

Before the  
**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
The Library of Congress

*In re:*

Determination and Allocation of Initial  
Administrative Assessment to Fund  
Mechanical Licensing Collective

Docket No. 19-CRB-0009-AA

**THE MECHANICAL LICENSING COLLECTIVE'S**  
**OPENING SUBMISSION**  
**IN SUPPORT OF THE PROPOSED**  
**INITIAL ADMINISTRATIVE ASSESSMENT**

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# Part I: Introductory Memorandum In Support of the Proposed Initial Administrative Assessment

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I. Preliminary Statement

The landmark legislation known as the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (the “MMA”) was enacted to, among other things, create a modern and comprehensive system of mechanical licensing across the music industry for the digital age. To achieve that goal, the MMA mandated the creation of a mechanical licensing collective to, *inter alia*: more effectively and efficiently license and administer mechanical rights on a blanket basis; collect royalties from licensees; identify and locate the owners of the musical works subject to the license; and ensure timely and accurate payment of royalties to those rights owners.

This new regime that the mechanical licensing collective is tasked with administering was designed by the MMA to put an end to a dysfunctional situation in which mechanical licenses were frequently not obtained, and royalties frequently not paid, by digital services, leading to numerous conflicts and lawsuits.

To establish this new regime, the MMA tasked the mechanical licensing collective with a broad range of mandated functions and responsibilities, and an aggressive timeline in which to develop full capabilities. The Register of Copyrights (the “Register”) confirmed the Delaware non-profit Mechanical Licensing Collective (the “MLC”) to be the mechanical licensing collective under the statute. The MMA provides that the total costs of establishing and running the MLC’s operations are to be funded by an administrative assessment to be paid in full by digital services: both the digital music providers (“DMPs”) who use the blanket mechanical license, and the significant nonblanket licensees (“SNLs”) who digitally exploit mechanical rights outside of the blanket license. The MMA tasked the Copyright Royalty Judges (the “CRJs”) with the responsibility under 17 U.S.C. 115 (“Section 115”) subsection (d)(7) to establish the administrative assessment in an amount that is calculated to defray the MLC’s reasonable “collective total costs,” a term that is defined expansively in the statute.

The MLC’s proposed initial administrative assessment (“Proposed Assessment”) described below fulfills the requirements of Section 115(d)(7), and is calculated to defray the “collective total costs” of the MLC *and no more*. As detailed in the accompanying witness testimony and evidence, the Proposed Assessment represents reasonable and prudent budgeting for actual and estimated actual costs of the MLC to fulfill its mandate—costs that are necessary for the MLC to successfully build, maintain and perform the operations required to fulfill the MMA’s directives under the fixed and accelerated timeline of the statute.

The MLC singularly carries enormous statutory responsibility to implement a new, industry-wide, blanket licensing system and to repair the errors and dysfunction of the fragmented system of the past. To do so, the MLC must deliver systems and operations that did not exist in the past. The Proposed Assessment represents the conclusion of the diverse and expert MLC governance that the Register has entrusted with this great responsibility, supported by the testimony of the most qualified and experienced people to speak to the needs and provisioning of the MLC in the coming years. Tremendous amounts of work and expertise have gone into the MLC’s development plan, because nothing less than tremendous amounts of work and expertise can pull off the monumental job delegated to the MLC. But the success of this work depends on adequate funding, in the form of the Proposed Assessment. The CRJs thus play a vital role in the success of the MLC and the fulfillment of the goals set by Congress, the President and the entire music industry that came together to pass the MMA to modernize music licensing.

## II. Background

### A. The MMA and Establishment of a Mechanical Licensing Collective

On October 11, 2018, the MMA was signed into law. The MMA was the product of years of negotiation and legislative efforts bringing together stakeholders from all areas of the music

industry to, among other changes made by the MMA, modernize the statutory licensing scheme for mechanical uses of musical works. It arose when a broad coalition of songwriters and publishers empowered their trade organizations – the National Music Publishers’ Association (the “NMPA”), the Songwriters of North America (“SONA”), Nashville Songwriters Association International (“NSAI”), and the performing rights organizations ASCAP and BMI – to work with Congress to craft a modern system of mechanical licensing that would work across the music industry and to support legislation to accomplish these goals. The coalition bloomed into a full industry compromise and consensus supporting the MMA on the part of copyright owners, writers and users of musical compositions, including the DMPs. Ultimately, the MMA became a landmark legislation with unanimous support in both houses of Congress.

