with its innovative technology providing data to creators and allowing them to manage rights and royalties directly. Scott has over 25 years of music industry experience, was formerly the COO of AMRA, and worked at STIM/KSTAR AB, Palan Music Publishing, BMG Music Publishing, EMI Music Publishing, and PRS.
- **Rell Lafargue.** Rell is President and COO of Reservoir Media Management, a boutique independent music publisher with a global reach. Rell joined Reservoir at its inception in 2007, and now oversees all aspects of the company's day-to-day operations and spearheads international and domestic expansion efforts. Rell is also a board member of the Canadian Music Publishing Association and AIMP's New York chapter.
- **Michael Lau.** Michael is the Chief Operating Officer and Chief Technology Officer of Round Hill Music. Michael began his career as a composer and a music supervisor before working at Warner/Chappell Music, where he served as that company's Senior Director of Creative IT and Marketing Development. Prior to his tenure at Warner/Chappell, Michael was a music supervisor, and produced and managed a number of music libraries. He is a composer and graduate of Berklee College of Music and a board member of AIMP's New York chapter.

- **John Reston.** John is Executive Vice President of Global Administration at Universal Music Publishing Group. John began working at UMPG's predecessor, MCA, in 1991. He has an unparalleled record of success in the areas of global IT and administration, and in integrating core business systems while maintaining structural efficiency.
- **Bill Starke.** Bill is Chief Information Officer for Sony/ATV Music Publishing, where he has been since 2004, after working for a decade at Sony Music Entertainment.

**b. Unclaimed Royalties Oversight Committee**

MLC's Board has established an Unclaimed Royalties Oversight committee with ten members, five of whom are representatives of musical work copyright owners and five of whom are professional songwriters whose works are used in covered activities, as required by Section 115(d)(3)(D)(v). This Committee is responsible for establishing policies necessary to undertake a fair distribution of unclaimed royalties. 17 U.S.C. § 115(d)(3)(J)(ii). Each of the publisher representatives appointed to this Committee is affiliated with an independent music publisher and has significant experience in the administration of musical composition copyrights and royalties. Each of the songwriter representatives appointed to this Committee has proven experience addressing the hurdles that songwriters face in obtaining fair and accurate accounting for the uses of their musical compositions on and via digital platforms. This Committee includes individuals who have experience in royalty and payment accounting and administration, have served on the boards of independent music publishing trade groups, and have litigated (on behalf of songwriters) the failure of digital music providers to pay royalties due to a claimed inability to identify or "match" recordings to musical works. Each of the member's experiences undoubtedly imparts insight and knowledge about the problem of unmatched and unclaimed works.



The Board's appointments to MLC's Unclaimed Royalties Oversight Committee are:

#### Professional Songwriter Members

- **busbee.** busbee is a songwriter, producer, publisher, record label executive, and musician. He has co-written hit singles for many artists, including 5 Seconds of Summer, Alexandra Burke, Kelly Clarkson, Florida Georgia Line, Lady Antebellum, Hunter Hayes, Girls' Generation, Carrie Underwood, Maren Morris, P!nk, Rascal Flatts, and Timbaland. He recently launched music company Altadena to work on developing new artists and writers.
- **Kay Hanley.** Kay is a singer and songwriter best known as the vocalist for Letters to Cleo. Kay, along with her songwriting partner Michelle Lewis, founded SONA (Songwriters of North America) in 2015 to advocate for greater licensing royalties for songwriters. In addition to her writing and performing work with Letters to Cleo, she co-writes all songs for *Doc McStuffins* and has co-written and/or performed music for a number of films and other children's television programs.
- **David Lowery.** David is a songwriter, mathematician, writer, musician, and producer. He is a co-founder and member of bands Camper Van Beethoven and Cracker, and teaches music business courses at the University of Georgia. David is an outspoken advocate for artists and songwriters, has testified before Congress multiple times, and has filed and settled litigation over mechanical royalties against both Spotify and Rhapsody Napster.
- **Dan Navarro.** Dan is a songwriter, musician, performer, and voice actor best known for his work in the folk-pop duo Lowen & Navarro, who together wrote Pat Benatar's "We Belong" along with other songs covered by artists such as the Bangles, Jackson Browne, Dave Edmunds, and Dionne Warwick.
- **Tom Shapiro.** Tom has been a prominent songwriter since the 1970s, primarily in country music. He is a four-time BMI Country Songwriter of the Year, is in the Nashville Songwriter's Hall of Fame, and has written hits for George Benson, Trisha Yearwood, Tim McGraw, Marie Osmond, Brooks & Dunn, and Neal McCoy, among others.

#### Musical Work Copyright Owner Members

- **Phil Cialdella.** Phil is COO and Partner at Atlas Music Publishing, a music publishing company established in 2013 with a roster of songwriters including Brandi Carlile, Brian Howes, Dan The Automator and Warren Haynes. Phil has over two decades of music publishing experience. Phil founded independent boutique music publishing company Wonderlous Music, and prior to that led administration and licensing at indie publishing pioneer Cherry Lane Music Publishing, where he led the team that established and grew the Cherry Lane "back office" into a market-leading global administration platform with a "best-in-class" reputation for diligence, transparency, and innovation in the administration of music publishing copyrights.

Phil serves on the board of directors of the AIMP and chairs A2IM's Licensing & Publishing Committee.

- **Patrick Curley.** Patrick is a songwriter, entertainment lawyer, and President and co-founder of Third Side Music, an independently owned synchronization licensing & copyright administration company based in Los Angeles & Montreal. Third Side Music was founded in 2005, boasts a world-class copyright administration department, and represents over 50,000 titles by a wide variety of artists. Patrick is a member of the board of the Canadian Music Publishers Association and is one of Canada's leading music industry experts.
- **Michael Eames.** Michael is co-founder and President of PEN Music Group, Inc., one of the leading American independent music publishers that represents the catalogs of artists such as Don Felder, Olivia Newton-John, Wendy Waldman, Maynard Ferguson, Philippe Saisse, and Gina Schock, among others. PEN Music Group operates a state-of-the-art copyright and royalty system called CORE, which is fully integrated with the company's web-based pitching system. Michael is a trained composer, songwriter, and pianist with experience in film scoring. He is a past President of AIMP and formerly oversaw film, television, and international activities for Don Williams Music Group.
- **Frank Liwall.** Frank is President and owner of The Royalty Network, Inc., which he founded in 1994 after beginning his career at Harry Fox Agency. Frank oversees all operations within the organization. The Royalty Network's catalog has appeared on albums from a diverse group of artists such as Pete Seeger, Beyoncé, Daughtry, Shaggy, Flo Rida, Kelly Clarkson, The Black Eyed Peas, Coldplay, and Lil Wayne. Frank oversees all of the organization's operations and is a sought-after industry expert.
- **Kathryn Ostien.** Kathryn is Vice President of Music Publishing Affairs at The Richmond Organization (TRO)/Essex Music Group, which was founded 70 years ago and consists of nearly 50 publishing companies with offices around the world. Its catalog has over 3000 titles written by over 850 songwriters in genres including folk, blues, hip hop, pop, jazz, popular standards, heavy metal, and rock.

*i. Discussion of the Copyright Office Question as to Works  
Susceptible to Being Unmatched and Unclaimed*

The Notice includes a request for information, “[w]ith respect to the unclaimed royalties oversight committee, how the proposed members possess specific insight and knowledge about the types of owners and songwriters whose works may be susceptible to being unmatched and unclaimed.” (Notice at 65752-53) Each of the members of this committee has shown substantial experience and leadership in the songwriting and/or publishing communities, experience that

gives them real insights into the problem of unmatched and unclaimed works, and understanding of the fairness concerns in the community. They are extremely well-suited to the task of analyzing and proposing policies for the fair distribution of unclaimed accrued royalties pursuant to Section 115(d)(3)(J). The statute does not envision the Unclaimed Royalties Oversight Committee as advising with respect to the processes for matching digital uses to musical works, and MLC agrees with the statutory mandate.

Matching is a much larger question that must be addressed throughout the collective. The Operations Advisory Committee will address the technologies that best accomplish automated matching, and the most effective use of manual matching efforts to supplement technology. The Dispute Resolution Committee will address policies to assist in handling claim disputes, the resolution of which will improve the rights database and matching results. The Board will oversee these efforts, as well as overseeing the broad public outreach campaigns to educate the public on the claiming portal and opportunities for copyright owners to claim their unmatched works, including those specifically contemplated in the statute. Section 115(d)(4)(J)(ii). These public education campaigns are very important for improving the rights database and reducing the number of unclaimed works (or shares thereof).

Reviewing the particular problems in the matching process may be useful to addressing this question. The quality of a musical work is not what makes it more or less “susceptible” to being unmatched or unclaimed. The qualities of a musical work do not drive matching problems, rather the main challenges for matching are (1) messy or missing metadata (either in the sound recording or musical work) or (2) inadequate recordation or dissemination of contact information for a copyright owner.

