Accountability Office so this rule may be reviewed.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order. This final rule will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[39]

List of Subjects in 12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed above, the Board amends 12 CFR part 701 as follows:

PART 701—Organization and Operations of Federal Credit Unions

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In § 701.6, revise paragraphs (a) and (b) to read as follows:

§ 701.6 Fees paid by Federal credit unions.

(a) *Basis for assessment.* Each calendar year, or as otherwise directed by the NCUA Board, each Federal credit union shall pay an operating fee to the NCUA for the current fiscal year (January 1 to December 31) in accordance with a schedule fixed by the Board from time to time.

(1) *General.* The operating fee shall be based on the average of total assets of each Federal credit union based on data reported in NCUA Forms 5300 and 5310 from the four quarters immediately preceding the time the Board approves the agency's budget or as otherwise determined pursuant to paragraph (b) of this section.

(2) *Exclusions from total assets.* For purposes of calculating the operating fee, total assets shall not include any loans on the books of a natural person Federal credit union made under the Small Business Administration's Paycheck Protection Program, 15 U.S.C. 636(a)(36), or any similar program approved for exclusion by the NCUA Board.

(b) *Coverage.* The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year in accordance with paragraph (a) of this section, except as otherwise provided by this paragraph (b).

(1) *New charters.* A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.

(2) *Conversions.* (i) In the first calendar year following conversion:

(A) A federally insured state-chartered credit union that converts to a Federal credit union charter must pay an operating fee based on the average assets reported in the year of conversion on NCUA Forms 5300 or 5310 from the four quarters immediately preceding the time the Board approves the agency's budget in the year of conversion.

(B) An entity not insured by the NCUA that converts to a Federal credit union charter must pay an operating fee based on the assets, or average thereof, reported on NCUA Forms 5300 or 5310 for any one or more quarters immediately preceding the time the Board approves the agency's budget in the year of conversion.

(ii) A Federal credit union converting to a different charter will not receive a refund of any operating fees paid to the NCUA.

(3) *Mergers.* (i) In the first calendar year following merger:

(A) A continuing Federal credit union that has merged with one or more federally insured credit unions must pay an operating fee based on the average combined total assets of the Federal credit union and any merged federally insured credit unions as reported on NCUA Forms 5300 or 5310 in the four quarters immediately preceding the time the Board approves the agency's budget in the merger year.

(B) For purposes of this paragraph (b)(3), a purchase and assumption transaction where the continuing Federal credit union purchases all or essentially all of the assets of another depository institution shall be deemed a merger.

(ii) A Federal credit union that merges with a Federal or state-chartered credit union, or an entity not insured by the NCUA, will not receive a refund of any operating fee paid to the NCUA.

(4) *Liquidations.* A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.

* * * * *

[FR Doc. 2020–28490 Filed 12–30–20; 8:45 am]

BILLING CODE 7535–01–P

[39] Public Law 105–277, 112 Stat. 2681 (1998).

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–8]

The Public Musical Works Database and Transparency of the Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The U.S. Copyright Office is issuing an interim rule regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. The law establishes a new blanket compulsory license that will be administered by a mechanical licensing collective, which will make available a public musical works database as part of its statutory duties. Having solicited public comments through previous notifications of inquiry and a notice of proposed rulemaking, the Office is issuing interim regulations prescribing categories of information to be included in the public musical works database, as well as rules related to the usability, interoperability, and usage restrictions of the database. The Office is also issuing interim regulations related to ensuring appropriate transparency of the mechanical licensing collective itself.

DATES: Effective February 16, 2021.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Anna B. Chauvet, Associate General Counsel,

by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA'').[1] Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] It does so by switching from a song-by-song licensing system to a blanket licensing regime that becomes available on January 1, 2021 (the ''license availability date''), and is administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office (''Office'').[3] Among other things, the MLC is responsible for ''[c]ollect[ing] and distribut[ing] royalties'' for covered activities, ''[e]ngag[ing] in efforts to identify musical works (and shares of such works) embodied in particular sound recordings and to identify and locate the copyright owners of such musical works (and shares of such works),'' and ''[a]dminister[ing] a process by which copyright owners can claim ownership of musical works (and shares of such works).''[4] It also must ''maintain the musical works database and other information relevant to the administration of licensing activities under [section 115].''[5]

A. Regulatory Authority Granted to the Office

The MMA enumerates several regulations that the Office is specifically directed to promulgate to govern the new blanket licensing regime, and Congress invested the Office with ''broad regulatory authority''[6] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate.''[7] The MMA specifically directs the Office to promulgate regulations related to the MLC's creation of a database to publicly disclose musical work ownership information and identify the sound recordings in which the musical works are embodied.[8] As discussed more below, the statute requires the public database to include various types of information, depending upon whether a musical work has been matched to a copyright owner.[9] For both matched and unmatched works, the database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.''[10] The database must ''be made available to members of the public in a searchable, online format, free of charge,''[11] and its contents must also be made available ''in a bulk, machine-readable format, through a widely available software application,'' to certain parties, including blanket licensees and the Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.''[12]

In addition, the legislative history contemplates that the Office will ''thoroughly review[ ]''[13] policies and procedures established by the MLC and its three committees, which the MLC is statutorily bound to ensure are ''transparent and accountable,''[14] and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.''[15] Congress acknowledged that ''[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations.''[16] Legislative history further states that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.''[17] Accordingly, in designating the MLC as the entity to administer the blanket license, the Office stated that it ''expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,'' and that ''the Register intends to exercise her oversight role as it pertains to matters of governance.''[18] Finally, as detailed in the Office's prior notifications and notice of proposed rulemaking, while the MMA envisions the Office reasonably and prudently exercising regulatory authority to facilitate appropriate transparency of the collective and the public musical works database, the statutory language as well as the collective's structure separately include elements to promote disclosure absent additional regulation.[19]

B. Rulemaking Background

Against that backdrop, on September 24, 2019, the Office issued a notification of inquiry (''September NOI'') seeking public input on a variety of aspects related to implementation of title I of the MMA, including issues regarding information to be included in the public musical works database (*e.g.,* what additional categories of information might be appropriate to include by regulation), as well as the usability, interoperability, and usage restrictions of the database (*e.g.,* technical or other specific language that might be helpful to consider in promulgating regulations, discussion of the pros and cons of applicable standards, and whether historical snapshots of the database should be maintained to track ownership changes over time).[20] In addition, the September NOI sought public comment on any issues that

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'').

[3] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[4] 17 U.S.C. 115(d)(3)(C)(i).

[5] *Id.* at 115(d)(3)(C)(i)(IV).

[6] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[7] 17 U.S.C. 115(d)(12)(A).

[8] *See id.* at 115(d)(3)(E), (e)(20).

[9] *Id.* at 115(d)(3)(E)(ii), (iii).

[10] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[11] *Id.* at 115(d)(3)(E)(v).

[12] *Id.*

[13] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further recognizes that the Office's review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.

[14] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[15] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12.

[16] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[17] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[18] 84 FR at 32280.

[19] *See* 85 FR 22568, 22570–71 (Apr. 22, 2020) (detailing various ways the statute promotes transparency of the mechanical licensing collective, such as by requiring the collective to publish an annual report, make its bylaws publicly available and its policies and practices ''transparent and accountable,'' identify a point of contact for publisher inquiries and complaints with timely redress, establish an anti-commingling policy for funds collected and those not collected under section 115, and submit to a public audit every five years; the statute also permits copyright owners to audit the collective to verify the accuracy of royalty payments, and establishes a five-year designation process for the Office to periodically review the collective's performance).

[20] 84 FR 49966, 49972 (Sept. 24, 2019).

should be considered relating to the general oversight of the MLC.[21]

In response, many commenters emphasized the importance of transparency of the public database and the MLC's operations, and urged the Office to exercise expansive and robust oversight.[22] Given these comments, on April 22, 2020, the Office issued a second notification of inquiry,[23] and on September 17, 2020, the Office issued a notice of proposed rulemaking (''NPRM''),[24] both soliciting further comment on these issues. In response to the NPRM, the comments overall were positive about the proposed rule, expressing appreciation for the Office's responsiveness to stakeholder comments.[25]

Having reviewed and considered all relevant comments received in response to both notifications of inquiry and the NPRM, and having engaged in transparent *ex parte* communications with commenters, the Office is issuing an interim rule regarding the categories of information to be included in the public musical works database, as well as the usability, interoperability, and usage restrictions of the database. The Office is also issuing interim regulations related to ensuring appropriate transparency of the mechanical licensing collective itself. Except as otherwise discussed below, the proposed rule is being adopted for the reasons discussed in the NPRM. The Office has determined that it is prudent to promulgate this rule on an interim basis so that it retains some flexibility for responding to unforeseen complications once the MLC launches the musical works database.[26] In doing so, the Office emphasizes that adoption on an interim basis is not an open-ended invitation to revisit settled provisions or rehash arguments, but rather is intended to allow necessary modifications to be made in response to new evidence or unforeseen issues, or where something is otherwise not functioning as intended.

