

**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

WRITTEN TESTIMONY OF ALISA COLEMAN

1. My name is Alisa Coleman. I am the Chair of the Board of Directors of the Mechanical Licensing Collective (the “MLC”). I am also the Chief Operating Officer (“COO”) of ABKCO Music & Records, Inc. and the President of the New York Chapter of the Association of Independent Music Publishers. I submit this testimony in support of the MLC’s proposed initial administrative assessment (“Proposed Assessment”).

2. My testimony here addresses the MLC’s actual and estimated total costs associated with numerous operations that will fall under the supervision of the COO of the MLC.

I. Background, Qualifications and Experience

3. ABKCO is one of the world’s leading independent entertainment companies. ABKCO has music publishing, recorded music, and film and theatre assets and divisions.

4. As ABKCO’s COO, I oversee all of ABKCO’s operations, business development, and global licensing functions. I have worked in every division of ABKCO since I first joined the company thirty-four years ago in 1985, and have held positions as a licensing assistant, Vice President, Senior Vice President, and Senior Executive Vice President prior to assuming my current role of Chief Operating Officer in January 2016.

5. Prior to joining ABKCO, I worked for two years at The Harry Fox Agency as Director of Music Licensing. I received a Bachelor of Music degree in Business/Music Management from the University of Hartford.

6. I am involved in all aspects of ABKCO's operations, including operations with respect 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, industry relations, accounts receivable and payable, and strategic planning. I am responsible for managing and maintaining ABKCO's relationships with songwriters and recording artists (and their heirs, managers, and estates), rights societies, and digital music providers ("DMPs"). I am also responsible for negotiating with third party vendors, and handling matters relating to royalty accounting, payment, claims and collections.

7. I am also responsible for budgeting and estimating operational costs for managing ABKCO's operations budget, and am very familiar with budgeting for the types of resources that the MLC requires. While the MLC's statutory mandate is unique, and the scale of its operations and responsibilities exceed the scope of any existing music publisher or license administrator, its operations will involve a great deal of work that is similar to work currently performed by music publishers and administrators. My evaluation of the MLC's estimated operational costs discussed herein is based my knowledge of the music industry and decades of experience managing budgets, running operations, and performing many different functions for one of the world's leading independent entertainment and music publishing companies, and also upon market information including negotiated contracts, competitive contract proposals, and market data.

II. Summary of estimated Operations Department costs

8. Just as the Proposed Assessment contains a startup-phase assessment and an ongoing assessment beginning in 2021, my cost estimate discussion is broken out into (i) startup phase costs, and (ii) 2021 costs. The estimates herein for 2021 are reasonably budgeted to continue in subsequent years [REDACTED]

[REDACTED]¹ [REDACTED]
[REDACTED]
[REDACTED]

9. [REDACTED]
[REDACTED]

[REDACTED] The number of users and amount of digital streaming usage are increasing every year, and the number of musical copyrights (and sound recordings in which they are reproduced) increases, year by year, as new works are written (and as new and existing works are recorded and re-recorded), consequently adding to the sizes of the streaming services' offerings. Indeed, in its testimony before the Senate to advocate for the passage of the Music Modernization Act (the "MMA"), the digital service trade group, DiMA, forecasted that the number of digital services will also increase with the establishment of the MLC and the blanket license, as the removal of the "business risk" associated with mechanical license administration burdens and copyright infringement liability will encourage "the next wave of market entrants."²

¹ [REDACTED]

² <https://www.c-span.org/video/?c4729594/>

10. Relatedly, the number of musical work copyright owners that the MLC must locate and pay is increasing every year, largely due to the growth in so-called “long tail” or DIY singer-songwriters, fed by the increasing ease of self-producing and releasing music and the number of split copyrights attributable to multiple writers, which should be expected to only increase the flow of new conflicts and rights management issues that arise, even as the MLC’s portal makes headway reducing existing backlogs of conflicts. Accordingly, there is no reason to expect that the MLC’s workload will do anything but increase in the coming years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. The cost estimates that I address in this statement are summarized as follows (each more fully explained below):³

Cost item	Startup phase	2021
Personnel		
COO + Assistants	[REDACTED]	
Songwriter and Publisher Relations Group		
Licensee Relations Group		
Rights Management Group		
Communications Group		
International Relations Coordinator		
Non-personnel		
Travel and related expenses	[REDACTED]	
Communications services		
Advertising and events		
IP/brand management		
Operations consulting and project management fees		
Public relations consulting		
TOTAL		

³ This is a subset of the costs outlined in Exhibit 1.

III. Operations Department personnel structure

12. The MLC has a host of statutory obligations under Section 115 of the Copyright Act, as amended by the MMA. In order for the MLC to fulfill these responsibilities, the Operations Department is budgeted to include several specialized groups necessary to carry out day to day operations in service of the MLC's obligations. A full estimated organizational chart of the Operations Department is included in the chart attached as Exhibit 2. As more fully described below, the departmental structure includes a Songwriter and Publisher Relations group; a Licensee Relations group; a Rights Management group; a Communications group; and an International Relations Coordinator. At their most fundamental level, the MLC's core obligations – and the groups responsible for meeting those obligations – can be broken down as follows.

A. Department management and administration

13. The department budgets 48 employees at steady state, to be led by the MLC's COO, and with administrative support from the executive assistant to the COO, and an administrative assistant for the Department:

Position	Duties
Chief Operations Officer	Oversee and provide leadership, direction, and management to the Operations Department.
Executive Assistant to COO	Assist COO with all office & administrative duties and interface with Board members and executives.
Administrative Assistant for the Operations Department	Assist and support entire Department with scheduling, arranging, and other office & administrative duties.

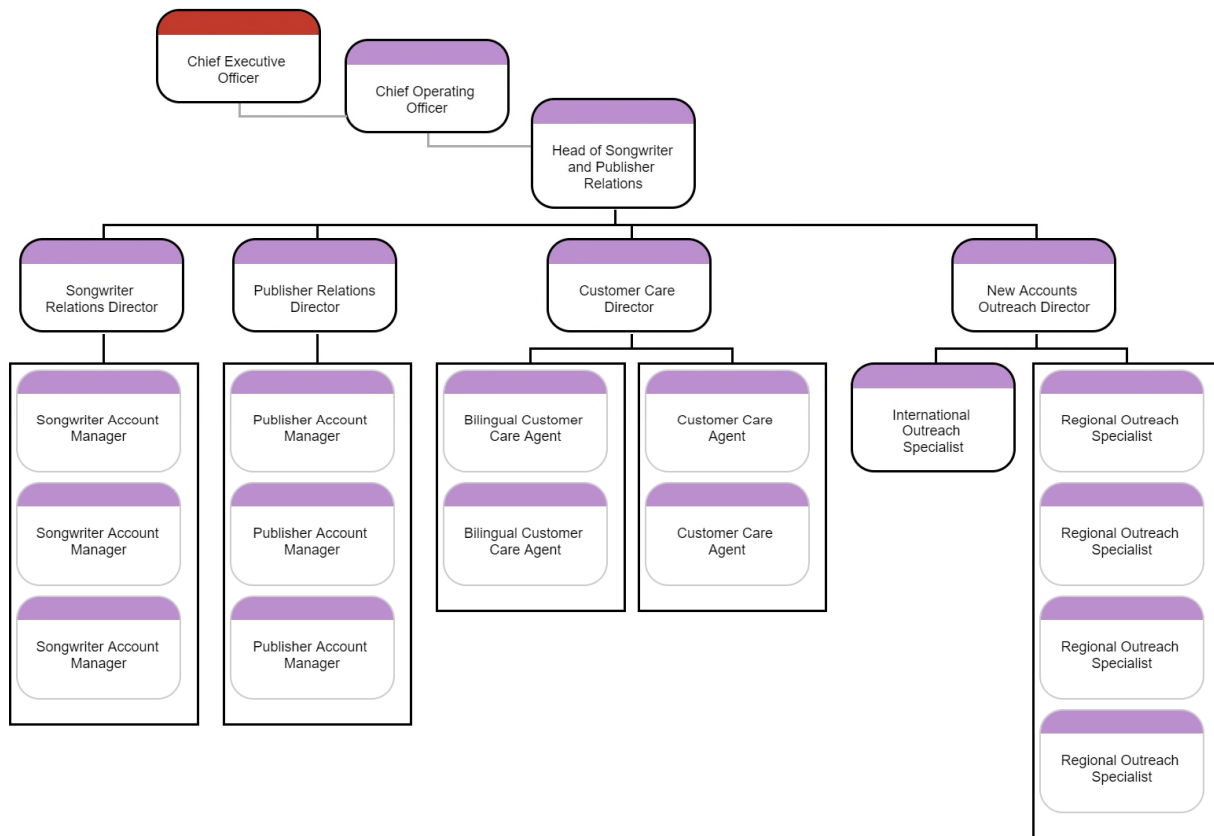
B. Songwriter and Publisher Relations group

14. The MMA requires the MLC to engage in efforts to identify musical works embodied in sound recordings and to identify and locate the copyright owners of such musical works. 17 U.S.C. § 115(d)(3)(C)(i)(III). The MLC must endeavor to identify each musical work's title, copyright owner(s), share(s) of ownership, contact information, and information about the

sound recording embodying the work. *Id.* § 115(d)(3)(E)(ii) and (iii). This information is required to be stored in a comprehensive musical works database and made available to the public online in a searchable format. *Id.* § 115(d)(3)(E)(v). The MLC must also maintain a publicly accessible portal listing unmatched musical works, through which copyright owners may assert ownership claims. *Id.* § 115(d)(3)(J). The MLC must establish accounts for and manage relationships with publishers and songwriters around the world, get their rights information into the rights database, and keep that information current.⁴ The MLC must provide customer service to those rights owners, including promptly addressing their questions regarding royalties, matching, ownership claims, or any other issues pertaining to their payments, the database, or the blanket licenses, and it is required to provide prompt access to records. *Id.* § 115(d)(3)(D)(ix); § 115(d)(3)(M). These obligations will be the responsibility of the Songwriter and Publisher Relations group.

⁴ I emphasize that the task of keeping information current is a substantial one. Ownership of musical works copyrights is, in practice, not static, but rather there are continual changes to ownership of the tens of millions of musical works in the industry. Among other things, writers change publishers, publishers transfer catalogs, existing grants to publishers are terminated under Section 304 or 203 of the Copyright Act, and songwriters' rights pass to heirs (often creating multiple additional payees).

15. The following chart (a portion of the chart attached as Exhibit 2) illustrates the budgeted structure of the Songwriter and Publisher Relations group:



16. The chart depicts the following budgeted positions for the Songwriter Relations Group:

Position	Duties
Head of Songwriter & Publisher Relations	Oversee and provide leadership, direction, and management to the Group; develop copyright owner relationship strategy; manage workflow and interface between MLC staff and vendor staff addressing member services.
Songwriter Relations Director	Lead the Songwriter Relations Team; manage and oversee relationships with self-published songwriters and songwriter community.
Songwriter Account Managers (3)	Interface and timely redress queries from self-published songwriters; assist with claims on musical works; account and catalog registrations; manage existing accounts; troubleshoot royalty payment and statement queries; handle escalated account issues from customer care at MLC and vendor; interface with specialist care groups for rights management and royalty analysis.

Publisher Relations Director	Lead the Publisher Relations Team; manage and oversee relationships with major and independent publishers and publishing community.
Publisher Account Managers (3)	Interface and timely redress queries from publishers; assist with claims on musical works; account and catalog registrations and transfers; process new registrations and assignment of royalties; handle escalated account issues from customer care at MLC and vendor; interface with specialist care groups for escalation.
Customer Care Director	Lead the Customer Care Team to ensure swift resolution of all customer issues; ensure excellent phone and email-based customer care to publishers, songwriters, licensees and other stakeholders.
Customer Care Agents (2)	Interface directly with customers to address their questions and concerns, including regarding licensing, use, royalties, technology, and dispute issues; provide answers to general inquiries and specific account inquiries; process updates to accounts; process mail returns following quarterly distributions.
Bilingual Customer Care Agents (2)	Perform the above functions in both English and Spanish.
New Accounts Outreach Director	Lead the New Accounts Outreach Team; strategize to drive new account affiliation and re-affiliation and work closely with Songwriter and Publisher Relations Teams to ensure industry penetration and resolution of new account issues.
Regional Outreach Specialists (4)	Engage in outreach efforts, including planning and attending events, in specific regions of the U.S., to educate the public and increase industry awareness and account creation; shepherd onboarding of new accounts from dedicated region.
International Outreach Specialist	Engage in outreach efforts to educate, identify, and locate musical work copyright owners that are outside the U.S.; assist with account creation; shepherd onboarding of new foreign accounts.

17. The MLC is required to diligently and actively identify, locate, and pay musical work copyright owners for uses by all digital services using the blanket license—which should be expected to be virtually all digital services engaged in interactive streaming, as well as numerous new digital services that will enter the market when the blanket license makes market entry much easier. This means the MLC is to provide education, assistance, and royalty payment and account services not only to thousands of music publishers, but also to the growing tens of thousands of “long tail” copyright owners, including both writers and writers’ heirs. To be clear, my estimates do not rely on this group of 20 employees to handle that member service workload alone. Rather,

this group will need to work closely with other care departments at the MLC (including the Rights Management group, the Royalty Analysts in the Finance Department, and others), as well as with the staff at the primary usage processing vendor, to ensure that this load can be managed.⁵

C. Licensee Relations group

18. The MLC must also manage relationships with blanket and nonblanket licensees (*i.e.*, DMPs and significant non-blanket licensees (“SNLs”)). Given the current marketplace, it is reasonable to expect that the number of entities which will notice blanket licenses and to which the MLC will be required to issue and administer blanket licensees will amount to at least 100, and potentially many more. As noted above, the digital service trade group DiMA forecasted to Congress that by removing the “business risk” associated with mechanical license administration burdens, the blanket license will encourage “the next wave of market entrants.”⁶

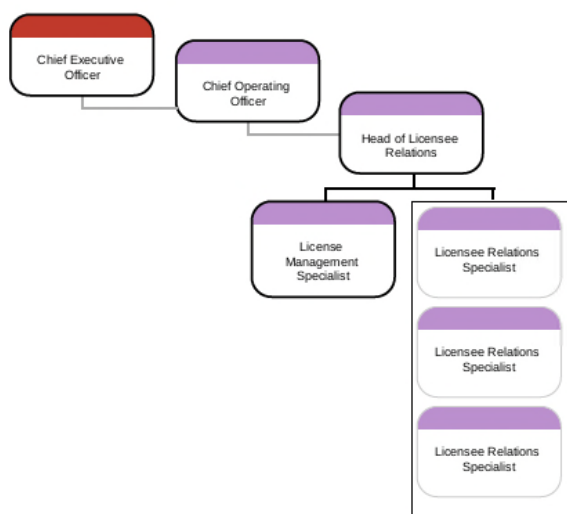
19. The MLC is further tasked with enforcing compliance with the statute, and thus is tasked with monitoring the digital service landscape to identify services that have failed to properly submit notices of license or notices of nonblanket activity. As to entities that do file notices, the MLC must not merely review, assess, and process notices of license, but must administer the blanket license and the licensee relationship. Once a digital service becomes a blanket licensee, the MLC must regularly liaise with that service concerning: (i) troubleshooting its account access and use; (ii) monthly usage reporting and royalty payments; (iii) assessment payment and reporting; (iv) data formatting, transfer and accuracy, and more. 17 U.S.C. § 115(d)(3)(G)(i). The MLC must also address licensee requests and issues, report back to licensees on license

⁵ Good design of the rightsholder portal and website is also an important part of managing customer issues, which is something that the MLC is pursuing now, as discussed in Richard Thompson’s testimony. Making the user interfaces more friendly and capable of self-service can somewhat reduce the load on staff, although the broad and proactive mandate given to the MLC to enlarge the pie of mechanical royalty payees will ensure that these roles remain essential.