There are three primary distinct types of matching that need to occur to connect a digital use royalty to a musical work copyright owner. First, the digital file needs to be matched to a sound recording. For a properly operating digital service, this should not be a source of matching problems, as sound recording information (including identifiers such as an ISRC code) should be mandatory for uploading digital files to a platform for streaming or downloading. Indeed, Section 115(d)(4)(A)(ii)(I)(aa) requires digital services to provide identifying information for sound recordings that they stream. In cases where there is nonetheless a matching problem at this level, audio signal matching such as fingerprinting can be effective, as well as metadata matching.

The second matching step is that the sound recording needs to be matched to its underlying musical work. This step is a source of many of the matching problems that the industry faces today, and where technological solutions have been widely deployed. In an ideal world, each sound recording would be transmitted with a unique metadata identifier (e.g., ISRC code) that is matched in a central, shared database to a unique musical work identifier (e.g., ISWC code). As discussed in Section B above, such a central database does not yet exist, although those involved in licensing such as vendors, publishers, labels, and PROs keep their own records of identified matches between sound recordings and their underlying musical works. Section 115(d)(4)(B) will hopefully be a strong impetus for digital services to do a better job of collecting information on these matches when digital files are provided to them, as it requires digital services to make good faith efforts to obtain and provide to the collective detailed sound recording metadata (specifically referencing ISRC codes) and respective underlying musical work metadata (specifically referencing ISWC codes) for the recordings they provide.

Where the musical work underlying a sound recording is not already on record, matching systems attempt to identify the underlying musical work by matching metadata (e.g., title). Again, the quality of a musical work is not more or less susceptible to being unmatched in this process. Rather, the question is to what extent metadata associated with a sound recording or its underlying musical work is messy or missing, such that the two are not matched by the automated systems or follow-up manual investigation. As noted in Section B, perhaps the most notable music profile for matching problems is classical music (or art music), since the metadata for such music is less standardized than the typical artist/album/song pattern for popular music.<sup>18</sup> As with every task facing the collective, this is yet another example of where the unparalleled breadth of experience across MLC's Board and Committee members ensures that MLC is informed, competent, and prepared. Board and Committee members have deep experience with every type of music, including classical music. Indeed, the largest specialist classical music publisher in the world, Boosey & Hawkes, a subsidiary of Concord Music, whose catalog contains many contemporary composers and copyrighted works, is represented on the Board.

Once a sound recording is matched to its underlying musical work, the third matching step is to identify and locate the owner(s) of that musical work. In an ideal world, a register of ownership of musical works would reside in a central, shared database, and transferring ownership would require updating that database. Of course, such an authoritative database does not yet exist, although as discussed in Section B above, MLC believes that at full speed its rights database can provide that value to the public, and that creation of such an industry-integrated rights database would be in fulfillment of its statutory purposes. This matching step is where the

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<sup>18</sup> See, e.g., Anastasia Tsioulcas, "Why Can't Streaming Services Get Classical Music Right?" June 4, 2015, NPR Music, <https://www.npr.org/sections/therecord/—2015/06/04/411963624/why-cant-streaming-services-get-classical-music-right>.

collective's claiming portal is of most value, and where the full songwriter and copyright owner communities can participate most effectively. Matching digital files to sound recordings and then to underlying musical works is not accessible work for most, but all songwriters and copyright owners can assist in claiming their musical works from a publicly-accessible online claiming portal, in the event that their ownership or contact information is missing. And MLC's outreach, as well as mobilization of its unparalleled network of industry supporters, will drive the success of the claiming portal.

The statutory purview of the Unclaimed Royalties Oversight Committee is recommending policies to undertake a fair distribution of unclaimed accrued royalties pursuant to Section 115(d)(3)(J), and its panel of respected songwriters and independent publishers are ideal for this job. The job that comes first—that of ensuring that royalties do not go unmatched and unclaimed—is the job of the entire MLC, which as described herein, mobilizes a group of professionals with talent and experience that is unparalleled.

**c. Dispute Resolution Committee**

MLC's Board has established and appointed a Dispute Resolution Committee consisting of ten members, which include an equal number of representatives of musical work copyright owners and professional songwriters, as required by Section 115(d)(3)(D)(vi). This Committee will be responsible for establishing policies and procedures for copyright owners to address disputes relating to ownership interests in musical works, including a mechanism to hold disputed funds pending the resolution of the dispute. 17 U.S.C. § 115(d)(3)(J). The Board's appointments to MLC's Dispute Resolution Committee are:

Professional Songwriter Members

- **Aimée Allen.** Aimée is a singer-songwriter, composer, founder of the Paris-based jazz and bossa nova group, Les Bossa Novices, and practicing intellectual property

rights attorney. Aimée has released five successful albums, including her most recent release in September 2018, entitled *Wings Uncaged*. Original compositions from Aimée's second album, *L'Inexplicable*, have been licensed for use in feature films and network television.

- **Odie Blackmon.** Odie is a Nashville-based songwriter, producer, and publisher, and teaches courses at Vanderbilt University's Blair School of Music and Middle Tennessee State University. Odie has written hit songs recorded by Lee Ann Womack, George Strait, Gary Allan, Martina McBride, John Legend, Elliot Yamin, Dale McCoury, Tracy Lawrence, Andy Griggs, Aaron Tippin, Striking Matches, Jim Lauderdale, and the television show *Nashville*, among others.
- **Gary Burr.** Gary is a songwriter, producer, musician, and inductee of the Nashville Songwriters Hall of Fame. Gary has written and co-written songs primarily for country artists and for some pop and rock artists, including Juice Newton, Reba McEntire, Patty Loveless, Tim McGraw, Wynonna, Billy Ray Cyrus, Kenny Rogers, Lynyrd Skynyrd, Lisa Loeb, LeAnn Rimes, Ringo Starr, and Kelly Clarkson, among others. Gary has also testified to the US Senate concerning internet piracy from China.
- **David Hodges.** David is a songwriter, musician, vocalist, and producer best known as a member of Evanescence. David has also released albums as a solo artist and with four other bands, and has written songs with or for Kelly Clarkson, Celine Dion, the Backstreet Boys, David Archuleta, Daughtry, Carrie Underwood, Christina Perri, Natasha Bedingfield, Avril Lavigne, Tim McGraw, Josh Groban, and Christina Aguilera, among others. David is a co-founder of Third and Verse, a boutique publishing company that focuses on devoting time, attention, and resources to mentoring new songwriters and fostering their careers long-term.
- **Jennifer Schott.** Jennifer is a songwriter and NSAI board member who has written songs released by top-selling artists in the US, Canada, and Australia, including Tim McGraw, The Eli Young Band, Gloria, Jana Kramer, Lucy Hale, Francesca Battistelli, Billy Ray Cyrus, Pam Tillis, Lonestar, Kelleigh Bannen, Restless Heart, Mickey Guyton, Katie Armiger, and Lucy Walsh.

#### Musical Work Copyright Owner Members

- **Alison Koerper.** Alison is the Director of Publishing Administration at Disney Music Group, the recording and publishing arm of Walt Disney Studios. Disney Music Group controls rights to music in Disney films, television shows, theatrical productions, and theme parks and its imprints include Walt Disney Music, Wonderland Music, Buena Vista Music, Fuzzy Muppet Songs, Marvel Superheroes Music, Pixar Music, and Touchstone Pictures Music & Songs, among others.
- **Ed Leonard.** Ed is the President of both Daywind Music Group and the Christian Music Trade Association, serves on the executive committee of the Gospel Music Association, and is an entertainment attorney. Daywind is a cornerstone of the

Christian music industry, and creates and distributes all genres of Christian music. It includes a publishing arm, multiple record labels, a recording studio, and an online store.

- **Sean McGraw.** Sean is the Vice President for Licensing/Administration at Downtown Music Publishing, one of the world’s premier independent music publishers, where he has worked since its founding in 2007. He is an expert in synch licensing protocol and has been instrumental in developing industry-wide standards and practices. Prior to his time with Downtown, Sean worked at Cherry Lane Music Publishing, Bourne & Co., and Spirit Music Group.
- **Debbie Rose.** Debbie is Vice President at Shapiro, Bernstein & Co., Shapiro Bernstein was founded in 1900 as a Tin Pan Alley sheet music publisher and remains an independent music company and a home for classic songs and legendary songwriters of every era. Debbie is also a board member of AIMP’s New York chapter.
- **Jason Rys.** Jason is Vice President for Copyright and Licensing Administration at Wixen Music Publishing. Jason created a user-friendly copyright termination and reversion calculator on Wixen’s website to simplify and take the guesswork out of determining when rights may be terminated.

#### 4. **Governance Issues**

Section 115(d)(3)(D)(ii) provides that “[n]ot later than 1 year after” designation, the collective shall establish bylaws to determine issues relating to the governance of the collective. It further mandates that these bylaws address length and staggering of terms, and processes for elections of members and filling vacancies, and also “a management structure for daily operation of the collective.” The Board will adopt bylaws and make them public well in advance of the statutory deadline. At this time, particularly as the precise optimal operations development path is still being analyzed, the Board has not finalized a management structure for daily operations<sup>19</sup> and has not adopted bylaws. Nonetheless, foundational policies and procedures to ensure accountability, transparency, fairness and confidentiality can be outlined here.

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<sup>19</sup> Section B.1.b.iv, provides a model organization chart for planning purposes. This chart demonstrates roles for operations (which may be divided between employees and vendors), but has not been finalized or approved by the Board.



