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**May 29, 2024**

**Comments of the Songwriters Guild of America (SGA), the Society of Composers & Lyricists (SCL), and Music Creators North America (MCNA)**

**Re: Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator (Docket No. 2024-1)**

**I. Willingness of the Independent Music Creator Community to Support Re-designation, But Only if Certain Enumerated Changes Are Effectuated**

**A. Introduction and Caveat**

The Songwriters Guild of America (“SGA”), the Society of Composers & Lyricists (“SCL”), and Music Creators North America (“MCNA”) are a coalition of independent music creator advocacy organizations (together, “Independent Music Creators”) whose interests in protecting and advancing the rights of the tens of thousands of independent American songwriters, composers and lyricists are neither influenced nor compromised by conflicts of interest. Our collective mission, initially launched by SGA nearly a century ago, can be accurately summarized in three simple words” “Protect Music Creators.”

The Independent Music Creators thank the Librarian of Congress (“LOC”) and the US Copyright Office (“USCO”) for the opportunity to submit these Comments concerning the periodic five-year review for re-designation of the current Mechanical Licensing Collective (“MLC”) and the Digital Licensee Coordinator (“DLC”) as viewed *solely* from the perspective of creators and authors-- the group whom Congress is primarily authorized and encouraged to protect under the Article I Section 8 of the US Constitution.

The purpose of these Comments is to formally indicate a willingness on the part of the Independent Music Creator community to support current MLC and DLC re-designation, *but only if certain changes in policy as enumerated herein giving greater consideration to music*

*creator interests and generating more robust MLC transparency and fairness can be agreed upon and implemented.*

**An Important Caveat:** Prior to proceeding to the presentation of our Comments, we are compelled by recent events and circumstances to issue the following, important caveat. Just days ago, the National Music Publishers Association (“NMPA”) announced its apparent intention to seek fundamental legislative changes to the US Copyright Act in regard to the statutory mechanical licensing system established under the Music Modernization Act (“MMA”) (the legislation that resulted in the creation of the MLC and the DLC).<sup>1</sup> This complete reversal in NMPA policy is the result of repugnant actions on the part of the digital music distributor “Spotify” to minimize its royalty payment obligations by identifying and exploiting alleged loopholes in what many view as the unevenly negotiated and drafted Phonorecords IV settlement.<sup>2</sup> The Independent Music Creators previously voiced formal opposition to the details of that settlement<sup>3</sup> prior to its ratification and adoption by the US Copyright Royalty Board at NMPA’s urging in December, 2022.

This morass, which threatens to deprive music creators of hundreds of millions of dollars in royalties over the next five years, is made even more complex by the fact that both NMPA and the MLC are served by the same team of legal advisors. Those same legal advisors also counseled NMPA on the negotiation of the Phonorecords IV settlement, which the MLC (albeit through another set of litigators) is now seeking to enforce against Spotify in federal court<sup>4</sup> (an action we support), and which NMPA is now essentially seeking to vacate through Congressional action to eliminate statutory mechanical licensing via an opt-out system (which predictably favors the major music publishing conglomerates over creators and small music publishers).<sup>5</sup>

The general idea of eliminating statutory mechanical licensing, the revival of which movement may now unfortunately be viewed as a fig leaf to camouflage poor NMPA decision-making and execution regarding the Phonorecords IV settlement, is one that the Independent Music Creators and many members of the music publishing sector have long believed should receive serious consideration. We will support such legislative reforms *if fairly framed and developed with meaningful independent music creator input*, along with pursuing our own legislative proposals

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<sup>1</sup> See, <https://www.rollingstone.com/music/music-news/music-publishers-fight-spotify-bundles-1235024841/>

<sup>2</sup> See, <https://fortune.com/europe/2024/05/17/spotify-used-one-word-justify-50-percent-cut-royalties-music-creators-allege-lawsuit/>

<sup>3</sup> See, <https://app.crb.gov/document/download/27358>. In urging the Copyright Royalty Board (“CRB”) to take an activist role in exploring the proposed Settlement, the Independent Music Creators wrote: “That evaluation process might include consideration of: (1) whether the settling parties should be required to explain in plain language how their streaming royalty rate settlement terms will avoid catastrophic losses in value due to inflation over the next five years; (2) whether a COLA provision is warranted, just as it has been included in several other recently negotiated rate agreements approved by the CRB, and; (3) *whether the proposed settlement agreement was negotiated with adequate and unconflicted representation of music creator and publisher interests, leading to results that provide a reliably reasonable basis for the setting of fair and equitable statutory streaming rates and terms.*” (emphasis added) *id* at 18.