Title I of the MMA addresses the efficiency and fairness of the mechanical license for the reproduction of musical works embodied in digital phonorecord deliveries, including permanent downloads, limited downloads, and interactive streams. (Designation of Music Licensing Collective and Digital Licensee Coordinator, 84 Fed Reg. 32274, 32274 (July 8, 2019)). Among other things, it creates a new blanket compulsory licensing system for DMPs. (*Id.*) This blanket licensing structure significantly reduces the transaction costs to DMPs of licensing the vast libraries of music that they wish to stream in their offerings. It also relieves the DMPs of substantial responsibility for matching their usage to respective song owners, locating those song owners, and accounting for royalties due to each of the tens of thousands of owners of the millions of songs streamed. Instead, those responsibilities are now shouldered by the MLC, at no cost to the DMPs (beyond their respective shares of the administrative assessment). And the MLC is mandated by the statute to provide much more than the inadequate past administration practices of the DMPs. The MMA tasks the MLC with building an improved regime, with increased

transparency, accountability and service to ensure that the creators and copyright owners of songs are properly identified and paid their mechanical royalties fully, fairly and in a timely manner.

Indeed, one of the drivers for the passage of the MMA was the recognition that the mechanical licensing practices of the DMPs were fundamentally broken. The DMPs had attempted to secure compulsory licenses through the issuance of Notices of Intent (“NOIs”), but frequently failed to properly locate copyright owners of songs exploited on their streaming platforms, resulting in the failure to pay those owners for the use of their music, and numerous lawsuits.<sup>1</sup> In light of these costly conflicts, the DMPs recognized the benefit of the blanket license, and supported the MMA with the full understanding that they would be responsible to fund the MLC’s total costs in return. They also obtained, in return for funding the MLC, the benefit of insulating themselves from liability for past failures to properly account for mechanical royalties through the MMA’s provisions limiting such infringement liability in certain circumstances. Section 115(d)(1), (d)(10).<sup>2</sup>

In order to enact this new blanket licensing structure and eliminate the fractured and ineffective licensing system currently in place, the MMA requires the establishment of a collective

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<sup>1</sup> In the absence of a blanket licensing system, digital services frequently resorted to serving “bulk” NOIs on the Copyright Office. This approach, however, did not provide proper licenses, and resulted in class actions and other legal claims against them. *See, e.g., Melissa Ferrick et al v. Spotify USA Inc., et al*, No. 1:16-cv-08412-AJN ECF No. 1 (S.D.N.Y. Dec. 28, 2015); Complaint, *Blewater Music Svcs. Corp. v. Spotify USA Inc.*, No. 3:17-cv-01051 ECF No. 1 (M.D. Tenn. July 18, 2017); Complaint, *Gaudio et al v. Spotify USA Inc.*, No. 3:17-cv-01052 ECF No. 1 (M.D. Tenn. July 18, 2017); Complaint, *Eight Mile Style, LLC et al v. Spotify USA Inc.*, No. 3:19-cv-00736 ECF No. 1 (M.D. Tenn. Aug. 21, 2019). Pre-MMA licensing practices also resulted in the accrual by DMPs of significant royalties for uses of musical works for which the DMPs did not locate the copyright owner.

<sup>2</sup> These issues were discussed by the CEO of the digital service trade group DiMA during the May 15, 2018 Congressional hearings on the MMA. *Senate Judiciary Committee hearing on Protecting Music Creation for the 21st Century and the Music Modernization Act*, 115th Cong. (May 15, 2018) (Testimony and Responses of Chris Harrison, CEO, Digital Media Association (DiMA)), available at <https://www.c-span.org/video/?c4729592/sjc-dima-testimony>; <https://www.c-span.org/video/?c4729594/sjc-harrison-q2-3>; <https://www.c-span.org/video/?c4729597/sjc-harrison-q4-5>.

to manage the blanket licensing system. Accordingly, the coalition of songwriters and music publishers who nurtured the creation and passage of the MMA created the MLC in accordance with the MMA’s directive.

As detailed below, the MLC will be responsible for a broad range of duties, including analyzing and processing usage data from the DMPs and SNLs, collecting and distributing royalties associated with that usage, identifying musical works embodied in sound recordings and identifying and locating the owners of the copyrights in those musical works, administering a process by which copyright owners can claim ownership of musical works, and establishing and maintaining a publicly-accessible musical works rights database. Section 115(d)(3)(C). This written submission sets forth the MLC’s Proposed Assessment, describes why it fulfills Section 115(d)(7), and explains in detail reasonable budgeting for staffing and other essential costs.

**B. The MLC’s broad statutory functions and mandates**

The MMA provides specific statutory requirements for the functioning and goals of the MLC. These statutory demands on the MLC are substantial, and in many cases, inflexible. As the Copyright Office explained in designating the MLC: “[T]he new collective must undertake formidable responsibilities expeditiously and conscientiously to establish a number of operational functions critical to implementation of the new blanket licensing system. . . .” (84 Fed. Reg. at 32292).