**a. Current Board Intentions as to Succession**

Board and Committee members will serve three-year terms, and those terms will be staggered. Thus, initial terms for some members will slightly vary from three years in order to accomplish staggering the terms such that the terms of one-third (or as nearly to one-third as possible) of the elected voting directors expire each year and come up for reelection.

Election of songwriter directors will be by songwriters from a slate of candidates chosen by songwriters. Election of music publisher directors will be by publishers from a slate of candidates chosen by publishers. Consistent with the statute, a publisher may only have one representative as a director, and all corporate parents, subsidiaries and affiliates are considered together as a single publisher. 17 U.S.C. § 115(d)(3)(D)(i)(I)(bb). Midterm vacancies would be filled either by vote of the Board, or by vote of the constituent members for that director seat (*i.e.*, the songwriter or publisher members) in special election.

Regular elections will occur at the annual meeting of members. Nominating committees appointed by the Board will (i) recommend qualifications and standards to serve as a director or committee member; and (ii) identify, evaluate, and recommend a slate of candidates for director or committee member.

Committee members will be appointed by the Board. Committee members who are to be professional songwriters will be appointed from a slate of candidates chosen by songwriters, and committee members who are to be musical work copyright owners will be appointed from a slate of candidates chosen by publishers.

To the extent that the Office suggests in the Notice that the Presidential Signing Statement accompanying enactment of the MMA can grant the Register “the ultimate authority to appoint and remove” Board members of the collective (Notice at 65753), MLC respectfully

disagrees for the reasons stated in the accompanying Memorandum on Legal Questions. (See Section E.5, *infra*.)

**b. Transparency**

MLC is committed to transparency and full accountability to the public.<sup>20</sup> There are numerous safeguards in place to ensure that the Board, Committees, and MLC generally will, to the greatest extent possible, operate in a transparent manner.

*First*, the Committees must report to the Board, which must approve and implement their recommendations. Three nonvoting directors sit on the Board, representing the three stakeholder communities of songwriters, publishers and digital services. A trade group for each stakeholder community thus participates in Board meetings, observes Board votes, and receives copies of Board materials and minutes.

*Second*, The Board must release annual reports to the public under Section 115(d)(3)(D)(vii) with information concerning operational and licensing practices; how royalties are collected and distributed; budgeting and expenditures; collective total costs; projected budget; aggregated royalty receipts and payments; detail on expenses that are more than 10% of the budget; and efforts to locate and identify copyright owners of unmatched works. This is in addition to the oversight and accountability provisions of Section 115(d)(3)(D)(ix), including ensuring that policies and practices are transparent and accountable; identifying a point of contact for publisher inquiries and complaints with timely redress; establishing an anti-

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<sup>20</sup> The legislative history cited by the Office concerns the operation of the three Committees required by the Act. Specifically, it states that those Committees “must operate in a transparent manner to the greatest extent possible in order to avoid unnecessary litigation as well as to gain the trust of the entire music community. Although it would be desirable that the committees reach unanimous decisions, that will not always be possible, in which case a majority vote will control the outcome of the decision.” H.R. Rep. No. 115-651, at 5. While the Board has not yet adopted charters for the committees, those charters will call for the vote of a majority for decisions.

comingling policy for funds not collected and royalties collected under Section 115; and complying with the audit provisions of that Section, including making the audit report available to the public.

*Third*, the composition of the Committees as mandated by the Act will further ensure that the operations of MLC and its Board are transparent and accountable.

The Operations Advisory Committee is tasked with making recommendations to the Board concerning MLC’s operations, “including the efficient investment in and deployment of information technology and data resources.” 17 U.S.C. § 115(d)(3)(D)(iv). The composition of that committee—an equal number of musical work copyright owner representatives and digital music provider representatives—includes stakeholders on both sides of the funding discussion and ensures that both sides have equal input into the discussion. While it is expected that the licensees will share a common interest in investing in and deploying those technological and other resources that are required to efficiently run MLC, Board oversight ensures that resources are adequately provisioned, and the statute provides that unresolved funding issues are to be determined in an administrative proceeding pursuant to Section 115(d)(7), from which a public determination issues.

The Dispute Resolutions Committee is tasked with setting policies and procedures for copyright owners to address in a timely and equitable manner disputes relating to ownership of musical works (*e.g.*, “split disputes”). 17 U.S.C. § 115(d)(3)(K). Such policies and procedures should be of general application, with all disputants facing the same rules. This large and diverse committee, with equal number of musical work copyright owner and professional songwriter representatives, ensures that the interests of all constituencies.

The Act similarly mandates that the Unclaimed Royalties Oversight Committee be composed of an equal number of musical work copyright owners and songwriters. MLC's Unclaimed Royalties Oversight Committee was selected through an open and transparent process resulting in a group of diverse and talented individuals comprising songwriters and music publisher representatives who can ensure that the interests of their constituencies are heard and reflected in the Committee's decisions.

*Fourth*, the Act requires that MLC make public a list of all unmatched musical works, and engage in diligent efforts to publicize throughout the music industry the existence of the collective and the ability to claim unmatched works and unclaimed accrued royalties. 17 U.S.C. § 115(d)(d)(J)(iii). The success of outreach and the availability and accessibility of the claiming portal are of course fully transparent to the public. Moreover, MLC must diligently publicize throughout the music industry any pending distribution of unclaimed accrued royalties (which may not occur before 2023) at least 90 days before distribution.

*Fifth*, the Board will adopt a comprehensive set of written codes, policies, and procedures to govern the conduct of the Board, Committees, and all MLC employees, who will all be expected to review, understand and consent to these policies. These written policies will be consistent with best practices and include:

- Code of Conduct and Ethics
- Conflict of Interest Policy
- Investment Policy (including an Anti-Comingling Policy as mandated in Section 115(d)(3)(D)(ix)(I)(ccc))
- Confidentiality Policy
- Whistleblower Policy
- Document Retention Policy

- Technology and Security Policy
- Non-discrimination Policy
- Anti-Sexual Harassment Policy
- Social Media Policy
- Gift Acceptance Policy

The Board considers accountability and transparency to be bedrock principles for the collective, and will ensure that compliance with best practices is monitored and documented.

**c. Conflicts of Interest**

Each of the Board members understands and acknowledges their duties of care, loyalty and obedience to the statutory mission of the collective. The Board appreciates that in serving MLC they act not in their personal interests or the interests of related parties, but rather solely in the interest of MLC, and that this is a legal obligation. As Delaware law explains,

Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. . . . A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate officer or director, peremptorily and inexorably, the most scrupulous observance of his duty, not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers. The rule that requires an undivided and unselfish loyalty to the corporation demands that there be no conflict between duty and self-interest.

*Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

In addition, as noted above, each Board and Committee member and employee will have to review and agree to compliance with the terms of a Conflict of Interest Policy. While the Board has not yet adopted the Conflict of Interest Policy, the policy will be in accordance with governance best practices and will require disclosure of all actual or potential conflicts. This includes but is not limited to having a financial interest (direct or indirect) in any contemplated

MLC transaction, or relationship with any counterparty to such transaction. After review and disclosure of all material facts, the Board will, without participation of the potentially interested individual, determine whether a conflict of interest exists. The Conflict of Interest Policy will also set forth procedures for transparently addressing and documenting all conflicts, and will provide for investigation of violations of conflict disclosure obligations, along with disciplinary action that may include removal for cause.

MLC expects all associated persons to fully comply with all applicable law, including the mandates of Section 115, and all fiduciary and ethical obligations, and will enforce such obligations, which may include removal for cause, in the event of a demonstrated violation of applicable law or duty.

**d. Confidential Information**

MLC will require that all persons involved in its governance or operations review, acknowledge in writing, and comply with a written confidentiality policy that will safeguard private, sensitive or confidential information, including information regarding any marketplace rival. Indeed, many MLC Board and Committee members are already involved with trade or collective organizations where this is an issue, and the importance of consistent enforcement of such confidentiality safeguards are not at all controversial.

Notably, the MLC Publisher Trade Group director is a representative of NMPA, a nonprofit trade organization that has on its Board numerous individuals employed by different music publishers who are marketplace rivals. NMPA has long experience navigating issues relating to the use or disclosure of sensitive or confidential competitive commercial information from the musical works market, similar to issues that MLC will face, and can advise and provide support to MLC in developing policies to address these issues. Moreover, several Board and

Committee members, including both songwriter and publisher representatives, are serving or have served on the board of other industry organizations (*e.g.*, ASCAP) that face similar issues and are familiar with the policies and procedures put in place by those organizations to address them. There is simply no dissent on the importance of these policies, and plenty of experience to implement them effectively.

## **SECTION D**

# Indicia of Endorsement and Support



The statute instructs that the collective must be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.” 17 U.S.C. § 115(d)(3)(A).

As discussed below, annexed to this proposal are letters of endorsement and support from musical work copyright owners that together represent the vast majority of the licensor market for uses of musical works in covered activities. (*See* Exhibits 11-A to 11-W.) These letters show not just endorsement, but detail commitment to providing substantial support to MLC including through active participation, resources, and voices and platforms to reach the music community. Also annexed hereto is a list of thousands of individual copyright owners that also support MLC for designation. (*See* Exhibit 5-A.)