<sup>4</sup> <https://www.musicbusinessworldwide.com/spotify-sued-by-the-mlc-for-cutting-pay-rate-to-songwriters-via-premium-bundles/>

<sup>5</sup> <https://www.musicbusinessworldwide.com/amid-spotify-bundling-dispute-in-the-us-nmpa-calls-on-congress-to-let-music-publishers-opt-out-of-compulsory-license-and-negotiate-with-streamers-in-a-free-market/>

expressed below. For now, however, this entire situation could hardly be less transparent or conducive to quick resolution than it currently remains.

In short, neither the Independent Music Creators nor any other groups of interested parties can possibly develop complete and cogent opinions on the issue of re-designation of the MLC and DLC without having greater access to the full body of facts surrounding this crucial new development regarding Spotify. These Comments, therefore, must be viewed against the backdrop of an unresolved and economically crucial dispute, the fallout from and resolution of which may completely alter the views expressed herein in the immediate future. As such, we look forward to making further comments on this issue as additional facts are disclosed concerning the Spotify/MLC/NMPA relationships and conflicts (past and present).

## **B. The Underpinnings of the Independent Music Creator Positions**

It is often said by and about the corporate music industry that “it all begins with a song.” However catchy that slogan may appear --and it is frequently expressed in the form of a platitude by those seeking to appear sympathetic to creators for their own commercial gain-- it is accurate only in the most general sense. Most members of the music creator community recognize that what the great American music creators Johnny Mercer and Sammy Cahn *really* meant when they long ago phrased those words in lyrical shorthand is that “it all begins with a songwriter, a composer and a lyricist. *Then* comes the song on which the rest of the industry relies as its lifeblood.”

That distinction is by no means an exercise in semantics. The US and global music industries rest on the bedrock provided not by songs simply pulled out of thin air by corporate music publishers and popularized by digital distributors, *but on the backs of the music creators who wrote them*. And it is those flesh and blood music creators that the US Congress sought to benefit first and foremost in enacting the Music Modernization Act and establishing the MLC and the DLC.<sup>6</sup> It is on that core premise that these Comments are based.

In that spirit, the Independent Music Creators respectfully seek the support of the USCO concerning the proposed policy changes summarized below, which we believe are indispensable both to the crucially needed improvement of services by the MLC, and to an increase in basic fairness concerning the protection of songwriter, composer and lyricist interests. We repeat that we consider the fulfillment of these requests to be a pre-requisite for Independent Music Creator support for re-designation.

**MLC Board Composition:** It bears further re-emphasis that most if not all of these suggested changes have been necessitated by the actions of the corporate-dominated MLC board, including the structure established by the MMA that allocates ten board seats to corporate music publishing entities (which in practice automatically grants control of the MLC board and of the entire organization to the three “major” publishers that together administer more than two-thirds of the world’s musical composition copyrights) compared with just four music creator board member

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<sup>6</sup> See, i.e., <https://www.coons.senate.gov/news/press-releases/senators-introduce-most-significant-change-in-music-licensing-laws-in-decades-to-ensure-songwriters-are-paid-fair-value-for-their-songs>

seats. Under such circumstances, music creator board members are virtually powerless to effect influence over the board's actions and MLC policy, and are relegated to serving merely as an amen chorus in support of every MLC-related music publisher action and demand. This system of publisher majority rule is contrary to the structures and rules of government-sanctioned royalty collectives everywhere else in the world. To our knowledge, no similar royalty and licensing collective in the world is controlled by a board with less than fifty percent music creator representation.<sup>7</sup>