The interim rule is intended to grant the MLC flexibility in various ways instead of adopting requirements that may prove overly prescriptive as the MLC administers the public database. For example, and as discussed below, the interim rule grants the MLC flexibility in the following ways:

- To label fields in the public database, as long as the labeling takes into account industry practice and reduces the likelihood of user confusion.
- To include non-confidential information in the public database that is not specifically identified by the statute but the MLC finds useful, including information regarding terminations, performing rights organization (''PRO'') affiliation, and DDEX Party Identifier (DPID).[27]
- To allow songwriters, or their representatives, to have songwriter information listed anonymously or pseudonymously.
- To select the most appropriate method for archiving and maintaining historical data to track ownership and other information changes in the public database.
- To select the method for displaying data provenance information in the public database.
- To determine the precise disclaimer language for alerting users that the database is not an authoritative source for sound recording information.
- To develop reasonable terms of use for the public database, including restrictions on use.
- To block third parties from bulk access to the public database based on their attempts to bypass marginal cost recovery or other unlawful activity with respect to the database.
- To determine the initial format in which the MLC provides bulk access to the public database, with a six-month extension to implement bulk access through application programming interfaces (''APIs'').
- To determine how to represent processing and distribution times for royalties disclosed in the MLC's annual report.

II. Interim Rule

A. Ownership of Data in the Public Musical Works Database

The MLC must establish and maintain a free-of-charge public database of musical work ownership information that also identifies the sound recordings in which the musical works are embodied,[28] a function expected to provide transparency across the music industry.[29] The Office appreciates that the MLC ''is working on launching the public search window on the website that will allow members of the public to search the musical works database in January [2021],'' and that the MLC ''anticipates launching the bulk data program to members of the public in January'' [30] (discussed more below).

As noted in the NPRM, the statute and legislative history emphasize that the database is meant to benefit the music industry overall and is not ''owned'' by

[21] *Id.* at 49973. All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Specifically, comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001,* and comments received in response to the April 2020 notification of inquiry and the notice of proposed rulemaking are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2020-0006.* Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters. References to these comments are by party name (abbreviated where appropriate), followed by ''Initial September NOI Comment,'' ''Reply September NOI Comment,'' ''April NOI Comment,'' ''NPRM Comment,'' ''Letter,'' or ''*Ex Parte* Letter,'' as appropriate.

[22] *See* 85 FR at 22571 (citing multiple commenters).

[23] 85 FR at 22568.

[24] 85 FR 58170 (Sept. 17, 2020).

[25] *See* DLC NPRM Comment at 1 (''The DLC supports the Office's proposed rule . . .''); Music Artists Coalition (''MAC'') NPRM Comment at 4 (''MAC would like to again thank the Office for their leadership and responsiveness to public comments during the implementation of the MMA.''); Recording Academy NPRM Comment at 1 (''The Academy is gratified that the Office's NPRM reflects many of the concerns and priorities expressed in the Academy's previous comments . . .''); Songwriters of North America (''SONA'') NPRM Comment at 3 (''SONA is grateful to the Copyright Office for its diligence and oversight in working to develop a strong regulatory framework to implement the MMA as the License Availability Date (''LAD'') quickly approaches.''); SoundExchange NPRM Comment at 3 (''SoundExchange applauds the Office for going to great lengths to ensure that appropriate categories of information are included in the MLC Database. SoundExchange particularly appreciates the Office's consideration of the public comments as it fashioned the regulations . . .'').

[26] *See* 85 FR at 22571 (advising that the Office may issue an interim rule to allow a flexible regulatory structure); DLC NPRM Comment at 1 (''The DLC would support the establishment of an interim rule, for similar reasons to those given by the Office in its recent usage and reporting rulemaking.'').

[27] DPID ''is an alphanumeric identifier that identifies the party delivering the DDEX message,'' and ''is also generally the party to whom the [digital music provider (''DMP'')] sends royalties for the relevant sound recording.'' A2IM & RIAA Reply September NOI Comment at 8.

[28] 17 U.S.C. 115(d)(3)(E), (e)(20).

[29] *See* The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Sept. 1, 2020) (web page no longer available) (noting that the MLC will ''promote transparency'' by ''[p]roviding unprecedented access to musical works ownership information through a public database'').

[30] MLC *Ex Parte* Letter Dec. 3, 2020 (''MLC *Ex Parte* Letter #11'') at 3. According to the MLC, it ''began providing members with access to the MLC Portal at the end of September,'' and ''[s]everal thousand members have completed the onboarding process and thousands more have received invitations via email to complete the onboarding process.'' *Id.*

the collective itself.[31] The MLC acknowledges this, stating that ''the data in the public MLC musical works database is not owned by the MLC or its vendor,'' and that ''data in this database will be accessible to the public at no cost, and bulk machine-readable copies of the data in the database will be available to the public, either for free or at marginal cost, pursuant to the MMA.'' [32] The Alliance for Recorded Music (''ARM''), Recording Academy, and Songwriters Guild of America (''SGA'') & Society of Composers & Lyricists (''SCL'') praised the Office for addressing the issue of data ownership, with ARM ''encourag[ing] the Office to make this point explicit in the regulations.'' [33] In light of these comments, and the statute and legislative history, the interim rule confirms that data in the public musical works database is not owned by the mechanical licensing collective or any of its employees, agents, consultants, vendors, or independent contractors.

B. Categories of Information in the Public Musical Works Database

The statute requires the MLC to include various types of information in the public musical works database. For musical works that have been matched (*i.e.,* the copyright owner of such work (or share thereof) has been identified and located), the statute requires the public database to include:

1. The title of the musical work;
2. The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner;
3. Contact information for such copyright owner; and
4. To the extent reasonably available to the MLC, (a) the ISWC for the work, and (b) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist,[34] sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.[35]

For unmatched musical works, the statute requires the database to include, to the extent reasonably available to the MLC:

1. The title of the musical work;
2. The ownership percentage for which an owner has not been identified;
3. If a copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner;
4. Identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works; and
5. Any additional information reported to the MLC that may assist in identifying the work.[36]

In other words, the statute requires the database to include varying degrees of information regarding the musical work copyright owner (depending on whether the work is matched), but for both matched and unmatched works, identifying information for sound recordings in which the work is embodied (*i.e.,* sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works). For both matched and unmatched works, the Register of Copyrights may prescribe inclusion of additional fields by regulation.'' [37] The ''Register shall use its judgement to determine what is an appropriate expansion of the required fields, but shall not adopt new fields that have not become reasonably accessible and used within the industry unless there is widespread support for the inclusion of such fields.'' [38]

In considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office focused on fields that the record indicates would advance the goal of the public database: Reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed under the section 115 statutory license.[39] At the same time, the Office is mindful of the MLC's corresponding duties to keep confidential business and personal information secure and inaccessible; for example, data related to computation of market share is contemplated by the statue as sensitive and confidential.[40] Recognizing that a robust musical works database may contain many fields of information, the interim rule establishes a floor of required information that users can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.[41] Stakeholder comments regarding the types of information to include (or exclude) are discussed by category below.

[31] 85 FR at 58172. Under the statute, if the Copyright Office designates a new entity to be the mechanical licensing collective, the Office must ''adopt regulations to govern the transfer of licenses, funds, records, *data,* and administrative responsibilities from the existing mechanical licensing collective *to the new entity*.'' 17 U.S.C. 115(d)(3)(B)(ii)(II) (emphasis added). The legislative history distinguishes the MLC's public database from past attempts to control and/or own industry data. *See* 164 Cong. Rec. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Sen. Hatch) (''I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill's oversight and transparency provisions.''); 164 Cong. Rec. S501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Coons) (''This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.''); 164 Cong. Rec. H3522, 3541 (daily ed. Apr. 25, 2018) (statement of Rep. Steve Chabot); 164 Cong. Rec. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Norma Torres); Conf. Rep. at 6 (''Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.''); *id.* (noting that the Global Repertoire Database project, an EU-initiated attempt to create a comprehensive and authoritative database for ownership and administration of musical works, ''ended without success due to cost and data ownership issues'').

[32] MLC *Ex Parte* Letter Aug. 21, 2020 (''MLC *Ex Parte* Letter #7'') at 2.

[33] ARM NPRM Comment 1–2; *see* Recording Academy NPRM Comment at 2 (''The Office states unambiguously that 'the statute and legislative history emphasize that the database . . . is not ''owned'' by the collective itself.' This principle is affirmed by the MLC . . . The Academy appreciates that this issue is addressed in a clear, straightforward manner and included in the record to assuage any concerns to the contrary.''); SGA & SCL NPRM Comment at 5 (''SGA and SCL were gratified by the USCO's clear statement'' that MLC and vendor does not own data).

[34] ARM asked that ''the MLC be required to label [the featured artist field] . . . using the phrase 'primary artist,' '' because '' 'primary artist' is the preferred term as 'featured artist' is easily confused with the term 'featured' on another artist's recording, as in Artist X feat. Artist Y.'' ARM April NOI Comment at 6. Because this is a statutory term and the Office wishes to afford the MLC some flexibility in labeling the public database, it tentatively declined this request. The proposed rule did, however, require the MLC to consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion. The interim rule adopts this aspect of the proposed rule. ARM encourages the MLC to consider its previous labeling suggestions, but does not object ''to the Office's decision to grant the MLC flexibility regarding how to label fields in the public database, as long as the MLC's labelling decisions consider industry practices and the MLC picks field labels that reduce the likelihood of user confusion regarding the contents of each data field.'' ARM NPRM Comment at 2.

[35] 17 U.S.C. 115(d)(3)(E)(ii).

[36] *Id.* at 115(d)(3)(E)(iii).

[37] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[38] Conf. Rep. at 7.

[39] 85 FR at 22573; 85 FR at 58172–73. *See* Conf. Rep. at 7 (noting that the ''highest responsibility'' of the MLC includes ''efforts to identify the musical works embodied in particular sound recordings,'' ''identify[ing] and locat[ing] the copyright owners of such works so that [the MLC] can update the database as appropriate,'' and ''efficient and accurate collection and distribution of royalties'').