A letter of endorsement and support from nearly every leading trade group in the music industry is also annexed. (*See* Exhibit 11-X.) While this show of support is not necessary under the statute, MLC wishes to emphasize how important broad industry support is to building an effective collective that is known, understood and utilized by the full community of copyright owners and songwriters. Active collaboration and support throughout every stakeholder group in the music industry was essential to bringing the MMA into law, and remains essential to operating the collective fairly, effectively and efficiently.

**1. Questions Regarding The Endorsement Criteria of Section 115(d)(3)(A)**

The Memorandum on Legal Questions (Section E, *infra*) addresses in detail several issues of statutory interpretation in connection with endorsement criteria. A brief summary is noted here before proceeding to explanation of how MLC meets the Section 115(d)(3)(A) criteria:

- a. *“The Office understands that there may be conflicting views regarding how the ‘greatest percentage of the licensor market’ should be measured—i.e., in market value, or in number of licenses.”*

As discussed in detail in the Memorandum on Legal Questions, the only reasonable interpretation of the statutory language in Section 115(d)(3)(A)(ii) is that the collective shall be the entity that has the endorsement and support of copyright owners that together received during the statutory three-year period the largest aggregate percentage of total mechanical royalties of any entity seeking designation as the collective. MLC does not believe that there is any basis in the text, legislative history, or reason, to use “number of licenses” (or any other metric) to measure “the greatest percentage of the licensor market for uses of [musical works] in covered activities.” (See Section E.3.a, *infra*.)

- b. *“Endorsement may be shown by including musical work copyright owners located outside the United States so long as they control the relevant rights to works played or otherwise distributed in the United States.”*

MLC agrees with the Office’s view on this question. Notice at 65753. The relevant ownership interest is ownership of the right to reproduce and distribute musical works in Section 115 covered activities in the U.S. Those persons or entities that own or control such U.S. rights (whether by an assignment or by exclusive license) should be included in the endorsement calculation, regardless of whether such person or entity itself is located inside or outside of the U.S. (See Section E.3.b, *infra*.)

- c. *“[R]elevant support should come from the parties who have a relevant ownership interest in the copyright to musical works (or shares of such works), in contrast to parties who do not possess any ownership interest in the musical work but rather the ability to administer the works.”*

MLC further agrees with the Office that the relevant support should come from the parties who have a relevant ownership interest in the copyright to musical works (or shares of such works). Notice at 65753. However, for clarity, and for the reasons stated in the

Memorandum on Legal Questions (Section E.3.c, *infra*), those who have a relevant ownership interest in the copyright to musical works (or shares of such works) should include entities that have been granted exclusive licenses of the right to reproduce and distribute musical works in Section 115 covered activities, as, under the Act, an exclusive licensee of a particular exclusive right comprised in a copyright is the owner of that copyright right. 17 U.S.C. § 101. This is true even if the exclusive license is granted in a document denominated an “administration agreement.” On the other hand, those who engage solely in “back office” or similar activities, such as identifying or matching rights, or collecting, accounting and distributing royalties or revenues, are not owners of any rights under copyright, and support from any such person or entity cannot be considered by the Office in determining which entity seeking designation has demonstrated that it is endorsed by, and enjoys substantial support from, musical work copyright owners that represent the greatest percentage of the licensor market for uses of such works in covered activities over the preceding three years, as required by Section 115(d)(3)(A). (*See* Section E.3.c, *infra*.)

## **2. MLC Is The Only Entity That Meets The Statutory Endorsement Criteria**

MLC is the only entity that is “endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.”

To begin with, the statutory language provides that one, and only one, entity meets this criterion. The “greatest percentage” is a plurality requirement in the context of entities seeking designation, meaning the entity with endorsement and support from licensors who have received the largest aggregate share of mechanical royalties from the uses of their musical works meets this criterion. That said, MLC has the exclusive endorsement and substantial support from the vast majority of the licensor market for mechanical uses, and from the owners of the exclusive

rights to license millions of musical works, so there is really no interpretation of this support provision that does not call for MLC to be the collective.

To date, 132 musical work copyright owners (the “**Supporting Copyright Owners**”) have confirmed that they endorse, and have pledged to provide (or have already provided and pledge to continue to provide) substantial support to MLC. (Exhibit 11 (Israelite Decl.) ¶ 13.) The endorsement and support of the Supporting Copyright Owners is documented in letters compiled by NMPA, the leading publisher trade group, and annexed to the accompanying sworn declaration of David Israelite. (*Id.* & Exhibits 11-A to 11-W). The Supporting Copyright Owners include copyright owners of all sizes who own the relevant rights in musical works covering the spectrum of musical genres—including pop, rap, hip hop, R&B, country, rock, metal, reggae, folk, electronic, jazz, classical—and from every era—including popular current hits and “evergreen standards.” (*See id.*) Their sizes range from major music publishers who own the relevant rights to millions of songs, to small, family-owned companies that focus on a particular genre or sub-genre. (*See id.*) The Supporting Copyright Owners own the mechanical rights to, at a minimum, well over seven million musical works. (*Id.* ¶ 20.)<sup>21</sup>

In addition to the Supporting Copyright Owners, MLC is endorsed by over 2,400 songwriters. Over 1,400 of these endorsing songwriters have reported that they are self-published songwriters, meaning they are not signed to or affiliated with a music publisher and

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<sup>21</sup> Given that many musical works are recorded (i.e. “covered”) multiple times by different artists and are also embodied in multiple live recordings, the number of “tracks” or recordings on digital music services that embody the musical works of the Supporting Owners is a substantially greater number. (*Id.*)

manage their own musical work copyrights. A list of these endorsing songwriters is annexed as Exhibit A to the sworn Declaration of Bart Herbison (NSAI).<sup>22</sup>

As shown in the Israelite Declaration (Exhibit 11 ¶¶ 14-18), the Supporting Copyright Owners represent the vast majority of the licensor market for uses of musical works in covered activities in the U.S. during the preceding 3 full calendar years, i.e., from 2016 through 2018 (the “**Covered Period**”). That is, the Supporting Copyright Owners together received the vast majority of total mechanical royalties for uses of musical works in covered activities in the U.S. during the Covered Period. This is, of course, more than the plurality that is required of the collective.

Industry data, including revenue information that NMPA collects from its members on an annual basis and publicly available data, demonstrates that the Supporting Copyright Owners represent between 85% and 90%<sup>23</sup> of the licensor market for all uses of musical works during the Covered Period. (*Id.* ¶¶ 15-17.)<sup>24</sup> Moreover, NMPA was able to confirm from information regarding the U.S. mechanical royalties paid by Apple Music and Spotify – the largest and most popular services in the market – that the Supporting Copyright Owners have together received

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<sup>22</sup> MLC was not able to obtain or collect revenue and market share information from these endorsing self-published songwriters, so their market share was not included in the share estimates discussed below. If they had been included, those estimates would be even greater.

<sup>23</sup> This range may actually underestimate the Supporting Copyright Owners’ share of the licensor market for all uses of musical works during the Covered Period for the reasons discussed in the Israelite Declaration (*id.* ¶ 16), and also because it does not include the market share of the over 1,400 self-published songwriters that have endorsed MLC.

<sup>24</sup> In fact, the Office’s own groundbreaking report on the music industry, *Copyright and the Music Marketplace*, further confirms the overwhelming market share of the Supporting Copyright Owners. The Office noted in that report that, as of the date of the report, Supporting Copyright Owners Sony/ATV, Warner/Chappell and Universal Music Publishing Group “together control over 60% of the music publishing market.” U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 19 (2015).

the substantial majority of total mechanical royalties for uses of musical works in covered activities in the U.S. during the Covered Period. (*Id.* ¶¶ 17-19.)

The same broad collaboration and tireless work that went into moving the MMA to enactment has moved MLC forward. It is no accident that MLC is endorsed by copyright owners with far and away the greatest percentage of licensor market share for uses of musical works in covered activities. As much as any entity could be, MLC was formed collectively by the whole community of songwriters and musical work copyright owners, large and small.

### **3. MLC Is Also Endorsed And Supported By A Diverse Group Of Music Industry Stakeholders**

In addition to the thousands of songwriters and musical work copyright owners identified above and in the songwriter and publisher endorsement letters and trade group declarations (*see* Exhibits 5 through 11-X), MLC is also endorsed and supported by nearly the entire music industry, including:

- All four musical work performing rights organizations (ASCAP, BMI, SESAC and GMR) (*See* Exhibit 11 (Israelite Decl.) ¶ 21; Exhibit 11-X);
- Major music associations in the U.S., including A2iM, AIMP, the American Composers Alliance, the Americana Music Association, AMRA, “And The Writer Is”, California Copyright Conference, CMPA, Copyright Alliance, Creative Future, Gospel Music Association MPA, NMPA, NSAI, RIAA, PMA, and SONA (*id.*); and
- Many of the most important record labels in the world, including Sony Music, Universal Music Group, and Warner Music Group (*Id.*).

While the MMA does not require the showing of such endorsements, that MLC is supported by virtually the entire music industry—including those with diverse and competing interests—is an important indicium of the support it will receive and its ability to motivate collaboration, access resources, and reach the entire music industry to educate the public, identify copyright owners, match uses and works, minimize unclaimed accrued royalties, and increase participation in the collective and accurate payouts to the rightful copyright owners of

all musical works exploited in covered activities. MLC is excited to help forge a new, “multi-platinum” age in musical works licensing.