The sound of this figurative rubber stamp within the MLC boardroom is further amplified by the fact that since inception, the non-voting seat set aside for music creator organizational input has been occupied by a non-creator whose organization's allegiance to following in lock step with the music publishing industry is so obvious as to be beyond rational dispute. Thus, the current reality is total, corporate music publisher influence and domination of MLC's rules and policies. This, despite the fact that the MMA as codified in section 115 of the US Copyright Act specifically mandates that the music creator organizational seat be occupied by the representative of "a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of songwriters in the United States." This situation must change.<sup>8</sup>

It is also noteworthy that section 4.2(b)(1) of the MLC bylaws establish that the four music creator board members may designate successor music creator board members, but in the event of a tie (a distinct likelihood with just four creator members voting), the full board shall vote on acceptance or rejection of a creator candidate. This provision gives music publishers veto power over (or at least enormous influence concerning) the selection of music creator board members for no apparent reason other than even greater boardroom domination. As one might expect, the MLC bylaws do not extend reciprocal rights to creators in the selection of music publisher board members.<sup>9</sup> This stands as just one example among many of the unfair results of unequal board membership that has been rejected in every other nation by every other music community around the globe.

Moreover, as we have pointed out over and over again in numerous prior filings, such a situation is especially toxic to fairness in board decision-making given the inevitable and inherent conflicts of interests created by (i) the vertical integration of the world's leading music publishing conglomerates under the influence or control of copyright users (potentially including DLC constituents), and (ii) the reality that the longer royalties are held by the MLC as unmatched and unclaimed, the greater the likelihood that they will eventually be distributed on a market share basis to the most powerful members of the MLC board --the only folks in the world whom we know don't own them-- the majors.<sup>10</sup>

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<sup>7</sup> In addition to our own prior submissions, see, <https://thetrichordist.com/2024/03/25/the-first-shot-across-the-bow-at-the-mlcs-redesignating-proceeding-thereup/>

<sup>8</sup> See, <https://musictechpolicy.com/2021/07/30/frozenmechanicals-crisis-comments-to-crb-by-twelve-international-songwriter-groups-opposing-frozen-mechanicals/>

<sup>9</sup> <https://f.hubspotusercontent40.net/hubfs/8718396/files/2020-05/Bylaws%20of%20The%20MLC.pdf> at 6.

<sup>10</sup> As stated in our press release dated October 2, 2023, "There are many reasons for multi-national music publisher insistence on iron-clad MLC board control, not the least of which is that the MLC is charged with identifying hundreds of millions of dollars in unmatched and unclaimed "black box" royalties and distributing them to their rightful owners. The law also provides that those royalties determined by the MLC to be *permanently* unmatched or unclaimed are to be distributed on a *market share* basis, with the vast bulk of such monies thereby flowing to the major, global music publishers who control the MLC board (required to be shared with their affiliated creators under an unnecessarily vague legislative mandate). This conflicted protocol --which may

**Transparency, Simplicity, and the Scope of the Black Box:** According to our interpretation of the MLC’s Initial Submission regarding the Re-designation process,<sup>11</sup> the MLC is still currently holding unmatched and unclaimed royalties in its black box that may soon total \$1 billion or more (about \$400 million in historical undistributed royalties and hundreds of millions more in post-MLC establishment receipts --admittedly 25% or more in some months-- that remain unmatched, unclaimed and/or undistributed). Ensuring fairness in market share-based distribution decision-making by the MLC board has thus already become a challenge of overwhelming importance that can only be met by genuine transparency intended to inform rather than to confuse and obfuscate the facts of this billion-dollar issue. Reforms and safeguards, in other words, are desperately required.