[40] 17 U.S.C. 115(d)(3)(J)(i)(II)(bb). *See* MLC Initial September NOI Comment at 24 (contending that not all information contained in its database ''would be appropriate for public disclosure,'' and that it ''should be permitted to exercise reasonable judgment in determining what information beyond what is statutorily required should be made available to the public'').

[41] *See* 37 CFR 210.29(c) (proposing a floor of categories of information to be required in periodic reporting to copyright owners).

1. Songwriter or Composer

Commenters—including the MLC [42]—overwhelmingly agreed that the database should include songwriter and composer information,[43] and so the interim rule requires including such information in the public database, to the extent reasonably available to the collective.[44] SGA & SCL suggest that the phrase ''to the extent reasonably available to the collective'' ''serves to diminish the requisite and explicit value of songwriter/composer identifying information.'' [45] The phrase ''to the extent reasonably available to the mechanical licensing collective'' for songwriter or composer information is employed to mirror the statutory qualification with respect to inclusion of other types of information.[46] For consistency with the statute (and the other fields discussed below), the interim rule adopts this aspect of the proposed rule without modification.

Commenters also supported the ability of songwriters, or their representatives, to mask songwriters' identity to avoid being associated with certain musical works by having their information listed anonymously or pseudonymously in the public musical works database.[47] While the proposed rule granted the MLC discretion to allow songwriters this option,[48] SGA & SCL suggest that ''that such a regulation be extended into a mandatory direction to the MLC to accept such direction from a music creator.'' [49] By contrast, while acknowledging ''that writers often use pennames and that there are also current trends to hide an artist's identity, in which case the writer may want to remain anonymous,'' SONA expresses concern that ''not having a songwriter's name associated with a musical work is often one of the biggest challenges in ensuring a songwriter receives proper payment,'' and that ''while at the time of creation that may be the express wish of the songwriter, it is critical that the creator and the musical work do not become dissociated over the term of the work's copyright.'' [50] SONA suggests that a songwriter should have the option of staying anonymous or using a pseudonym in the public database only if ''the MLC has sufficient contact information with the songwriter's representation,'' and that the rule should ''ensure adequate information to contact the songwriter or their representatives is easily accessible for users of that writer's musical works.'' [51]

For its part, the MLC contends that ''[i]f the copyright owner or administrator requests that the writer be identified as 'anonymous' or by a pseudonym, it can do so when it submits the musical work information to the MLC,'' and that the MLC will ''consider subsequent requests by an owner or administrator to change the name to 'anonymous' or to a pseudonym.'' [52] The MLC contends that the regulations should not ''make it mandatory for the MLC to change songwriter names in the musical works database at the request of any particular party, because such may not always be appropriate,'' and that the MLC ''is also responsible for maintaining an accurate musical works database, and must be afforded the ability to fulfill that function.'' [53]

Having carefully considered this issue, the Office has included in the interim rule adjusted language ensuring that the MLC develops and makes publicly available a policy on how it will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously. The Office encourages the MLC to grant any subsequent requests by a copyright owner or administrator to change a songwriter name to ''anonymous'' or to a pseudonym.

2. Studio Producer

As the statute requires the public database to include ''producer'' to the extent reasonably available to the MLC,[54] so does the interim rule. Initially, there appeared to be stakeholder disagreement about the meaning of the term ''producer,'' which has since been resolved to clarify that it refers to the studio producer.[55] Because the term ''producer'' relates not only to the public database, but also to information provided by digital music providers in reports of usage, the Office defined ''producer'' in its interim rule concerning reports of usage, notices of license, and data collection efforts, among other things, to define ''producer'' to mean studio producer throughout its section 115 regulations.[56]

3. Unique Identifiers

The statute requires the MLC to include ISRC and ISWC codes, when reasonably available.[57] According to the legislative history, ''[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of unmatched works.'' [58] The proposed rule required the public database to include the Interested Parties Information (''IPI'') [59] and/or

[42] MLC April NOI Comment at 9 (agreeing with inclusion of songwriter information for musical works); MLC Reply September NOI Comment at 32 (same).

[43] *See* SGA Initial September NOI Comment at 2; The International Confederation of Societies of Authors and Composers (''CISAC'') & the International Organisation representing Mechanical Rights Societies (''BIEM'') April NOI Comment at 2; SONA April NOI Comment at 2; *see also* Barker Initial September NOI Comment at 2; Future of Music Coalition (''FMC'') Reply September NOI Comment at 2; DLC Reply September NOI Comment at 26; Recording Academy NPRM Comment at 2; SONA NPRM Comment at 2, 4.

[44] Because the statute's definition of ''songwriter'' includes composers, the interim rule uses the term ''songwriter'' to include both songwriters and composers. 17 U.S.C. 115(e)(32). To reduce the likelihood of confusion, the MLC may want to consider labeling this field ''Songwriter or Composer'' in the public database.

[45] SGA & SCL NPRM Comment at 2–3.

[46] *See* 17 U.S.C. 115(d)(3)(E)(ii)(IV), (iii)(I); *see also* 37 CFR 210.29(c)(2)(i), (ii), and (v) and (c)(3)(ii) (requiring the MLC to report certain types of information to copyright owners ''known to the MLC'').

[47] *See* Kernen NPRM Comment at 1, U.S. Copyright Office Dkt. No. 2020–7, available at *https://beta.regulations.gov/document/COLC-2020-0004-0001;* Recording Academy NPRM Comment at 2 (''[T]he Academy agrees that it is appropriate to give the MLC discretion to give songwriters the option to remain anonymous or use a pseudonym in the database.''); SGA & SCL NPRM Comment at 3 (''[W]e desire to make clear that SGA and SCL also continue to support the rights of those music creators who may wish *not* to be publicly associated with certain musical works. That is and must continue to be right of any songwriter or composer.'').

[48] 85 FR at 58173.

[49] SGA & SCL NPRM Comment at 3.

[50] SONA NPRM Comment at 4.

[51] *Id.* at 4–5.

[52] MLC *Ex Parte* Letter #11 at 4.

[53] *Id.*

[54] 17 U.S.C. 115(d)(3)(E)(ii)(IV), (iii)(I)(dd). The statute also requires digital music providers to report the ''producer'' to the mechanical licensing collective. *Id.* at 115(d)(3)(E)(ii)(IV), (iii)(I)(dd). *See also* 37 CFR 210.27(e)(1)(i)(E)(*2*).

[55] *See* MLC Initial September NOI Comment at 13 n.6 (originally believing that ''producer'' referred to ''the record label or individual or entity that commissioned the sound recording''); Recording Academy Initial September NOI Comment at 3 (urging Office to ''clarify that a producer is someone who was part of the creative process that created a sound recording''); RIAA Initial September NOI Comment at 11 (stating ''producer'' should be defined as ''the primary person(s) contracted by and accountable to the content owner for the task of delivering the recording as a finished product''); MLC Reply September NOI Comment at 34–35 (updating its understanding).

[56] 37 CFR 210.22(i) (defining ''producer'' for purposes of Subpart B of section 210). *See* Recording Academy NPRM Comment at 2 (supporting proposed rule).

[57] 17 U.S.C. 115(d)(3)(E)(ii)–(iii).

[58] Conf. Rep. at 7. The legislative history also notes that ''the Register may at some point wish to consider after an appropriate rulemaking whether standardized identifiers for individuals would be appropriate, or even audio fingerprints.'' *Id.*

[59] IPI is ''[a] unique identifier assigned to rights holders with an interest in an artistic work, including natural persons or legal entities, made known to the IPI Centre. The IPI System is an international registry used by CISAC and BIEM societies.'' U.S. Copyright Office, Unclaimed Royalties Study Acronym Glossary at 3, *https://*

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International Standard Name Identifier (''ISNI'') [60] for each songwriter, publisher, and musical work copyright owner, as well as the Universal Product Code (''UPC''), to the extent reasonably available to the MLC.[61] As proposed, the public database must also include the MLC's standard identifier for the musical work, and to the extent reasonably available to the MLC, unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee.[62] The Office sought public comment on whether IPIs and/or ISNIs for foreign collective management organizations (''CMOs'') should be required to be listed separately.[63]

In response to the proposed rule, commenters expressed continued support for including IPIs, ISNIs, and UPC,[64] which the MLC has agreed to include.[65] The interim rule thus adopts this aspect of the proposed rule without modification. SGA & SCL ''support the comments of CISAC and BIEM . . . as to the listing of IPIs and ISNIs for foreign collective management organizations.'' [66] As discussed more below, the Office declines to require the MLC to separately include IPIs and ISNIs for foreign CMOs in the database at this time, apart from where they may otherwise already be included as a relevant musical work copyright owner.

4. Information Related to Ownership and Control of Musical Works

By statute, the database must include information regarding the ownership of the musical work as well as the underlying sound recording, including ''the copyright owner of the work (or share thereof), and the ownership percentage of that owner,'' or, if unmatched, ''the ownership percentage for which an owner has not been identified.'' [67] The statute also requires a field called ''sound recording copyright owner,'' the meaning of which is discussed further below.