The MMA specifically identifies numerous functions and obligations of the MLC, which include:

- (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 CRJs 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 CRJs 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.

Section 115(d)(3)(C)(i).

Consistent with the final, expansive function, the statute further details numerous other specific responsibilities, including but not limited to requirements that the MLC must: (i) engage in diligent efforts to publicize information about its operations throughout the music industry, and participate in music industry conferences and events for that purpose (Section 115(d)(3)(J)(iii));

(ii) use commercially reasonable efforts to facilitate access to information relevant to a valid audit by a copyright owner that is maintained by third parties (Section 115(d)(3)(L)); (iii) ensure that the practices of the MLC are accountable (Section 115(d)(3)(D)(ix)(I)(aa)); and (iv) timely redress music publisher inquiries and complaints (Section 115(d)(3)(D)(ix)(I)(bb)).

Furthermore, the statute provides that the MLC shall take responsibility for the vast “black box” royalty pools that have accumulated with the DMPs (and subjected them to multi-billion dollar copyright infringement lawsuits) since inception of their covered activities. Section 115(d)(10)(B)(iv)(III)(aa). The MLC must take custody of these unclaimed accrued royalty pools upon deposit by the DMPs, and is charged with identifying musical works and locating owners entitled to payment where DMPs failed to do so for years. The plain language and intent of the statute is for the MLC to provide resources and effort well beyond those previously dedicated to these tasks in order to succeed in matching usage and consequent royalty entitlement where DMPs previously failed.

As set forth in more detail below, in order to carry out these statutorily required functions, the nonprofit MLC has a governing board made up of fourteen voting members and three non-voting members, including: (i) four professional songwriters, (ii) ten music publisher representatives, who range from small independent publishing companies to the largest global publishers, (iii) one nonvoting member representative from the trade association of music publishers, NMPA, (iv) one nonvoting member representative from the trade association for songwriters, NSAI, and (v) one nonvoting member representative from the Digital Licensee Coordinator (“DLC”). 84 Fed. Reg. at 32275-77.

The MMA also requires the MLC to form certain advisory committees, which the MLC has done, to provide advice and guidance on aspects of the MLC’s operations. The Operations

Advisory Committee, composed of an equal number of members appointed by the MLC and the DLC, is to “make recommendations to the board of directors concerning the operations of the mechanical licensing collective, including the efficient investment in and deployment of information technology and data resources.” Section 115(d)(3)(D)(iv). The Unclaimed Royalties Oversight Committee, composed of five songwriters and five copyright owner representatives, “shall establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest,” in accordance with the statute. Section 115(d)(3)(J)(ii). The Dispute Resolution Committee, also composed of five songwriters and five copyright owner representatives, “shall establish policies and procedures... for copyright owners to address in a timely and equitable manner disputes relating to ownership interests in musical works licensed under this section and allocation and distribution of royalties by the mechanical licensing collective, subject to the approval of the board of directors of the mechanical licensing collective.” Section 115(d)(3)(K).

The MLC’s board and advisory committee memberships are unpaid positions, and involve oversight and advisory responsibilities.<sup>3</sup> Execution of the extensive daily operations of the MLC will be effectuated by its staff of full-time employees, along with the assistance of third-party vendors and contractors. The MLC’s estimates concerning the composition of that staff, and related expenses for employees and outside contractors, are described in detail in the accompanying testimony and materials.

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<sup>3</sup> Indeed, because committee membership requires extensive knowledge and experience in order to properly advise the MLC, the committee members will be established representatives across the music publishing and songwriting industries. Accordingly, they each are currently fully employed and are serving on these committees as a public service and without pay. As such, their roles will necessarily be limited in nature and will not entail day-to-day operational activities.

C. The statutory requirements for the administrative assessment and the digital services' obligation to fund the MLC's total costs

The MMA explicitly provides that the MLC shall be funded by an administrative assessment established by the CRJs in an amount “calculated to defray the reasonable collective total costs.” Section 115(d)(7)(A), (d)(7)(D)(ii)(II). It further requires that any assessment take into consideration past costs and anticipated future costs. Section 115(d)(7)(D)(ii)(V). The statute also provides for the assessment to be wholly independent of royalty rates and terms applicable to the digital services. Section 115(d)(7)(D)(ii)(I).