One of the most consternating aspects of the MLC’s data reporting, however, is that it seems constantly geared toward presenting “headline” information on its activities and progress in misleading rather than fully forthright and transparent ways. This can be easily illustrated, for example, by reference to the information provided by the MLC in its reporting recap concerning March 2024 distributions of December 2023 receipts (as published recently on the MLC website).<sup>12</sup>

That March 2024 MLC narrative recap begins as follows delineated in blue (with our comments bracketed and in *black italics* to point out certain confusing deficiencies):

## MLC March Royalty Distribution Recap

The MLC completed its third royalty distribution of the year on March 15, bringing us to 36 total royalty distributions since we began full operations — all of which were on time or early. [*Good work.*] March’s distribution primarily covered newly reported usage that took place in December of 2023. The total of all royalty pools reported to The MLC for this cycle was approximately **\$97.2 million**. [*The term “cycle” apparently refers to a one-month period.*]

Every month our team attempts to match sound recording uses to the musical works data in our public database and then distributes the resulting matched royalties to our Members. [*The key word in this sentence is “Members.” The MLC does not distribute royalties to non-members, even if such royalties are matched to them, until when and if the affiliate with the MLC.*] This month, we were able to match more than **85 percent** of the total royalty pools we administered to songs currently registered in our database. [*So that means that the 85% headline figure above actually refers to just “matching,” not to*

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soon come into play regarding distributions of black box royalties that could easily top one billion dollars over the next three years-- is antithetical to any reasonable standard of fair business practice, and one not worthy of the current imprimatur granted to it by the Congress of the United States through the MMA.

<sup>11</sup> See, <https://www.copyright.gov/rulemaking/mma-designations/2024/initial-submissions/mlc-initial-submission-2024.pdf>

<sup>12</sup> See, [https://pages.themlc.com/march-2024-royalty-distribution-recap?utm\\_campaign=Member%20Newsletters&utm\\_source=hs\\_email&utm\\_medium=email&utm\\_content=300450003&hsenc=p2ANqtz-9uGqdQIKzXRghLSQD37ZBLzdq8wbg8ulTktYdYBfcFR5M5PQnSsRXGIWLdwhGotVOhFCInUig9nn3ceuwB\\_7UUbqzC4LQ](https://pages.themlc.com/march-2024-royalty-distribution-recap?utm_campaign=Member%20Newsletters&utm_source=hs_email&utm_medium=email&utm_content=300450003&hsenc=p2ANqtz-9uGqdQIKzXRghLSQD37ZBLzdq8wbg8ulTktYdYBfcFR5M5PQnSsRXGIWLdwhGotVOhFCInUig9nn3ceuwB_7UUbqzC4LQ)

*“distributions.” We believe it evident, however, that the reader is clearly being led to believe by implication that the 85% refers to a success rate for distributions.]*

After deducting royalties for usage covered by voluntary licenses maintained by DSPs with rightsholders, we collected approximately **\$92.9 million** in royalties [*not the \$97.2 million mentioned in the first paragraph above*] and distributed approximately **\$68.4 million** to our Members.... [*This is the first apparent acknowledgement by the MLC in this explanation that the matching and distribution rates are not synonymous and vary substantially from one another. If we do the math on our own (since the MLC did not do it for us) we discern that the actual rate of distribution of new royalties received appears to be just 73.6 percent, leaving 26.4 percent currently un-distributable. That adds up, it would seem, to the addition of \$24.5 million in royalties to the MLC black box in a single month (which we assume may be representative of a monthly pattern, unless we are informed otherwise).]*

As you regularly see in our monthly newsletters, we always break down the remaining royalties that are pending distribution into the following three categories: unmatched, unclaimed and on hold. We do this to provide greater transparency into the reasons these royalties are being held and to help you understand the steps you can take to help us reduce these amounts. For a refresher on these terms [*we need a refresher course on the terms the MLC uses?*] and what you can do to collect your royalties, check out our latest [Annual Royalty Recap](#) that we published last month.

This month, the remaining royalties still pending distribution break down as follows:

- **\$14.1 million** in royalties for uses we have not been able to match to registered works;
- **\$8.3 million** in royalties for shares of matched works that have not yet been registered (or claimed) by our Members; and
- **\$2.1 million** in matched royalties that are on hold.