Although the MMA does not reference music publishing administrators—that is, entities responsible for managing copyrights on behalf of songwriters, including administering, licensing, and collecting publishing royalties without receiving an ownership interest in such copyrights—a number of commenters have urged inclusion of this information in the public musical works database.[68] As one commenter suggested, because ''a copyright owner's 'ownership' percentage may differ from that same owner's 'control' percentage,'' the public database should include separate fields for ''control'' versus ''ownership'' percentage.[69] The MLC agreed,[70] stating that ''the database should include information identifying the administrators or authorized entities who license the relevant musical work and/or collect royalties for such work on behalf of the copyright owner.'' [71] In addition, with respect to specific ownership percentages, which are required by statute to be made publicly available, the MLC expressed its intention to mark overclaims (*i.e.,* shares totaling more than 100%) as such and show the percentages and total of all shares claimed so that overclaims and underclaims (*i.e.,* shares totaling less than 100%) will be transparent.[72]

Relatedly, CISAC & BIEM raised concerns about needing ''to clarify the concept of 'copyright owner,' '' as ''foreign collective management organizations (CMOs) . . . are also considered copyright owners or exclusively mandated organizations of the musical works administered by these entities,'' and thus ''CMOs represented by CISAC and BIEM should be able to register in the MLC database the claim percentages they represent.'' [73] The MLC responded that it will ''engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators,'' [74] and that it ''intends to operate on a non-discriminatory basis, and all natural and legal persons or entities of any nationality are welcome to register their claims to works with the MLC.'' [75]

The NPRM noted that ''[w]hile the MMA does not reference foreign musical works specifically, nothing in the statute indicates that foreign copyright owners should be treated differently from U.S. copyright owners under the blanket licensing regime, or prevents the MLC from seeking or including data from foreign CMOs in building the public database.'' [76] The Office also stated that ''[w]here copyright ownership has been assigned or otherwise transferred to a foreign CMO or, conversely, a U.S. sub-publisher, the statute does not specify that it should be treated differently from a similarly-situated U.S. entity that has been assigned or otherwise been transferred copyright ownership.'' [77] The Office noted that the MLC appeared to be planning for data collection from foreign CMOs, as evidenced by promotional material in connection with its Data Quality Initiative (DQI).[78]

Based on public comments, the Office concluded that to the extent reasonably available to the MLC, it would be beneficial for the database to include information related to all persons or entities that own or control the right to license and collect royalties related to musical works in the United States, and that music publishing administrator and control information would be valuable additions.[79] Accordingly, the proposed rule required the public database to include administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for such musical work (or share thereof) in the United States.[80] It would not prevent the MLC from including additional information with respect to foreign CMOs.[81]

In response, CISAC & BIEM again expressed ''the need to have CMOs clearly recognized as 'copyright

www.copyright.gov/policy/unclaimed-royalties/glossary.pdf (last visited Dec. 18, 2020).

[60] ISNI is ''[a] unique identifier for identifying the public identities of contributors to creative works, regardless their legal or natural status, and those active in their distribution. These may include researchers, inventors, writers, artists, visual creators, performers, producers, publishers, aggregators, and more. A different ISNI is assigned for each name used.'' *Id.*

[61] 85 FR at 58188–89.

[62] *Id.*

[63] 85 FR at 58174.

[64] *See* CISAC & BIEM NPRM Comment at 1 (''appreciat[ing] that the Office has included international identifiers such as ISWC and IPI''); SGA & SCL NPRM Comment at 3 (''strongly support[ing]'' the inclusion of IPI, ISNI, and UPC data''); SONA NPRM Comment at 5 (''commend[ing] the Office'' for including IPI, ISNI, and UPC).

[65] *See* MLC April NOI Comment at 9; MLC *Ex Parte* Letter #7 at 5; MLC NPRM Comment at 2–3.

[66] SGA & SCL NPRM Comment at 3.

[67] 17 U.S.C. 115(d)(3)(E)(ii)–(iii).

[68] *See* DLC Reply September NOI Comment Add. at A–16; ARM April NOI Comment at 2; FMC April NOI Comment at 2; SONA April NOI Comment at 5–6; SoundExchange Initial September NOI Comment at 8; Barker Initial September NOI Comment at 2.

[69] Barker Initial September NOI Comment at 3.

[70] MLC Reply September NOI Comment at 32 n.16.

[71] MLC April NOI Comment at 9.

[72] MLC *Ex Parte* Letter #7 at 5.

[73] CISAC & BIEM April NOI Comment at 1. *See also* Japanese Society for Rights of Authors, Composers and Publishers (''JASRAC'') Initial September NOI Comment at 2.

[74] MLC *Ex Parte* Letter #7 at 6.

[75] MLC Reply September NOI Comment at 44.

[76] 85 FR at 58175; *see* 17 U.S.C. 115.

[77] 85 FR at 58175; *see* 17 U.S.C. 101 (defining ''copyright owner'' and ''transfer of copyright ownership''); *id.* at 115.

[78] 85 FR at 58175; The MLC, Play Your Part, *https://themlc.com/play-your-part* (last visited Dec. 18, 2020). According to the MLC, the DQI ''does not act as a mechanism for delivering work registrations/works data,'' but ''[m]usic publishers, administrators and foreign CMOs may use [Common Works Registration] to deliver new and updated work registrations to The MLC.'' The MLC, MLC Data Quality Initiative 2 (2020), *https://themlc.com/sites/default/files/2020-08/2020%20-%20DQI%20One%20Pager%20Updated%208-18-20.pdf* (last visited Dec. 18, 2020).

[79] 85 FR at 58175.

[80] *Id.*

[81] *Id.*

owners,'' explaining that ''outside the U.S., the 'copyright ownership' of the work is attributed to the CMOs managing the mechanical rights . . .'' [82] CISAC & BIEM also contended that there is no ''business need to include the *creator* percentage shares in the musical works'' in the public database (as opposed to copyright *owner* share(s), which is required by the statute), ''as this information [is] not required to license or distribute musical works, and constitutes particularly sensitive and confidential financial and business information for creators and their representatives.'' [83] SONA emphasized the importance of the Office's statement that ''there is no indication that foreign copyright owners should have different treatment under the blanket licensing regime.'' [84] For its part, the MLC has ''repeatedly maintained that it will engage in non-discriminatory treatment towards domestic and foreign copyright owners, CMOs and administrators,'' and that ''foreign CMOs should be treated no differently in the database from other mechanical rights administrators.'' [85] The MLC also stated that if a foreign CMO ''is an owner or administrator of US copyright rights, it will be treated as such, and in a non-discriminatory manner as compared to other US copyright owners or administrators.'' [86]

Having considered these comments, the Office reaffirms the general requirement that the database include information related to all persons or entities that own or control the right to license and collect royalties related to musical works in the United States, irrespective of whether those persons or entities are located outside the United States. The interim rule thus adopts this aspect of the proposed rule without modification. To address CISAC & BIEM's concerns about the recognition of copyright ownership by foreign CMOs, the interim rule references the statutory definitions of ''copyright owner'' and ''transfer of copyright ownership,'' and states that a copyright owner includes entities, including foreign CMOs, to which ''copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.'' [87] Where a foreign CMO is the copyright owner of the musical work under U.S. law, the database should identify the foreign CMO as the copyright owner, along with its percentage share.[88] The database should take a parallel approach with respect to administration rights. Depending upon the specific arrangements in place, this may mean that the database will need to display information related to both the foreign CMO as well as a U.S. sub-publisher or administrator (along with percentage shares).[89] And while the songwriter or composer of the same musical work must, by regulation, be identified in the database as the songwriter or composer (as discussed above), if he or she is not the copyright owner due to assignment of the copyright to a foreign CMO, he or she would not have ownership shares to display in the database. To the extent that sub-publishers own or control foreign musical works in the U.S. and foreign CMOs do *not* (*i.e.,* the foreign CMOs do not have a U.S. right of ownership or administration), the Office concludes that the mechanical licensing collective should not be required to include information about such foreign CMOs in the database. The Office recognizes that including foreign CMO information even when the CMOs are not copyright owners or administrators in the U.S. may be desired by certain commenters, but the Office is reluctant to require the MLC to include such information at this time, given the MLC's indication that it needs to focus on more core tasks. As noted above, in considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office focused on fields that the record indicates would advance the goal of the public database: Reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed under the section 115 statutory license. Should confusion arise after the musical works database becomes publicly available, the Office is willing to consider whether adjustment to the interim rule is warranted.

5. Additional Information Related To Identifying Musical Works and Sound Recordings

Given the general consensus of comments, the interim rule largely adopts the proposed rule without modification, which requires the public database to include the following fields, to the extent reasonably available to the MLC: Alternate titles for musical works, opus and catalog numbers of classical compositions, and track duration,[90] version, and release date of sound recordings.[91] It also incorporates the statutory requirements to include, to the extent reasonably available to the mechanical licensing collective, other non-confidential information commonly used to assist in associating sound recordings with musical works (for matched musical works), and for unmatched musical works, other non-confidential information commonly used to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.[92] The MLC notes that ''[o]pus and catalog numbers for classical compositions and UPC have now been added to the DDEX format, so the MLC will provide that information

[82] CISAC & BIEM NPRM Comment at 1–2.

[83] *Id.* at 2 (emphasis added).

[84] SONA NPRM Comment at 6 (''When contemplating rules and procedures to implement a database intended to show the public information on the ownership of a musical work, it is important that the development of the database conceive that the data it incorporates and users that rely on that data are not all of U.S. origin.'').

[85] MLC NPRM Comment at 3 (citation omitted).

[86] MLC *Ex Parte* Letter #11 at 4.