Once the administrative assessment is determined, the MMA explicitly requires that the total costs of the MLC be paid by the DMPs and SNLs. Section 115(d)(7)(A)(i).<sup>4</sup> This requirement is not being forced upon the DMPs— rather, the structure and funding of the MLC was the central compromise between copyright owners and the DMPs that allowed the MMA legislation to move forward to passage, and was strongly and vocally supported by both constituencies.<sup>5</sup>

As discussed above, the DMPs supported the statutory requirement that they fund the total costs of the MLC because they obtained far greater value in return, namely the blanket license, the shift of the burden and cost of administration to the MLC, and the ability to insulate themselves from liability for past copyright infringement. The DMPs and SNLs can now deposit all of the “black box” royalties attributable to their use and exploitation of copyrighted compositions with

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<sup>4</sup> The MMA also provides that the MLC may also be funded by “voluntary contributions” from DMPs and SNLs that may be agreed upon with copyright owners. Section 115(d)(7)(A)(ii). Such voluntary contributions would be treated as an offset to the collective total costs that would otherwise be recovered in an administrative assessment. Section 115(d)(7)(B)(i)-(ii). Any such voluntary contributions agreed upon are to be made available to the CRJs to establish or adjust the administrative assessment. *Id.* As of the date of filing, the MLC has not received any voluntary contributions.

<sup>5</sup> See footnote 2 above.

the MLC, and the MLC will take over the administration and distribution of such royalties. The MLC will do so through a modernized and transparent process backed by technology and human resources, which technology and resources will be further applied to achieve the statutory goals of efficiently and effectively administering copyrights, educating and providing outreach to copyright owners, researching, identifying and indexing copyright owners and rights, and collecting and promptly and properly distributing royalties to copyright owners. Thus, both the digital services and the copyright owners benefit greatly from the MLC’s role and mandate, which can only be diligently fulfilled with adequate funding as outlined herein.

III. Proposed Initial Administrative Assessment

A. Details of proposal

1. Assessment periods and amounts

The MLC proposes (i) a one-time assessment to cover the startup phase leading up to the license availability date of January 1, 2021 (the “Startup” assessment), and (ii) an annual assessment beginning in 2021 (together with the Startup assessment, the “Proposed Assessment”):

<i>Assessment period</i>	<i>Assessment amount</i>	<i>Payment Period Start Date</i>
Startup through 2020	\$37,250,000	January 1, 2021
2021	\$29,000,000	January 1, 2021
2022 and each subsequent calendar year		January 1 <sup>st</sup>

## 2. Allocation

- Assessments shall be allocated across DMPs and SNLs<sup>6</sup> (each a “Licensee” and together “Licensees”) *pro rata* by market share of aggregate Licensee Service Revenue (as defined below) (the “Market Share Allocation”) for the 12-month period ending on June 30<sup>th</sup> of the calendar year preceding the payment period start date (the “Allocation Calculation Period”).
- For purposes of allocating the administrative assessment, Service Revenue shall have the meaning set forth in 37 CFR 385.2, except that the term “Offering” as used therein shall mean a Service Provider's engagement in any Licensed Activity (not merely Licensed Activity covered by subparts C and D of 37 CFR 385).
- Each Licensee shall pay a minimum fee of \$5,000 per month for each month of the Allocation Calculation Period during which they met the definition of a Licensee (the “Minimum Fee”), which shall offset its respective Market Share Allocation. In the event that the Minimum Fee exceeds the Market Share Allocation of the assessment for some Licensees, the excess amounts shall be pooled and credited back *pro rata* to all Licensees by Market Share Allocation. Thus the allocation calculation shall be as follows:
  - Step One: Calculate the Market Share Allocation of the assessment due.
  - Step Two: Calculate any individual Licensee overages of minimum fees due beyond fees due under the Market Share Allocation, and pool them together (the “Minimum Fee Overage Pool”).
  - Step Three: Calculate the Market Share Allocation of any Minimum Fee Overage Pool.
  - Step Four: Each Licensee must pay the greater of (1) the minimum fee and (2) its Market Share Allocation of the assessment, less its Market Share Allocation of the Minimum Fee Overage Pool.

## 3. Timing of payment

- Payment of the Minimum Fee shall accompany the submission of an Notice of License (“NOL”) or Notice of Nonblanket Activity (“NNBA”) by a Licensee. Payment of any additional assessment based on Market Share Allocation shall be due within 30 days of receipt of an invoice from the MLC or on the Payment Period Start Date, whichever is later. The assessment invoice shall be deemed received one business day after electronic transmission to the contact information provided by the Licensee in its NOL pursuant to Section 115(d)(2)(A) or its NNBA pursuant to Section 115(d)(6)(A)(1) (“NNBA”).

## 4. Additional regulations

- Accompanying each initial submission of a NOL or NNBA, the Licensee must submit to the MLC, for the Startup and 2021 assessments, a certified statement of Service Revenue by a certified public accountant, that lists (i) the Licensee’s total Service Revenue for the Allocation

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<sup>6</sup> References to DMPs and SNLs herein are as those terms are defined in Section 115(e).

