

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

JOINT MOTION TO ADOPT PROPOSED REGULATIONS

In accordance with the Copyright Royalty Judges’ (the “Judges”) Order Granting Joint Motion to Suspend Case Schedule and Directing Parties to Submit Proposed Regulations Implementing Settlement (Doc. 15277), the Judges’ Order Directing Parties to Address Compliance with Title 17 of Proposed Regulations Implementing Settlement (the “Compliance Order”) (Doc. 15705), and the Judges’ Order Granting Participants’ Joint Motion for Extension (Doc. 15744), the Mechanical Licensing Collective (the “MLC”) and the Digital Licensee Coordinator (the “DLC”) (collectively, the “Parties”), hereby provide proposed regulations implementing the Parties’ full settlement of the above-captioned proceeding concerning the amount and terms of the initial Administrative Assessment under Section 115(d)(7)(D)(iii) of the U.S. Copyright Act (the “Proposed Regulations”). The Proposed Regulations are attached hereto as Exhibit A. The Parties respectfully request that the Judges adopt the Proposed Regulations in full.

The Proposed Regulations should be adopted in full

Section 115(d)(7)(D)(v) provides that the Judges “shall approve and adopt a negotiated agreement to establish the amount and terms of the administrative assessment that has been agreed to by the mechanical licensing collective and the digital licensee coordinator..., except that [the Judges] shall have the discretion to reject any such agreement for good cause shown.” 17 U.S.C. § 115(d)(7)(D)(v). Moreover, as the Compliance Order notes, the Proposed Regulations must not be contrary to the law. As discussed below, the Parties submit that there is no good cause for rejecting the agreement of the Parties, and that the attached Proposed Regulations are not contrary to the law.

I. Proposed Regulations concerning the elements identified in the Compliance Order

The Compliance Order identifies two elements of the proposed settlement as to which statutory compliance should be specifically addressed in this submission. As discussed in detail below, the Parties submit that the Proposed Regulations concerning each of these elements are not contrary to any law, and provide no other grounds for rejection of the settlement.

A. Minimum Fee obligations of Significant Nonblanket Licensees

The Compliance Order notes that:

The discussion of the Settlement in the Motion does not address specifically the minimum fee obligations of a “Significant Nonblanket Licensee” a term defined in section 115(e)(31) of the Copyright Act that references the entity’s usage of sound recordings. This statutory definition may conflict with the threshold use of Total Sound Recordings separating alternative minimum fees in the Settlement.

With regard to the first part of this concern, the Proposed Regulations now make clear that the definition of Licensee includes both blanket licensees and Significant Nonblanket Licensees. Thus, the minimum fee obligations outlined in the Proposed Regulations—which apply to all Licensees—specifically address Significant Nonblanket Licensees.

With regard to the second part of this concern, the Parties submit that there is no conflict between the statutory definition of a Significant Nonblanket Licensee set forth in Section 115(e)(31) and the Proposed Regulations concerning the threshold use that separates the alternative minimum fees. Significant Nonblanket Licensee is defined under the statute to include an entity that, *inter alia*, either “(I) on any day in a calendar month, makes more than 5,000 different sound recordings of musical works available through such service; or (II) derives revenue or other consideration in connection with such covered activities greater than \$50,000 in a calendar month, or total revenue or other consideration greater than \$500,000 during the preceding 12 calendar months.” 17 U.S.C. § 115(e)(31)(A)(iii). This definition uses a threshold of 5,000 different sound recordings *available* to the end consumer on *any day* in a calendar month (or the alternative revenue prongs). In other words, the statutory definition involves the peak daily catalog size of the digital music provider.

In contrast, the threshold between the alternative minimum fees in the Proposed Regulations is the reporting of *usage* (not merely availability) of an *average* of 5,000 different sound recordings per month over the respective annual calculation period. Ex. A at §§ 390.1 (*Unique Sound Recordings Count*) & 390.3(a). Thus, while both the statutory definition and the Proposed Regulations share a 5,000 count threshold, the object of the counts are very different.

More importantly, the two definitions are not in conflict, but run consecutively. First, one must qualify as a Significant Nonblanket Licensee, and only then do the Proposed Regulations come into play. The Proposed Regulations provide (consistent with the statute) that the assessment is only payable by Licensees. Thus, regardless of whether a digital music provider might meet the threshold for a minimum fee in the Proposed Regulations, if that digital music provider does not first meet the definition of a Significant Nonblanket Licensee, then it is not required to pay (and is

not included in allocations of) the administrative assessment.¹ There is thus no conflict with the statutory provisions defining Significant Nonblanket Licensees.