[87] 17 U.S.C. 101. SGA maintains that ''[m]any songwriters (including composers) and their heirs have carefully opted to retain ownership of the copyrights in their musical compositions, and to assign only limited administration or co-administration rights to third party music publishing entities,'' and that ''any songwriter or heir who retains copyright ownership in her or his portion of a work [should be able to] serve notice on the MLC at any time directing that she or he is to be listed as the copyright owner in the database as to that portion.'' SGA & SCL NPRM Comment at 4. If a songwriter or a songwriter's heir is the copyright owner of a musical work, the public database should identify the songwriter or heir as such, to the extent such information is available to the mechanical licensing collective.

[88] *See* CISAC & BIEM et al. *Ex Parte* Letter Oct. 27, 2020 at 2.

[89] *See* CISAC & BIEM September NOI Initial Comment at 3 (noting foreign musical works ''may have a publisher or may be sub-published in the US in a way that the sub-publisher does not necessarily hold 100% of the mechanical rights''); CISAC & BIEM et al. *Ex Parte* Letter Oct. 27, 2020 at 2 (noting ''the existence of certain limitations in certain cases, that prevent sub-publishers from collecting 100% of mechanical (*e.g.* 25% limitation in the case of GEMA works)'').

[90] The rule uses the term ''playing time.'' *See* 37 CFR 210.27(e)(1)(i)(D).

[91] 85 FR at 58188–89; *see* Recording Academy NPRM Comment at 2; SONA NPRM Comment at 7; ARM April NOI Comment at 3; MLC Reply September NOI Comment at App. E; MLC April NOI Comment at 10; Recording Academy Initial September NOI Comment at 3; Recording Academy April NOI Comment at 3; RIAA Initial September NOI Comment at 6–7; SONA April NOI Comment at 6; SoundExchange Initial September NOI Comment at 7. Because UPC numbers are ''product-level'' identifiers and sound recordings can thus have multiple UPC numbers (*i.e.,* one for each product on which the sound recording appears), ARM and SoundExchange ask the MLC to be careful about conveying the association between the UPC number displayed in the database and the track at issue to reduce confusion. ARM NPRM Comment at 2; SoundExchange NPRM Comment at 5.

[92] 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd)–(ee).

to the extent it is reasonably available to the MLC.'' [93]

ARM and SoundExchange seek clarity regarding the meaning of ''release date.'' [94] ARM maintains that because ''it is not uncommon for a given sound recording to be released on more than one product, each with its own release date,'' ''the release date included in the database must reflect the actual, not the intended, release date,'' [95] and ''regulations should prohibit the MLC from publicly displaying any data about a sound recording prior to its actual release date.'' [96] The Office agrees that ''release date'' should not be an intended release date; rather, it should reflect the date on which the recording was first released. The Office encourages the MLC to include an explanation of release date in its glossary.[97]

Finally, the MLC contends that the phrase ''other non-confidential information commonly used to assist in associating sound recordings with musical works'' is vague, and suggests changing it to ''other non-confidential information that the MLC reasonably believes would be useful to assist in associating sound recordings with musical works.'' [98] After carefully considering the statute, legislative history, and comments, the Office agrees that the MLC should have some flexibility to include additional information that may be helpful for matching purposes, but is also mindful that the phrase proposed by the NPRM was taken directly from the statute. Accordingly, the Office has adjusted the interim rule to add the phrase ''reasonably believes, based on common usage'' for consistency with the statute (*i.e.,* the MLC is required to include, to the extent reasonably available to it, other non-confidential information that it reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works).

6. Performing Rights Organization Affiliation

In response to the September NOI, a few commenters maintained that the public database should include PRO affiliation.[99] By contrast, the MLC and FMC raised concerns about including and maintaining PRO affiliation in the public database.[100] The largest PROs, the American Society of Composers, Authors, and Publishers (''ASCAP'') and Broadcast Music, Inc. (''BMI''), also objected, stating that because ''music performing rights organizations such as BMI and ASCAP all have comprehensive databases on musical works ownership rights, and these databases are publicly available,'' ''administration of data with respect to the licensing of public performing rights does not require government intervention.'' [101]

After evaluating these comments, in the April NOI the Office tentatively concluded against requiring PRO affiliation in the public database, noting that ''[b]ecause the MMA explicitly restricts the MLC from licensing performance rights, it seems unlikely to be prudent or frugal to require the MLC to expend resources to maintain PRO affiliations for rights it is not permitted to license.'' [102] Similarly, the Office declined to require the inclusion of PRO affiliation in the proposed rule.[103]

In response to the NPRM, the DLC asked the Office to reconsider and include PRO affiliation in the public database.[104] The DLC contends that PRO affiliation may aid matching in some instances, giving the example of songwriters affiliated with ASCAP being able to ''target their searches of the MLC's database for works that the MLC has affiliated with ASCAP,'' and ''more readily confirm that the PRO and MLC databases contain consistent information regarding information such as share splits and unique identifiers'' (*i.e.,* ''mak[ing] the MLC database a useful cross-check for PRO data'').[105] The DLC asks that the MLC ''*not throw away valuable musical works metadata,*'' and states it ''would not be opposed to an accommodation such as a six-month transition period for this aspect of the database.'' [106] MAC similarly requests inclusion of PRO affiliation.[107] By contrast, CISAC & BEIM, FMC, Recording Academy, and SGA & SCL agree it should not be included, with Recording Academy stating that ''information related to public performance rights goes beyond the scope of the MMA, which is focused on mechanical rights.'' [108] For its part, the MLC contends that it ''should be afforded the opportunity to focus on its main priority of a robust and fulsome mechanical rights database,'' and not include PRO affiliation, but that ''[i]f, at some time in the future, the MLC has the capacity and resources to also incorporate performance rights information, it may undertake this task . . .'' [109]

Having considered these comments, the statutory text, and legislative history, the Office concludes that the mechanical licensing collective should not be required to include PRO affiliation in the public database at this time. The Office recognizes that PRO affiliation is desired by certain commenters, particularly licensees, for transparency purposes, and that the record contains some limited suggestions that it could be a useful data point in the MLC's core project of matching works under the mechanical license. Without further information, the Office is reluctant to require the MLC to include such information, given the statutory prohibition against administering performance licenses and the MLC's suggestion that it needs to focus on more core tasks. In addition, in a related rulemaking, the Office declined to require that musical work copyright owners provide information related to PRO affiliation in connection with the statutory obligation to undertake commercially reasonably efforts to deliver sound recording

[93] MLC NPRM Comment at 3.

[94] ARM NPRM Comment at 3; SoundExchange NPRM Comment at 5.

[95] ARM NPRM Comment at 3.

[96] *Id.* at 2.

[97] *See id.* at 3.

[98] MLC NPRM Comment at 3. *See* MLC *Ex Parte* Letter #11 at 4 (contending that its proposed language allows it to ''operate under its reasonable judgment as to which fields fit into the category'').

[99] *See* DLC Initial September NOI Comment at 20; Music Innovation Consumers (''MIC'') Coalition Initial September NOI Comment at 2; Barker Initial September NOI Comment at 8–9.

[100] *See* MLC Reply September NOI Comment at 36 (pointing out that its ''primary responsibility is to engage in the administration of mechanical rights and to develop and maintain a mechanical rights database,'' and that ''gather[ing], maintain[ing], updat[ing] and includ[ing] . . . performance rights information—which rights it is not permitted to license—would require significant effort which could imperil [its] ability to meet its statutory obligations with respect to mechanical rights licensing and administration by the [license availability date]''); FMC Reply September NOI Comment at 3.

[101] ASCAP & BMI Reply September NOI Comment at 2.

[102] 85 FR at 22576; *see* 17 U.S.C. 115(d)(3)(C)(iii) (limiting administration of voluntary licenses to ''only [the] reproduction or distribution rights in musical works for covered activities'').

[103] 85 FR at 58176.

[104] DLC NPRM Comment at 3; DLC *Ex Parte* Letter Dec. 11, 2020 (''DLC *Ex Parte* Letter #8'') at 3–4.

[105] DLC *Ex Parte* Letter #8 at 4. The DLC also states that ''BMI has taken the position that it is not barred from licensing mechanical rights in addition to public performance rights, and ASCAP has sought an amendment to its consent decree permitting it to engage in such licensing,'' and that ''[i]f the PROs begin to administer mechanical rights in the United States, then including information about PRO affiliation in the MLC's database will be especially important.'' *Id.*

[106] *Id.*

[107] MAC NPRM Comment at 4.

[108] Recording Academy NPRM Comment at 3; CISAC & BIEM April NOI Comment at 3; FMC April NOI Comment at 2; SGA & SCL NPRM Comment at 3–4; *see also* SONA NPRM Comment at 7 (accepting Office's decision not to compel PRO affiliation).

[109] MLC April NOI Comment at 10.

information to the MLC.[110] Given that the MLC intends to source musical work information from copyright owners or administrators, requiring the MLC to ''pass through'' PRO affiliation from DMPs may potentially be confusing as to the source of such information or result in incorrect or conflicting information. After the MLC has been up and running, the Office is willing to consider whether modifications to the interim rule prove necessary on this subject. In the meantime, as previously noted by the Office, not requiring the MLC to include PRO affiliation does not inhibit the MLC from optionally including such information.[111] Should the MLC decide to include PRO affiliation in the database and source such information from DMPs' reports of usage, the Office encourages the MLC to include an explanation of PRO affiliation and the sourcing of such information in its glossary.