*[These figures, if we add them up, indeed confirm that an additional \$24.5 million in royalties was added in one month to the MLC black box (potentially less the \$2.1 million on dispute hold). It also illustrates that only about 85% of new royalties were matched in March 2024 for the period December 2023, indicating that identification rates seem not to be improving on new receipts (at least on a percentage of royalties basis), and we would like to know why that is. The royalty pool match rates for May 2024 regarding February receipts were just 83 percent, and only 85.25 percent for June regarding March receipts. In other words, there is no positive trending in this regard that we can discern.]*

In addition, The MLC also distributed another **\$9.7 million** in blanket royalties from previously unmatched or unclaimed uses that we were able to match, through reprocessing, to data submitted to us after we completed the initial distribution cycle for that usage. [*The discussion appears to have now overtly shifted to improvement in matching rates regarding recent black box additions from prior months, and that about*

*\$10 million of such royalties (or about 1-2% of all undistributed royalties being held) were distributed in March 2024, even as the black box apparently increased by a 2.5 multiple of that percentage.] Thanks to reprocessing, our current match rates for each month of usage we initially distributed in 2021 and 2022 now range between 90 and 92 percent, and our overall current match rate for all periods is above 90 percent. [This is incredibly confusing because the match rate for March 2024 reported above is clearly only about 85 percent, and the same for past two months. Are those the calculations “before reprocessing?” We cannot tell. We also know that the match rate figures of over 90 percent cannot possibly refer to historical black box royalties, since only a quarter of those hundreds of millions of dollars have so far been distributed. Further, it seems clear that since the actual March 2024 distribution rate is just 73.6 percent, but that the matching rate on a dollar basis was 85 percent, something is lacking in terms of outreach by MLC to non-members whose royalties have been identified but remain in the MLC black box due to failure (we surmise) of the owners to affiliate with the MLC. Shouldn't, for example, the MLC be pressing harder on companies such as SoundCloud, DistroKid and TuneCore to encourage new music creators to sign up to receive royalties from the MLC when they upload music they've written onto those platforms?]*

*This month, we continued to distribute matched historical royalties for uses that took place between 2007 and 2017 (during the Phono 1 and 2 rate periods). As a result of reprocessing the remaining unmatched historical royalties that we began processing last year, we were able to distribute approximately **\$104k** [note that “thousand” is not spelled out but “million” always is] in historical royalties this month, plus interest [interest earned from what sources?] from a number of different digital services. Overall, we have distributed more than 85 percent of the previously unmatched royalties for uses that took place during the Phono 1 rate period and more than 48 percent of the previously unmatched royalties for uses that took place during the Phono 2 rate period, for a total of more than **\$25 million** dollars in historical royalties. [So without saying so directly, of the original \$400 million in historical royalties originally received by the MLC, by March 2024 just \$25 million or only 6.25% had been distributed? We need to check the details to see if this percentage can possibly be correct.]*

*[After referring to the MLC website at <https://www.themlc.com/historical-unmatched-royalties>, as of March 2024 it WAS correct. Of the \$53 million the MLC received in historical black box royalties pertaining to the entire decade 2008-2017 (the period covered by Phonorecords I and II), the MLC has so far distributed less than 50%, or about \$26.5 million. That yields a distribution percentage for ALL historical black box royalties of about 6.25 percent.*

*In fairness, it must be pointed out that only in April 2024 was the MLC finally enabled by the Copyright Royalty Board (CRB) to start the distribution process regarding the Phonorecords III black box royalties (about \$345 million), but so far that initial distribution rate is only 21%. That means that some three years after first receiving historical black box royalties of over \$400 million, just \$100 million has been distributed (about 25%). While we happily acknowledge that the historical black box distribution*

*percentage is likely to rise significantly in the near future as the MLC works on the Phonorecords III black box royalties, with all due respect, the headlines of the MLC's March 2024 report should more accurately and constructively have been:*

***“75% of Historical and Post-2021 Black Box Royalties Still Unmatched and/or Undistributed and Likely to Grow by Hundreds of Millions Per Year Toward \$1 Billion,” and***