⁶ <https://www.c-span.org/video/?c4729594/>

administration issues, and manage the required provision of free, bulk access to the MLC musical works database for all blanket licensees and SNLs, as well as their authorized vendors. *Id.* § 115(d)(3)(E)(v)(I)-(III). These functions will fall under the purview of the Licensee Relations group.

20. The following chart (a portion of the chart attached as Exhibit 2) illustrates the estimated structure for the Licensee Relations group:



21. The MLC has budgeted for the following Licensee Relations group personnel:

Position	Duties
Head of Licensee Relations	Oversee and provide leadership, direction, and management to Licensee Relations Group; drive MLC licensee relationship strategy; increase exposure to MLC of potential licensees and relevant technology industry associations and groups.
Licensee Relations Specialists (3)	Maintain strong working relationships with DMPs and SNLs; interface directly with licensees and potential licensees to respond to all questions and concerns; troubleshoot and ensure compliance with reporting and payment requirements.
License Management Specialist	Maintain data regarding licensees, licenses and offerings; monitor service landscape to identify services failing to file necessary notices of license or nonblanket activity; coordinate with licensing counsel team and technology

	vendor concerning MLC licensee business processes; facilitate blanket license administration.
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D. Rights Management group

22. The MLC is also tasked by the statute with building and maintaining a centralized database of musical works ownership, providing information to the public that not merely identifies the tens of millions of works that underlie the streaming offerings of digital services, but identifies the copyright owners of each share of each work.⁷ Even further, the MLC must match each musical work to all of the sound recordings in which it is embodied. For context and to demonstrate the scope of the MLC’s statutory obligation, Spotify and Apple Music each claim catalogs of more than 50 million sound recordings, and Spotify stated earlier this year that more than 40,000 new sound recordings were being uploaded *every day* to its platform.⁸ The vast majority of these sound recordings represent the DIY/“long tail” sector, many of which embody self-published musical works. If just one percent of these sound recordings correlate to new self-published songwriters, that translates (even assuming just a single songwriter per song, which is usually not the case) to more than one new copyright owner account for the MLC to open every minute of every business day of the year, not to mention the service demands to address resulting questions on account credentials, use of the systems, ownership claims, royalty payments and the like. This alone is a tremendous administrative task (which will be shared by the Songwriter and

⁷ Note that there can be more than 20 different writer shares for a single song, and recent industry reporting found hit songs in 2018 had *on average* more than nine writers, which fits with my understanding of the current marketplace. <https://www.musicbusinessworldwide.com/how-to-have-a-streaming-hit-in-the-us-hire-9-1-songwriters-and-a-rap-artist/>. Each writer may be represented by different publishers, further increasing the administrative burden imposed on the MLC.

⁸ <https://www.apple.com/apple-music/>; <https://seekingalpha.com/article/4257719-spotify-technology-sa-spot-ceo-daniel-ek-q1-2019-results-earnings-call-transcript>.

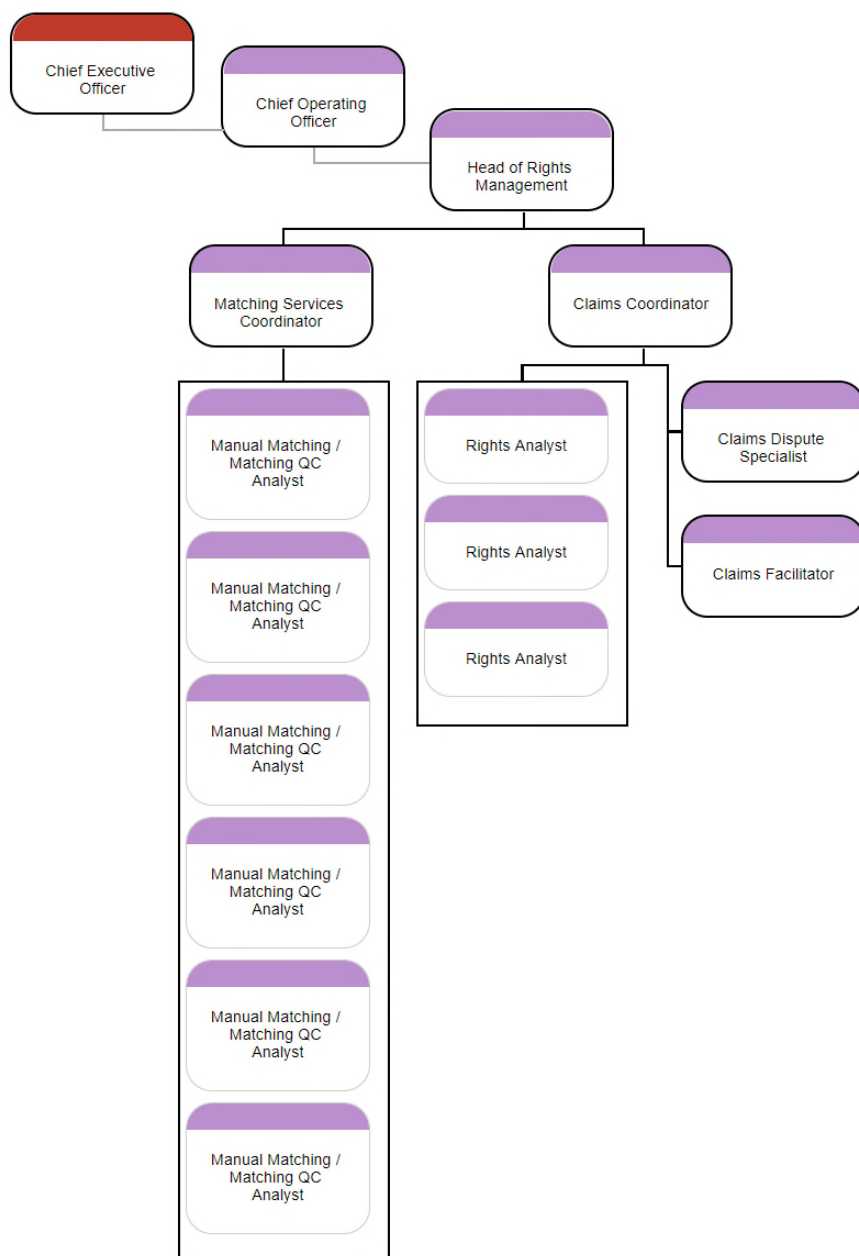
Publisher Relations group, other MLC staff, and resources with the MLC vendor), but the extreme influx of new works brings with it even more administration demands as to rights management.

23. The MLC must also build, maintain, and provide a claiming portal to allow the public to search the rights database to claim matches of musical works to sound recordings and claim ownership of musical works (or shares of works). The combination of the centralized, public claiming portal, along with the dramatically increased flow of new works into the system, will generate a significant volume of conflicts, errors, overclaims, and disputes over musical works ownership and matches to sound recordings that the MLC must address. While the MLC is not tasked with adjudicating disputes over ownership, it must address disputes sufficiently to evaluate when to trigger its “mechanism to hold disputed funds” in interest-bearing accounts pending resolution of the dispute. 17 U.S.C. § 115(d)(3)(K). Moreover, the MLC expects to be called upon to produce information in connection with most disputes.

24. Moreover, thousands upon thousands of conflicts and disputes simply generates significant volumes of queries, requests, and ultimately service burdens. The MLC takes very seriously its mandate to improve on industry history in this regard, provide “timely redress” to queries, bring transparency to ownership data, and empower all copyright owners to obtain the royalties due to them.

25. The Rights Management group is a specialist team to assist with the demands of managing claims, conflicts, errors, and disputes across the tens of millions of songs and more than 50 million sound recordings. It will work with other service teams at the MLC and with the primary technology vendor in order to develop and manage business processes implementing the MLC’s rights management obligations; develop matching and claims strategy; quality-check data, reports, and statements; and assist with escalated service problems related to claims and disputes.

26. The Rights Management group is budgeted for the following structure (a portion of the chart attached as Exhibit 2):



27. This chart depicts the following budgeted staff in this group:

Position	Duties
Head of Rights Management	Oversee and provide leadership, direction, and management to Rights Management group; work with other departments, committees and other stakeholders to identify needs and concerns and improve business processes.
Matching Services Coordinator	Oversee Matching Services team policy and manage to goals for manual matching of musical works and quality control of matching systems; handle escalated issues from matching analysts.
Manual Matching / QC Analysts (6)	Match sound recording usage reported by licensees that remains unmatched to musical works despite automated processes by conducting research, outreach and communications; interface with New Account Outreach group to assist with identification and location of copyright owners of musical work shares.
Claims Coordinator	Oversee policy and manage team to goals; assess and assign ownership claims and disputes; oversee claim processing troubleshooting; coordinate referrals and escalation between other departments and vendor; handle escalated issues from team.
Claims Dispute Specialist	Manage overlapping claims between multiple accounts and manage escalated dispute queries.
Rights Analysts (3)	Review ownership claims and assess queries through research and review of MLC data and information submitted.
Claims Facilitator	Communicate with claimants and oversee account management; troubleshoot copyright owner claim problems and errors; assist with claims paperwork and submission information; mediate non-escalated claim conflicts.

E. Communications group

28. The MLC is also required to publicize itself throughout the music industry and ensure public knowledge of the ability to claim accrued unpaid royalties. It also must publicize its procedures for copyright owners to identify themselves so that the MLC can pay them royalties, including previously unclaimed accrued royalties. The MLC is required to participate in music industry conferences and events for the purpose of publicizing these items in particular. 17 U.S.C. § 115(d)(3)(J). The MLC must also provide periodic and ad hoc reports to the public, licensors, licensees, and the DLC regarding a variety of issues. *E.g., id.* § 115(d)(6)(B). The MLC's obligations to engage in such education, outreach, and publicity efforts, including through events,

education, media (including internet and social media) and public relations, will be some of the responsibilities of the Communications group.

29. To accomplish the functions of the Communications group, the MLC has budgeted the following personnel:

Position	Duties
Head of Communications	Oversee and provide leadership, direction, and management to Communications group; drive MLC strategy for clear, unified messaging in all external communications
PR Director	Serve as primary press contact; manage MLC's external presence; maintain relationships with press and content creators throughout all media forms; develop newsworthy pitches and media angles
Social Media Manager	Plan, implement, manage, and monitor social media strategy to increase MLC brand awareness, improve marketing efforts, and foster relationships within the music community
Education Outreach Manager	Oversee and develop education programs and projects; maintain and develop relationships with music industry groups and schools to expand and fulfill outreach functions
Content Manager	Create informative, search engine optimized copy and video content for MLC website and other media

F. International Relations Coordinator

30. While the MLC administers U.S. rights and uses, it does so for the benefit of copyright owners around the world, and its mandate to identify and locate copyright owners likewise extends around the world. Furthermore, as the Register noted, it is important that the MLC not merely use existing industry standards, but that it continue to explore emerging standards, open protocols, and technological developments to fulfill its mandate. 84 FR 32287, 32290. Maintaining strong relationships with the numerous foreign Collective Management Organizations (CMOs) and music industry groups helps fulfill both of these goals. The International Relations Coordinator fosters and manages the MLC's relationships with relevant foreign music industry trade groups; acts as point of contact for the dozens of international Collective Management Organizations; identifies and pursues opportunities for collaboration and

cooperation to both advance the MLC’s operational efficiency and further the MLC functions of education and outreach and identification of copyright owners around the world.

IV. Personnel Cost Details

31. As reflected above, the costs to implement the above planned Operations Department are reasonable costs of the MLC, and prudent expenditures in order to diligently shoulder the burden the statute places on the MLC. The following table outlines reasonable compensation budgets for each of the different positions discussed above, for operations located in Nashville, Tennessee. The column entitled “Month of hire” indicates the precise month in 2020 when the MLC budgets hiring the particular employee. [REDACTED]

Position	2020 base salary	Month of hire	2020 true employee cost ⁹	2021 true employee cost
Chief Operations Officer	[REDACTED]			
Executive Assistant to COO				
Operations – Admin Assistant				
Head of Rights Management				
Matching Services Coordinator				
Manual Matching / QC Analyst				
Manual Matching / QC Analyst				
Manual Matching / QC Analyst				
Manual Matching / QC Analyst				
Manual Matching / QC Analyst				
Manual Matching / QC Analyst				
Claims Coordinator				
Claims Dispute Specialist				
Claims Facilitator				
Rights Analyst				
Rights Analyst				

⁹ The amounts budgeted for personnel are the “true employee costs,” which take into account the full cost to the MLC of personnel, including varied benefits, compensation, insurance and other costs necessary to comply with laws and regulations and adequately compete to retaining qualified personnel. [REDACTED]

The accompanying testimony of Paul Kahn further explains the budget for total benefit loads and “true employee cost.”

Rights Analyst	
Head of Communications	
PR Director	
Education Outreach Manager	
Social Media Manager	
Content Manager	
Head of Songwriter & Publisher Relations	
Songwriter Relations Director	
Songwriter Account Manager	
Songwriter Account Manager	
Songwriter Account Manager	
Publisher Relations Director	
Publisher Account Manager	
Publisher Account Manager	
Publisher Account Manager	
Customer Care Director	
Bilingual Customer Care Agent	
Bilingual Customer Care Agent	
Customer Care Agent	
Customer Care Agent	
New Accounts Outreach Director	
Regional Outreach Specialist	
Regional Outreach Specialist	
Regional Outreach Specialist	
Regional Outreach Specialist	
International Outreach Specialist	
Head of Licensee Relations	
License Management Specialist	
Licensee Relations Specialist	
Licensee Relations Specialist	
Licensee Relations Specialist	
International Relations Coordinator	
TOTAL	

V. Operations Department non-personnel costs

32. The MLC also expects to pay the following reasonable amounts at marketplace rates for necessary non-personnel costs during the startup and ongoing assessment periods:

Cost item	Startup phase	2021
Travel and related expenses		
Communications services		
Advertising and events		
IP/brand management		
Operations consulting and project management fees		
Public relations consulting		

A. Operations consulting and project management fees

33. In the absence of a full complement of operations executives and full-time staff, the MLC has engaged outside vendors with industry experience and wide-ranging capabilities to consult on operations development as well as perform much of the actual project development work of the MLC. The costs for these outside consulting and project management vendors are budgeted until the MLC can identify and hire adequate staff in the coming months.

34. As the Register noted, the 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. The MLC has had to address a great number of issues during the brief startup period, and has to hit the ground running as a fully functioning organization at full capacity.” 84 FR 32292. Indeed, if the MLC had not actively progressed operations development consistently over the past months, it would not be able to meet the statutory deadlines.