7. Historical Data

In response to the September NOI and April NOI, multiple commenters asserted that the public database should maintain and make historical ownership information available.[112] For its part, the MLC stated its intention to ''maintain information about each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities,'' and to ''maintain at regular intervals historical records of the information contained in the database.'' [113] The MLC confirmed that it ''will maintain an archive of data provided to it after the license availability date ('LAD') and that has subsequently been updated or revised (*e.g.,* where there is a post-LAD change in ownership of a share of a musical work), and the MLC will make this historic information available to the public.'' [114] The MLC contends that ''it should be permitted to determine, in consultation with its vendors, the best method for maintaining and archiving historical data to track ownership and other information changes in its database.'' [115]

The proposed rule adopted the MLC's request for flexibility as to the most appropriate method for archiving and maintaining historical data to track ownership and other information changes in the database, stating that the MLC shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time.[116] No commenters objected to this aspect of the proposed rule. The Office continues to believe that granting the MLC discretion in how to display such historical information is appropriate, particularly given the complexity of ownership information for sound recordings (discussed below). Accordingly, the interim rule adopts this aspect of the proposed rule without modification. As previously noted by the Office, the MLC must maintain all material records of the operations of the mechanical licensing collective in a secure and reliable manner, and such information will also be subject to audit.[117] CISAC & BIEM did seek clarity on whether the database will include historical information for both musical works and sound recordings.[118] The Office confirms that the interim rule broadly covers information changes in the database, which covers information relating to both musical works and sound recordings.

8. Terminations

Title 17 allows authors or their heirs, under certain circumstances, to terminate an agreement that previously granted one or more of the author's exclusive rights to a third party.[119] In response to the September NOI, one commenter suggested that to the extent terminations of musical work grants have occurred, the public database should include ''separate iterations of musical works with their respective copyright owners and other related information, as well as the appropriately matched recording uses for each iteration of the musical work, and to make clear to the public and users of the database the appropriate version eligible for future licenses.'' [120] Separately, as addressed in a parallel rulemaking, the MLC asked that the Office require digital music providers to include server fixation dates for sound recordings, contending that this information will be helpful to its determination whether particular usage of musical works is affected by the termination of grants under this statutory provision.[121] The DLC objected to this request.[122]

In the April NOI, the Office sought public input on issues that should be considered relating to whether termination information should be included in the public database.[123] The DLC, SGA & SCL, and SONA support including information concerning the termination of grants of rights by copyright creators in the public database.[124] By contrast, the MLC contended that it ''should not be required to include in the public database information regarding statutory termination of musical works *per se*.'' [125] The Recording Academy asked the Office to ''set aside any issue related to termination rights and the MLC until it conducts a full and thorough examination of the implications . . . for songwriters and other authors, including an opportunity for public comment.'' [126]

The proposed rule did not require the mechanical licensing collective to include termination information in the public database, an approach that is adopted by the interim rule.[127] While in response to the NPRM, SGA & SCL reiterate their viewpoint that this information should be required, at this time, the Office is not convinced this requirement is necessary in light of the statutory obligation to maintain an up-to-date ownership database.[128] Indeed,

[110] 85 FR 58114, 58121 (Sept. 17, 2020).

[111] 17 U.S.C. 115(d)(3)(E)(v); 85 FR at 22576; 85 FR at 58176–77.

[112] *See* DLC Initial September NOI Comment at 20; SoundExchange Initial September NOI Comment at 10; CISAC & BIEM April NOI Comment at 3; FMC April NOI Comment at 2; SoundExchange April NOI Comment at 4–5; SONA April NOI Comment at 9.

[113] MLC April NOI Comment at 12.

[114] MLC *Ex Parte* Letter #7 at 4.

[115] MLC April NOI Comment at 12.

[116] 85 FR at 58189.

[117] 85 FR at 22576; 85 FR at 58177; 17 U.S.C. 115(d)(3)(M)(i); *id.* at 115(d)(3)(D)(ix)(II)(aa).

[118] CISAC & BIEM NPRM Comment at 2–3. SoundExchange asserts that ''the regulations [should] make clear that, in addition to 'archiving and maintaining such historical data,' the MLC shall make such historical data available to the public.'' SoundExchange NPRM Comment at 4. The interim rule, like the proposed rule, identifies the categories of information that must be included in the public musical works database, which includes historical information. *See* 85 FR at 58188 (''This section prescribes the rules under which the mechanical licensing collective will provide information relating to musical works (and shares of such works), and sound recordings in which the musical works are embodied, in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E). . . .'').

[119] 17 U.S.C. 203, 304(c), 304(d).

[120] Barker Initial September NOI Comment at 4.

[121] MLC Reply September NOI Comment at 19, App. at 10–11; *see also* 85 FR at 22532–33.

[122] DLC *Ex Parte* Letter Feb. 14, 2020 (''DLC *Ex Parte* Letter #1'') at 3; DLC *Ex Parte* Letter #1 Presentation at 15; DLC *Ex Parte* Letter Feb. 24, 2020 at 4; DLC *Ex Parte* Letter Mar. 4, 2020 (''DLC *Ex Parte* Letter #3'') at 5.

[123] 85 FR at 22576.

[124] DLC April NOI Comment at 4 n.19; SGA & SCL April NOI Comment at 8; SONA April NOI Comment at 2–3.

[125] MLC April NOI Comment at 10.

[126] Recording Academy April NOI Comment at 3. *See also* Recording Academy NPRM Comment at 3 (''The decision not to require the inclusion of termination information in the public database is prudent and appropriate.'').

[127] 85 FR at 58178.

[128] SGA & SCL NPRM Comment at 4.

the MLC has noted its intention to include information regarding administrators that license musical works and/or collect royalties for such works,[129] as well as information regarding ''each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities,'' [130] which presumably should include updated ownership information that may be relevant for works that are being exploited after exercise of the termination right. The Office's conclusion does not restrict the MLC from optionally including such information.

9. Data Provenance

In response to both notifications of inquiry, commenters overwhelmingly supported having the public musical works database include data provenance information.[131] The DLC and SoundExchange contend that including data provenance information will allow users of the database to make their own judgments as to its reliability.[132] Others noted that for sound recordings, first-hand data is more likely to be accurate.[133] For its part, the MLC maintains that it ''should be given sufficient flexibility to determine the best and most operationally effective way to ensure the accuracy and quality of the data in its database, rather than requiring it to identify the source of each piece of information contained therein.'' [134] The MLC also stated that it ''intends to show the provenance of each row of sound recording data, including both the name of and DPID for the DMP from which the MLC received the sound recording data concerned,'' and that it ''intends to put checks in place to ensure data quality and accuracy.'' [135] For musical works information, the MLC maintains that it ''will be sourced from copyright owners.'' [136]

The proposed rule would require the MLC to include data provenance information for sound recording information in the public database, though it grants the MLC some discretion on *how* to display such information.[137] The proposed rule would not require the MLC to include data provenance information for musical work information, as the MLC intends to source musical works information from copyright owners (which commenters generally supported).[138] Specifically, the Office noted that ''data provenance issues appear to be especially relevant to sound recording information in the public database,'' particularly ''given that the MLC intends to populate sound recording information in the public database from reports of usage, as opposed to using a single authoritative source.'' [139] The Office sought public input on this aspect of the proposed rule.[140]

ARM and SoundExchange both ask for regulations to require the MLC to identify the actual person or entity from which the information came, as opposed to including a categorical description such as ''digital music provider'' or ''usage report,'' though ARM does ''not oppose inclusion of those sorts of descriptors along with the party name.'' [141] In addition, ARM and CISAC & BIEM contend that the database should also include data provenance information regarding musical works information, with ARM stating that data provenance information for musical works ''would be of similar benefit to users of the database, particularly those who are required to pay mechanical royalties outside of the blanket license.'' [142] For its part, the MLC ''confirmed that it will include in the database DMP names and DPID information where it receives it.'' [143] Accordingly, the interim rule states that for sound recording information received from a digital music provider, the MLC shall include the name of the digital music provider. Because the MLC has stated that it will source musical work information from copyright owners and administrators of those works, and because (as noted above) copyright owners and administrators will already be included in the database, the Office concludes at this time that the regulations do not need to require data provenance information for musical works. Should future instances of confusion suggest that modifications to the interim rule are necessary, the Office is willing to reconsider this subject. The interim rule does not dictate the precise format in which such information is made available in the database.[144]

C. Sound Recording Information and Disclaimers or Disclosures in the Public Musical Works Database

1. ''Sound Recording Copyright Owner'' Information

In response to the September NOI, RIAA and individual record labels expressed concern about which information will populate the database and be displayed to satisfy the statutory requirement to include ''sound recording copyright owner'' (SRCO) in the public musical works database.[145] Specifically, RIAA explained that under current industry practice, digital music providers send royalties pursuant to information received from record companies or others releasing recordings to DMPs ''via a specialized DDEX message known as the ERN (or Electronic Release Notification),'' which ''is typically populated with information about the party that is entitled to receive royalties (who may or may not be the actual legal copyright owner), because that is the information that is relevant to the business relationship between record labels and DMPs.'' [146] In short, information ''in the ERN message is not meant to be used to make legal determinations of ownership.'' [147] RIAA noted the

[129] MLC April NOI Comment at 9.

[130] MLC Reply September NOI Comment at 34.