Calculation Period, and (ii) the number of months during such period that the entity met the definition of a Licensee (the “Certified Assessment Disclosure”).

- By November 1st of each year beginning in 2021, each Licensee must submit to the MLC a Certified Assessment Disclosure for the forthcoming assessment period.
- The MLC shall invoice assessment payments due based on Market Share Allocations calculated from Certified Assessment Disclosures received. Licensees that fail to timely and accurately submit Certified Assessment Disclosures (“Nondisclosing Licensees”) shall be liable to other Licensees for assessment fees that other Licensees paid beyond what would have been due from them if the Nondisclosing Licensee had filed a proper Certified Assessment Disclosure.

B. The Proposed Assessment fulfills the requirements of Section 115(d)(7)

Each of the requirements of Section 115(d)(7) is fulfilled by the Proposed Assessment, as discussed below.

1. Be “wholly independent of royalty rates and terms applicable to digital music providers” (Section 115(d)(7)(D)(ii)(I))

The Proposed Assessment is not calculated in any way based upon the royalty rates and terms applicable to DMPs, but is calculated based upon the detailed and reasonable estimates of the actual operational costs of the MLC to fulfill its statutory mandate.

2. Be “in an amount that is calculated to defray the reasonable collective total costs” (Section 115(d)(7)(D)(ii)(II))

The Proposed Assessment is based on the MLC’s reasonable and detailed estimates of its total costs, without including any costs that would be associated with providing services under voluntary licenses. Section 115(e)(6) (collective total costs “does not include any added costs incurred by the mechanical licensing collective to provide services under voluntary licenses.”) Thus, the staffing and other costs detailed in the accompanying written testimony are those needed to operate the MLC as an entity that is not servicing voluntary licenses. Any additional staffing or costs that the MLC might incur in connection with any voluntary license administration services

would be paid for by the “reasonable fees” that the MLC shall charge for such services under Section 115(d)(3)(C)(iii).

3. Be “assessed based on usage of musical works by digital music providers and significant nonblanket licensees in covered activities under both compulsory and nonblanket licenses” (Section 115(d)(7)(D)(ii)(III))

The Proposed Assessment is allocated across both DMPs and SNLs, together defined herein as “Licensees,” based on market share.

4. Be “in the form of a... usage-based metric reasonably calculated to equitably allocate the collective total costs across [Licensees] engaged in covered activities, and [] include as a component a minimum fee for all [Licensees]” (Section 115(d)(7)(D)(ii)(IV))

The Proposed Assessment includes a minimum fee as a component, and uses Service Revenue as a metric to allocate the assessment across Licensees. Market share of Service Revenue is a reasonable metric to equitably allocate the assessment across Licensees because it has low transaction costs, as it is already reported by compulsory licensees and is otherwise not complicated to calculate (and it encourages an element of self-policing among and between Licensees). Moreover, allowing the minimum fee to offset amounts due under the revenue-based allocation ensures that small Licensees do not pay an inequitably high share of the assessment.<sup>7</sup>

5. Take into consideration “anticipated future collective total costs and collections of the administrative assessment” (Section 115(d)(7)(D)(ii)(V))

The Proposed Assessment is based on the MLC’s reasonable and detailed estimates of its current and future total costs, without including any costs that would be associated with providing

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<sup>7</sup> The MLC does not believe that the use of a definition of Service Revenue in connection with the proposed method for *allocating* the Proposed Assessment that is parallel to a definition in the regulations for mechanical royalty rates and terms (namely “Service Revenue” under 37 CFR 385.2) is inconsistent with this requirement. The use of the parallel definition simply decreases the transaction costs connected with allocating the assessment because it leverages a figure that is already calculated and reported by statutory licensees. However, if the CRJs believe that using this definition would run afoul of the statute, the MLC respectfully submits that simply a different definition of Service Revenue should be used.

services under voluntary licenses. Further, the MLC’s estimates assume that the assessment will be collected in full each year, and do not budget for unpaid assessment shares. The Proposed Assessment thus takes into consideration future collections of the assessment.