35. The MLC's primary strategy and operations vendor, Prophet, was a driving force in moving development forward during this critical period, bringing operations development and project management expertise, as well as flexible staffing capacities to handle the MLC's needs on issues ranging from operations and timeline modeling, vendor RFI/RFP logistics, business process workflows, technology evaluation and selection processes, and general business mobilization project management.

36. Prophet's contract scopes have been thoroughly documented and negotiated, and the value of Prophet's services are manifest to me through my regular interactions with its personnel and the central role that it plays in keeping operations moving pending the MLC's ability to recruit and hire executives with the expertise to take over these roles. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. The MLC has also contracted with Media Rights Management, LLC for the services of Maurice Russell, to consult and advise with respect to MLC's administrative and operational capabilities. Mr. Russell has over fifteen years of experience in the music publishing industry in an operational role, including experience with rights management and works-to-recording matching. Mr. Russell has advised and will continue through in or around January 2020 (around the time that the MLC's full-time COO will be onboarded) to advise the MLC on, among other issues: investment in administrative and operational resources and vendor engagement; creating and maintaining the musical works database; collecting and distributing royalties, including

unclaimed accrued royalties; and designing, establishing and maintaining effective administrative and operational controls, policies and procedures, customer service functions; and SLAs. [REDACTED]

[REDACTED]

[REDACTED]

B. Public relations consulting

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

C. Communications services

41. The MLC will also need to engage standard communications services such as: a media monitoring or “clipping” service that provides the MLC with media content of interest regarding the music and technology industries; a media database service that will facilitate the Communications group to penetrate the appropriate media outlets; a wire service for widespread press release distribution; and an email service for mass email outreach and communications. These costs are reasonable and directly related to the MLC’s public outreach and education obligations.

D. Advertising and events (including related travel)

42. The MLC is required by the MMA to attend and promote events to publicize the MLC and its actions. As such, expenses to support these actions are necessary and will be expended both during the startup period and in the MLC's annual budgets. Fulfilling this core statutory obligation will require a number of MLC personnel to attend and participate in functions for industry groups throughout the songwriting, publishing, streaming, and broader music and technology industries across the country and around the world.

E. Intellectual Property and Branding

43. The MLC must incur intellectual property and branding costs in the startup period so that it will have a recognizable visual identity, without which outreach will be hampered. [REDACTED]

[REDACTED]

[REDACTED]

VI. Note on the MLC's Conflict of Interest Policy

44. The MLC's Board of Directors has adopted a Conflict of Interest Policy that establishes guidelines for appropriately managing conflicts of interest in accordance with legal requirements and the MLC's goals of accountability and transparency. A copy of the policy is attached as Exhibit 18. As the policy explains, the MLC is committed to conducting its operations in accordance with the highest standards of ethics and integrity. The Conflict of Interest Policy contains clear provisions requiring disclosure of actual, potential or perceived financial or other conflicts of interest, and lays out clear procedures for assessing such conflicts and ensuring the integrity and fairness of the MLC's business transactions.

45. The MLC is committed to enforcing its Conflict of Interest Policy, and ensuring that all MLC transactions are fair and reasonable and in the best interests of the MLC. I am not

aware of, and do not believe there are, any overlapping ownership or other overlapping economic interests between the MLC or its members and any of the MLC's selected contracting or sub-contracting parties.

Conclusion

46. I have spent hundreds of hours overseeing the MLC's operational development, analyzing its mandate, researching its resource needs and considering its budget options. As Chair of the Board of Directors of the MLC, I approach my responsibility of stewardship of this unprecedented organization with great care. While much is unknown about how the landscape will develop, the operations and associated costs detailed herein are reasonable and prudent to discharge the formidable statutory responsibilities of the MLC.

47. I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information, and belief.

Dated: September 13, 2019



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Written Testimony of Richard Thompson

1. My name is Richard Thompson. I am a consultant for the MLC in the role of interim Chief Information Officer (“CIO”). I have been consulting for the MLC since February 2019.

2. I submit this statement in support of the MLC’s proposed initial administrative assessment (“Proposed Assessment”). In particular, I provide cost estimates associated with the development, acquisition, implementation and maintenance of computer and information technology infrastructure and related technological and operational services deployed to fulfil the statutory mandate of the MLC, including estimated costs associated with:

- personnel reporting up to the Chief Technology Officer;
- operational and office technology; and
- third-party vendors delivering technological and operational solutions to the MLC.

I. Professional background

3. I hold a degree in Computer Science with Business & Management from the University of Manchester in the UK.

4. Prior to my work with the MLC, I was the Chief Technology Officer (“CTO”) of the music services company Kobalt Music Group (“Kobalt”) for approximately 17 years. Kobalt’s

different divisions include Kobalt Music Publishing, a leading music publisher, and AMRA, a global digital music collection society that collects royalties for the digital use of musical works. Kobalt Music Publishing and AMRA have a strong emphasis on leveraging well-designed technology to provide exceptional services to their clients, which include songwriters and other music publishers. Prior to joining Kobalt Music Group, I worked for Oracle Corporation in its Interactive Services Solutions group, consulting on the development of media technology products.

5. In my role as CTO of Kobalt, I led the design and development of the company'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 royalty distribution to rightsholders.

6. Kobalt also built several iterations of different rightsholder portals and mobile applications during my tenure as CTO, and I was responsible for the management of those projects. I was also responsible for Kobalt's information security procedures, which included hiring multiple vendors to implement hardware and software solutions.

7. I also evaluated needs and estimated costs for the development of Kobalt's technology platforms and all resources and expenses of its technology department. I was responsible for the creation and management of an annual technology department budget reaching approximately 20 million pounds (approximately \$30 million at the time) annually. This included budgeting for all of the types of expenses discussed herein for the MLC, including provisioning for technology vendors, computer hardware purchase and deployment, computer network

infrastructure, software design, IT system implementation and maintenance, information security measures, and other technology costs.

8. I was also responsible for recruitment and hiring for Kobalt’s technology department, which reached approximately 125 full-time employees, and included software architects, engineers and managers, help desk staff and other technology positions.

9. In addition to my work at Kobalt, I served as the Board Chair of the international standard-setting organisation DDEX from 2017 to February of this year. DDEX is a consortium of leading media companies, music licensing organisations, digital service providers, and technical intermediaries, focused on the creation of digital supply chain standards. DDEX standards are widely used by rights management organisations similar to the MLC all around the world. I was also Board sponsor and 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.

10. As a result of this oversight and management experience, I am familiar with nearly every aspect of the technology for which the MLC anticipates a need.

II. Overview of MLC technological functions

11. The Copyright Office explained that the MLC “must undertake formidable responsibilities expeditiously and conscientiously to establish a number of operational functions critical to implementation of the new blanket license system.” 84 FR 32276. Indeed, the MLC is responsible for developing and implementing extensive technological capacities on a very short timeframe. The MLC is tasked with the responsibility to administer, process and pay royalties on every blanket mechanical license in the country starting on January 1, 2021 – a responsibility that is expected to entail processing of hundreds of billions of lines of data comprising trillions of

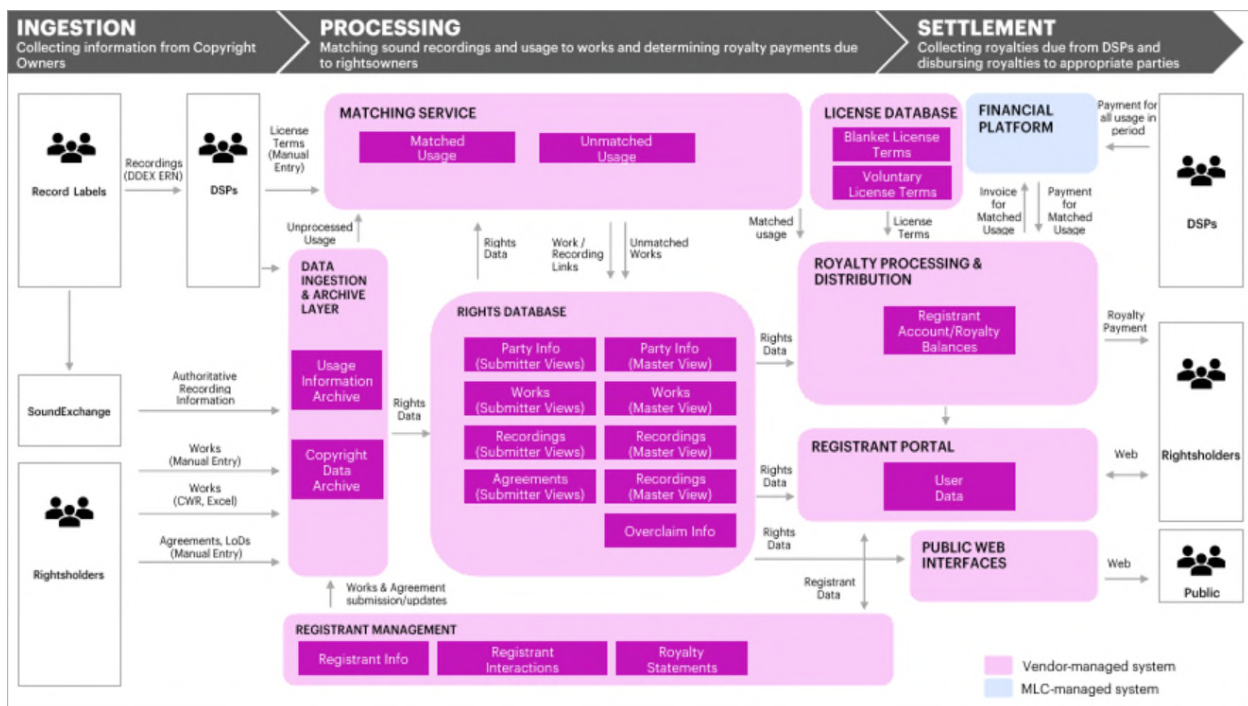
transactions, and payments over time of billions of dollars of royalties to copyright owners around the globe.¹ Simultaneously, it must build a clearinghouse musical works ownership database and claiming portal, and manage the countless ownership claims and conflicts over the tens of millions of musical works therein. The MLC also has a specific mandate to address the historical royalties that have remained unmatched and unpaid despite the efforts of existing vendors, and to address the constant stream of new sound recordings with missing or incomplete metadata that need additional efforts to be matched to underlying musical works so that the proper owners can be paid.

12. These broad programs should not mask the myriad other critical development activities that must occur in order to make the MLC's core programs successful. For example, massive amounts of data need to be compiled, communicated and corrected, both before and after launch of the rights database, and many parties need to be involved in that process for it to be successful. Furthermore, users around the globe, with varied technological sophistication and data platforms and standards, must be able to successfully navigate the MLC systems in order to achieve the adoption required to have an effective rights database. This requires substantial work on user interface design, which will be based on research into stakeholder needs and experience. The rights database must be kept updated through a constant stream of transactions, terminations and bequests that change ownership, and it must handle the increasing flow of new musical works being created and registered from both the traditional songwriting and music publishing industry as well as the fast-growing DIY market. Notably, the musical works ownership landscape is significantly more complex than the sound recording ownership landscape, since many works

¹ As part of this, the MLC must provision for the setup and maintenance of member accounts with online access for each of these copyright owners around the world, to manage their personal, payment and repertoire information, and for them to be able to obtain information on the usage of their works and royalty accountings.

typically have multiple authors and multiple owners, multiplying the number of transactions that must be completed in order to process ownership claims, conflicts and royalties. Programming and design must be constantly updated in order to address changes in inputs, formats, standards, interoperability and inevitable changes in the business and legal landscape. Additional essential work also must be done to accommodate everything from ensuring full data security and privacy to international regulatory compliance and much more.

13. The MLC has created and iterated on a chart that outlines a high-level solution architecture and data flows for its core technology solutions:



See Exhibit 3. This chart offers a window into many of the different core sub-systems and components that the MLC is responsible for developing, implementing and maintaining, and the many exchanges and processing of data that the MLC is responsible for handling on a regular basis. This chart depicts numerous technology pieces that the MLC is responsible to coordinate, and hopefully illuminates somewhat the complicated information engineering and interface

management that must underlie the MLC's systems. Note that this chart remains iterative and may change further as understanding of needs and solutions matures.

14. A more technical document for understanding some of the technology systems required of the MLC is its Detailed Functional Requirements document for primary vendor technology services. Originally included as part of the MLC RFP (discussed in detail below), this document has also been updated, and describes many of the technology components that the MLC is responsible for implementing and maintaining. The updated version is attached as Exhibit 4. The many requirements listed in this document are far from exhaustive of the MLC's mandate, which goes well beyond the vendor's contract scope, but they should help place into perspective the seriousness of the technology systems for which the MLC is responsible.

15. My discussion of estimated costs below provides additional detail on various technology development roles, tasks and needs. Please note that these discussions cannot capture all of the details on needs and tasks that the MLC faces, as they are too numerous and many are still to manifest.

III. Summary of estimates

16. The cost estimates that I discuss are presented as (i) startup phase costs, and (ii) 2021 costs.² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. A summary of my cost budgeting³ is as follows:

Cost item	Startup phase	2021
Technology Department personnel		
Operational technology and services		
Office technology and services		
Interim CIO consulting		
Central office IT hardware costs		
Software licensing		
Internet, phone, network conferencing		
Employee IT hardware costs		
TOTAL		

19. Below is a discussion of each of these line items, explaining the role of the item in fulfilling the statutory functions of the MLC. To be clear, as discussed more fully below, based on my experience managing analogous technology projects and budgets, and my familiarity with the MLC's specific obligations, operational needs, and options, each of these items represents a reasonable budget for delivery of necessary MLC operations. Indeed, in my experience it would be imprudent not to budget (or to budget less) for each of these line items, as the MLC is responsible for providing a platform to deliver critical industry functions for which the MLC is solely responsible.

³ The figures presented here are rounded to the nearest thousand-dollar increment for ease of review.

20. Moreover, the statute does not provide the MLC the flexibility of delivering fewer services or making licenses available sometime after the license availability date, and thus timely, efficient, and complete development of MLC's technology by the license availability date is critical to ensuring the success of the MLC in fulfilling its statutory obligations. In designating the MLC, the Copyright Office noted that the MLC had demonstrated "a more realistic understanding of the MLC's responsibilities under this new system and indicate[d] that it is better positioned to undertake and execute the full range of administrative functions required of the MLC within these critical first five years," and further explained that "[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. I could not agree more with this distinction; the MLC is a truly unique entity, and the startup of the MLC is unprecedented in scope and inflexible in demand. Proper technology budgeting for this task dictates provisioning sufficient resources to all needed products and services by required dates, which includes budgeting prudently for all of the expected and the inevitably unexpected costs of technology development projects.

IV. Details on personnel estimates

21. While, as discussed below, a primary vendor with an existing works database and usage processing capabilities is essential to meeting the deadlines, the MLC must also have an in-house department and staff that is competent to design and supervise development, implementation and maintenance of the MLC systems, including its right database, as well as handle the IT requirements of other MLC staff. The statute provides for the MLC to "[i]nvest in relevant resources, and arrange for services of outside vendors and others, *to support the activities of the*

mechanical licensing collective,” (17 U.S.C. § 115(d)(3)(C)(i)(VII) (emphasis supplied)) and the Copyright Office explains that it is “[t]he MLC, through its board of directors and task-specific committees, [that] will be responsible for a variety of duties, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.” 84 FR 32274.