B. Timing of assessment payments by Significant Nonblanket Licensees

The Compliance Order also raises the question of whether allocation and payment on a quarterly basis conflicts with the provisions in Section 115(d)(6) concerning Significant Nonblanket Licensees. The Parties respectfully submit that the Proposed Regulations concerning allocation and payment are not contrary to Section 115(d)(6) or any other law, and provide no grounds for rejection of the settlement.

Section 115(d)(7)(D) provides that the administrative assessment “may be in the form of... any [] usage-based metric reasonably calculated to equitably allocate the collective total costs across digital music providers and significant nonblanket licensees engaged in covered activities.” There is no additional requirement in Section 115(d)(7), or elsewhere in the statute, that the assessment be allocated or paid on any particular time frame.

Section 115(d)(6)(ii) states that:

The notice of nonblanket activity submitted to the mechanical licensing collective shall be accompanied by a report of usage that contains the information described in paragraph (4)(A)(ii), as well as any payment of the administrative assessment required under this subsection and applicable regulations. Thereafter, subject to clause (iii), a significant nonblanket licensee shall continue to provide monthly reports of usage, accompanied by any required payment of the administrative assessment, to the mechanical licensing collective. Such reports and payments shall be submitted not later than 45 calendar days after the end of the calendar month being reported.

¹ If the digital music provider has already submitted a notice of nonblanket activity to the MLC, and then ceases to qualify as a Significant Nonblanket Licensee, then it must notify the MLC pursuant to Section 115(d)(6)(A)(iii) before its obligation to pay the administrative assessment is discontinued (unless and until it again qualifies as a Significant Nonblanket Licensee).

As a matter of statutory construction, the use of the indefinite adjective “any,” rather than the definite article “the,” in connection with required payments, signifies that there may *or may not* be any required payments of the administrative assessment to accompany reports of usage. *See, e.g., In re Filene’s Basement, LLC*, No. 11-13511 KJC, 2013 WL 1910284, at *3 (Bankr. D. Del. May 8, 2013) (“‘Any,’ as an indefinite adjective, can mean all, any, *none* or some.” (emphasis added)); *Allied Painting & Decorating Co.*, ASBCA No. 43287, 93-3 B.C.A. (CCH) ¶ 26218 (July 8, 1993), *aff’d sub nom. Allied Painting & Decorating Co. v. Widnall*, 39 F.3d 1197 (Fed. Cir. 1994) (holding that “nothing in [the] sentence [‘[t]he contractor is responsible for *any* tax waiver application for sales tax relief’] can be construed to lead one to conclude... that a sales tax waiver would be granted or, for that matter, *that one even existed.*” (emphasis added)); *see also S.E.C. v. KPMG LLP*, 412 F. Supp. 2d 349, 387–88 (S.D.N.Y. 2006) (“Statutory interpretation ‘begin[s] with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.’ A statutory provision’s use of the definite article ‘the,’ as opposed to the indefinite ‘a,’ ‘an,’ or ‘any,’ indicates that Congress intended the term modified to have a singular referent.” (internal citations omitted) (citing *Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004))).²

The other provisions of Section 115 are consistent with this understanding. Section 115(d)(4) discusses the monthly reporting and payment requirements of blanket licensees, with no requirement for monthly payments of the administrative assessment. Rather, Section 115(d)(4)(C)

² The last sentence of Section 115(d)(6)(ii) does not change this understanding, as the reference there to “such reports and payments” simply refers back to import the scope from the preceding clause discussed above concerning “any” required payments, including that there might be no such required payments. *See, e.g., In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 295 (3d Cir. 2004) (“The word ‘such’ means ‘the aforementioned.’ Thus, when ‘such’ precedes a noun it is assumed to refer to a particular antecedent noun and any dependent adjective or adjectival clauses modifying that noun.” (internal citation omitted) (quoting *Gen. Elec. Co. v. Bucyrus-Erie Co.*, 550 F. Supp. 1037, 1042 (S.D.N.Y. 1982))).

is entitled “Payment of administrative assessment,” and states merely that, “A digital music provider and any significant nonblanket licensee shall pay the administrative assessment established under paragraph (7)(D) in accordance with this subsection and applicable regulations.” Section 115(d)(7)(D) similarly contains no requirement for monthly payments.³

The Proposed Regulations establish a straightforward process for equitably allocating the administrative assessment based on Licensee usage, and collecting payments at the start of each quarter. Under the Proposed Regulations, no administrative assessment payments are required when usage reports are collected, as the assessment will have already been collected for that monthly period in advance. The Parties respectfully submit that this process for allocation and payment is not contrary to any law, nor does it provide any other grounds for rejection of the settlement.