## **SECTION E**

# Memorandum on Legal Questions Raised By the Notice



## 1. **Introduction**

In this memorandum (the “**Memorandum on Legal Questions**”),<sup>25</sup> MLC addresses various legal issues raised in or by the Copyright Office’s Notice. This memorandum is provided in connection with MLC’s proposal for designation as the collective pursuant to Section 115(d)(3)(B)(i) of the U.S. Copyright Act, as amended by the MMA.

## 2. **Eligibility of Administrators for Collective’s Board**

The Notice asks:

Whether the proposed [collective] believes that the board members who are ‘representatives of music publishers ... to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities’ could include representatives of music publishing administrators, where copyright ownership interests are not transferred to the publisher, but remain with the songwriter(s).

Notice at 65752.

MLC believes that the statute itself answers the question posed by the NOI: a representative of a music publishing entity is qualified to serve on the board if that entity has been assigned exclusive rights of reproduction and distribution by songwriters with respect to covered activities. Regardless of whether it is labeled a “music publisher” or a “music publishing administrator,” if the entity meets the statutory test, its representative qualifies for a seat on the board.

Certainly, a music publisher to which one or more songwriters have assigned all copyright rights in musical works written by those writers would qualify as a publisher “to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities,” as required by Section 115(d)(3)(D)(i)(I). Moreover, because

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<sup>25</sup> This legal memorandum was prepared jointly by Pryor Cashman LLP and Covington & Burling LLP.

copyright rights are divisible, and any of the exclusive rights comprised in a copyright may be transferred in whole or in part and owned separately, 17 U.S.C. § 201(d), a music publisher to which one or more songwriters have assigned solely the exclusive right to reproduce and distribute (but not, for example, to publicly perform) musical works written by those writers would also qualify as a publisher “to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities,” as required by Section 115(d)(3)(D)(i)(I). Finally, an exclusive licensee of a particular exclusive right comprised in a copyright is the owner of that copyright right. 17 U.S.C. § 101 (“A ‘transfer of copyright ownership’ is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.”). Thus, an exclusive licensee of solely the right to reproduce and distribute musical works in Section 115 covered activities would also qualify as a publisher “to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities,” as required by Section 115(d)(3)(D)(i)(I).

Indeed, where a copyright owner grants an exclusive license to a third party with respect to one or more particular rights, such as the rights to reproduce and distribute the work, even if the copyright owner retains ownership of the copyright in the work (or retains such rights in territories other than the United States or has exclusively licensed the rights only for a certain period of time), the exclusive licensee is the only entity that may license or otherwise exploit such rights. *See, generally, Davis v. Blige*, 505 F.3d 90, 101 (2d Cir. 2007). The exclusive licensee may preclude even the copyright owner from licensing or otherwise exploiting such

right and, if the copyright owner licenses or exploits such right, it can be considered an infringer.<sup>26</sup>

There are many agreements between songwriters and music publishers that may use the nomenclature of “administration agreements,” but grant to the music publishers exclusive licenses (in some cases for a fixed period or term) to reproduce and distribute musical works (and to license others to do so). To the extent that any music publishing entity has been granted by songwriters an exclusive license to reproduce and distribute those songwriters’ musical works in Section 115 covered activities, such entity is acting as a music publisher and, under the statute, is the same as a music publisher to which songwriters have assigned a copyright interest in their musical works with respect to its ability to serve on the board of the collective.

On the other hand, to the extent that a music publisher or other entity engages solely in “back office” or similar activities with respect to rights in musical works, but does not acquire any exclusive right to reproduce and distribute musical works, such entity is not a music publisher “to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities,” and representation of such an entity does not qualify one to sit on the board of the collective. This would exclude, for example, entities that solely identify uses of copyrights or that solely collect and distribute royalties, but that do not own any exclusive rights to license, and do not license, musical works for covered activities.

Moreover, the MMA’s requirement that ten voting board members be “representatives” of qualifying music publishers can only be understood to require that each board member be an

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<sup>26</sup> See 3 NIMMER ON COPYRIGHT § 12.02(C) (“Once the copyright owner grants an exclusive license of particular rights, only the exclusive licensee, and not his grantor, may sue for later-occurring infringement of those rights. Indeed, the licensor may be liable to the exclusive licensee for copyright infringement, if the licensor exercises rights that have theretofore been exclusively licensed.”); *Id.* § 12.02(B)(1) (“As the owner of ‘an exclusive right under a copyright,’ an exclusive licensee is ‘entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it.’”).

actual employee, officer, or board member of such publisher, and may not be merely the outside counsel or a third-party agent of such publisher. If such third-party individuals could qualify, virtually anyone would be able to sit on the board of the statutory collective merely by stating that he or she “represents” a music publisher in some manner. Given the specific qualifications for board members set forth in the statute, such a result could hardly be Congress’s intent. Rather, by “representatives” Congress undoubtedly meant only to signify that the publishing entities themselves would not be board members. *See American Tobacco Co. v. Patterson*, 456 U.S. 63, 71 (1982) (“Statutes should be interpreted to avoid untenable distinctions and unreasonable results wherever possible.”).

### 3. **Endorsement Criteria**

In the Notice, the Office asks how the candidate for designation “interprets and satisfies the endorsement criteria” required by Section 115(d)(3)(A), that the collective be a single entity that “is endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.” In particular, the Office notes the following issues for consideration:

- (1) Whether the “greatest percentage of the licensor market” for uses of musical works in covered activities<sup>27</sup> should be measured by “market value, or in number of licenses,” or by some other metric.
- (2) Whether the relevant market for making and distributing in the U.S. phonorecords of musical works include musical work copyright owners located outside of the United States provided they control the relevant rights to works played or otherwise distributed in the U.S.

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<sup>27</sup> “Covered activities” is defined in the MMA as digital phonorecord deliveries in the form of permanent downloads, limited downloads, and interactive streams. 17 U.S.C. § 115(e)(7).

- (3) Whether “the relevant support . . . come from the parties who have a relevant ownership interest in the copyright to musical works (or shares of such works), in contrast to parties who do not possess any ownership interest in the musical works but rather the ability to administer such works”

Notice at 65753.

**a. Support From The “Greatest Percentage Of The Licensor Market” Means Support From Licensors Earning The Largest Aggregate Percentage of Total Mechanical Royalties**

Section 115’s requirement that the collective be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of [musical] works in covered activities, as measured over the preceding 3 full calendar years,” means that the collective shall be the entity that has the endorsement and support of copyright owners that together earned the largest aggregate percentage of total mechanical royalties of any entity seeking designation as the collective.

Notably, the provision envisions that there is one, and only one, entity that will meet this criterion. The “greatest percentage” can have only one meaning in context, which relates to designation, meaning the entity whose endorers have the largest market share among the entities that seek designation as the collective. In other words, it is a plurality requirement, not a majority requirement (although to be clear, MLC has the exclusive endorsement of, and support from, the overwhelming majority of the mechanical licensor market). This meaning is not only required by the text, as discussed in detail below, it is the logical interpretation. The collective is a private entity that will collect mechanical royalties on behalf of copyright owners. It follows that the group of copyright owners with the most royalties at stake—the largest aggregate share of the royalty pool that the collective will have authority to license—should voice who is entrusted with that authority.

The Notice suggests that there may be “conflicting views” regarding “how the ‘greatest percentage of the licensor market’ should be measured—*i.e.*, in market value, or in number of licenses.” Notice at 65753. MLC does not believe that there is any basis—either in the text or the legislative history of the MMA, or in logic—to use “number of licenses” or any metric other than revenues from usage in connection with this criterion.<sup>28</sup> The framing of the issue in the Notice quotes the language “greatest percentage of the licensor market,” but omits the statutory description of the market. If the statute had referred only to a “greatest percentage of the licensor market,” with nothing more, its meaning might be subject to some debate (although it would still be most reasonable to interpret it as referring to those licensors who collectively and relatively have the greatest share of the market). The statute is more precise, referencing “musical work copyright owners that together represent the greatest percentage of the licensor market *for uses of such works in covered activities*, as measured over the preceding 3 full calendar years.” The full language leaves no ambiguity.<sup>29</sup>

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<sup>28</sup> The House and Senate Reports for the MMA summarize the endorsement criteria in abbreviated fashion, suggesting that it involves a “majority of musical work copyright owners as measured over the preceding three years.” H.R. REP. NO. 115–651, at 26 (2018); S. REP. NO. 115–339, at 22 (2018). If taken literally, rather than as a shorthand description of market share, this contradicts the actual statutory text in 17 U.S.C. § 115(d)(3)(A)(ii), and thus carries no weight and cannot be relied upon for purposes of statutory interpretation. *See Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (“When [statutory] text and legislative history disagree, the text controls.”); *see also U.S. v. Clark*, 454 U.S. 555, 560 (1982) (“If the statutory language is clear, it is ordinarily conclusive.”). The MMA nowhere states that the collective must enjoy support from a “majority” of musical work copyright owners or musical work copyrights, or any kind of “majority” at all. The MMA uses the phrase “greatest percentage of the licensor market.” As discussed below, “percentage” refers to market *share* and “greatest” refers to a plurality (sometimes known as a “relative majority”), not an absolute majority, and the only context for a plurality determination is as part of the designation process. Finally, as discussed below, endorsement from a “majority” of copyrights or copyright owners as measured by a numerical count is inconsistent with the statute’s requirement that endorsement be measured by “uses” of works, and would also be impossible for any entity to demonstrate, given that there is no way to know the total universe of copyrights or copyright owners, as copyrights do not even need to be registered to subsist or to fall under the statutory blanket license.