22. The following represents reasonable staffing for the MLC’s Technology Department to shoulder these responsibilities, under current information and in connection with the other resources that are costed herein. A chart of the department organisation can be found in Exhibit 2. As not all positions will be hired at the same time, this table indicates the number of months in 2020 for which each position is budgeted (*e.g.*, an entry of “10” under “2020 Months Onboard” indicates a budget for hiring at the start of March 2020). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Position	2020 Months Onboard	2020 Base Salary	2020 True Employee Cost ⁴
Chief Technology Officer			
Product Manager – Frontend			
Product Manager – Backend			
Head of Software Engineering			
Lead Technical Architect			
Head of Vendor Service Delivery			
Information Security Director			
IT Help Desk Manager			
IT Help Desk Engineer			
IT Help Desk Engineer			
Administrative Assistant, Technology Dept.			

A. Chief Technology Officer (“CTO”)

23. All aspects of the MLC’s technology will be overseen and managed by the CTO, including both internal and external IT processes. While many organisations have both a CTO and a separate CIO, and may divide ownership for internal and external IT processes between them, I do not see a need to budget both a CTO and a CIO at the MLC at this time. Rather, I think a single individual with substantial experience handling both internal- and external-facing processes is prudent. Given the extraordinary speed required for technology ramp up and delivery, and the massive number of collaborators (songwriters, music publishers, aggregators, digital services, record labels, standards bodies, international rights groups, etc.) needed to make development a success, a single officer under the title of CTO who has significant industry experience will be important to minimize the runway needed to get the MLC’s technological operations up and running.

⁴

B. Product Managers

24. Product Managers are the glue for successful development, implementation and maintenance of technology products. A good Product Manager dramatically increases efficiency by managing communication from the users and stakeholders of a product through to the designers and developers of that product. Because the MLC plans to obtain most development resources on both the front-end and back-end from a primary vendor, good Product Managers at the MLC will be crucial, as they will supervise design and ensure that the products meet the needs of the MLC's stakeholders. To clarify, the "front-end" product here is the public-facing aspects of the MLC's platform, including the portal for claiming works, business and financial information, conflicts and other account services, and the website for education, outreach and other public information. This portal is mandated by the statute and will service copyright owners around the world. The "back-end" is both the product that sits behind the portal and also that handles the other work related to data gathering from multiple stakeholders, matching and usage processing. While not as visible to the public, the back-end product is no less important, especially as proper matching of works and "efficient and accurate collection and distribution of royalties" are among the highest responsibilities of the MLC.⁵ The Product Managers will work with the Head of Software Engineering, and should be responsible for ensuring the success of the front-end and back end products.

C. Head of Software Engineering

25. The Head of Software Engineering is a leadership role accountable for the successful component/sub-system design and delivery of software and IT infrastructure for the

⁵ See Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 7 (2018), https://www.copyright.gov/legislation/mma_conference_report.pdf ("Conf. Rep.').

MLC's operations. The Head of Software Engineering will work with the Lead Technical Architect, Product Managers and vendors to ensure development and delivery of software against agreed priorities, including all of the components and sub-systems depicted in the solution architecture chart in Exhibit 3.

D. Lead Technical Architect

26. The Lead Technical Architect is a leadership role accountable for the successful architecture and high-level design of software and IT infrastructure for the MLC's operations. In particular the Lead Technical Architect will be responsible for identifying the optimal tools and technologies (both internal and external) needed by the MLC to perform its statutory functions. The Lead Technical Architect monitors technology developments in service areas to foster the use of the most efficient and effective technologies to carry out the MLC's functions. Where external technologies are needed, the Lead Technical Architect will work with the Head of Vendor Service Delivery to procure those components. The Lead Technical Architect also works with the Head of Software Engineering, Product Managers and vendors to ensure the end-to-end delivery of MLC's systems.

E. Head of Vendor Service Delivery

27. Particularly given the broad spectrum of essential MLC services that will involve outside vendors, a dedicated supervisor to monitor and maintain vendor service standards and deliverables is an integral part of successful results. The Head of Vendor Service Delivery will work closely with the MLC's vendors to ensure successful delivery of the vendors' services. More specifically, the Head of Vendor Service Delivery will be central to managing relationships with the vendors, establishing and monitoring vendor service level agreements, managing coordination where multiple vendors are working on single project, working with vendors to obtain quotations

and changes, analysing the industry, technology and vendor landscapes to identify project vendor candidates, and assisting the MLC's legal team in negotiating and addressing vendor contract issues.

F. Information Security Director

28. The MLC is also responsible for maintaining accounts containing the personal and financial information of many thousands of payees around the globe, and the movement over time of billions of dollars in funds. An Information Security Director ("ISD"), preferably a Certified Information Systems Security Professional ("CISSP"), has specialized knowledge and skills necessary to ensuring that the MLC diligently oversees the information and assets that the statute entrusts to its care. The ISD is responsible for designing, implementing, managing and reporting on security controls throughout the MLC. The ISD is also responsible for reviewing security systems at all vendors who will have access to sensitive MLC data, and ensuring that such systems are maintained to necessary standards. The ISD will coordinate with outside vendors as needed for services such as network audits, system security incident responses and testing networks and computer systems for security vulnerabilities. The ISD will be the lead on incident management and remediation of potential breaches of network security. The ISD will also interface with all departments to identify risks and threats related to their special operations and educate personnel on information security and risk awareness.⁶

⁶ [REDACTED]

G. Help Desk Team

29. A good IT help desk team is essential to maintaining efficiency in modern office operations. The MLC is estimated to have nearly 90 employees when it is up and running, most of whom will regularly interface with the complex technology systems and multiple software platforms used by the MLC in its operations. The IT help desk team will address the inevitable requests for assistance and computer issues that will arise internally at the MLC. The help desk team will also provide overflow assistance with technical customer care questions and projects of the other IT department staff.

V. Detail on non-personnel estimates

In addition to the personnel making up the Technology Department, the MLC will also incur certain non-personnel related costs in connection with the establishment and ongoing operations of the Technology Department, as described below.

A. [REDACTED]

30. [REDACTED]

[REDACTED] The process for evaluation and selection of technology vendors began in 2018.

i. RFI process

31. The MLC began with a Request for Information (“RFI”) process in order to gather information and scope out its technology needs. 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 5. Participants in the RFI process included:

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

32. 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 experience with each of the vendor's services and capabilities. Additional input was provided on request by major digital services, including Amazon, Apple, Google, Spotify and Pandora, each of whom also have significant experience with vendors in this space.

ii. RFP process

33. 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 a Request for Proposal ("RFP") process, including:

- ASCAP
- BackOffice
- Consensys/HFA/Rumblefish/SESAC
- IBM/SACEM
- ICE
- Music Reports, Inc.
- SXWorks

34. A copy of the RFP along with its Detailed Functional Requirements Appendix, is attached as Exhibit 6. The Detailed Functional Requirements lay out specific capabilities and components of the program. (An updated version of the Detailed Functional Requirements document is discussed in Paragraph 14 above and attached as Exhibit 4.)

35. Three of the initial RFP participants—ASCAP, BackOffice and ICE—determined that the aggressive demands of the statutory timeline for the MLC conflicted with other business goals and removed themselves from the process. Responses from the others were received in March 2019.

iii. Overview of technology data processes

36. The RFP process involved an examination of the MLC’s core technology processes that facilitate the MLC’s day to day activities in service of its statutory obligations. The details of these core processes have evolved since the issuance of the RFP, and may evolve further still, but are depicted in the solutions architecture attached as Exhibit 3.

iv. [REDACTED]

37. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

38. [REDACTED]

[REDACTED]⁷ [REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

v. [REDACTED]

40. [REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

⁷ [REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸ [REDACTED]

[REDACTED]

[REDACTED]⁹

⁸ [REDACTED]

⁹ [REDACTED]

vi. [REDACTED]

46. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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47. [REDACTED]
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48. [REDACTED]
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49. [REDACTED]
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[REDACTED]¹⁰ [REDACTED]

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B. [REDACTED]

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[REDACTED]

C. [REDACTED]

51. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

¹⁰ It bears emphasis that no entity in the U.S. has ever discharged the responsibilities of the MLC. The mandate to both administer a blanket license for all musical works that is available to anyone simply by filling out a notice, and to actively identify the owners of musical works underlying sound recordings, no matter how small the use, and to create and service royalty payment accounts for them, are considerable mandates that have never existed in the U.S. market.

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55. [REDACTED]

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F. [REDACTED]

56. [REDACTED]

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[REDACTED]

I. [REDACTED]

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹² [REDACTED]

[REDACTED]

[REDACTED]

J. Office technology and services

i. Interim CIO consulting

62. [REDACTED]

[REDACTED]

[REDACTED]

¹² [REDACTED]

ii. Central office IT costs

63. These are indispensable costs for any organisation, let alone one with the technology interfacing that the MLC will have. The budgeted amount is reasonable to cover essential costs to run MLC operations that include servers and storage, back-up hardware and services, cloud computing infrastructure, network switching, wireless network infrastructure, security cameras, domains and various other equipment required for operations.

iii. Software licensing

64. These are the software counterpart indispensable costs to the hardware costs above, and would include software license purchases for central IT resources, as well as licenses for software of the types as office productivity suites (*e.g.*, Office 365), messaging tools (*e.g.*, Hive, Slack), enterprise password management (*e.g.*, Dashlane, LastPass), collaboration software (*e.g.*, Huddle, Confluence), identity management (*e.g.*, Ping, Okta), project management (*e.g.*, Jira, Basecamp) and other software to enable efficient operations. The budget for this line item is reasonable, although it would not provide for full-featured versions of all apps for all employees, as basic office software licensing should be able to be managed to this budget by conservative resourcing among staff.

i. Internet, phone, network conferencing, collaboration services

65. These costs include reasonable office internet service, virtual private branch exchange (“PBX”) phone services, and phone/video conferencing and collaboration services.

ii. Employee office IT hardware costs

66. The MLC will need central IT hardware, as discussed above. It must also provide computer equipment to its employees, which is budgeted on a per employee basis. This line item budgets a startup cost of [REDACTED], which covers desktops/laptops/tablets/mobile devices where appropriate, screens, docking stations, keyboards and interface equipment, and other related IT equipment accessories. The annual costs start in 2021 at [REDACTED], for equipment maintenance and replacement. To be clear, this estimated cost does not contemplate that each employee will receive a desktop, laptop, tablet and mobile devices. Rather, it would cover each employee receiving a base device, and additional devices where necessary or prudent for operational work, both at the individual and shared team/department level. It must also cover a basic provision of supplemental equipment in the IT office for staff needs. This budgeting is reasonable in my experience, both as to initial costs and also ongoing maintenance. Generally, employee computer equipment has short life cycle (two to three years) on average, as accident-prone employees offset those who are less accident prone.

VI. Summary

67. The budget presented herein is a reasonable and prudent budget for various MLC technology-related costs. As I have emphasized at places, the MLC faces a formidable and unprecedented technology development program, under time constraints and performance obligations that no private entity faces. It is a daunting technology project, and will require the MLC to “run the table” in recruiting excellent talent, motivating important collaborators, choosing the right vendor partners and orchestrating all of the pieces to work together. Success and fulfilment of the statutory functions simply cannot be attained without the proper financial

resources to accomplish these tasks, and to mobilise, maintain and operate the technology, as laid out herein.

68. I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: September 13, 2019



RICHARD THOMPSON

**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

WRITTEN TESTIMONY OF PAUL KAHN

1. My name is Paul Kahn. I am Executive Vice President and Chief Financial Officer of Warner Chappell Music (“Warner Chappell”), a leading global music publishing company that is home to a wide array of legendary songwriters and a vast catalog of music. I have held this position since 2015. I am also a director and officer of the Mechanical Licensing Collective (the “MLC”), and was unanimously elected the first Treasurer of the MLC on April 29, 2019.

2. I submit this declaration in support of the MLC’s proposed initial administrative assessment (“Proposed Assessment”). Specifically, my statement addresses (i) the structure of the Proposed Assessment, and (ii) the reasonable actual and estimated costs of the MLC, in connection with:

- the MLC’s Finance Department, including the personnel, specialized software and services, outside professional services, and other costs necessary to the operations of the Finance Department;
- the MLC’s Chief Executive Officer and assistant; and
- various business expenses, itemized below, that are necessary to support the MLC’s infrastructure and operations (the “Overhead Expenses”).

I. Professional Background

3. I hold a Bachelor of Science degree from Binghamton University and an MBA from Columbia Business School. Prior to joining Warner Chappell, I served as Chief Financial Officer of EMI Music North America, Chief Financial Officer of Primedia, Inc.'s Business Information Group, Senior Vice President at Viacom, and General Partner of Himalaya Capital, among other positions.

4. In my current position as Executive Vice President and Chief Financial Officer of Warner Chappell, I am responsible for, among other things: (i) preparing and reviewing budgets, (ii) analyzing financial data and financial forecasting; (iii) overseeing various audit processes, including both audits of Warner Chappell and audits by Warner Chappell; (iv) overseeing the accuracy of royalty payments to songwriters and copyright owners; (v) hiring and managing the Finance Department personnel; (vi) estimating overhead expenses, including each type of expense discussed herein; and (vii) negotiating loans and financing agreements on behalf of Warner Chappell. I have also been responsible for reviewing and implementing budgets for royalty processing, songwriter account management (including the collection and distribution of royalties and confirmation of the accuracy of such payments) and hiring the necessary employees to perform these operations.

5. While the MLC's statutory mandate and operations are unique, my experience running the operations of one of the world's largest music publishers informs this statement and positions me to knowledgeably estimate the needs of the MLC's Finance Department as well as the costs and expenses the MLC will incur to carry out its statutory mandate.

II. Structure of the Proposed Assessment

A. *The Startup and Ongoing Costs of the Proposed Assessment*

6. The Proposed Assessment includes (i) a one-time assessment to cover startup phase costs for establishing the MLC and (ii) an ongoing annual assessment to cover ongoing costs to operate the MLC starting in 2021. This structure is appropriate because it provides for the statutorily-mandated reimbursement of the MLC's startup expenses, which will be primarily incurred prior to the January 1, 2021 license availability date (the "LAD") and include many one-time startup costs,¹ while also establishing an appropriate assessment to fund the recurring costs for the MLC's ongoing operations going forward from 2021.

7. The MLC's estimated ongoing costs are captured by the annual portion of the Proposed Assessment, which begins in 2021 at \$29 million, and continues year-to-year, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²

¹ Some startup phase costs, such as financing costs associated with startup financing, may be incurred in 2021, but are nevertheless one-time costs related to startup and so are appropriately included in the one-time startup assessment.

² [REDACTED]

Period	Average Increase in Total Compensation for Sales and Office workers

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³

B. *Allocation terms of the Proposed Assessment*

9. The MLC submits that the Proposed Assessment be allocated across the digital music providers and significant nonblanket licensees (together, the “Licensees”) on a pro rata basis, based on market share of aggregate Licensee Service Revenue for the 12-month period ending on June 30th of the calendar year preceding the payment period start date.⁴ Service Revenue is defined to include revenue received by the Licensees for all covered activities, including digital downloads as well as interactive streaming offerings.