II. The Proposed Regulations are otherwise consistent with the law

While the statute does not clarify what would constitute good cause to reject otherwise mandatory terms from a settlement between the MLC and the DLC, it does provide requirements for an administrative assessment determined by the Judges after a full proceeding. While the statute does not apply these requirements to a negotiated settlement, the consistency nonetheless of the Proposed Regulations with these requirements is further indication that the Proposed Regulations are appropriate and should be adopted in full.

³ The Parties thus respectfully submit that, if the Judges continue to perceive a statutory requirement of assessment payments every month by Significant Nonblanket Licensees, the appropriate cure would be for the Parties to submit revised proposed regulations to apportion the proposed quarterly allocations for monthly payment by Significant Nonblanket Licensees only, without changing the Proposed Regulations and settled payment schedule for blanket licensees. The MLC respectfully submits that its orderly operations call for receipt of sufficiently advance funding to manage its budget, and that monthly funding is not sufficiently in advance to provide for orderly management of payables.

Section 115(d)(7)(D)(ii)(I) requires that an administrative assessment determined by the Judges “be wholly independent of royalty rates and terms applicable to digital music providers.” That is the case with the negotiated settlement and the Proposed Regulations. The amounts and terms of the administrative assessment as set forth in the Proposed Regulation are not tied or otherwise related in any way to the mechanical rights royalty rates and terms applicable to digital music providers.

Section 115(d)(7)(D)(ii)(III) requires that any administrative assessment determined by the Judges “be assessed based on usage of musical works by digital music providers and significant nonblanket licensees in covered activities under both compulsory and nonblanket licenses.” This is precisely what the Proposed Regulations call for. As is set forth therein, the assessment is to be allocated across all digital music providers and Significant Nonblanket Licensees (collectively defined as “Licensees”) and the proposed allocation is based on each Licensee’s activities covered by Section 115. Ex. A at § 390.4(a). Specifically, the assessment is allocated based on the number of unique and royalty-bearing sound recordings actually used by the digital music provider or Significant Nonblanket Licensee during the relevant time period.

Section 115(d)(7)(D)(ii)(IV) requires that any allocation determined by the Judges must “include as a component a minimum fee for all digital music providers and significant nonblanket licensees” and that the allocation take the form of a “usage-based metric reasonably calculated to equitably allocate the collective total costs across digital music providers and significant nonblanket licensees engaged in covered activities.” Both are true of the allocation formula contained in the Proposed Regulations. With respect to the minimum fee, the Proposed Regulations contain two different minimum fees – a lower minimum for those Licensees that use a relatively small number of unique sound recordings and a larger minimum for those Licensees

that use a relatively large number of unique sound recordings. Ex. A at § 390.3(a). The proposed allocation also utilizes a usage-based metric – the number of unique and royalty-bearing sound recordings used by means of Section 115 covered activities by each Licensee in a given month. Ex. A at §§ 390.1(*Unique Sound Recordings Count*) & 390.3(a). The rationale for using unique sound recordings as the usage-based metric is that it is directly tied to the key function of the MLC – the identification of the underlying musical works and musical works rightsholders in a given sound recording. Moreover, to further ensure that the allocation is done equitably, and to add protections for smaller Licensees, only half of the assessment is allocated amongst all Licensees. The remaining half is allocated only to the larger Licensees – those that account for at least 7.5% of the unique sound recordings across all Licensees.

The Parties have found no inconsistency between the Proposed Regulations and the statute, and respectfully submit that there is no basis to reject the settlement or the Proposed Regulations implementing that settlement.

* * * *

For the foregoing reasons, the Parties respectfully request that the Judges grant this motion and adopt the Proposed Regulations in full. If the Judges have any further questions or concerns, the Parties further respectfully request the opportunity to provide an additional submission addressing any such questions or concerns.