<sup>29</sup> Under the “surplusage” canon of statutory interpretation, there is a “presumption that each word Congress uses is there for a reason.” *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659

An analysis can begin with the fact that “percentage of the ... market” means “market share.” “Share” is synonymous with “percentage,” and there is no reasonable alternative interpretation of “percentage of the market” that is not “market share.”<sup>30</sup> Thus, this provision calls for a calculation of market share. The next question is: a share of what market? As the statute explains, it is the market “for uses of [musical] works in covered activities, as measured over the preceding 3 full calendar years.” This is critical, as it makes clear that it is not a measurement of the number of licenses, or the number of copyright owners, or the number of works. It is a measurement of *usage*, specifically in covered activities over a specified period of time. To wit:

1. “Percentage of the ... market for uses” calls for a percentage of total *usage*.
2. “Percentage of the ... market for uses of [musical] works in covered activities” calls for a percentage of *total usage of musical works in covered activities*.
3. “Percentage of the licensor market for uses of [musical] works in covered activities” calls for a percentage of total usage of musical works in covered activities ***as measured with respect to licensors***.

Alternative interpretations are untenable under text, principle, and practice:

- “Percentage of the number of total licenses” is inscrutable as a metric, as there is no agreeable definition or practice for how to count up licenses. Would a single blanket

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(2017). Thus, the goal “is to give effect, if possible, to every clause and word of a statute.” *Id.* (internal quotation marks omitted); *see also Jones v. U.S.*, 527 U.S. 373, 393 (1999) (“Statutory language must be read in context and a phrase gathers meaning from the words around it.”) (internal quotation marks omitted).

<sup>30</sup> The definition of “market share” is “the percentage of the market for a product or service that a company supplies.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/market%20share>. And share plainly means a portion or percentage. The Notice itself repeatedly uses the term “share” in connection with musical work ownership, which is of course in reference to percentages of ownership.

agreement that covers one million separate musical works for ten years be one license or one million licenses? If the same agreement was instead for one year and was then extended annually for nine more years, would it be one license, ten licenses, one million licenses, or ten million licenses? (And would it change if the annual extensions were opt-out instead of opt-in?) If the agreement licensed usage in a streaming offering and separately in a downloading offering, of course with different rates and terms, would it be one license, two licenses, ten licenses, twenty licenses, one million licenses, two million licenses, ten million licenses, or twenty million licenses? Is the conveyance of a fractional share of a work a fraction of a license? If not, how many licenses can be “counted up” in connection with a single use of a single work? There is nowhere to even begin to answer these questions because an absolute number of licenses has never been a metric in the industry for assessing market share.<sup>31</sup>

- “Percentage of the number of total copyright owners” as a market share calculation would imply a market where the product is copyright owners. This of course is not sensible or relevant. The statute states that the market to be measured is for *usage of musical works in covered activities*. And beyond being irrelevant under the statute, practically speaking, there is no way of determining the total number of musical work copyright owners. Registration is not a prerequisite to being a copyright owner,<sup>32</sup> and there is no way of reasonably estimating

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<sup>31</sup> These definitional problems do not even address the larger conceptual problem with the idea that owners of musical works that are not being streamed or earning royalties could be deemed to have the same market share as owners of works that are streamed billions of times and earn substantial royalties. Such an interpretation makes a mockery of the language of the statute.

<sup>32</sup> The technical count of musical work copyright owners would include not simply professional songwriters and publishers, as well as at-home, amateur, and DIY self-published songwriters, but also anyone who creates an original lullaby or shower song. And all copyright owners are by definition potential licensors. These realities only underscore the textual irrelevance of discussing counts of copyright owners divorced from market usage.



total musical work copyright owners so as to determine percentage of total copyright owners.<sup>33</sup>

- “Percentage of the number of total musical works” as a market share would imply a market where the product is musical works themselves. Of course, there is a market for ownership of musical works, but Section 115 clarifies that the market here is one for “uses of [musical] works in covered activities.” If a percentage of the number of total musical works was desired, the criterion would be endorsement of “copyright owners that together own the greatest percentage of total musical works.” This criterion also suffers from the same problem as the percentage of total copyright owners. There is, practically speaking, no way to determine what the total number of musical works is, as registration is not required.

The next step is determining how to measure the percentage of total usage of musical works in covered activities, with reference to licensors. Percentage of total revenues from usage is the natural interpretation.<sup>34</sup> A licensor’s market share is generally understood as the total

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<sup>33</sup> Nor can this problem be ignored by using just a numerical count of endorsing copyright owners. A percentage of the total market is required. Section 115(d)(3)(A)(ii) is not the only provision of the MMA that implicates the market “for uses of musical works in covered activities.” Section 115(d)(7)(D)(v) requires the Copyright Royalty Judges to approve a negotiated administrative assessment if it has been agreed to by the collective and, if no DLC has been designated, “interested digital music providers and significant nonblanket licensees representing more than half of the market for uses of musical works in covered activities.” (emphasis added) Thus, the CRJs would have to calculate against the total market to confirm what is 50% of the market. This criteria could not be determined if “market for uses of musical works in covered activities” was somehow twisted into calling for a percentage of an unknowable quantity such as potential licensing parties.

<sup>34</sup> One might argue for a metric based on user activity, such as calculating a percentage of total streams. This cannot suffice, though, as downloads are also covered activities. There would need to be a reliable metric for converting counts of downloads to streams so as to combine them fairly, and none is available. (This issue was before the CRJs in the recent *Phonorecords III* proceeding, and as the determination indicates, there was no evidence indicating a reliable metric for “converting” streams to downloads or *vice versa*. (84 Fed. Reg. 1918 (Feb. 5, 2019), at 1946)) Also, practically speaking, a metric based on user usage is going to align with a metric based on licensor revenues, as the statutory royalty rates for both streaming and downloading are tied to usage. The royalty rate for permanent downloads is a penny rate, while the royalty rates for streaming create a single royalty pool for each offering and divide it up *pro rata* based on stream counts. In either instance, within any given offering and accounting period, a

value that the licensor receives for uses of its works in a market divided by the total value that all licensors receive for all competitor works in that market.<sup>35</sup> As Congress was undoubtedly aware in specifying that the collective should have the support of copyright licensors representing the greatest percentage of the market for uses of musical works in covered activities, market share is commonly used as a comparative measure in the music industry.<sup>36</sup>

That the only reasonable interpretation of “market for uses of [musical works]” is the market in economic terms is further supported by the fact that the Digital Licensee Coordinator qualification provision (115(d)(5)) has nearly verbatim language. It provides that the DLC is to be supported and endorsed by licensees “that together represent the greatest percentage of the *licensee* market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.” 17 U.S.C. § 115(d)(5)(A)(ii) (emphasis added). The parallel language indicates that what is being focused upon is the licensee and licensor market share for the uses of musical works in covered activities, as measured by royalty payments. The collective designation criterion references total mechanical royalty payments made to *licensors* to obtain licensor

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musical work with more usage will wind up with more royalty revenues. Thus, using mechanical royalty revenue share should also proxy well for actual usage by users in covered activities.

<sup>35</sup> See INVESTOPEDIA, <https://www.investopedia.com/ask/answers/033015/how-do-i-determine-particular-companys-market-share.asp> (“A company’s market share is its sales measured as a percentage of an industry’s total revenues.”).

<sup>36</sup> See U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 9, 20, 147, 153, 191 (2015) (referencing “market shares” of various music industry participants); see also, e.g., *UMG and WMG make recorded-music market share gains, Sony outperforms in publishing, Music & Copyright* (May 15, 2018) available at <https://musicandcopyright.wordpress.com/2018/05/15/umg-and-wmg-make-recorded-music-market-share-gains-sony-outperforms-in-publishing/> (reviewing respective market shares of major music companies in digital and physical markets)

market share, while the DLC designation criterion references total mechanical royalty payments made by *licensees* to obtain licensee market share.<sup>37</sup>

An alternative measurement of the market would not fit across the different provisions that utilize this language in Section 115. Likewise, the language calling for the market share to be “as measured over the preceding 3 full calendar years,” indicates a royalty revenue metric. How and why would number of licenses, number of copyright owners, or number of musical works be measured “over the preceding 3 full calendar years”? Would a license (or musical work or copyright owner) that came into being three years ago count for a higher percentage than one that came into being one year ago? If not, then how does measuring the percentage over a three-year period work? And if so, why would that be appropriate or relevant? Indeed, there is no logic behind discarding the plain language of the provision, and no alternative measurement that fits with the statute’s repeated reference to the market for uses of musical works in covered activities.