³ [REDACTED]

⁴ Consistent with the statute, the Proposed Assessment also provides for a minimum fee to be paid by Licensees, to be offset against the amounts due under the market share allocation.

C. *Payment and reporting terms of the Proposed Assessment*

10. In order for there to be appropriate allocation, the Proposed Assessment includes specific terms to ensure timely and certified reporting of Service Revenue by Licensees. This reporting would be used to calculate allocations and invoice Licensees, which is particularly important for significant nonblanket licensees, who might not otherwise report Service Revenue to the MLC as blanket Licensees must under the current compulsory mechanical license rates and terms. Since inadequate reporting that leads to an underpayment by one Licensee would amount to an overpayment by all other Licensees, proper reporting from all Licensees is important to protect each of their rights.

III. Summary of MLC costs addressed herein

11. As with the Proposed Assessment, I have divided my cost estimates into (a) startup phase costs, and (b) 2021 costs (which serve as the basis for the ongoing annual assessment).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. A summary of cost estimates⁵ that I address in this testimony is as follows:

Cost item	Startup phase	2021		
Personnel				
Finance Department personnel				
CEO personnel				
Non-personnel				
Administrative software platforms				
Recruitment costs				
Professional services (Financial)				
Financing costs				
Insurance				
Premises				
Miscellaneous overhead				
Contingency budget				
TOTAL				

13. I discuss each of these items in detail below. In light of the required functions and responsibilities of the MLC, each of the line item budgets is reasonable, and the total budgeted costs are reasonable as a whole.

IV. Cost details

A. *Finance Department Personnel*

14. As the Copyright Office has recognized, the MLC “must undertake formidable responsibilities to establish a number of operational functions critical to implementation of the new blanket license system.” 37 CFR 210 (July 8, 2019).

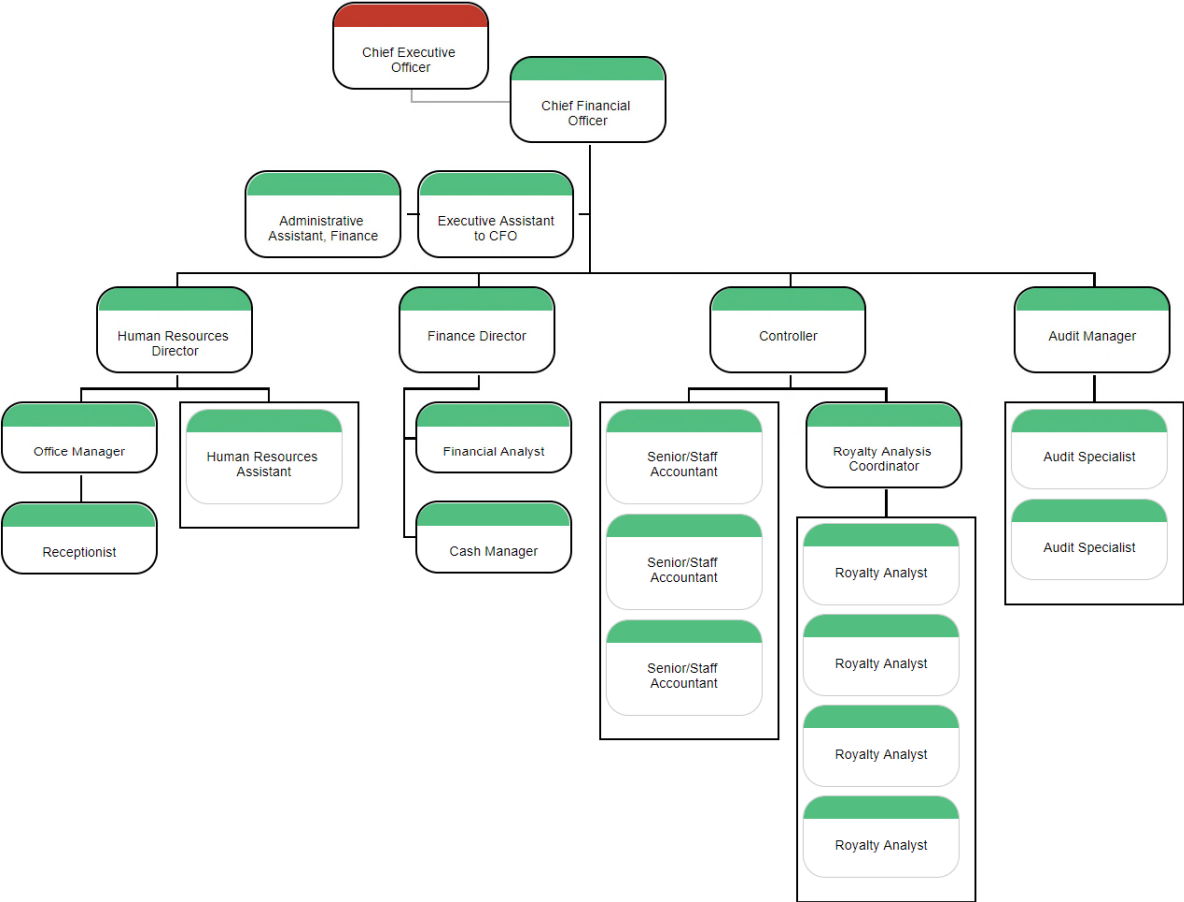
15. The MLC is required by statute to diligently undertake significant financial activities. Specifically, it will be responsible for collecting and distributing payments to copyright owners behind every share of the tens of millions of songs made available on streaming services. 17 U.S.C. § 115(d)(3)(G). While the MLC is retaining a vendor to assist in processing royalty

⁵ The figures presented here are rounded to the nearest thousand-dollar increment for ease of review.

distributions, the MLC alone is statutorily empowered and responsible for handling the timely and accurate payments to copyright owners, and must maintain a proper finance department sufficient to supervise operations, to be consistent with the responsibilities mandated by statute and ensure that payments are being calculated and remitted correctly.

16. The Finance Department responsibilities include timely worldwide royalty collection, payment processing, and tax compliance and reporting associated with those royalty payments. Relatedly, the Finance Department must address accounting issues and disputes from licensors and licensees with respect to likely billions of dollars over time in mechanical royalties. The Finance Department will also oversee and manage financial analysis and accounting with respect to the sprawling unclaimed royalty pools (currently believed to total in the hundreds of millions of dollars and to date back several years), and interest associated with those royalties, that the digital services will deposit with the MLC in early 2021. *See* 17 U.S.C. §115(d)(3)(J).

17. The Finance Department’s budgeted full organizational chart is as follows⁶:



⁶ The following diagram is excerpted from MLC’s organizational chart, located at Exhibit 2.

18. The positions depicted in this chart are budgeted for the following onboard dates and compensation numbers:

Position	2020 Base Salary	Start Month	2020 True Employee Cost	2021 True Employee Cost
CFO				
Controller				
Senior Accountant				
Staff Accountant (x2)				
Royalty Analysis Coordinator				
Royalty Analyst (x2)				
Royalty Analyst (x2)				
Audit Manager				
Audit Specialist (x2)				
Finance Director				
Financial Analyst				
Cash Manager				
HR Director				
HR Assistant				
Office Manager				
Receptionist				
Executive Assistant to CFO				
Administrative Asst., Finance				

19. This departmental structure, along with these estimated compensation numbers, are reasonable in the context of the necessary functions of the MLC, the current market requirements and rates, and the office location in Nashville, Tennessee.

i. Chief Financial Officer (“CFO”)

20. The Finance Department will be led by the CFO, who manages and provides leadership, direction and oversight to the finance, accounting and human resources groups. The CFO manages the processes for financial forecasting and budgets and oversees the preparation of all financial reporting. The CFO also oversees royalty payment processing operations to the copyright owners. The CFO oversees the coordination and production of tax documentation as required, and works closely with the CEO to advise on long-term business and strategic financial

planning. The CFO further provides financial reporting and data analysis to the Board of Directors and relevant Committees, manages startup financing, and oversees all financial and accounting issues relating to voluntary licenses.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷

22. The MLC budgets additional costs of employment [REDACTED]. The base pay plus the cost to the employer of benefits is sometimes referred to as the “true employee cost,” or the “fully-loaded” or “fully-burdened” employee cost. Numerous costs⁸ go into the true employee cost, including:

- Taxes, including federal and state unemployment, Social Security, Medicare, workers’ compensation, local payroll taxes, etc.;
- Insurance, including employer paid premiums for health, dental and vision, short-term and long-term disability, life, etc.;
- Retirement benefits, including plan management cost and employer matching contribution on 401(k) and other plans;
- Bonuses and overtime compensation; and
- Paid leave.

⁷ [REDACTED]

⁸ The MLC at this time has not determined the precise benefits packages that will be offered to employees, and so this list should not be taken as determinative of actual benefits.

23. I note that [REDACTED]

[REDACTED]⁹ [REDACTED]

[REDACTED]¹⁰

ii. Controller and Supporting Personnel

24. The Controller is responsible for overseeing and executing the invoicing and collection of royalty payments from the digital music providers (the “DMPs”). The Controller also oversees the process of issuing royalty statements to copyright owners.

25. More generally, the Controller develops accounting policies and procedures and ensures that all accounting allocations are properly made and documented. The Controller also oversees accounts payable, accounts receivable, cash disbursements, payroll and bank reconciliation functions. The Controller manages a team of one Senior and two Staff Accountants (whose specific roles are described below), who assist with the MLC’s accounting obligations.

26. The Controller also manages an Audit Manager and Audit Specialists. The Controller works directly with its in-house audit team and external auditor to conduct examinations of the books, records and operations of the MLC and to prepare reports as required by the statute. 17 U.S.C. §115(d)(3)(D)(ix). The Controller also oversees all statutorily permitted audits both by the MLC and of the MLC (described in further detail below).

⁹ True employee cost is not to be confused with “total employee compensation.” Total employee compensation generally looks from the perspective of the employee, and may leave out employer costs (such as unemployment taxes) that employees typically do not see as compensation, but which are nonetheless costs to the company associated with the employee.

¹⁰ [REDACTED]

27. The Controller additionally supervises a Royalty Coordinator and Royalty Analysts. The Royalty Coordinator and Analysts coordinate calculation validation to ensure the royalties are accurately calculated and distributed as well as payment reconciliation.

a. Senior/Staff Accountants

28. The Senior Accountant and Staff Accountants report directly to the Controller. The Accountants liaise with the MLC's technology vendor and oversee all royalty invoicing and payment processing. The Accountants ensure that collection and distribution of payments to each musical copyright owner behind each share of the tens of millions of songs is being done timely and properly and address customer inquiries regarding such payments, including through interface with the rights portal and usage and payment processing systems. This team of accountants is vital to ensuring that the MLC's statutory mandate is diligently and accurately fulfilled.

29. The Accountants are also responsible for the MLC's accounts payable and receivable and ensure that all transactions are recorded properly, including but not limited to the billions of dollars in royalty payments to copyright owners and payments to vendors that will be required of the MLC.

30. Among other duties, the Accountants also work with the Controller to comply with local, state and federal government reporting requirements and tax filings, including Corporate, State, and Local Tax Returns and the Form 990 (in addition to other compliance reporting), and work with the Human Resources Department to manage payroll for the MLC's employees.

b. Audit Manager & Specialists

31. The Audit Manager reports directly to the Controller and manages Audit Specialists to assist with the three different types of audit processes in which the MLC will need to engage:

- Copyright Owner Audits of the MLC

32. Copyright owners are statutorily permitted to audit the MLC to verify the accuracy of royalty payments made to them. 17 U.S.C. §115(d)(3)(L). The in-house Audit Manager and Specialists will work closely with the copyright owner or retained auditor to conduct the reviews.

- MLC Audits of Digital Music Providers

33. The MLC is statutorily permitted to conduct an audit of any DMP to verify the accuracy of royalties deposited with the MLC by the DMP. 17 U.S.C. §115(d)(4)(D). Substantial such audits would be conducted by an outside auditor under the supervision of the Audit Manager and Specialists. Narrow such audits might be largely conducted by in-house staff.

- MLC Audit of MLC

34. In 2023 and at least every five years thereafter, the MLC has a statutory obligation to conduct an audit of its own books, records and operations, and prepare a report for the MLC's Board of Directors addressing the implementation and efficacy of internal procedures (a) for the receipt, handling, and distribution of royalty funds, including unclaimed royalties, (b) to guard against fraud, abuse, waste and the unreasonable use of funds, and (c) to protect confidentiality of financial, proprietary and other sensitive information.

35. The Audit Manager is responsible for organizing and overseeing these internal and external audits (together with outside auditors).

36. In addition, the Audit Manager implements internal auditing policies, procedures and programs, and will also supervise, conduct and report on the adequacy of internal controls over financial reporting. The Audit Manager also investigates and determines whether any financial reporting irregularities and errors exist and recommends corrective actions.

37. The Audit Specialists, who report directly to the Audit Manager, manage audits of the MLC conducted by copyright owners to verify the accuracy and propriety of royalty payments. The Audit Specialists track audit notice letters received from copyright owners and determine the permissible scope of the audit. The Audit Specialists, interfacing with the Legal Department, assist in analyzing claims identified in audit notice letters. The Audit Specialists work with the copyright owner or their retained auditor to ensure the audits are performed properly.

38. As part of each audit process, the Audit Specialists review and analyze account information, statement data, and other pertinent information affecting royalty calculations and reporting. They create documentation and assist in settlement of each audit, in coordination with the legal and licensor relations teams. Each Audit Specialist also manages the input and tracking of data related to pending audits. They also provide *ad hoc* assistance with overflow from the Royalty Analysis team, discussed below.

39. It is reasonable for the MLC to estimate at least 100 audits of the MLC by copyright owners each year. This is a conservative estimate given the tens of thousands of copyright owners and tens of millions of songs which require mechanical royalty distribution, along with the historical inability of many copyright owners to audit digital streaming royalties that has been lifted by the MMA and its creation of the MLC.

40. Based on my expertise with similar types of musical work royalty audits conducted at Warner Chappell, it is reasonable to estimate that each Audit Specialist will be responsible for ten active audits at a given time, each of which should be expected to take one to two months to conduct (and to resolve if there are any issues). This makes it reasonable to estimate that each Audit Specialist will likely manage 40 to 50 audits each year.

c. Royalty Analysis Coordinator & Analysts

41. The Royalty Analysis Coordinator manages a team of Royalty Analysts, who are responsible for royalty calculation validation and payment reconciliation. Specifically, the Royalty Analysis Coordinator oversees the tracking and recording of incoming royalty payments and reporting and outgoing royalty payments and statements. The Coordinator also oversees the Royalty Analysts in their review and analysis of data to ensure proper payment to royalty recipients. The Coordinator also liaises with the appropriate sources (*i.e.*, the DMPs) directly to resolve issues when they arise.

42. As explained above, copyright owners are statutorily permitted to conduct an audit of the MLC to verify royalty payments. In the event of an underpayment or overpayment to any copyright owner, the Royalty Analyst Coordinator will work with other members of the Finance Department to arrange payment of any such underpayment, or to debit the account of the auditing copyright owner(s) for any overpayments, as required by the statute. *See* 17 U.S.C. §115(d)(3)(L).