Respectfully submitted,

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Exhibit A

EXHIBIT A

*Proposed Regulations Implementing Settlement of Docket No. 19-CRB-0009-AA
Submitted by MLC and DLC Dec. 4, 2019*

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 390

[Docket No. 19-CRB-0009 AA]

Regulation Identifier Number (RIN) _____

Determination and Allocation of Initial Administrative Assessment to Fund

Mechanical Licensing Collective (Initial AA)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: The Copyright Royalty Judges are publishing regulations setting the determination and allocation of the Initial Administrative Assessment to fund the Mechanical Licensing Collective.

DATES: *Effective:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The final determination is posted in eCRB at <https://app.crb.gov/>.

For access to the docket to read the final determination and submitted background documents, go to eCRB and search for docket number 19-CRB-0009 AA.

FOR FURTHER INFORMATION CONTACT: [INSERT CONTACT]

SUPPLEMENTARY INFORMATION:

On July 8, 2019, the Copyright Royalty Board initiated the *Determination and Allocation of Initial Administrative Assessment To Fund Mechanical Licensing Collective* proceeding by notice published in the Federal Register at 84 FR 32475, pursuant to the

Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA), Public Law 115–264, 132 Stat. 3676 (Oct. 11, 2018), 17 U.S.C. 115(d)(7)(D)(vii) and 801(b)(8) (2018). The purpose of this proceeding was to determine the initial administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the collective total costs of the Mechanical Licensing Collective.

On November 14, 2019, the Mechanical Licensing Collective and the Digital Licensee Coordinator filed with the Copyright Royalty Judges (“Judges”) a Joint Notice of Settlement and Motion to Suspend Case Schedule informing the Judges that they had reached a full settlement of all terms in the proceeding and describing in detail those terms. The Judges granted that motion and directed the participants to file proposed regulations.

List of Subjects in 37 CFR Part 390

Copyright, Phonorecords, Recordings, Royalties, Music, Licensing and registration.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges add Part 390 to Chapter III of title 37 of the Code of Federal Regulations as follows:

PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

Sec.

390.1 Definitions.

390.2 Amount of Assessments.

390.3 Annual Minimum Fees.

390.4 Annual Assessment allocation and payment.

Authority: 17 U.S.C. 115, 801(b).

PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

§ 390.1 Definitions.

Administrative assessment has the meaning set forth in 17 U.S.C. 115(e)(3).

Aggregate Sound Recordings Count means the sum of the Unique Sound Recordings Counts of each and every Licensee, calculated over the respective Quarterly Allocation calculation period.

All Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Annual Assessment means the administrative assessment for each calendar year beginning with the calendar year 2021.

Annual Calculation Period means the calculation period for annual minimum fees, as set forth in 37 CFR 390.3(b).

Annual minimum fee means the minimum amount each Licensee shall pay for each Annual Assessment period, as set forth in 37 CFR 390.3.

Certified Minimum Fee Disclosure means a Licensee's certified statement setting forth its Unique Sound Recordings Count for the respective calculation period.

Digital licensee coordinator or *DLC* has the meaning set forth in 17 U.S.C. 115(e)(9).

ECI means the Employment Cost Index for Total Compensation (not seasonally adjusted), all civilian workers, as published on the website of the United States Department of Labor, Bureau of Labor Statistics, for the most recent 12-month period for which data are available on the date that is 60 days prior to the start of the calendar year.

License availability date has the meaning set forth in 17 U.S.C. 115(e)(15).

Licensee means either (i) a digital music provider that is engaged, in all or in part, in covered activities pursuant to a blanket license, or (ii) a significant nonblanket licensee, as those terms are defined under 17 U.S.C. 115(e).

Mechanical licensing collective or *MLC* has the meaning set forth in 17 U.S.C. 115(e)(18).

Notice of license has the meaning set forth in 17 U.S.C. 115(e)(22).

Notice of nonblanket activity has the meaning set forth in 17 U.S.C. 115(e)(23).

Quarterly Allocation means each of four equal parts of each Annual Assessment, to be paid on a calendar quarterly basis.

Startup Assessment means the one-time administrative assessment for the startup phase of the Mechanical Licensing Collective.

