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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

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

Docket No. 19-CRB-0009–AA

THE SONGWRITERS GUILD OF AMERICA'S RESPONSE IN OPPOSITION TO THE MOTION OF THE MLC TO DISMISS SGA'S PETITION TO PARTICIPATE

The Songwriters Guild of America, Inc. ("SGA") respectfully requests that the Copyright Royalty Judges (the "Judges") deny the motion filed by the MLC to dismiss the Petition To Participate ("Petition") filed by SGA in the above-captioned Administrative Assessment Proceeding (the "Proceeding").

1. SGA's Petition

As set forth in its Petition, SGA is the longest established and largest music creator advocacy and copyright administration organization in the United States run solely by and for songwriters, composers, and their heirs. Established in 1931, SGA has for 88 years successfully operated with the two-word mission statement "Protect Songwriters," and continues to do so throughout the United States and the world. SGA's organizational membership consists of approximately 4000 individual music creator members and their heirs.

Further, through SGA's formal affiliations with both Music Creators North America, Inc. (MCNA) (of which it is a founding member) and the International Council of Music Creators (CIAM) (of which MCNA is a key Continental Alliance Member), SGA is also part of a global coalition of music creators and heirs numbering in the millions, and is a founding member of the international organization Fair Trade Music, which is the leading US and international advocacy group for the principles of transparency, equitable treatment, and financial sustainability for all songwriters and composers.

SGA has been deeply involved in the legislative process concerning the Hatch-Goodlatte Music Modernization Act from its beginnings, and has filed extensive comments in regard to its enactment and implementation. A copy of SGA's most recent such submission to the United States Copyright Office was appended to its Petition ("SGA Copyright Office Submission re MMA") in further evidence of SGA's status as an interested party. In addition, it should be noted that SGA has also appeared as a party in numerous *mechanical rate-setting* hearings and actions before the CRB and its predecessor adjudicative bodies in the past, *in partnership wi*th the music publishing industry and its principle trade association.

2. SGA's Catalog Administration Program

Of key importance to the matter at hand and as prominently noted in its Petition, SGA also serves through its Catalog Administration Program ("CAP Program") as the copyright administrator of over one hundred catalogs of songs containing thousands of musical compositions (many of them globally recognized "standards" of the American musical repertoire), the copyrights of which are owned and controlled by those dozens of its CAP Program participants who have designated SGA as their representative and agent for such purposes in the United States. In practice, such administrative services are carried out on an exclusive basis by SGA for its CAP Program affiliated members, with the qualifier that the CAP Program was established specifically to allow members to have direct input into how their works are administered, and to allow them always as a matter of principle to retain ownership of all rights.

Such latitude is the very reason for the CAP Program's establishment, consistent with the entire *raison d'etre* of the SGA organization: to protect songwriters, in this case from predatory music publishing practices common throughout the industry. Thus, SGA was careful to note in its Petition that the organization is not itself a copyright owner. Rather, it functions (and has so functioned for approximately a half century or more since the CAP Program's establishment) as an exclusive agent for its CAP Program members. According to SGA (and specifically to CAP Program director Sam Fein of SGA and SGA president Rick Carnes), consistent with institutional memory stretching back decades, not a single CAP member to their knowledge has ever asserted on any occasion during the term of its CAP Program membership that SGA is not its exclusive music publishing administrator, or acted inconsistently with that premise regardless of whether the term "exclusivity" is actually present in the CAP Program affiliation agreement excerpts voluntary provided by SGA on a confidential basis to the MLC.