6. Take into consideration “any portion of past actual collective total costs of the mechanical licensing collective not funded by previous collections of the administrative assessment or voluntary contributions because such collections or contributions together were insufficient to fund such costs” (Section 115(d)(7)(D)(ii)(V)(aa))

The Proposed Assessment includes the “Startup” assessment that fulfills this provision by taking into account the “past actual” total costs of the MLC, which include (i) past actual costs of the MLC as of the date of this submission, and (ii) estimates of actual costs from the date of submission to the effective date of the initial assessment, January 1, 2021 (Section 115(d)(7)(D)(iii)(IV), which of course will be the “past actual” costs of the MLC as of the effective date of the Proposed Assessment. Indeed, due to the unique array of costs during startup, the separate Startup assessment is the only feasible way to take into consideration these startup costs, while also providing the required ongoing assessment to defray total costs of the MLC once steady-state operations have been achieved.<sup>8</sup>

7. Take into consideration “any past collections of the administrative assessment and voluntary contributions that exceeded past actual collective total costs, resulting in a surplus” and “the amount of any voluntary contributions by [Licensees] in relevant periods.” (Section 115(d)(7)(D)(ii)(V)(cc))

There have been no voluntary contributions by Licensees to date (and of course no collections of the assessment), and so the Proposed Assessment is not reduced thereby.

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<sup>8</sup> The definition of “collective total cost” explicitly includes “startup costs,” many of which are not recurring costs. Section 115(e)(6). Section 115 also provides that the initial administrative assessment “shall continue in effect unless and until an adjusted administrative assessment is established pursuant to an adjustment proceeding under [Section 115(d)(7)(D)(iv)].” Section 115(d)(7)(D)(iii)(IV). This provision indicates the need to provide an initial administrative assessment that can continue in effect from year to year. *See also* 37 CFR § 355.3(b)(2)(i).

#### IV. Summary of Written Testimony

The Proposed Assessment is explained with detailed estimates that tie directly to the statutory functions of the MLC and are based on the budget adopted by the MLC Board of Directors. The accompanying written testimony in Part II of this statement, summarized below, breaks down the MLC estimates by every department and down to every single estimated personnel need (along with salary and benefit details), as well as each non-personnel cost component. The estimates are based on extensive and direct personal experience and expertise in the witnesses' respective fields, as well as actual contract proposals obtained in the market, benchmarks from similar organizations, and market data. While no budget estimate can be a guarantee that the actual future costs will prove precisely equal to the budgeted amounts, the MLC estimates presented herein are informed, examined and reasoned, and demonstrate that the Proposed Assessment is "in an amount that is calculated to defray the reasonable collective total costs," and fulfills the requirements of Section 115(d)(7).<sup>9</sup>

The following is a brief overview of the written testimony included in this submission.

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<sup>9</sup> Notably, the Proposed Assessment is consistent with the findings of the Congressional Budget Office, which analyzed information "from industry experts and the administrative costs to operate entities that engage in similar activities," and estimated ongoing costs of the MLC would "average \$30 million annually and would total \$227 million over the 2021-2028 period . . . . CBO expects that the assessment would be set to recover all of the allowable costs of the MLC and would be collected in full in each year; therefore, CBO estimates that collections would average about \$30 million annually." Cong. Budget Office, Cost Estimate: *H.R. 5447 Music Modernization Act* 3-4 (Apr. 25, 2018) <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr5447.pdf>; Cong. Budget Office, Cost Estimate: *S. 2823 Music Modernization Act* 3-4 (Sept. 17, 2018) <https://www.cbo.gov/system/files/2018-09/s2823.pdf>. The digital services trade group DiMA itself referenced these CBO estimates in advocating to the Senate for passage of the MMA. See *Senate Judiciary Committee hearing on Protecting Music Creation for the 21st Century and the Music Modernization Act*, 115th Cong. (May 15, 2018) (Response of Chris Harrison, CEO, Digital Media Association (DiMA)), available at <https://www.c-span.org/video/?c4729593/sjc-hearing-q1>; see generally, *Senate Judiciary Committee hearing on Music Creation and Copyright*, 115th Cong. (May 15, 2018) <https://www.c-span.org/video/?445410-1/>.

A. Alisa Coleman, Chair of the MLC Board of Directors and Chief Operating Officer of ABKCO Music & Records, Inc.

Alisa Coleman, the Chair of the MLC Board of Directors, submits written testimony (the “Coleman Testimony”) addressed to cost estimates associated with the operations of the MLC that fall under the management of the Chief Operating Officer of the MLC. Ms. Coleman is the current Chief Operating Officer of ABKCO Music & Records, Inc., one of the world’s leading independent entertainment companies, with divisions in music publishing, recorded music, film and theater. Ms. Coleman oversees all of ABKCO’s operations, business development and global licensing functions. Ms. Coleman also serves as President of the New York Chapter of the Association of Independent Music Publishers. Ms. Coleman has thorough experience with operational needs and expenses associated with carrying out many of the functions with which the MLC is tasked, including but not limited to digital music licensing and license administration, mechanical royalty processing, payment and account management for musical work copyright owners, rights and conflicts management, marketing and communications, recruitment and staffing, and industry relations.