Threshold Licensee means a Licensee that reports at least 7.5% of the Aggregate Sound Recordings Count of all Licensees.

Threshold Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Unique Sound Recordings Count means, for each Licensee, the number of unique and royalty-bearing sound recordings used per month by such Licensee in Section 115 covered activities, such as would be reflected in the information required to be reported under Section 115(d), calculated as a monthly average over the respective calculation period. For example, a Licensee's Unique Sound Recordings Count for a Quarterly Allocation calculation period will be calculated by adding together the counts of unique and royalty-bearing sound recordings reported by such Licensee to the MLC during each month of that quarter, and dividing that sum by three. A Licensee's Unique Sound

Recordings Count for an Annual Calculation Period will be calculated by adding together the counts of unique and royalty-bearing sound recordings reported by such Licensee to the MLC during each month of that twelve-month period, and dividing that sum by twelve. Within each month's usage reports from a particular Licensee, a sound recording reported multiple times with the same metadata would be counted as a single sound recording, and a sound recording reported multiple times each with different metadata would be counted multiple times, once for each reporting with new or different metadata.

§ 390.2 Amount of Assessments.

(a) *Startup Assessment.* The Startup Assessment shall be in the amount of \$33,500,000.

(b) *2021 Annual Assessment.* The Annual Assessment for the calendar year 2021 shall be in the amount of \$28,500,000.

(c) *Other Annual Assessments.* For the calendar year 2022 and all subsequent years, the amount of the Annual Assessment will be automatically adjusted by increasing the amount of the Annual Assessment of the preceding calendar year by the lesser of (a) 3 percent and (b) the percentage change in the ECI. The MLC shall publish notice on its website of each year's automatic adjustment to the Annual Assessment. The Annual Assessment shall continue from year to year unless and until an adjusted administrative assessment is established and these Regulations are revised accordingly.

§ 390.3 Annual Minimum Fees.

(a) *Amount.* All Licensees shall pay the following annual minimum fee for each Annual Assessment period:

(1) For Licensees that have a Unique Sound Recordings Count of less than 5,000 during the relevant Annual Calculation Period, the annual minimum fee shall be \$5,000.

(2) For Licensees that have a Unique Sound Recordings Count of 5,000 or more during the relevant Annual Calculation Period, the annual minimum fee shall be \$60,000.

(b) *Annual Calculation Period.* The calculation period for annual minimum fees shall be the 12-month period that ends on the September 30th immediately preceding the start of the assessment period (e.g., the annual minimum fee calculation period for the 2021 Annual Assessment shall be October 1, 2019 to September 30, 2020).

(c) *Calculation by Licensee certification (2021 and 2022).*

(1) *2021.* Each Licensee in operation on or before the license availability date shall submit to the MLC, accompanying its Notice of License under Section 115(d)(2)(A) or its Notice of Nonblanket Activity under Section 115(d)(6)(A), no later than February 15, 2021, its Certified Minimum Fee Disclosure for the 2021 annual minimum fee (i.e., for the period from October 1, 2019 to September 30, 2020). Each Licensee shall submit the appropriate minimum fee (i.e., \$5,000 or \$60,000) for the 2021 Assessment simultaneously with its Certified Minimum Fee Disclosure.

(2) *2022.* Each Licensee shall submit to the MLC by November 1, 2021 a Certified Minimum Fee Disclosure for the 2022 Assessment, and shall pay the appropriate annual minimum fee by January 15, 2022.

(b) *Calculation by the MLC (2023 and subsequent years).* Beginning with the 2023 Assessment and continuing in subsequent years, the MLC will calculate each Licensee's annual minimum fee based on usage reporting received from Licensees pursuant to Section 115(d)(4). The MLC shall send invoices for the appropriate annual minimum fee to each Licensee. Licensees shall pay the annual minimum fee invoices from the MLC by the later of (i) 30 days from receipt of the invoice from the MLC or (ii) January 15th of the respective Annual Assessment year. Each Licensee in operation during any portion of an annual minimum fee calculation period shall pay the full amount of the respective annual minimum fee.

§ 390.4 Annual Assessment allocation and payment.