3. Discussion

It was and remains SGA's position that to read narrowly rather than expansively the definition of "copyright owner" as a criterion for participation as an interested party in these Proceedings under 37 C.F.R. § 355.2(d) would be to stand the meaning of copyright protections in the United States as derived from Article 1 Section 8 of the United States Constitution on its head. Congress is given authority under that Constitutional provision to enact laws for the purpose of protecting the rights of authors and inventors, *not* primarily to safeguard the rights of corporate assignees. To exclude SGA's participation in these Proceedings on the basis that it is by design for the benefit of its songwriter and composer members a copyright administrator rather than a copyright owner --thus denying it the ability to carry out its longstanding function as a cooperative but diligent watchdog over the rights of those very individuals whom the US Constitution seeks to protect through copyright law-- would in SGA's view represent a significant and counter-intuitive injustice.[1]

[1] A further irony of such exclusion would be that the entire concept of "copyright ownership" in the United States was expanded enormously when the hard-fought right of termination was won by music creators and enshrined in Sections 203 and 304 of the United States Copyright Act of 1976. Other than instances of works for hire, no assignee of copyright in the United States (such as a music publisher) is in reality a permanent "owner" of such rights, which are in all other cases subject to recovery by creators and their heirs. Yet such assignees generally continue to insist that they are copyright "owners" whenever the concept suits them, including before this body. For an entity such as the MLC, which is controlled and run by music publishing interests, to argue today for a narrow reading of the term "copyright owner" represents a glaring

Moreover, SGA also respectfully requests that the Judges take note of the content of the "SGA Copyright Office Submission re MMA," previously provided as an attachment to its Petition. In that document, SGA recounted its experiences concerning the apparent, consistent efforts of the music publishing community, its principle trade association, and their affiliated and/or vertically integrated so-called "songwriter" advocacy organizations, to limit the ability of truly independent music creator organizations such as SGA from engaging in meaningful participation concerning the protection of songwriter and composer interests within the MMA.

SGA is concerned that the motion filed to exclude it from these proceedings is simply a continuation of those same tactics, designed to allow corporate interests to dominate discussion and to blunt or silence the input of those same, truly uncompromised creators whom the MMA principally seeks to protect. This is especially alarming in light of the fact that SGA has made clear to MLC that a principle focus of its activities as a participant in these Proceedings will be to advocate for the principle that allocations to the MLC must be sufficient for it to fulfill its mandate to mount a robust, global search for the true owners of unmatched works, as well as to fulfill its other statutory duties.

As SGA made clear in its "Copyright Office Submissions re MMA," in a situation in which those who control the MLC will likely benefit from *not* identifying the proper owners of unmatched works (by reason of the fact that potentially hundreds of millions of dollars in royalties pertaining to "permanently" unmatched works will eventually be distributed on a market share basis), every effort must be made to ensure that the search process for those rightful owners be a bona fide and sufficiently financed global effort. Why the MLC would move to exclude SGA from discussions relating to this issue under such circumstances is a question of great concern to SGA, and it believes, to the entire music creator community.

4. Conclusion

The voice of music creators needs to be heard directly in proceedings such as this one, in which the crucial rights and interests of songwriters and composers are so clearly at stake. As a matter of both fairness and transparency, SGA urges the Judges to adopt an expansive reading of 37 C.F.R. § 355.2(d) in its interpretation of the term "copyright owner," and deny the motion to exclude its participation in these Proceedings. SGA believes that it has demonstrated beyond question that it is an interested party to these Proceedings, and seeks merely to act collegially and responsibly in the protection of the rights of the American and international music creator community in this process.

In the event that the Judges are not disposed toward denying the MLC motion and opt for a more narrow reading of § 355.2(d) than proposed herein, SGA urges in the strongest possible terms that its concerns regarding the proper funding for MLC activities specifically designed to identify the proper owners of unmatched musical compositions wherever they may reside in the world be regarded as one of the highest priorities of these Proceedings. SGA thanks the Judges for their consideration in these regards.

inconsistency by any reasonable measure in light of the past and present position espoused by its controlling members concerning definitional elasticity when it comes to the concept of copyright "ownership."

Dated: September 7, 2019

Respectfully submitted,

/s/ Charles J. Sanders, Attorney at Law PC, Counsel for SGA

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Proof of Delivery

I hereby certify that on Friday, September 06, 2019, I provided a true and correct copy of the The Songwriters Guild of America's Response in Opposition to the Motion of the MLC to Dismiss SGA's Petition to Participate to the following:

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

Mechanical Licensing Collective, represented by Benjamin K Semel, served via Electronic Service at Bsemel@pryorcashman.com

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Signed: /s/ Charles J Sanders