43. The Royalty Analysts, who report directly to the Royalty Analyst Coordinator, are primarily responsible for analyzing and ensuring proper royalty payments. They oversee the service and troubleshooting of royalty accountings to the tens of thousands of copyright owners, and track and record incoming royalty payments, interfacing with the technology vendor. The Analysts perform analysis on data to address queries and conflicts, and work with MLC senior and staff accountants to ensure the accuracy of payments.

44. The Royalty Analysts also provide specialized client services for more technical questions or issues from copyright owners regarding royalty accounting. Royalty Analysts provide expert financial analysis to resolve inquiries from copyright owners that are escalated from other departments and groups. If there are errors in royalty payments, the Analysts liaise with the

appropriate sources to correct those errors and work with other individuals in the Finance Department to reconcile any payment issues.

45. In addition, when a copyright owner of an unmatched musical work is identified, the Royalty Analysts will work with the vendor and other in-house accounting personnel to issue a cumulative statement of account (potentially dating back several years and many months of reporting) along with the payment of accrued royalties and the proportionate amount of accrued interest associated with the work. *See* 17 U.S.C. §115(d)(3)(I). The MLC's responsibility to take over custody and responsibility for the unmatched royalty pools that have accumulated for years with the digital services, and to match and pay out those pools, is a substantial and important undertaking that will require devotion of significant resources and efforts by the Royalty Analysts as well as other MLC personnel.

iii. Finance Director and Supporting Personnel

46. The Finance Director coordinates and directs the preparation of the MLC's budget, financial forecasts and related reports, including preparing and issuing monthly financial reports relating to the royalty collections, related distributions and company expenses.

47. The Financial Analyst reports to the Finance Director, and assists with the budget, financial forecasts and reports, and issuance of monthly financial statements. The Financial Analyst also analyzes data on the MLC's expenses and prepares related financial reports, including monthly variance reports, which highlight causes of change in finances or expenses. The Analyst is responsible for day-to-day accounting operations related to the analysis of the transactions, preparation and recording of month-end journal entries for all facets of the monthly close process, and executing the monthly, quarterly and annual close process for the MLC.

48. A dedicated Cash Manager is also critical for the MLC, which will have hundreds of millions of dollars in cash regularly flowing through its custody, likely across numerous bank accounts and subject to numerous regulations concerning custody of funds, including restrictions on comingling and depository interest requirements. The Cash Manager ensures compliance with the banking regulations set forth in the statute. *See, e.g.*, 17 U.S.C. 115(d)(3)(D)(iv)(I)(cc), (G)(i)-(ii), (H)(ii). The Cash Manager is also responsible for monitoring cash transactions, overseeing cash management activities such as posting procedures for payments and bank account administration, the allocation of cash balances, loans and disbursements, and reconciliation of cash applications and disbursements

iv. Human Resources Department

49. The Human Resources Department will also fall under the supervision of the MLC's CFO. The Department will be headed by the Director of Human Resources, who will oversee recruiting, staffing, and performance management for the MLC. He or she will oversee employee orientation, development and training. The Director will also oversee compensation and benefits administration for the MLC's employees, assist in the creation of employee policies and oversee employee safety and welfare services. The Director will also coordinate with the Legal Department with respect to issues relating to compliance with employment laws and policies

50. A Human Resources Assistant provides support to the Director of Human Resources with his or her responsibilities, serving as a point of contact with benefits vendors and administrators, managing payroll information and employee information, and assisting in recruitment, new employee orientation and handling employee queries.

51. The MLC's office manager and receptionist, which are customary positions for an office of the size of the MLC, are also included in the Human Resources Department and manage

facilities, filing, mail and deliveries, supplies and equipment, premises space and planning, visitors and phones.

v. Departmental Assistants

52. The CFO is supported by an Executive Assistant, and a general Administrative Assistant will provide support for the Finance Department, each of which are standard support staff that provide efficiency gains by handling routine tasks and freeing up the time of others in the department.

B. *Chief Executive Officer (“CEO”)*

53. The MLC will be managed under the leadership of the CEO, who oversees the MLC’s work in all areas, and acts as the key voice and relationship manager for the MLC. The CEO makes high-level decisions about the MLC’s policies and strategies for all aspects of the MLC’s functions and operations, and is responsible for interfacing with, and reporting to, the Board of Directors to keep them informed about the operations of the MLC and implement their decisions throughout the organization.

54. The CEO works closely with the other chief officers, including with the CFO to oversee the MLC’s fiscal activity, including budgeting, reporting and auditing. The CEO also builds strategic and collaborative relationships with other organizations and stakeholders that help the MLC fulfill its statutory mission. As the Copyright Office has indicated, the MLC needs to work with many stakeholders, including services and the broader musical work copyright owner and songwriting communities. 84 FR 32292.

55. The CEO is supported by an Executive Assistant to maximize efficiency, as is standard.

56. The CEO is budgeted for a 2020 base salary of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹ [REDACTED]

C. *Non-Personnel Costs*

i. Administrative Software Platforms

a. *Human Resources Systems*

57. Like any organization of its size, the MLC will require human resources software to organize and manage employee payroll and benefits. ADP is a common provider of such human resources software. A budget [REDACTED] to implement such a platform that is administered by the MLC's in-house staff, with a maintenance budget of [REDACTED] is reasonable.

b. *Financial Management Platform*

58. MLC will also require a financial management platform for its day-to-day financial and accounting functions. A budget of [REDACTED] to implement such a platform, with a maintenance budget of [REDACTED], is reasonable based on the current marketplace.

ii. Human Resources Costs

a. *Recruitment*

59. It is critical that MLC find the right leadership team and hire executives who have the specialized experience and talent to run the MLC. As with any organization, the executives' competency and decision-making ability are critical to the success of operations. These

¹¹ [REDACTED]

individuals will also be responsible for hiring all of the employees for the MLC. Given that the MLC must be in a position to begin issuing blanket licenses in January 2021 under the statute (*see e.g.* 17 U.S.C. §§ 115(d)(2)(B)), 115(e)(15)), it has a very short time-frame to hire these individuals and begin operations. The MLC must also begin matching and distributing the unclaimed royalties as soon as possible.

60. Accordingly, MLC has retained an executive search firm to assist in recruitment of MLC executives. The standard fee charged by the search firm is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. Professional Services (Financial)

62. As described in detail above, there are three different types of audits that will be conducted under the statute. The MLC will need to engage outside professional audit services to handle its self-audits, as well as substantial copyright owner audits and audits of Licensees. A single large audit is a significant expense that can cost hundreds of thousands of dollars. The MLC also budgets for outside tax accounting services for compliance with regular tax filings and local, state and federal tax laws. [REDACTED] is a conservative annual budget for these professional services, in light of the MLC's statutory mandate and requirements.

iv. Startup Financing

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

65. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

v. Insurance

66. The MLC, like any organization, will also require particular insurance. The MLC has already procured preliminary Directors & Officers (“D&O”) insurance, and approximately [REDACTED] in currently payable premiums for this insurance underlie part of this budget line item. In

the coming months, the MLC intends to add additional standard policies including general liability, property, commercial crime, error & omissions and cyber-insurance, and an umbrella policy. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi. Overhead Expenses – Premises

67. The headquarters of the MLC is expected to be located in Nashville, Tennessee, which has a long tradition as one of the country's cultural epicenters of the music industry, particularly in the historical district in downtown Nashville known as Music Row.

68. Nashville is also easily accessible to many other parts of the county. Within the city limits is the Nashville International Airport, which has nonstop service to 75 markets, including direct flights to other locations important to the music industry, including New York, Los Angeles, Washington, D.C., Austin, Seattle, Atlanta, New Orleans and the Bay Area.

69. Over the last several years, Nashville has also become a favorable location for company expansions and relocations due in part to a low cost of living and conducting business in the area. This growth has resulted in an increase in Class A office inventory in the region.

70. [REDACTED]

[REDACTED]

[REDACTED]¹² [REDACTED]¹³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴

71. The MLC expects to have a standard open floor plan of primarily workstations, with some enclosed offices and several conference rooms. The MLC budgets [REDACTED] per square foot for complete fit out of the premises, which should cover a functional, budget-conscious office build out based on Nashville market estimates.¹⁵ This budget item includes the process of designing, constructing and furnishing the physical workspaces in the MLC’s office, and includes hard costs (e.g., general contracting, installations), soft costs (e.g., architecture, engineering), furniture, fixtures and equipment (“FF&E”) (e.g., workstations, partitions, lighting, storage, cabling, conference room equipment, projectors), and miscellaneous costs, such as equipment

¹² According to Cushman & Wakefield, by the end of 2017, the national average density of office space was 194 square feet per employee. (See Exhibit 23, Cushman & Wakefield, *Space Matters*, available at <http://blog.cushwake.com/americas/why-space-matters-density.html>). [REDACTED]

¹³ This gross rent budget takes into account expenses associated with the property that should be covered in gross rent leases, including property taxes and property insurance, common area maintenance, utilities (e.g., electricity, sewer, water, trash and recycling collection), janitorial services and building security. If the MLC’s lease is instead a modified gross lease or a net lease, some or all of these expenses may not be included in rental rate. However, the total property costs should be comparable regardless of the lease type, and so this is a reasonable budget even without knowing the precise type of lease that will be negotiated.

¹⁴ See Exhibit 24, Colliers International, *Research & Forecast Report, Nashville Office, Mid-Year 2019*, available at https://www2.colliers.com/-/media/Files/UnitedStates/Markets/Nashville/Nashville-Research/2Q_2019_Nashville_Office_Report.ashx; Exhibit 25, JLL, *Nashville Office Insights, 2019 Q1*.

¹⁵ See, e.g., Exhibit 26, JLL, U.S. and Canada Fit Out Guide: Office Cost Benchmarking Report (2019), at 28.

installation and safety and security expenses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vii. Miscellaneous Overhead

72. This budget item covers cost of office supplies for the MLC (e.g., paper, stationery, printer supplies, and other basic supplies), as well as miscellaneous office expenses, such as mailing. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. This item also includes typical and ordinary charges relating to the significant banking activities of the organization. This includes, but is not limited to, set-up and maintenance fees, and fees for domestic and international wire transfers. [REDACTED] beginning in 2021 is a reasonable estimate of these banking fees.

viii. Budget contingency reserve

74. I also estimate here contingency costs equal [REDACTED]

[REDACTED].

75. A budget contingency reserve is standard line item in any organization's budget.

[REDACTED]

[REDACTED]. The MLC does not budget this line item as a reserve fund for insurance

against unlikely expenses, but rather the line item captures costs that, based on experience with operations and prudent budgets, should be expected but simply have not yet manifest so as to be put in a particular line item.

V. Conclusion

76. The foregoing sets forth several of the foreseeable needs and expenses with which the MLC is or will be faced as it is getting off the ground and continues going forward. Based on my professional experience and my review of market information and benchmarks, the structure and estimates described herein are prudent to budget for the MLC to fulfill its objectives, and support the reasonableness of the Proposed Assessment.

77. I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: September 13, 2019

A handwritten signature in blue ink, appearing to read "Paul Kahn", is positioned above a horizontal line.

PAUL KAHN

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

WRITTEN TESTIMONY OF DANIELLE AGUIRRE

1. My name is Danielle Aguirre. I am the Executive Vice President and General Counsel of the National Music Publishers' Association ("NMPA"). I also currently serve as a nonvoting Director of the Mechanical Licensing Collective (the "MLC") pursuant to 17 U.S.C. § 115 ("Section 115") (d)(3)(D)(III). I submit this statement pursuant to 37 C.F.R. § 355.3(b) in support of the MLC's opening submission in this proceeding (the "Proceeding") and the MLC's proposed initial administrative assessment (the "Proposed Assessment") under Section 115(d)(7)(D).

2. This statement addresses the reasonableness of the MLC's legal costs incurred and budgeted, including for in-house and outside counsel, in connection with establishing, maintaining and operating the MLC to fulfill its statutory functions,¹ both during the startup phase of its operations, and on an ongoing basis after the January 1, 2021 license availability date (the "LAD").²

¹ The MLC may incur added legal costs in connection with administering voluntary licenses as set forth in 17 U.S.C. § 115(d)(3)(C)(iii). The estimates discussed herein do not include such added costs, as they are not part of the collective total costs covered by the administrative assessment, *see* Section 115(e)(6)(B). Such added costs would be covered by the reasonable fees charged by the MLC for providing those voluntary license administration services.

² *See* 37 CFR § 355.3(b)(2)(i), published at 84 Fed. Reg. 32296 (Jul. 8, 2019), at 32309.

A. Background, Qualifications and Experience

3. NMPA is the leading trade association representing all American music publishers and their songwriting partners, including before Congress, in the courts, and before this Copyright Royalty Board (the “CRB”). NMPA is a non-profit that is exempt under section 501(c)(6) of the Internal Revenue Code, as the MLC is expected to be. NMPA played a significant role in the passage of the Music Modernization Act (“MMA”) that established the Section 115 blanket license for digital streaming services, and supported and assisted with the creation of the MLC by copyright owners to carry out the responsibilities of the statutory collective under the MMA.

4. At NMPA, I have held the position of Executive Vice President and General Counsel since 2015. Prior to that, I held the position of Senior Vice President for Litigation and Business Affairs. Prior to joining NMPA, I was an attorney at Paul, Weiss, Rifkind, Wharton and Garrison LLP for nine years.

5. In my current position, I am and have been responsible for, among other things, managing NMPA’s in-house legal team, hiring and supervising outside counsel (including in connection with CRB proceedings), and managing all litigation and CRB proceedings. For these reasons, I am familiar with the compensation paid to NMPA’s in-house legal team, the internal budgeting for in-house legal costs by the NMPA, the range of fees charged by outside law firms experienced in the intersection of the music industry and copyright law, and budgeting for outside legal costs.

6. In my role as General Counsel at NMPA, I am in regular contact with members of the in-house legal teams for many of NMPA’s music publisher members and am familiar with the sizes of many of those publishers’ legal teams and the roles played by individual attorneys on those teams.

7. I am also familiar with the staffing of the legal department at SoundExchange, Inc. (“SoundExchange”), which is perhaps the closest existing analogue to the MLC, as it is a 501(c)(6) non-profit entity whose primary purpose is to administer, collect and distribute royalties from digital exploitations of sound recordings to sound recording copyright owners. I have also reviewed public financial disclosures by SoundExchange and the Recording Industry Association of America Inc. (“RIAA”), general market information from the Nashville area where the MLC intends to base its operations, and other public information, in connection with assessing the reasonableness of the MLC’s legal staffing and outside counsel budget.

**B. The Legal Costs Described Herein Are Required For
The MLC To Fulfill Its Statutory Functions**

10. The administrative assessment is to be established “in an amount that is calculated to defray the reasonable collective total costs.” Section 115(d)(7)(D)(ii)(II). “Collective total costs means the total costs of establishing, maintaining, and operating the [MLC] to fulfill its statutory functions,” and specifically includes “legal” costs. Section 115(e)(6)(A). Collective total costs also includes, *inter alia*, the MLC’s startup costs, audit costs, and costs of licensing, royalty administration, and enforcement of rights, all of which themselves involve and include legal costs.