**b. Endorsing Licensors Who Own Or Control U.S. Rights In Covered Activities Should Be Included In The Calculation, Regardless Of Where Located**

MLC agrees with the Office that “[e]ndorsement may be shown by including musical work copyright owners located outside the United States so long as they control the relevant rights to works played or otherwise distributed in the United States.” Notice at 65753. The relevant ownership interest is ownership of the right to reproduce and distribute musical works in Section 115 covered activities in the U.S. Those persons or entities that own or control such

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<sup>37</sup> This market “for uses of musical works in covered activities” is also referenced in connection with the qualification of the nonvoting publisher trade group director (Section 115(d)(3)(D)(i)(III)), the qualification of the nonvoting licensee representative director (Section 115(d)(3)(D)(i)(IV)), as well as the above-referenced uses in connection with DLC designation and approval of negotiated administrative assessments.

U.S. rights (whether by assignment or exclusive license) should be included in the endorsement calculation, regardless of whether such person or entity itself is located inside the U.S.

**c. The Only Relevant Support Is Support From Those Who Own The Right To License Musical Works In Covered Activities In The U.S.**

MLC also agrees with the Office that the relevant support for the collective should come from the parties who have a relevant ownership interest in the copyright to musical works (or shares of such works). Notice at 65753. However, for clarity, for the reasons stated in Section E.2 above (in connection with MLC's views as to whether representatives of "music publishing administrators" to which "copyright ownership interests" have not been transferred "but remain with the songwriter(s)" qualify to serve on the board of the collective), those who have a relevant ownership interest in the copyright to musical works (or shares of such works) should include entities that have been granted (whether by assignment or exclusive license) the exclusive right to reproduce and distribute musical works in Section 115 covered activities, as, under the Act, an exclusive licensee of a particular exclusive right comprised in a copyright is the owner of that copyright right. 17 U.S.C. § 101. This is true even if the exclusive right is assigned or exclusively licensed in a document denominated an "administration agreement." On the other hand, those who engage solely in "back office" or similar activities, such as identifying or matching rights, or collecting, accounting, and distributing royalties or revenues, are not owners of any rights under copyright, and support from any such person or entity should not be considered by the Office in determining which entity seeking designation has demonstrated that it is endorsed by, and enjoys substantial support from, musical work copyright owners that represent the greatest percentage of the licensor market for uses of such works in covered activities over the preceding three years, as required by Section 115(d)(3)(A).

#### **4. The Notice's Informational Requests**

##### **a. Scope of Requests**

MLC appreciates that the considerable breadth and scope of the Office's inquiries are designed to aid the selection process and to ensure that the entity selected is the one best able to satisfy the Act's requirements and to fulfill the duties required of the collective. MLC observes, however, that the Notice includes a number of requests for information that go beyond what is required for the designation process as set forth in the MMA.

By way of example, the Notice seeks "[d]raft bylaws or other documentation regarding" "transparency and accountability." Notice at 65753. But the relevant provisions of the MMA require only that the collective establish its bylaws within a year after designation and that the policies and practices to be adopted by the collective be transparent and accountable. *See* 17 U.S.C. §§ 115(d)(3)(D)(ii); 115(d)(3)(D)(ix). The MMA does not require draft bylaws or other governance documentation at this early, application stage.

Similarly, the Notice requests that proposals for designation address whether board members (or, presumably with respect to board members who represent music publishers, the publishers that they represent) intend to license covered activities through the proposed collective or whether, and to what extent, they intend to license covered activities directly with licensees. Respectfully, the MMA does not require that board members of the proposed collective (or the publishers that they represent) intend to license covered activity through the collective. Nevertheless, we understand that the publishers represented by the publisher board members of MLC all expect to license musical works that they own and administer through MLC.

The Notice also indicates that the Register will seek public comment on the collective's board members, including whether the public "support[s] such individuals begin appointed for these provisions." *See* Notice at 65748–49. As discussed below, the collective is a private, nonprofit entity—not a government entity. Accordingly, the text of the MMA makes no provision for public input into the process of selecting board members. *See generally* 17 U.S.C. § 115. Indeed, the statute provides that the collective will promulgate its own bylaws, which shall include how members of its board will be selected. *Id.* § 115(d)(3)(D)(ii).

In making the informational requests discussed above, and in other areas of the Notice, the Office relies on the legislative history of the MMA rather than the statutory text. MLC respectfully submits that, to the extent that such legislative history alters or contravenes the text of the MMA, including to expand the scope of information required to be provided by an applicant seeking designation at the time of submission, the Office may not rely on such legislative history and should adhere to the plain language of the statute. *See U.S. v. Woods*, 571 U.S. 31, 46 n. 5 (2013) ("Whether or not legislative history is ever relevant, it need not be consulted when, as here, the statutory text is unambiguous."); *see also Darby v. Cisneros*, 509 U.S. 137, 147 (1993) ("Recourse to the legislative history ... is unnecessary in light of the plain meaning of the statutory text."); *Northwest Environmental Defense Center v. Bonneville Power Admin.*, 477 F.3d 668, 683 (9th Cir. 2007) ("[I]t is contrary to law for an agency to conclude that it is legally bound by language in a congressional committee report.").

MLC understands and appreciates that the Office is seeking to have as much information as possible so that it can make the best and most informed decision, and MLC has endeavored to make the most thorough submission and to proffer as much relevant information as possible in response to all of the Office's inquiries. However, to the extent that the Notice requests

information that the MMA does not require applicants seeking designation to provide at the time of proposal, and MLC has not (or the Office believes MLC has not) provided such information in or with this submission, MLC respectfully reserves the right to provide it upon request, if and when it is available, if appropriate, or provide it at a later date when required by the MMA.

**b. Confidentiality of Government Submissions**

In certain instances, the Notice requests types of information that may constitute trade secrets or other sensitive commercial or financial information, including contractual terms, planned technological and business methods, and responses to requests for information and proposals. *See, e.g.*, Notice at 65751–52. In responding to the Notice, MLC omits such confidential and proprietary information from its public comment submission. If the Copyright Office needs to review additional confidential information to assist with its deliberations, MLC is happy to provide such information in a secure manner for the confidential review of the Copyright Office.<sup>38</sup>

**5. The Collective’s Board Succession and Appointment Powers**

Notwithstanding that the statute makes clear that the collective is to prescribe its own bylaws and elect its own board, in signing the MMA, the President offered the inconsistent and confusing view that succeeding board members of the collective are “officers of the United

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<sup>38</sup> Government agencies are tasked with treating the confidential and proprietary information of private entities with care. Consistent with the goal of “protect[ing] from disclosure certain information which is highly valuable to ... important industries and which should be kept confidential when it is contained in government records,” “private business information should be afforded appropriate protection” by agencies. *Union Oil Co. of Cal. v. Fed. Power Comm’n*, 542 F.2d 1036, 1044–45 (9th Cir. 1976) (finding that an agency’s order requiring a submission of detailed information containing trade secrets would cause substantial competitive harm, as well as being arbitrary and capricious); *see also Qwest Commc’ns Int’l Inc. v. F.C.C.*, 229 F.3d 1172, 1180, 1183–84 (D.C. Cir. 2000) (holding that requiring disclosure of raw audit data to competitors in connection with notice of inquiry was not permissible because the FCC had not explained why disclosure was required and consistent with its policy on treatment of confidential information).

States” whose appointment must be confirmed by the Librarian of Congress.<sup>39</sup> The Notice “invites comment regarding how the proposed [collective] intends to address issues relating to succession of board and committee members, and any other obligations that may be impacted by” the Presidential Signing Statement (the “**Signing Statement**”) that accompanied enactment of the MMA. Notice at 65753.

The short answer is that the Signing Statement is not law and has no impact on the selection or succession of board members of the collective. As set forth in the Notice, the Signing Statement expresses the view that “directors of the [collective] are inferior officers under the Appointments Clause of the Constitution, and that the Librarian of Congress must approve each subsequent selection of a new director. It also suggests that the Register work with the [collective], once designated, to address issues related to board succession.” Notice at 65750. Additionally, without endorsing or confirming the Signing Statement, the Office notes that the Signing Statement “indicate[d] an expectation that the Register work with the [collective], once it has been designated, to ensure that the Librarian retains the ultimate authority to appoint and remove all directors.” Notice at 65753.

The collective’s obligations with respect to the succession of board and committee members are set forth in the express and unambiguous language of the MMA. To the extent that the Signing Statement appears to alter or augment those obligations, or is in any way inconsistent with the statutory language passed by Congress, the Signing Statement has no bearing on the collective’s functioning.

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<sup>39</sup> See Statement on Signing the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, 2018 DAILY COMP. PRES. DOC. 692 (Oct. 11, 2018), available at <https://www.govinfo.gov/content/pkg/DCPD-201800692/pdf/DCPD-201800692.pdf>.



**a. The MMA’s Express Language**

The MMA does not authorize the Librarian of Congress to appoint board or committee members to MLC – a private, nonprofit entity created and funded by private actors. Regardless of the text of the Signing Statement, the Librarian of Congress, respectfully, does not have powers with respect to the collective beyond those conferred by the Act. The MMA does not provide that the collective’s directors are officers of the U.S. government, and does not contemplate their appointment by the Librarian. Indeed, granting the Librarian such appointment power would directly conflict with the MMA’s provisions setting forth the mechanisms by which MLC’s leaders *are* to be selected.