(a) *Allocation Formula.* Each Annual Assessment shall be divided into four equal Quarterly Allocations, each of which shall be allocated and paid on a calendar quarterly basis. Each Quarterly Allocation shall be divided into two equal parts, allocated among Licensees according to the following formula:

(1) *All Licensee Assessment Pool.* The All Licensee Assessment Pool shall be allocated on a pro rata basis across all Licensees based on each Licensee's share of the Aggregate Sound Recordings Count.

(2) *Threshold Licensee Assessment Pool.* The Threshold Licensee Assessment Pool shall be allocated on a pro rata basis across Threshold Licensees based on each Threshold Licensee's share of the aggregate Unique Sound Recordings Counts of all Threshold Licensees.

(b) *Calculation Periods and Timing.* The calculation period for each Quarterly Allocation shall be the three-month period that ends three months prior to the start of the

respective quarter, except that the calculation period for the Quarterly Allocation for the first and second quarters of 2021 shall be the same as for the annual minimum fee for the 2021 Annual Assessment, and shall be calculated based upon the information provided in the Certified Minimum Fee Disclosures, as required hereunder. The MLC shall make all calculations for each respective period based upon the reporting for such period received from Licensees as of the time of calculation by the MLC, which calculation time shall not be earlier than the legal deadline for submission of reporting by Licensees for the respective period. In the event that a Licensee has not provided timely reporting for the respective calculation period at the time the MLC calculates a Quarterly Allocation, the MLC may instead, in its discretion, use the most recent reporting from that Licensee to determine that Licensee's Unique Sound Recordings Count, for the purposes of calculating the Quarterly Allocation.

(c) *Invoicing and payment of allocation.*

(1) *Deadline for payment.* Invoices from the MLC for Quarterly Allocation shares shall be payable pursuant to the MLC invoice, but no earlier than the later of (i) 30 days from receipt of the invoice from the MLC or (ii) the first day of the next calendar quarter. Invoices from the MLC to Licensees shall be deemed received on the business day after electronic transmission.

(2) *Format of invoices.* The quarterly invoices issued by the MLC shall include at least the following information, where applicable:

- (i) Invoice issuance date;
- (ii) Invoice payment due date;
- (iii) Amount owed, by share of All Licensee Assessment Pool and Threshold Licensee Assessment Pool;

- (iv) Allocation of Startup Assessment;
- (v) Offset of minimum fee payment against quarterly assessment;
and
- (vi) Amount of credit for un-recouped minimum fee.

Invoices issued as a result of an allocation adjustment shall include all of the information set forth in (i)-(vi) herein that may be relevant, as well as an explanation of the change from the prior invoices that are affected, and the reason(s) for the adjustment.

(d) *Late Reporting.* The MLC shall promptly notify the DLC of any known Licensees who have not timely submitted reports of usage as required each month pursuant to Section 115(d) and associated regulations.

(e) *Recalculation of Allocated Assessment Invoices.* The MLC may, in its discretion, recalculate allocations and adjust prior invoices, with the written consent of the DLC, within twelve months after the initial issuance of such invoices, in circumstances including, but not limited to, where new usage reporting is received or where a correction would alter one or more of any Licensee's Quarterly Allocation shares by at least 10%.

(f) *Recoupment of Minimum Fee.* Each Licensee's annual minimum fee will be offset against its Quarterly Allocation shares, and additional payment will not be due from a Licensee unless and until its total Quarterly Allocation shares exceed its annual minimum fee payment. To the extent that a Licensee's annual minimum fee exceeds that Licensee's Quarterly Allocation shares for a given Assessment period, the excess amounts will be pooled and credited pro rata to all Licensees based on the Quarterly Allocation shares for the first quarter of the following year.

(g) *Reports to DLC.* The MLC shall report to the DLC no later than 75 days after the end of every quarter the Aggregate Sound Recordings Count for that quarter.

(h) *Startup Assessment allocation and payment.* The Startup Assessment shall be allocated and paid in the same manner and on the same dates as the 2021 Annual Assessment, including as to each of the applicable provisions above, and shall be separately itemized in invoices from the MLC to Licensees.

Dated: December __, 2019

Jesse M. Feder
Chief Copyright Royalty Judge

Proof of Delivery

I hereby certify that on Wednesday, December 04, 2019, I provided a true and correct copy of the Joint Motion to Adopt Proposed Regulations to the following:

Digital Licensee Coordinator, Inc., represented by Sarang V Damle, served via Electronic Service at sy.damle@lw.com

Signed: /s/ Benjamin K Semel