11. As the Copyright Office recognized, the MLC will be confronted with meeting the demands of a multitude of significant statutory obligations. *See U.S. Copyright Office, Designation of Music Licensing Collective and Digital Licensee Coordinator*, 84 Fed. Reg. 32274 (Jul. 8, 2019) (“Designation Determination”), at 32288. Indeed, the Copyright Office expressed outright concern that a “licensing and legal” annual budget of only \$600,000 to \$730,000 (as budgeted by the other entity seeking designation as the collective) likely did not “fully anticipate the MLC’s statutory obligations in this area,” calling out such required MLC activities as participating in Copyright Office rulemakings and administrative assessment proceedings, and

enforcement of the blanket license regime, including in bankruptcy proceedings and federal court proceedings for damages and injunctive relief. *Id.* (citing the American Intellectual Property Law Association’s 2017 Report of the Economic Survey (“AIPLA Report”), reporting on the AIPLA’s nationwide survey of, *inter alia*, intellectual property attorney compensation and IP litigation costs).

12. In fact, the MMA specifically identifies dozens of unique categories of MLC obligations that will be performed by or will require the assistance of attorneys. These include:

- Engaging in legal and other efforts to enforce rights and obligations under the MMA, including by filing bankruptcy proofs of claims for amounts owed under licenses, and acting in coordination with the digital licensee coordinator (“DLC”), Section 115(d)(3)(C)(i)(VIII);
- Handling all legal aspects of audit requests and audits by copyright owners, including reviewing the legal sufficiency and propriety of the requests, responding to reasonable requests for relevant information, facilitating access to relevant information maintained by third parties, negotiating and documenting any audit procedures agreed between the parties, reviewing tentative drafts of and final audit reports and assisting in responding to same, and negotiating and documenting any settlement of any audit claim, Section 115(d)(3)(L);
- Handling all legal aspects of audits by the MLC of digital music providers (“DMPs”), including preparing, filing with the Copyright Office, and delivering to DMPs notices of intent to conduct audits, negotiating with DMPs regarding alternative verification procedures, and handling any legal challenge to such audits or results thereof, Section 115(d)(4)(D);
- Initiating and participating in proceedings before the CRB to establish or to adjust the administrative assessment, and in any appeals of any assessment before the D.C. Circuit Court of Appeals, Section 115(d)(3)(C)(i)(IX), (d)(7)(D);
- Initiating and participating in proceedings before the Copyright Office with respect to activities under Section 115(d), including rulemaking proceedings, Section 115(d)(3)(C)(i)(X);
- Gathering and providing documentation for use in proceedings before the CRB to set rates and terms under Section 115, including responding to subpoenas and other discovery demands, Section 115(d)(3)(C)(i)(XI), (d)(8)(A);

- Defending challenges to the MLC’s rejection of a notice of license in District Court, Section 115(d)(2)(A)(v);
- Assessing any default by any DMP, preparing, delivering, and defending notices of default and termination of a DMP’s blanket license, including participating and providing evidence in any district court review, and providing notice to affected copyright owners regarding same, Section 115(d)(4)(E);
- Commencing and prosecuting actions in federal court for damages and injunctive relief against any significant non-blanket licensee (“SNL”) that has failed to comply with its statutory obligations, and providing monthly reports to the DLC identifying any SNLs that have not complied with such obligations, Section 115(d)(6)(C);
- Participating in legal proceedings as a stakeholder party if the MLC is holding funds that are the subject of a dispute between copyright owners, Section 115(d)(11)(D);
- Drafting, reviewing and releasing annual reports and complying with other reporting requirements, see, e.g., Section 115(d)(3)(D)(vii), (d)(3)(ix)(II)(aa)-(cc), (d)(6)(B); and
- Establishing, maintaining and enforcing legal policies, including confidentiality and document retention policies and conflicts policies, Section 115(d)(3)(M), (d)(3)(D)(ix).

13. In addition to the various specific obligations discussed in the statute, the MLC will be confronted on a daily basis with legal issues relating to its formidable statutory obligations and mandate, including the blanket license, rights management, unclaimed accrued royalty pools, data security and privacy, regulatory compliance, and its voluminous accounting and payment obligations. These tasks will include responding to legal inquiries and questions from music publishers and self-published songwriters; assessing the legal implications and providing internal legal guidance regarding business transactions of the MLC; responding to third-party subpoenas and other legal notices and claims; working closely with the MLC board and committees to ensure legally compliant and best practices policies, processes and decisions; ensuring compliance with federal and state reporting and filing obligations, as a 501(c)(6) entity and an entity processing likely billions of dollars in financial transactions with entities dispersed around the world;

addressing employment matters; and handling all of the varied legal issues confronted by sizable operating businesses. Each of these tasks will require significant resources.

14. Certain of the tasks described above are expected to be performed by the budgeted MLC in-house legal team. Some of the tasks, including proceedings before federal, state and bankruptcy courts and the CRB and Copyright Office, will require the services of outside counsel. In projecting legal costs herein, I estimate the reasonable staffing requirements and compensation packages for in-house attorneys to perform appropriate tasks. I also estimate the demands for outside counsel, and the expected hourly fees and associated expenses of those resources. For budgeting purposes, I endeavor to divide labor on a category-by-category basis between in-house and outside lawyers, but in running efficient legal operations, these divisions are not firm. Within any category, exceptions arise that are more efficiently handled in a different way.

15. I separate my estimates into categories that correspond to the two parts of the Proposed Assessment: (i) startup phase legal costs, including costs for work performed to date and going forward through 2020 (“Startup Phase Legal Costs”) and (ii) 2021 costs for legal work, which serves as a basis for an ongoing annual budget (“Ongoing Legal Costs”).

16. Startup Phase Legal Costs are primarily associated with legal work performed in connection with the creation, establishment, designation and funding of the MLC, the startup of MLC operations, and Copyright Office rulemaking concerning the blanket license. Much of the Startup Phase Legal Costs relate to work that is not expected to be routine, recurring work.³

17. As discussed more fully below, I budget the MLC estimated legal costs for 2021, the first year of the MLC’s operations after the LAD. Subsequent Ongoing Legal Costs are based

³ To be clear, certain legal work performed during the startup phase *will* be recurring work, including such routine work as regulatory compliance, governance oversight and contractual negotiations. Such recurring work will also underlie the estimate for Ongoing Legal Work, as discussed below.

off of this 2021 budget

18. Below I explain my estimates for the MLC's in-house legal personnel and costs, followed by an explanation of its outside counsel costs, both actual (to date) and estimated. To date the MLC had not hired in-house legal staff, having only been designated as the collective in July of this year. Rather, all legal work to date has been performed by the MLC's outside counsel, Pryor Cashman LLP. Once the MLC hires and onboards in-house counsel, work can be appropriately apportioned between the in-house and outside resources as efficiency and effectiveness dictates.

C. MLC Legal Department Personnel Roles

19. To fulfill all of its statutory duties, the MLC requires an in-house legal staff. The budgeted staffing at full strength for the MLC’s legal needs is five attorneys with one administrative assistant. The budgeted department chart is a General Counsel overseeing an Associate General Counsel and a licensing group comprised of a Deputy General Counsel, Licensing and two Associate Counsels, Licensing.

20. An in-house legal team consisting of a General Counsel and four other attorneys is appropriate, if lean, given the statutory requirements of the MMA for which the legal team will have responsibility. This team will have to be supplemented by substantial outside counsel work, but it would not be efficient for the MLC to outsource all of its legal tasks to outside counsel where volumes of more routine legal tasks and oversight can be handled by employees.⁵

General Counsel

21. The General Counsel (“GC”) will be responsible for leading the MLC’s strategic and tactical legal and regulatory initiatives. As appropriate for an organization whose operations are fundamentally guided by a detailed statutory mandate and legal and regulatory obligations, the General Counsel is a “C-suite” position that reports directly to the CEO and will provide the CEO and the Board of Directors with advice to navigate business, legal, regulatory and policy challenges and opportunities. The GC also manages the legal department, and the procurement and oversight of outside counsel. The GC has ultimate responsibility for ensuring that all of the MLC’s statutory and other legal obligations are met, including all of categories of obligations requiring the assistance of attorneys as described above.

⁵ For comparison, I understand that

NMPA has an in-house legal team

22. Given the broad scope of the responsibilities and activities overseen by the GC, the position requires an industrious individual with a broad experience and skills. The GC should be knowledgeable about, inter alia, the music and digital service industries, music licensing, the MMA and Section 115 and its implementing regulations, as well as able to manage legal oversight of a company engaged in very large-scale data collection and financial transactions across the globe.

23. The annual base salary for the GC is estimated to be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁶ [REDACTED]

[REDACTED]⁷ [REDACTED]

[REDACTED]

24. The budgeted compensation for the GC is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸ [REDACTED]

[REDACTED]

⁶ The reasonableness of this estimate is discussed in more detail in the accompanying testimony of Paul Kahn.

⁷ All in-house legal personnel costs of the MLC's Legal Department discussed herein are set forth in Exhibit 1.

⁸ [REDACTED]

Since there are costs to employers that do not count as compensation to the employee, employee compensation numbers will understate employer costs.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Associate General Counsel

25. The MLC budgets one Associate General Counsel (“AGC”), who will support and report directly to the GC. The AGC will work on regulatory and compliance matters; will assist in the establishment and maintenance of, and compliance with, internal and external policies; will be responsible for responses to subpoenas, requests for information and other legal demands and claims; will work with outside counsel in connection with the MLC’s involvement in legal and regulatory proceedings; and will assist the General Counsel providing legal advice and assistance to the Board, Advisory Committees and all of the MLC departments. The AGC position should be someone with both litigation experience and copyright and music industry knowledge.

26. The base annual salary in 2020 for the AGC is budgeted to be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Deputy General Counsel and Associate Counsels, Licensing

27. A substantial portion of the MLC's legal responsibilities relate to licensing and, relatedly, the accounting and payment of royalties. For this reason, the MLC budgets a Deputy General Counsel, Licensing, who will be responsible for, *inter alia*, overseeing a comprehensive program to administer, service and enforce the blanket license and the obligations of significant nonblanket licenses. The Deputy General Counsel will report directly to the General Counsel. The MLC also budgets two Associate Counsels, Licensing, who will work with and report to the Deputy General Counsel, Licensing, to handle all of the significant tasks described below that relate to licensing issues.

28. The MLC's licensing legal team will together be responsible for assessing notices of license and notices of nonblanket activity, and monitoring compliance with related regulations. These attorneys will be responsible for assessing performance and compliance with license requirements, addressing questions and concerns regarding same, following up with licensees as to notice and cure of defaults, and addressing and defending enforcement of any uncured defaults, including via court actions, along with notices to affected copyright owners as appropriate. This team will also interface with outside counsel and manage all of the legal aspects of audits of the MLC conducted by copyright owners, as well as MLC audits of DMPs. They will assist in the establishment and maintenance of, and will enforce and ensure compliance with, those legal policies of MLC that relate to licensing and payment and accounting of royalties. They will have day-to-day responsibility for responding to issues raised by or concerning copyright owners, DMPs, and SNLs with respect to licenses, including disputes regarding copyright ownership claims and

rights management, and the payment of mechanical royalties. All of these positions should be filled by individuals with experience in copyright and music licensing.

29. The estimate for 2020 annual base salary for the Deputy General Counsel, Licensing is [REDACTED] The budgeted compensation is consistent with what is being offered in the marketplace to qualified candidates for comparable Deputy Counsel positions. [REDACTED]

[REDACTED]

[REDACTED]⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

⁹ [REDACTED]

Administrative Assistant

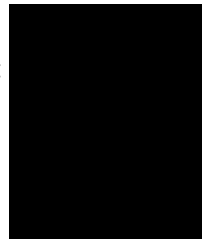
31. The MLC budgets for one Administrative Assistant for the Legal Department. This assistant will handle phones, scheduling, filing, word processing, correspondence, mailing, and other administrative tasks. [REDACTED]

[REDACTED] This is reasonable in my understanding of the market for these services in Nashville.

D. MLC Legal Department Personnel Cost Estimates

32. The MLC budgets to hire and onboard its legal staff on the following schedule:

General Counsel:
Deputy General Counsel, Licensing:
Administrative Assistant:
Associate General Counsel:
Assistant Counsel, Licensing:
Assistant Counsel, Licensing:



33. This is an appropriate onboarding schedule to handle the ramp up of legal work to be handled by in-house counsel. As the MLC onboards all of its employees, ramps up its information systems, begins to collect and manage sensitive data, executes increasing transactions and relationships relating to operations, technology and finance, and implements guidance from the Board and Advisory Committees, some MLC legal personnel should be on hand to learn the systems, make sure necessary policies and procedures are in place, and ensure the proper contracts, policies and best practices are in place, and all operations are in compliance with all applicable standards, rules and regulations. The General Counsel and Deputy General Counsel, Licensing, will also guide the hiring of the remaining legal positions in the department, to get them into place to handle the increased flow of work arising around and after the LAD.

34. Costs for the MLC's Legal Department personnel through 2020 are part of my estimated Startup Phase Legal Costs. Using the above onboard schedule, along with the

compensation figures discussed above for each position, the estimated total costs for MLC Legal Department personnel through 2020 is [REDACTED]. This is a very reasonable budget for legal work that is part of the operations of the MLC to fulfill its statutory functions.

35. [REDACTED]

[REDACTED] for 2021, the estimated total costs for MLC Legal Department personnel in 2021 is approximately [REDACTED]. This is likewise part of a reasonable budget for legal work to discharge the significant responsibilities of these positions towards fulfilling the MMA's statutory mandate.

E. Outside Counsel Legal Costs

36. Following on my discussion above of estimated costs for the in-house Legal Department, I detail below the estimated costs for outside counsel. I break this down into three categories: (i) Actual costs incurred (as invoiced through July 2019); (ii) Additional costs estimated through 2020; and (iii) Costs estimated for 2021, which serve as the basis for subsequent year budgets.

1. Actual costs incurred (through July 2019)

37. The legal work of the MLC has been performed to date by Pryor Cashman LLP ("Pryor Cashman"). Pryor Cashman was retained after diligent consideration and review of proposals of other law firms, both because its rates are reasonable compared to other law firms in its class, including other firms providing proposals, and because few firms have the music, licensing, copyright and CRB experience possessed by Pryor Cashman. Pryor Cashman is a full-service law firm with significant depth of knowledge and experience in the numerous legal areas implicated in the startup, establishment, and development of the MLC. These areas include copyright and intellectual property law, administrative law and litigation (Pryor Cashman represented writers and publishers in the most recent mechanical royalty rate proceeding, *Phonorecords III*, before the CRB), corporate law, nonprofit law, technology law, tax law, as well

as significant knowledge regarding the music publishing, songwriting and digital streaming service industries.