[131] ARM April NOI Comment at 3 (contending that the public database should indicate ''which data was provided to the MLC by the actual copyright owner or its designee, which was provided by a DMP and which was provided by some other third party'') (footnote omitted); DLC Initial September NOI Comment at 20; DLC Reply September NOI Comment at Add. A–15–16; FMC April NOI Comment at 2 (agreeing that public database ''should include provenance information, not just because it helps allow for judgments about how authoritative that data is, but because it can help writers and publishers know where to go to correct any bad data they discover''); CISAC & BIEM April NOI Comment at 3 (''Submitters of information should be identified, and when the information is derived from copyright owners (creators, publishers, CMOs, etc.), it should be labelled, and it should prevail over other sources of information.'').

[132] DLC April NOI Comment at 4; SoundExchange Initial September NOI Comment at 10–11.

[133] A2IM & RIAA Reply September NOI Comment at 2–3 (asserting MLC should be required to obtain its sound recording data from a single authoritative source); Jessop Initial September NOI Comment at 3 (''The MLC should obtain sound recording information from as close to the source as possible. In practice this means from the record label or someone directly or indirectly authorized to manage this information for them.'').

[134] MLC April NOI Comment at 12.

[135] MLC *Ex Parte* Letter #7 at 4.

[136] *Id.* at 2.

[137] 85 FR at 58189.

[138] *Id.* at 58178.

[139] *Id.*

[140] *Id.*

[141] ARM NPRM Comment at 3; SoundExchange NPRM Comment at 3.

[142] ARM NPRM Comment at 3; CISAC & BIEM NPRM Comment at 2.

[143] MLC *Ex Parte* Letter #11 at 5.

[144] *See id.* (noting ''the importance of flexibility in precisely how such information is provided online to ensure coherent displays and a quality user experience'').

[145] 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd).

[146] RIAA Initial September NOI Comment at 2 (footnote omitted). Although the RIAA's initial September NOI comments suggested that the ERN feed included a field labeled sound recording copyright owner (SRCO), upon reply, it clarified that there is no such specific field. *See* A2IM & RIAA Reply September NOI Comment at 8 n.5.

[147] RIAA Initial September NOI Comment at 2.

potential for confusion stemming from a field labelled ''sound recording copyright owner'' in the public database being populated by information taken from the labels' ERN messages—for both the MLC (*i.e.,* the MLC could ''inadvertently misinterpret or misapply the SRCO data''), and users of the free, public database (*i.e.,* they could mistakenly assume that the so-called ''sound recording copyright owner'' information is authoritative with respect to ownership of the sound recording).[148] Relatedly, SoundExchange noted that it ''devotes substantial resources'' to tracking changes in sound recording rights ownership, suggesting that inclusion of a SRCO field ''creates a potential trap for the unwary.'' [149] A2IM & RIAA and Sony suggested that three fields—DDEX Party Identifier (DPID), LabelName, and PLine—may provide indicia relevant to determining sound recording copyright ownership.[150]

In the April NOI, the Office sought public comment regarding which data should be displayed to satisfy the statutory requirement, including whether to require inclusion of multiple fields to lessen the perception that a single field contains definitive data regarding sound recording copyright ownership.[151] In response, ARM did not object ''to a regulation that requires the MLC to include [DDEX Party Identifier (DPID), LabelName, and PLine] in the Database, provided the fields are each labeled in a way that minimizes confusion and/or misunderstanding,'' as ''this will lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.'' [152] For DPID, the Office understands that ARM does not object to including the DPID party's name, but does ''object to the numerical identifier being disclosed, as the list of assigned DPID numbers is not public and disclosing individual numbers (and/or the complete list of numbers) could have unintended consequences.'' [153] The MLC ''ha[d] no issue with including LabelName and PLine information in the public database to the extent the MLC receives that information from the DMPs,'' but expressed concern about including DPID because it ''does not identify sound recording copyright owner, but rather, the sender and/or recipient of a DDEX-formatted message.'' [154] The DLC stated that LabelName and Pline ''are adequate on their own,'' as DPID ''is not a highly valuable data field,'' and contended that the burden of converting DPID numerical codes into parties' names (to address ARM's concern about displaying the numerical identifier) outweighs any benefit of including DPID in the public database.[155] The Recording Academy, although acknowledging that ''DDEX ERN information is an important source of reliable and authoritative data about a sound recording,'' asserted that ''many of the fields serve a distinct purpose in the digital supply chain and do not satisfy the 'sound recording copyright owner' field required in the MLC database.'' [156]

The proposed rule tentatively concluded that DPID does not have as strong a connection to the MLC's matching efforts or the mechanical licensing of musical works as the other fields identified as relevant to the statutory requirement to list a sound recording copyright owner. In light of this, and the commenters' concerns, the proposed rule did not require the MLC to include DPID in the public database. In case the MLC later chooses to include DPID in the public database, the proposed rule states that the DPID party's name may be displayed, but not the numerical identifier. In addition, because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, to satisfy the statute's requirement to include information regarding ''sound recording copyright owner,'' the proposed rule requires the MLC to include data for both LabelName and PLine in the public database, to the extent reasonably available.[157] In light of numerous comments expressing similar views, the Office tentatively concluded that inclusion of these two fields would adequately satisfy the statutory requirement by establishing an avenue for the MLC to include relevant data that is transmitted through the existing digital supply chain, and thus reasonably available for inclusion in the public database.[158]

Regarding labeling, the Office tentatively declined to regulate the precise names of these fields,[159] although the proposed rule precluded the MLC from labeling either the PLine or LabelName field ''sound recording copyright owner,'' and required the MLC to consider industry practices

[148] *Id.* at 3. Those concerns were echoed in *ex parte* meetings with individual record labels. *See* Universal Music Group (''UMG'') & RIAA *Ex Parte* Letter Dec. 9, 2019; Sony & RIAA *Ex Parte* Letter Dec. 9, 2019 at 1–2.

[149] SoundExchange Initial September NOI Comment at 11–12.

[150] Sony & RIAA *Ex Parte* Letter Dec. 9, 2019 at 2 (noting that ''DIY artists and aggregators serving that community'' may be most likely to populate the DPID field); A2IM & RIAA Reply September NOI Comment at 8–10. The LabelName represents the ''brand under which a Release is issued and marketed. A Label is a marketing identity (like a MusicPublisher's 'Imprint' in book publishing) and is not the same thing as the record company which controls it, even if it shares the same name. The control of a Label may move from one owner to another.'' Digital Data Exchange (''DDEX''), DDEX Data Dictionary, *http://service.ddex.net/dd/ERN411/dd/ddex_Label.html* (last visited Dec. 17, 2020). ''PLine'' is ''[a] composite element that identifies the year of first release of the Resource or Release followed by the name of the entity that owns the phonographic rights in the Resource or Release. . . . In the case of recordings that are owned by the artist or the artist's heirs but are licensed to one of [their] member companies, the PLine field typically lists those individuals' names, even though they generally are not actively involved in commercializing those recordings.'' A2IM & RIAA Reply September NOI Comment at 9 (citing Music Business Association and quoting DDEX, *DDEX Release Notification Standard Starter Guide for Implementation* 28 (July 2016), *https://kb.ddex.net/download/attachments/327717/MusicMetadata_DDEX_V1.pdf*).

[151] 85 FR at 22577.

[152] ARM April NOI Comment at 4. A2IM & RIAA initially stated that ''[b]ecause the PLine party is, in many cases, an individual who would not want to be listed in a public database and is often not the party who commercializes the recording, the regulations should prohibit that party name from appearing in the public-facing database.'' A2IM & RIAA Reply September NOI Comment at 9. The Office understands that ARM, of which A2IM and RIAA are members, does not object to PLine being displayed in the public musical works database.

[153] ARM NPRM Comment at 10, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001.*

[154] MLC April NOI Comment at 13. *See also* Digital Data Exchange (''DDEX'') NPRM Comment at 2, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001* (''[T]he DPID, although a unique identifier and in relevant instances an identifier of ''record companies'', does not identify sound recording copyright owners. It only identifies the sender and recipient of a DDEX formatted message and, in certain circumstances, the party that the message is being sent on behalf of.'').

[155] DLC Letter July 13, 2020 at 10 (stating ''it would require at least a substantial effort for some services'' (around one year of development), ''and would be an impracticable burden for some others'').

[156] Recording Academy April NOI Comment at 3. *Compare* ARM April NOI Comment at 5 (stating ''there is no single field in the ERN that can simultaneously tell the public who owns a work, who distributes the work *and* who controls the right to license the work'').

[157] As the MMA also requires ''sound recording copyright owner'' to be reported by DMPs to the mechanical licensing collective in monthly reports of usage, the Office has separately issued an interim rule regarding which information should be included in such reports to satisfy this requirement. Because industry practice has not included a single data field to provide definitive data regarding sound recording copyright ownership, that rule proposes that DMPs can satisfy this obligation by reporting information in the following fields: LabelName and PLine. *See* 37 CFR 210.27(e)(4).

[158] 85 FR at 58180.