***“No Matter Our Match Rate, We Need Your Help in Getting Music Copyright Owners to Affiliate With the MLC in Larger Numbers So That Some Day Our Black Box Distribution Rates Can Rise in Equal Measure.”]***

Our hope for eliciting such future candor from the MLC board in the future, however, has been nearly extinguished by what we found in checking the MLC website (as it suggested) for a “refresher on terms.” Here is what the MLC has written on so basic a self-posed question as:

[“Is There Still A “Black Box” of Mechanical Royalties With The MLC?](#)

[No, the data on all unmatched uses is posted and available to be searched by Members. This includes all data for historical and blanket unmatched uses. All of these remaining unmatched uses are available to be searched by Members in The MLC's Matching Tool. With this unprecedented transparency, The MLC has illuminated the so-called “black box” of streaming mechanical royalties for the first time.”<sup>13</sup>](#)

We are not saying that the MLC is not being transparent in many ways. It is. But is the Orwellian exercise above (including the double-speak re-definition of the term “black box”) really the type of full, honest and straight-forward transparency that the Independent Music Creator community, the LOC, the USCO, and Congress have a right to expect under MMA mandates? Shouldn't we be ignoring the self-serving tech award presentations being touted by the MLC on its own behalf,<sup>14</sup> and focusing on what's actually being disclosed to music creators -and the serpentine way it's being presented-- in determining the efficacy of the MLC board's transparency and technological excellence claims?

### **C. Summary of Independent Music Creator Requests**

In light of the foregoing information and circumstances, we reiterate once again that our music creator community relies on, as Congress intended, the close, careful and equitable oversight of

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<sup>13</sup> <https://www.themlc.com/historical-unmatched-royalties> (disclosed in the form of a drop-down, click-through insert)

<sup>14</sup> <https://blog.themlc.com/press/the-mlc-receives-impact-award-for-technological-excellence-at-music-business-associations-2024-bizzy-awards>



the MLC by the United States Copyright Office (USCO).<sup>15</sup> As such, we implore the USCO to do all it can to address the following, crucial needs of creators as they relate to the MLC, the accomplishment of each of which we again repeat is a necessary prerequisite to our support of MLC and DLC re-designation:

1. **Robust USCO Oversight.** We ask that the MLC board of Directors join with the Independent Music Creators in requesting that the USCO exercise the oversight authority granted to it by Congress to the fullest possible extent, for the purpose of ensuring that the proper levels of fairness and efficiency envisioned by Congress are being facilitated and achieved by the MLC despite the MLC board's inherent conflicts of interest;
2. **Independent Technology, Systems & Operations Review.** We ask that the MLC and the DLC agree to immediately engage a wholly independent technologies and efficiencies analytics firm, as approved by the USCO (*or alternatively as referred by the USCO to the Office of the Inspector General or to a specific, permanent USCO "MLC-Issues Ombudsperson" with requisite knowledge and experience*) to analyze and evaluate the current hardware, software, systems and procedures of the MLC and its sub-contractors as they apply to all aspects of MLC-related operations. This includes review of the practice of excluding music creators from providing missing or corrected database entries concerning their own musical compositions unless registered with the MLC as a copyright owner. We further ask that all such independent findings and recommendations be timely published by the USCO. *The annual accounting audits as required under the MMA are simply neither broad nor detailed enough to be relied upon to satisfy the requirements of the five-year re-designation process.*
3. **Voluntary Constraints on Market Share Distributions.** We ask that the MLC board formally agree by vote and through written public announcements (created and published in consultation with the USCO) that it shall exercise its MMA-sanctioned discretion to refrain from distributing on a market share basis (a) any previously unmatched and unclaimed royalties whose owners have since been identified, regardless of the status of such owners' MLC affiliation or lack thereof, and (b) any unidentified royalties that have remained unidentified for fewer than seven years from their date of receipt by the MLC, *and* for which the MLC does not have proof of reasonably broad, sustained and substantial global efforts (including the engagement of reputable, third party search organizations) to so identify the proper owners of such royalties. If legislative clarifications are required to enforce such rules, we must insist that the MLC board support such changes.