Ms. Coleman provides detailed evidence concerning the MLC’s operational needs and costs associated therewith that are necessary to carry out several of the numerous statutory obligations of the MLC. Specifically, the Coleman Testimony describes the role and responsibilities of the Operations Department that will be under the supervision and direction of the MLC’s Chief Operating Officer.

As the Coleman Testimony reflects, the budgeted personnel in the Operations Department represent vital roles for fulfilling the statutory mandates of the MLC, including but not limited to (i) identifying musical works used in sound recordings and identifying and locating copyright owners of such musical works; (ii) overseeing and maintaining public database of musical works

and portal of unmatched musical works through which copyright owners may assert ownership rights; (iii) assessing and managing conflicts, overclaims and disputes between competing copyright owners and claims involving whole works and shares of works; (iv) quality control on usage and royalty data, reports and statements; (v) ensuring public knowledge of the ability to claim unpaid royalties and expanding identification of copyright owners to ensure proper payment of royalties through community outreach, participation in music industry conferences and events, marketing activities, periodic industry and public reporting, social media and education activities, and other public relations endeavors; (vi) establishing and managing publisher and songwriter accounts and relationships for all musical work copyright owners around the globe; (vii) collecting, maintaining and updating publisher and songwriter rights information; (viii) managing and servicing licensees and potential licensees, including reviewing notices of license, liaising with licensees, monitoring licensee usage reports, data accuracy and royalty payments; and (ix) managing relationships with international rights owners, as well as foreign Collective Management Organizations, music industry groups and governments.

Ms. Coleman further outlines the non-personnel costs associated with the operations of the MLC (outside of operational costs that are addressed in other accompanying witness testimony), including startup and continuing costs for outside vendors, consultants, communications services, and advertising, event, and marketing costs. The Coleman Testimony explains actual and estimated costs in detail and is informed by Ms. Coleman's decades of direct experience as a leader in the industry, as well as evidence of actual contracted costs and benchmarks including contract proposals and market research and evidence.

B. Richard Thompson, interim Chief Information Officer of the MLC and former Chief Technology Officer of Kobalt Music Group

Richard Thompson submits written testimony concerning estimated costs related to the technology programs of the MLC. Mr. Thompson currently works in the role of interim CIO for the MLC. He was the CTO for seventeen years of music services company Kobalt Music Group, including its music publishing division Kobalt Music Publishing, which is a leading music publisher with a strong emphasis on leveraging technology to service clients. Mr. Thompson led the design and development of Kobalt's leading rights management platform, encompassing the management of rights in musical works and sound recordings. This platform includes sub-systems and components of the same types that the MLC requires, including a rights database (encompassing by-work and by-agreement functionality); member/rightsholder management; license management; matching; usage processing; royalty processing; statement generation and distribution to rightsholders. Mr. Thompson thus has extensive oversight and management experience with nearly every aspect of the technology for which the MLC is currently estimating a need.

Moreover, Mr. Thompson has seventeen years of experience being responsible for creating and maintaining technology budgets covering virtually every activity that the MLC must engage in, including software development, portal design, license administration, rights database management, royalty processing and distribution, information security and privacy, office IT, data storage and transfer and more.

Mr. Thompson also served until this year as Board Chair of the leading music standards-setting organization DDEX, and was also Chair of the DDEX Licensing Working Group, whose mandate was to design and specify data exchanges to improve the efficiency of mechanical

licensing in North America. Mr. Thompson is indeed uniquely qualified to evaluate and estimate costs associated with the MLC's unique statutory mandate.

Mr. Thompson's testimony breaks down the Technology Department estimates for personnel and non-personnel costs, including those associated with each estimated employee, numerous outside vendors, infrastructure and equipment, licensing and more. His estimates are supported by his authoritative experience, along with benchmark contract proposals and market evidence. As the Register cautioned, "[t]he MLC is not a start-up venture or small business that can adjust its rollout timing or pivot its focus; rather, it is tasked with establishing, for the first time, a complex and highly regulated administrative framework designed to serve all who are subject to (or make use of) the statutory license, under legally-mandated timeframes." 84 FR 32292. Mr. Thompson's testimony, based on his direct experience in the music publishing industry, budgeting analogous technological capacities, and managing development of analogous mechanical rights management sub-systems and components, manifests the prudence of the budgeted MLC technology costs.