38. The legal work performed by Pryor Cashman to date includes (by general category):

- Advice on nonprofit organization law issues;
- Advice and research regarding the corporate structure of the MLC and its governance and policies;
- Advice and drafting of corporate formation and governance documents;
- Advice and drafting of corporate policies;
- Advice on the law and regulations impacting MLC formation, governance and operations, including concerning Section 115 licensing and mechanical royalty rates and terms;
- Evaluation of operational development plans for legal and regulatory compliance and compatibility;
- Advice and drafting related to a request for information (“RFI”) and request for proposal (“RFP”) to vendors;
- Legal due diligence on vendors;
- Negotiation and drafting of non-disclosure agreements with vendors, RFI/RFP participants, DMPs, and the DLC;
- Negotiation and drafting of service contracts;
- [REDACTED]
- Representation of the MLC in the Copyright Office proceeding for designation of the statutory collective, including:
 - Advice, research, analysis, evidence collection and drafting of the MLC submission responding to all areas of inquiry identified by the Copyright Office in its Notice of Inquiry (83 Fed. Reg. 245 (Dec. 21, 2018), at 65747-54);
 - Research, analysis, evidence collection and drafting of the MLC response to the competing submission seeking designation;
 - Meeting with the Copyright Office to address further questions;
- Onboarding of MLC directors and committee members (including advice on conflicts issues and other legal responsibilities and requirements);

- Advice and assistance on maintaining MLC governance practices, including procedures for meetings and actions, and maintenance of minutes and records;
- Advice and assistance evaluating insurance needs and options, legal exposures requirements, evaluation of insurance policy options and terms and policy negotiation;
- Advice on trademark law and research on trademark and intellectual property issues;
- Advising on draft regulations governing the procedures of this Proceeding;
- Meetings and negotiations with the digital services and the DLC regarding the administrative assessment and the funding of the MLC; and
- Representation of the MLC in this Proceeding.

39. This list is only a partial summary of the work done by outside counsel to date to address the many, daily legal questions that arise in the MLC's startup and development. Pryor Cashman's invoices for this work through July 31, 2019 total [REDACTED]. The costs incurred are reasonable, and directly related to the startup and establishment of the MLC and the fulfillment of the statutory mandate of the collective.

2. Estimated costs through 2020

40. Additional legal costs have been incurred since July, including in connection with this Proceeding, and the MLC will continue to require the services of outside counsel to perform legal work going forward. These outside legal costs from August 2019 through the end of 2020, including costs in connection with this Proceeding, are estimated in this section.

41. During this time, as the MLC onboards Legal Department personnel, some of the work being performed by outside counsel will be shifted to in-house staff. However, new types of legal tasks will also arise in 2020, and there will remain a significant need for the services of outside counsel.

42. Costs budgeted for outside counsel work through 2020 are included in Startup Phase Legal Costs. This work will include continuing to represent the MLC in this Proceeding, including, *inter alia*, as needed:

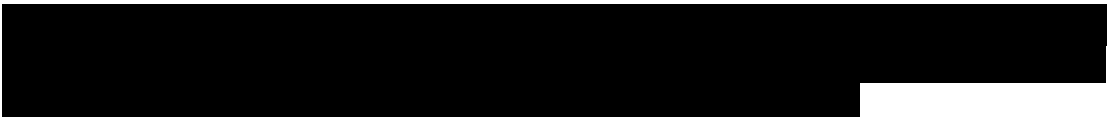
- Legal analysis, strategy, client conferences;
- Collecting evidence and collaborating on this opening submission and the accompanying production and disclosures, 37 CFR 355.3(b);
- Propounding and defending discovery requests during the first and second discovery periods, 37 CFR § 355.3(d)-(g);
- Document collection, review, analysis and processing (defensive), 37 CFR § 355.3(d)(1);
- Document discovery, review and analysis (offensive), 37 CFR § 355.3(g);
- Collecting evidence and collaborating on fact and expert witness statements for the MLC's reply submission, 37 CFR § 355.3(i);
- Representing MLC witnesses in connection with depositions, *see* 37 CFR § 355.3(e);
- Taking depositions of DLC witnesses, 37 CFR § 355.3(e), (g)(2);
- Making and contesting discovery motions, 37 CFR § 355.3(h);
- Negotiating with the DLC and preparing the joint pre-hearing submission, 37 CFR § 355.3(j);
- Making and contesting other motions, *see* 37 CFR § 303.4;
- Continued negotiation with the DLC regarding the administrative assessment and funding, 37 CFR 355.4; and
- Preparation and conduct of the live hearing, including examination of DLC witnesses and representation of MLC witnesses, 37 CFR § 355.5.

43. As with any litigation, the MLC is not in full control of how much it is required to spend to vindicate its positions in this Proceeding. The litigation conduct of the DLC will have a significant effect on the legal resources that the MLC must apply in this Proceeding. Based on my experience with many other proceedings, litigations and trials (including the CRB *Phonorecords*

III proceeding, in which the five digital services who comprise the DLC board of directors also participated), it is prudent to budget [REDACTED] for outside legal costs in connection with this Proceeding (which includes costs and expert witness fees) from August 2019 through a hearing and completion. Obviously this budget could be significantly reduced in the event of settlement on all or a significant portion of the issues before a hearing.

44. In addition to legal work in connection with this Proceeding, I estimate between [REDACTED] in additional outside counsel legal costs through 2020, including in the following areas:

- Advice, research, industry collaboration, drafting of submissions, and additional meetings and participating in multiple Copyright rulemaking proceedings and notices of inquiry, including as related to: (a) adopting regulations to determine the form, content and manner of service of notices to obtain a blanket license (Section 115(b)(1), (b)(2)(A), (d)(2)(A)(i)); (b) adopting regulations setting forth requirements related to usage reporting (Section 115(d)(4)(A)(iv)); (c) adopting regulations to determine the information to be included in the musical works database, and the usability, interoperability, and usage restrictions related thereto (Section 115(d)(3)(E)(ii)(V), 115(d)(3)(E)(iii)(II), 115(d)(3)(E)(vi)); (d) adopting regulations to provide for the appropriate procedures to ensure the protection of confidential, private, proprietary or privileged information (Section 115(d)(12)(C)); and (e) adopting additional regulations to effectuate the provisions of the MMA (Section 115(d)(12)(A)).
- [REDACTED]
- Evaluation of operational development plans for legal and regulatory compliance and compatibility;
- Drafting and advising with respect to executive and employee agreements and benefits plans;
- Assistance onboarding executives and employees as to regulatory environment, legal obligations, policy requirements and other legal issues;
- Negotiating and preparing IP/invention agreements, technology transfer and collaboration agreements, web development agreements, and patent, copyright and trademark filings, as needed;

- Negotiating office and equipment leases;
- Continuing advice and assistance on maintaining MLC governance practices, including procedures for meetings and actions, and maintenance of minutes and records;
- Continuing legal advice to the MLC board and committee members, including with respect to potential conflicts and other issues;
- Advice and assistance with drafting and implementation of appropriate policies;
- Continuing advice and assistance evaluating insurance needs and options, legal exposures requirements, evaluation of insurance policy options and terms and policy negotiation;
- Advice and assistance concerning implementation of the administration assessment and the allocation thereof;
- Advice, negotiation, and preparation of agreements and policies to ensure compliance with data privacy and security rules and best practices, including GDPR;
- 
- Continuing work to obtain 501(c)(6) tax exemption, and advice on tax and financial reporting issues;
- Researching and addressing legal questions, claims and disputes that arise, including as to confidentiality, liability, indemnification, intellectual property, publication of materials, and other issues; and
- Further advice in specialized legal areas, including trademark, digital media, real estate, labor, tax, and nonprofit law.

45. While the MLC budgets at the low end of my range for these costs through 2020, I must emphasize that there is of course the very real possibility that reasonable costs actually incurred may be higher, and even exceed the range. As this list hopefully conveys, there are many legal issues that the MLC must navigate, and any number of them could lead to unexpected additional legal costs.

F. Ongoing Legal Work – Annual Anticipated Future Costs (Outside Counsel)

46. As discussed above, there are a host of statutory and other legal obligations that the MLC must fulfill that will, on an ongoing basis, require the services of outside counsel. The MLC budgets [REDACTED] in outside legal and expert costs for 2021, which represents a prudent budget given the extensive legal responsibilities and regulatory oversight that the MLC must address. This budget is based on my review of those obligations, my assessment of which of those obligations will require the services of outside counsel (and experts, if any), and what I believe, based on my experience and other information discussed herein, it will cost to perform these services.

47. ***Legal Proceedings.*** The MLC's statutory obligations include representing the MLC in numerous types of legal proceedings before the CRB or federal or state courts. Such proceedings include proceedings: (a) to enforce rights and obligations under the MMA (including in bankruptcy and other court proceedings); (b) addressing legal compliance by DMPs and SNLs, including as to royalty and assessment reporting and payment obligations; (c) challenging and defending the results of audits; (d) challenging an MLC rejection of a notice of license or termination of a license; (e) implicating the MLC in ownership disputes as a custodian of funds in dispute, including potentially necessitating interpleader proceedings; and (f) by the CRB to adjust the administrative assessment¹⁰ (including appeals) or by the Register to assess the designation of the MLC as the statutory collective. Any single proceeding in any of these categories can require substantial MLC resources, and the MLC's legal budget must be sufficient to ensure that the MLC can adequately represent itself and the rights of copyright owners in all such proceedings.

¹⁰ The regulations permit the DLC, the MLC or any interested copyright owner, DMP or SNL to commence a proceeding to adjust the administrative assessment. 37 CFR § 355.2

48. Based on my experience, I estimate that outside legal costs to handle all of these legal proceedings – which could include dozens of federal, state and bankruptcy court proceedings – will be [REDACTED]. This estimate includes not just the fees and costs of in-house counsel, but also of any expert witnesses that the MLC needs to retain in connection with any proceeding.

49. This estimate of litigation-related costs is supported by the following:

50. First, it is supported by the annual outside counsel legal budget of SoundExchange, as reported by SoundExchange. [REDACTED]

[illegible]

¹¹ [REDACTED]

12. [REDACTED]

51. *Second*, it is supported by the AIPLA Report and, in particular, the data from that report cited by the Copyright Office in the Designation Determination. There, the Copyright Office pointed to just a few of the MLC’s statutory obligations concerning “legal and other efforts to enforce rights and obligations” under section 115(d), “including by filing bankruptcy proofs of claims for amounts owed under licenses” or commencing actions for damages and injunctive relief in federal court. Designation Determination at 32288, citing the MLC’s obligations identified in 17 U.S.C. §§ 115(d)(3)(C)(i)(VIII)–(XI) and § 115(d)(6)(C)(i). In noting that the AMLC’s legal budget failed to adequately consider these statutory obligations, the Office cited to page 44 of the AIPLA Report, which estimates the cost of outside counsel to handle a single copyright infringement action. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] While the MLC is not a copyright owner and will not be litigating copyright infringement actions, issues in potential MLC litigations could substantially overlap with issues typical to in copyright infringement actions, including as to document discovery and evidence of noncompliance with license rates and terms and unauthorized copying.

52. The [REDACTED] estimate takes into account my reasoned assessment of risk, as we are admittedly dealing to some degree here with an element that is not within the control of the MLC, *i.e.*, the number of legal proceedings filed by third parties. Despite this, the

[REDACTED]

MLC is committed to maximizing efficiency, and the budget reflects that. Nevertheless, as with startup phase estimates, there is a risk that the costs actually incurred may prove to be at the higher end of the range or greater. In fact, the possibility exists that there will be so many legal proceedings that the entire annual outside counsel budget will not suffice to cover the cost of those litigations, let alone all of the other non-litigation legal work described below.

53. ***Audits.*** In addition to representing the interests of the MLC in CRB and court proceedings, the MLC will need the services of outside counsel in connection with the legal aspects of audits, which will be a significant obligation of the MLC in terms of both time and money. The MLC will undoubtedly receive many audit requests from copyright owners; the legal sufficiency and propriety of the requests must be evaluated, the requests must be responded to, and procedures must be negotiated, agreed and documented. Reports must be reviewed from a legal perspective, and settlements must be negotiated and documented. Further, the MLC has the right to audit DMPs, in discharge of its obligation to ensure proper royalty accounting for all licensors, and outside counsel's services will be required to evaluate the need for the audits, review the auditor requests for information and participate in the audit requests themselves, consult with the auditors, address and deal with any information disagreements, review the audit reports for compliance with applicable law, and negotiate and document settlements. Although no one can determine the precise number of audits the MLC will face at this time, there will be regular audits occurring, and I believe a reasonable budget for outside counsel work in connection with audits should not be below [REDACTED].

54. ***Information Gathering, Review and Production (and Challenges Thereto).*** Another significant obligation of the MLC relates to the information that the MLC will have in its possession. Given that the MLC will be the repository of a trove of information concerning the

digital exploitation of musical works, it will certainly be the subject of many subpoenas and other requests for information in connection with, by way of example, infringement actions. In fact, the MMA contemplates this, noting that the MLC will be responsible for gathering and providing documentation for use in proceedings before the CRB to set rates and terms under the MMA. 17 U.S.C. §§ 115(d)(3)(C)(i)(XI), 115(d)(8)(A). It will also undoubtedly receive subpoenas and requests in other types of proceedings. In all cases, outside counsel will be required to, where appropriate, object to relevance or scope, seek limitations or restrictions, ensure confidential or privileged information is appropriately protected, and assist in making production. Based on my experience, particularly given the number of infringement suits and the cost of document review and production, I believe a reasonable budget for this work is between [REDACTED].

55. ***Rulemaking Proceedings and Other Regulatory Work.*** The services of outside counsel (and in particular counsel with regulatory and copyright experience) will also be required in connection with initiating and participating in proceedings before the Copyright Office with respect to activities under the MMA, including rulemaking proceedings. Based on my experience, I believe the budget for this work should be [REDACTED].

56. ***Areas of Particular Legal Specialty.*** As is standard for organizations, outside counsel services are required with respect to particular areas of legal specialty beyond the mastery of in-house counsel, such as financial technologies, data privacy and security (and global compliance therewith), trademark, tax, labor, real estate, and nonprofit entities. Based on my experience and understanding of the MLC's operational functions and scope, a reasonable budget for this work is between [REDACTED].

57. Adding up all of the ranges of fees for the categories of Ongoing Legal Work described above leads to between [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. Summary of Estimates

58. With respect to Startup Phase Legal Costs, I have provided herein reasonable calculations of: (a) the actual costs for outside legal counsel invoiced through July 2019 [REDACTED]; (b) the budgeted costs for continued outside legal services through 2020, including in connection with this Proceeding [REDACTED],¹³ and (c) the budgeted costs for the MLC's in-house Legal Department personnel through 2020 [REDACTED]. Together, these calculations detail Startup Phase Legal Costs of [REDACTED] that are directly tied to the MLC's statutory functions and responsibilities. It is not merely reasonable for the MLC to budget these costs, but it would be unreasonable not to budget for them, as they are central to diligently and properly establishing the MLC and its operations, in order to fulfill its statutory functions under the MMA.

59. With respect to Ongoing Legal Costs, I have provided reasonable calculations of: (a) the budgeted 2021 costs for the MLC's Legal Department personnel, [REDACTED], and [REDACTED], and

¹³ [REDACTED]

(b) the budgeted 2021 costs for outside counsel and related legal expenses [REDACTED]. Together, these calculations detail legal costs for 2021 of [REDACTED]. These costs are likewise directly related to statutory responsibilities, and the budget is likewise reasonable and prudent, as is the conservative [REDACTED]

[REDACTED].

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: September 13, 2019



DANIELLE M. AGUIRRE

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 II - PUBLIC to the following:

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

Digital Licensee Coordinator, Inc., represented by Allison Stillman, served via Electronic Service at astillman@mayerbrown.com

Signed: /s/ Alex R Goldberg