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<sup>15</sup> See USCO comments at <https://www.copyright.gov/rulemaking/mma-designations/faq.html>: "While the designation of the MLC and DLC allows these entities to begin performing many of their statutory functions, the MMA also requires additional activities of the Copyright Office and, separately, the Copyright Royalty Board. The Copyright Office is directed to promulgate regulations related to the license and operation of the MLC, including requirements for notices of license and non-blanket activity, usage reporting, handling of confidential information, and operational aspects of the MLC database. The Copyright Office will also engage in education and outreach activities to inform the public of important changes under the law, including by educating songwriters and others about the process by which they may claim ownership of musical works in the MLC database and receive royalties for uses of these works. The Office will also conduct a policy study regarding best practices for the MLC...."

4. **Revised MLC Rules on Transparency and Communication.** While the Independent Music Creators appreciate the regular outreaches made to our community by the current MLC administrators, we remain highly disappointed by the apparent lack of authority or ability of such administrators to provide us with straightforward details concerning issues ranging from investment of held royalties (including the black box), to fuller details concerning performance evaluations of its consultant known as the Harry Fox Agency in producing improvements over pre-MMA, industry-wide accuracy and success concerning the collection and distribution of regular and historical black box mechanical royalties. We therefore ask that the USCO demand that the MLC board institute internal rules guaranteeing more robust, straight-forward transparency and disclosure of the handling details of our works and royalties (including but not limited to the issues cited above) on an immediate basis.
  
5. **Support for Congressional Changes in the Structure of the MLC.** We demand that the MLC board and the DLC join with the Independent Music Creators in requesting to all members of Congress that legislation be enacted to establish:
  - (a) a new Congressional mandate that an equal number of music creators and music publishers must serve on the MLC board, in line with global norms;
  
  - (b) a clarification that music publisher board members have no right of approval over music creator candidates nominated by music creator board members to serve on the MLC board, and further, that each caucus (music creators and music publishers) shall designate its own slate of board candidates and elect its own board members (with USCO oversight and approval) without participation of the other;
  
  - (c) a transparency requirement that the MLC music creator board member caucus be required to file a separate report on MLC issues and challenges from its perspective as part of every future MLC Annual Report, and be provided by the MLC with independent legal counsel of the music creator caucus' choice to assist it in doing so. This will provide opportunities for the American music creator community to be better informed about the workings and priorities of their MLC board representatives, and of the MLC and its board, on their behalf;
  
  - (d) rules requiring prompt and full public disclosure of open MLC board seats through press releases and USCO push notifications;
  
  - (e) enforcement of the MMA mandate that the non-voting music creator organizational representative on the MLC board must represent an organization the "primary mission of which is advocacy on behalf of songwriters in the United States" (not advocacy on behalf of music publishers), and preferably whose service (including past service) shall be limited to three years in duration; and,
  
  - (f) a stipulation that the MLC is to provide separate and independent legal counsel to each of the two board caucuses (music creators and music publishers), of their own choosing and upon their request, to render advice on any issues that come before the

board. It remains grossly unfair that while most if not all larger MLC music publisher board members retain their own legal staffs, and are further served by MLC legal counsels of the board's choosing, the music creator board members and small publishers more than likely have no ready access to independent legal advice and analysis at any point during their board service.

#### **D. Summary of Other Requested Changes**

The Independent Music Creators also believe that the following reforms in MLC policies and protocols need to be examined and implemented under the oversight of the USCO:

1. **Anti-fraud Efforts:** We request implementation with USCO oversight of more stringent rules governing mandatory MLC preventative and post-discovery actions against those willfully committing acts of malfeasance concerning the MLC database and the reporting, matching and distribution of royalties processes.
2. **Database Change Delays.** We request a revamping with USCO oversight of MLC rules governing the ability of music creators to demand proper and accurate changes to the MLC database if the copyright owner of a work refuses to respond to written correction requests within a thirty-day period.
3. **Definition of "Copyright Owner."** We request a clarification by the USCO that the term "copyright owner" as used in the MMA designates those parties who retain copyright ownership of work, rather than such owner's administrator.
4. **Reminders Concerning Division of Market Share-Based Royalties with Music Creators.** We request establishment of rules with USCO oversight requiring mandatory inclusion by the MLC --with any market share distribution of royalties to music publisher copyright owners and administrators-- of a written reminder that music creators and their heirs are entitled to a split of such royalties equal to the music creator's contractual mechanical rights share, with a *floor* and *not a ceiling* of fifty percent.