C. Paul Kahn, Treasurer of the MLC and Chief Financial Officer of Warner Chappell Music

Paul Kahn submits written testimony addressed to estimated costs associated with the MLC's Finance Department and certain general overhead. Mr. Kahn is currently the Chief Financial Officer of Warner Chappell Music, one of the world's leading music publishing companies. Prior to joining Warner Chappell Music, Mr. Kahn served as the Chief Financial Officer of EMI Music North America, as well as Chief Financial Officer of Primedia Inc.'s Business Information Group, as well as a Senior Vice President at Viacom. As his long career as a music finance executive indicates, Mr. Kahn has comprehensive experience with the financial operations responsibilities that the MLC faces and the departmental costs and expenses associated

with supporting the musical works licensing, mechanical royalty administration and rights management operations under the MLC’s mandate.

Mr. Kahn describes the significant financial activities arising from the MLC’s statutory mandates, including collecting, processing and distributing payments to every musical copyright owner behind the tens of millions of songs on streaming services, tax compliance and reporting associated with those payments, accounting issues and disputes from licensors and licensees, overseeing and managing the complex accounting with respect to the unclaimed royalties, as well as numerous audit responsibilities. Mr. Kahn also explains the personnel and non-personnel needs of the Finance Department and costs associated therewith to carry out the MLC mandate, including much of the MLC’s general overhead expenses, such as the startup, fit out and continuing costs for its physical premises.

Based on his decades of relevant experience and expertise, along with benchmarks from specific contract proposals and market evidence, Mr. Kahn’s testimony underscores the reasonableness of MLC estimates.

D. Danielle Aguirre, Nonvoting Board Member of the MLC and General Counsel of the National Music Publishers’ Association

Danielle Aguirre submits written testimony (the “Aguirre Testimony”) addressing estimates of the MLC’s legal costs to diligently discharge its substantial legal duties under the statute. Ms. Aguirre, who is a non-voting Director on the Board of the MLC, is the Executive Vice President and General Counsel of the National Music Publishers’ Association (“NMPA”), the leading non-profit trade organization representing all American music publishers and their songwriting partners.<sup>10</sup> Ms. Aguirre previously served as Senior Vice President for Litigation and

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<sup>10</sup> NMPA played a significant role in the passage of the Music Modernization Act that established the Section 115 blanket license for digital streaming services, as well as in supporting the creation and

Business Affairs of the NMPA, and prior to joining NMPA, was an attorney at Paul, Weiss, Rifkind, Wharton and Garrison LLP for nine years.

Ms. Aguirre is uniquely qualified to address the MLC's legal needs, given her extensive experience managing legal issues within both the music publishing industry and the non-profit sector. Ms. Aguirre's experience further covers many of the types of legal demands and expenses that the MLC will encounter. She is responsible for managing the NMPA's in-house legal team, liaising with the in-house legal teams of the NMPA's many music publisher members and other trade organizations, and retaining and supervising outside counsel work and budgeting. She further manages litigations involving fact and expert witnesses, participation in Copyright Office rulemaking and other proceedings, and participation and discovery in Copyright Royalty Board proceedings, subpoena responses and audit obligations. Ms. Aguirre thus has substantial experience budgeting costs associated with in house and external legal resources.

Ms. Aguirre explains the MLC's budgeted Legal department and the legal aspects of the statutory obligations with which it is tasked. These include the legal work associated with the administration of mechanical licenses; the processing and payment of royalties; the management of musical works rights disputes and conflicts; the enforcement of mechanical rights (including through legal proceedings); Copyright Office rulemaking; administrative assessment proceedings; responding to subpoenas and other information requests in CRB and other proceedings; audits, tax and regulatory compliance; handling data security and privacy issues; business contracting in areas such as employment, real estate, vendors, software licenses, professional services; and much more. They also include the many legal aspects of starting the MLC from the ground up, including its

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organization of the MLC by copyright owners to carry out the responsibilities of the statutory collective under the MMA.

formation, 501(c)(6) designation, establishment of policies and procedures, and managing governance matters. Ms. Aguirre provides experience and expertise to explain and support the conservativeness and reasonableness of the MLC's estimates for an area of services that is, to some degree, inherently unpredictable.

V. Summary of Exhibits and Redaction Log

Part III of the submission attaches evidentiary exhibits referenced in the submission.

Part IV of the redacted public version of this submission includes the redaction log pursuant to Section IV.C of the Protective Order in this proceeding.

Dated: September 13, 2019

Respectfully submitted,

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# Proof of Delivery

I hereby certify that on Monday, September 16, 2019, I provided a true and correct copy of the MLC Opening Submission - Part I - PUBLIC to the following:

Digital Licensee Coordinator, Inc., represented by Allison Stillman, served via Electronic Service at [astillman@mayerbrown.com](mailto:astillman@mayerbrown.com)

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at [davidpowell008@yahoo.com](mailto:davidpowell008@yahoo.com)

Signed: /s/ Alex R Goldberg