The MMA, as enacted by Congress, states that:

the collective shall establish bylaws to determine issues relating to the governance of the collective, including, but not limited to –

- (aa) the length of the term for each member of the board of directors;
- (bb) the staggering of the terms of the members of the board of directors;
- (cc) a process for filling a seat on the board of directors that is vacated before the end of the term with respect to that seat;
- (dd) a process for electing a member to the board of directors; and
- (ee) a management structure for daily operation of the collective.

17 U.S.C. § 115(d)(3)(D)(ii). Thus, the statute explicitly recognizes that the collective, a private nonprofit entity, itself retains sole authority and responsibility for determining the process for selection of board members and other aspects of its management structure in accordance with the bylaws it will be establishing. *Id.*

The MMA does provide that the Register of Copyrights should “solicit” names of initial board and committee members as part of the initial designation process for the collective. *See* 17 U.S.C. § 115(d)(3)(B)(i) (to “initially designate” the collective, “the Register shall publish notice in the Federal Register soliciting information to assist in identifying the appropriate entity to serve as the mechanical licensing collective, including the name and affiliation of each member

of the board of directors ... and each committee.”).<sup>40</sup> And voting board members of the collective must be either representatives of music publishers or professional songwriters. *See* 17 U.S.C. § 115(d)(3)(D)(i) (also providing for nonvoting board seats and various committees). But entirely absent from the statute is authority for the Register or the Librarian of Congress to nominate, appoint, accept, or reject board or committee members for the collective.

Had Congress intended the Librarian of Congress to have appointment power over the directors and committee members of the collective, whether alone or in consultation with the Register of Copyrights, it would have granted that power explicitly. For example, and in contrast to provisions concerning the collective, the Act unambiguously states: “The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress.” *Id.* at § 701(a). The Act also unambiguously provides that “[t]he Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges ... after consultation with the Register of Copyrights.” 17 U.S.C. § 801(a). Notably, the Act also specifies rates of pay for the Register and Copyright Royalty Judges with reference to the government pay scale, *because they are government employees*. *See id.* §§ 701(f), 802(e). There is no allotment of government pay for the directors and committee members of the collective, because they are not government employees, but instead are working for a private entity. *Id.*

## **b. The Role of Presidential Signing Statements**

A signing statement is a formal expression of the executive’s views regarding a bill. Signing statements can range from a simple statement of recognition for a bill’s supporters to

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<sup>40</sup> Significantly, the Register’s obligation to solicit information regarding board and committee members applies only to the *initial* designation process for the collective, *see* 17 U.S.C. § 115(d)(3)(B)(i), and not to subsequent designations, *see* 17 U.S.C. § 115(d)(3)(B)(ii), thus underscoring that Congress did not intend for the Register or Librarian of Congress to exercise appointment power over the board or committee members of the collective.

comment on its substance or its effect on the executive branch—including federal agencies. *See The Last Word? The Constitutional Implications of Presidential Signing Statements*, 16 WM. & MARY BILL OF RTS. J. 1 (2007).

As with legislative history in general, a signing statement itself is not law or legally binding. *See Taylor v. Heckler*, 835 F.2d 1037, 1044 n.17 (3d Cir. 1987) (“[W]e do not determine what weight, if any, a presidential signing statement deserves in the process of statutory interpretation.”); Curtis A. Bradley & Eric A. Posner, *Presidential Signing Statements and Executive Power*, 23 CONSTITUTIONAL COMMENTARY 307, 344 n. 130 (2006) (“[C]ourts ... do not give [signing statements] much, if any, independent weight.”). In our constitutional system, the President’s role is to execute the laws, not make them. As one court explained:

Presidential signing statements are rarely of use in statutory interpretation given that the president’s role in the legislative process amounts to nothing more than approving or disapproving—not modifying—the bills that Congress passes. Because the president has no special insight into the meaning or intent of legislative text, his statements and opinions bear little weight in the project of statutory interpretation, the goal of which is to effectuate Congress’s will as expressed in the words Congress has chosen for the laws it enacts.

*Struniak v. Lynch*, 159 F. Supp. 3d 643, 658 (E.D. Va. 2016) (internal citation omitted). For example, in a 2013 case in the D.C. Circuit, a plaintiff-appellant brought an argument based on a signing statement’s comment that one section of a statute was unconstitutional. *Zivotofsky ex rel. Zivotofsky v. Secretary of State*, 725 F.3d 197, 220 (D.C. Cir. 2013). The D.C. Circuit quickly disposed of the argument, explaining that “[t]he signing statement is irrelevant.” *Id.*

**c. The Collective’s Board Members Are Not Officers of the United States and Are Not Subject to the Appointments Clause**

Irrespective of the Signing Statement’s assertion, the collective’s directors are not “inferior officers” of the United States. This is because the collective, a private, nonprofit entity “created by copyright owners,” 17 U.S.C. § 115(d)(3)(A)(1), is not a government entity

exercising sovereign authority on behalf of the United States or operated by officers or agents of the United States.

Simply put, because the collective is not a government entity, its board of directors and committee members are not officers of the United States. An officer of the United States is a person who holds an office “under the government.” *Buckley v. Valeo*, 424 U.S. 1, 125–26 (1976) (citing U.S. Const. art. II, § 2, cl. 2). Individuals operating private entities are not government officers. See *U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency*, 154 F. Supp. 2d 19, 26–27 (D.D.C. 2001) (“Supreme Court precedent has established that the constitutional definition of an ‘officer’ encompasses, at a minimum, a continuing and formalized relationship of employment with the United States Government. A private entity ... has no such association with the Government.” (internal citations and quotation marks omitted)).

The reasons why the collective is not a government actor are readily apparent. First, the collective is required to be created and incorporated by copyright owners as a private, nonprofit entity—not by Congress. Second, the collective serves a private purpose—the issuance and administration of licenses on behalf of private actors—and will not be receiving or handling public monies. Third, while the names and affiliations of the collective’s directors and committee members are solicited by the Register of Copyrights during the designation process, neither the Register nor the Librarian of Congress has the authority to accept, reject, or appoint them. Rather, the MMA expressly provides that the collective’s board members will be chosen according to the collective’s bylaws, which will also govern the collective’s overall structure.

For example, in *Becker v. Gallaudet University*, 66 F. Supp. 2d 16 (D.D.C. 1999), the D.C. District Court held that a university was not a government actor, even though the school was formed to serve governmental objectives. *Id.* at 20 (applying criteria established by the

Supreme Court in *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374 (1995)). Most members of its board of directors were not appointed by federal officials; the court thus found that the university was not a government actor. *Id.* Similarly, in *Abu-Jamal v. National Public Radio*, 1997 WL 527349 (D.D.C. Aug. 21, 1997), the D.C. District Court found that NPR was not a government actor because the Federal government had no control over NPR's board of directors, which were chosen pursuant to NPR's bylaws. *Id.* at \*4.

Notably, SoundExchange, in many ways a model for the collective, has existed for close to two decades. SoundExchange is a collective designated by the Copyright Royalty Board to administer the statutory licenses set forth in sections 112 and 114 of the Copyright Act. *See* 37 C.F.R. § 380.23(b)(1). Like the collective, SoundExchange is a private, nonprofit entity (specifically, a 501(c)(6) tax-exempt organization incorporated in Delaware) designated by the government to administer statutory music licenses. *See* 17 U.S.C. §§ 112, 114 (g)(3) (referring to a “nonprofit designated to distribute receipts from the licensing of transmissions” under section 114(f) and its ability to deduct from its receipts “the reasonable costs of such agent,” including those incurred in the “licensing and enforcement of rights with respect to the making of ephemeral recordings and performances subject to licensing under section 112 and this section [114]”).<sup>41</sup> As a private entity overseeing statutory music licenses, SoundExchange is thus directly analogous to the collective but (quite properly) has never been considered or treated as a government entity, nor are its members subject to appointment by the Librarian of Congress or Register of Copyrights.

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<sup>41</sup> *See also SoundExchange Draft Annual Report for 2017 Provided Pursuant to 37 C.F.R. § 370.5(c)*, SOUNDEXCHANGE (Sept. 2016), available at <https://www.soundexchange.com/wp-content/uploads/2016/09/2017-SoundExchange-Fiscal-Report-FINAL-Pre-Audit-SXI-Only.pdf>.

As a nonprofit entity incorporated in Delaware, the collective will be governed by Delaware law. In addition, like SoundExchange, it will need to comply with federal law for nonprofits, as well relevant provisions of the Act and related regulations. The fact that the collective, like all private entities, must comply with certain aspects of federal law does not transform it into a government agency.

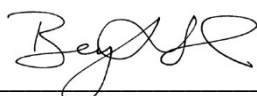
In sum, the collective is not a government entity. Its board members and committee members are not officers of the United States and their selection is not subject to the requirements of the Appointments Clause.

### **Conclusion**

MLC appreciates the diligence of the Notice and hopes that the information provided herein is of assistance to the Office in making its designation and in addressing any issues relating to the statutory collective after such designation. MLC and its counsel are committed to this process and are available to respond to any additional legal questions or requests for further information.

Respectfully submitted,

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