#### **E. Conclusion**

We thank the LOC and USCO for their consideration of these Comments, and for their steadfast work regarding issues of crucial importance to the future economic health and survival of the US and global music creator community.

Respectfully submitted,



Rick Carnes  
President, Songwriters Guild of America  
Officer, Music Creators North America



Ashley Irwin  
President, Society of Composers & Lyricists  
Co-Chair, Music Creators North America

cc: Charles J. Sanders, Esq.  
Ms. Carla Hayden, US Librarian of Congress  
Ms. Shira Perlmutter, US Register of Copyrights  
Mr. Eddie Schwartz, President, MCNA and International Council of Music Creators (CIAM)  
The Members of the US Senate and House Judiciary Committees

#### List of Other Affiliated Organizations

Alliance for Women Film Composers (AWFC). <https://theawfc.com>  
Game Audio Network Guild (G.A.N.G.) <https://www.audiogang.org/>  
Screen Composers Guild of Canada (SCGC), <https://screencomposers.ca>  
Songwriters Association of Canada (SAC), <http://www.songwriters.ca>  
Asia-Pacific Music Creators Alliance (APMA), <https://apmaciam.wixsite.com/home/news>  
Music Answers (M.A.), <https://www.musicanswers.org>  
Fair Trade Music International (FTMI), <https://www.fairtrademusicinternational.org/>  
Pan-African Composers and Songwriters Alliance (PACSA), <http://www.pacsa.org>  
Alliance of Latin American Composers & Authors (AlcaMusica) <https://www.alcamusica>.

**The Songwriters Guild of America (SGA)** is the longest established and largest music creator advocacy and copyright administrative organization in the United States run solely by and for songwriters, composers, and their heirs. Its positions are reasoned and formulated independently and solely in the interests of music creators, without financial influence or other undue interference from parties whose interests vary from or are in conflict with those of songwriters, composers, and other authors of creative works. Established in 1931, SGA has for over 90 years successfully operated with a two-word mission statement: “Protect Songwriters,” and continues to do so throughout the United States and the world. SGA’s organizational membership stands at approximately 4500 members. For more information: <https://www.songwritersguild.com/site/index.php>

**The Society of Composers & Lyricists (SCL)** is the premier U.S. organization for music creators working in all forms of visual media. With chapters in Los Angeles, New York and Nashville, and members in every state of the U.S. as well as over 80 countries around the world, the SCL operates as the primary voice for close to 4,000 members who work as creators of scores and songs for film, television, video games, and theatre. The SCL is a founding co-member -- along with SGA and other independent music creator groups -- of Music Creators North America (MCNA). For more information: <https://thescl.com>

**Music Creators North America (MCNA)** is an alliance of independent songwriter and composer organizations that advocates and educates on behalf of North America’s music creator community. It includes, by way of example, the organizations Music Answers, The Alliance for Women Film Composers (“AWFC”), the Game Audio Network Guild (“G.A.N.G.”), and other leading North American music creator groups throughout the US and Canada. As the only internationally recognized voice of American and Canadian songwriters and composers, MCNA, through its affiliation with the International Council of Music Creators (CIAM), is part of a coalition that represents the professional interests and aspirations of more than half a million creators across Africa, Asia, Austral-Oceania, North and South America, and Europe. For more information: <https://www.musiccreatorsna.org/>

SGA, SCL and MCNA are also founding members of the international organization **Fair Trade Music International**, which is the leading US and international advocacy group for the principles of transparency, equitable treatment, and financial sustainability for all songwriters, composers and lyricists. For more information: <https://www.fairtrademusicinternational.org/>