[159] *See* ARM April NOI Comment at 5 (suggesting that ''LabelName'' be described as ''U.S. Releasing Party (if available),'' and that ''PLine'' be described as ''Sound Recording Owner of Record (who may not be the party that commercializes the recording; note that this party may change over time)'').

when labeling fields in the public database to reduce the likelihood of user confusion.[160] The Office also expressed appreciation that the MLC intends to ''make available in the database a glossary or key, which would include field descriptors.'' [161] The Office specifically encouraged ''the MLC to consider ARM's labeling suggestions with respect to the PLine and LabelName fields.'' [162] The Office strongly disagreed with the MLC's notion that ''the names or labels assigned to these fields in the public database is not ultimately the MLC's decision,'' and that ''it is ultimately at DDEX's discretion.'' [163] The Office explained that ''[w]hile DDEX 'standardizes the formats in which information is represented in messages and the method by which the messages are exchanged' 'along the digital music value chain' (*e.g.,* between digital music providers and the MLC), DDEX does not control the public database or how information is displayed and/or labeled in the public database.'' [164]

The Office received no comments in opposition to this aspect of the proposed rule. In response, ARM agreed with the Office's decision to include LabelName and PLine in the public database, prohibit the MLC from labeling either field ''sound recording copyright owner,'' and require that the MLC ''consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion.'' [165] ARM also reiterated its labeling suggestions for the PLine and LabelName fields.[166] Similarly, SoundExchange ''welcome[d]'' the Office's approach of prohibiting the MLC from identifying either the PLine or LabelName field as the ''Sound Recording Copyright Owner,'' and directing the MLC to consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion.[167]

Given the overwhelming support expressed in the comments, and for all of the reasons given in the NPRM, the interim rule adopts this aspect of the proposed rule without modification.

2. Disclaimer

Relatedly, the Office received persuasive comments requesting that the MLC be required to include a conspicuous disclaimer regarding sound recording copyright ownership information in its database. ARM, A2IM & RIAA, CISAC & BIEM, Recording Academy, and SoundExchange agreed that the public database should display such a disclaimer.[168] And the MLC itself has agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording ownership information.[169]

The proposed rule would require the MLC to include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording ownership information, and explains the labeling of information in the database related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields. The proposed rule would not require that the disclaimer include a link to SoundExchange's ISRC Search database.

The proposed rule was largely supported, and is now adopted without modification.[170] Because the MLC intends to populate the public musical works database with sound recording information from reports of usage (discussed below), ARM did suggest that the disclaimer ''explain that the sound recording data displayed in the database has been provided by users of the sound recordings, not by the owners or distributors of the sound recordings,'' and that ''MLC require users to click on the disclaimer to acknowledge that they have seen and accepted it.'' [171] SoundExchange agrees, noting that it is ''critically important the MLC's disclaimer concerning sound recording information be clear and prominent, and perhaps linked to a more detailed explanation of the issue, because this design decision carries a significant risk of confusing the public, which needs to understand what the MLC Database is and what it is not.'' [172] For its part, the MLC believes having the disclaimer state that sound recording information has been provided by users of the sound recordings ''may be confusing to the public, as sound recording information reported by DMPs will largely be the data provided by the respective record labels.'' [173]

Given that the proposed rule requires the MLC to include a conspicuous disclaimer that states that the database is not an authoritative source for sound recording ownership information, and explain the labeling of information related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields, the Office adopts this aspect of the proposed rule without modification. The Office endorses SoundExchange's suggestion that the MLC consider providing a more detailed explanation of the issue, and also notes that the rule does not prohibit the MLC from linking to SoundExchange's ISRC Search database.

3. Populating and Deduplication of Sound Recording Information in the Public Musical Works Database

The statute requires the MLC to ''establish and maintain a database containing information relating to musical works (and shares of such works) and, to the extent known, . . . the sound recordings in which the musical works are embodied.'' [174] As noted above, for both matched and unmatched musical works, the public database must include, to the extent reasonably available to the MLC, ''identifying information for sound recordings in which the musical work is embodied.'' [175]

As discussed in the NPRM, throughout this and parallel rulemakings, ''commenters have expressed concern about the MLC using non-authoritative sources to populate the sound recording information in the public database.'' [176] Some commenters, including several representing recorded music interests, maintained that sound recording data in the public database should be taken from copyright owners or an authoritative source (*e.g.,* SoundExchange) rather than DMPs.[177]

[160] The same limitation applies if the MLC elects to include DPID information.

[161] 85 FR at 58180 (quoting MLC *Ex Parte* Letter #7 at 4).

[162] *Id.*

[163] *Id.* (quoting MLC *Ex Parte* Letter #7 at 4).

[164] *Id.* (quoting DDEX NPRM Comment at 1, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001*).

[165] ARM NPRM Comment at 3–4.

[166] *Id.* at 4.

[167] SoundExchange NPRM Comment at 4.

[168] A2IM & RIAA Reply September NOI Comment at 9; CISAC & BIEM Reply September NOI Comment at 8; SoundExchange Initial September NOI Comment at 12; RIAA Initial September NOI Comment at 10; ARM April NOI Comment at 6–7; Recording Academy April NOI Comment at 3–4.

[169] MLC Reply September NOI Comment at 36–37; MLC April NOI Comment at 13.

[170] *See* ARM NPRM Comment at 4; MLC NPRM Comment at 4; Recording Academy NPRM Comment at 3; SoundExchange NPRM Comment at 5–6.

[171] ARM NPRM Comment at 4.

[172] SoundExchange NPRM Comment at 6.

[173] MLC *Ex Parte* Letter #11 at 5.

[174] 17 U.S.C. 115(d)(3)(E)(i).

[175] *Id.* at 115(d)(3)(E)(ii)(IV)(bb), (iii)(I)(dd).

[176] 85 FR at 58180.

[177] *See id.* at 58180–81; ARM *Ex Parte* Letter July 27, 2020 at 1–2; ARM April NOI Comment at 3; ARM NPRM Comment at 6, U.S. Copyright Office Dkt. No. 2020–5, available at *https://beta.regulations.gov/document/COLC-2020-0005-0001;* Jessop Initial September NOI Comment at 3; SoundExchange Initial September NOI Comment at 12; DLC Reply September NOI Comment at 10; DLC *Ex Parte* Letter #3 at 2. During this proceeding, RIAA designated SoundExchange as the authoritative source of ISRC data in the United States. RIAA, *RIAA Designates SoundExchange as*

Though raised in the context of data collection by DMPs, as opposed to populating the public database, the DLC supported the MLC obtaining sound recording information from a single, authoritative source, such as SoundExchange, because ''[w]ith record labels acting as the primary and authoritative source for their own sound recording metadata, the MLC could then rely on only a single (or limited number of) metadata field(s) from licensees' monthly reports of usage to look up the sound recordings in the MLC database (*e.g.,* an ISRC or digital music provider's unique sound recording identifier that would remain constant across all usage reporting).'' [178] The DLC further maintained that ''the MLC's suggestion to obtain disparate sound recording data from every digital music provider and significant non-blanket licensee is far less efficient than obtaining it from a single source like SoundExchange.'' [179]

By contrast, the MLC stated that while it intends to use SoundExchange as one source of data about sound recordings, it intends to primarily rely on data received from DMPs to populate sound recording information in the database.[180] The MLC added that receiving unaltered sound recording data from DMPs, as it sought to have required in a separate proceeding, would ''both improve the MLC's ability to match musical works to sound recordings'' and ''better allow the MLC to 'roll up' sound recording data under entries that are more likely to reflect more 'definitive' versions of that sound recording data.'' [181]

The NPRM invited the MLC to reassess how it will populate sound recording information in the public database, noting commenters' concerns about using non-authoritative sources, and that adopting a requirement for DMPs to report unaltered sound recording data fields need not drive display considerations with respect to the public database.[182] The Office stated that ''the MMA anticipates a general reliability of the sound recording information appearing in the public database,'' [183] and that ''[w]hile it may be true that reports of usage are the better indicators of which sound recordings were actually streamed, the public database is not necessarily meant to serve that same function.'' [184] The statute requires the public database to contain information relating to ''the sound recordings in which the musical works are embodied,'' which can reasonably be read as information to *identify* the sound recordings in which musical works are embodied, regardless of whether they were streamed pursuant to disparate attendant metadata or not.[185] In the NPRM, the Office also noted the potential that by passing through inaccurate or confusing sound recording information received by DMPs in the database, such inaccuracies or confusion in the public database could translate into inaccuracies in royalty statements to musical work copyright owners.[186] Further, because the statute requires the MLC to grant free bulk-access to digital music providers, such access ''seems less meaningful if [it] were to mean regurgitating the same information from reports of usage back to digital music providers.'' [187] While the proposed regulatory language did not address the manner in which the MLC populates sound recording information in the database or the deduplication of sound recording records (*i.e.,* eliminating duplicate or redundant sound recording records), the Office invited further comment on these issues.[188]

In response, though commenters did not express additional concerns about the MLC's plans to populate sound recording information in the database, SoundExchange did note that ''the MLC's reluctance to include and organize its data around authoritative sound recording information . . . represents a missed opportunity to develop a resource with authoritative linkages between sound recordings and musical works that would be of significantly greater value for participants in the ecosystem.'' [189] The MLC stated that because the database is ''musical works-driven,'' ''it should be populated in such a way to assist owners of musical works in identifying uses of their works by DMPs so they can be paid royalties to which they are entitled.'' [190] The MLC maintains that ''normalizing'' sound recording data ''may be useful to sound recording copyright owners, but that neither serves the primary purpose of the MMA nor necessarily helps musical work copyright owners.'' [191] Rather, the MLC asserts, ''there could be hundreds of different recorded versions of a popular musical work . . . , including cover versions, live versions, and remastered versions,'' and the musical work copyright owner ''wants to see in the database all of those hundreds of different recordings associated with its musical work when it searches for that musical work, and it also wants to see all of the uses by the different DMPs of each of those different recordings because it is to be paid for each such use.'' [192] The MLC added that, given the requirement for DMPs to provide data unaltered from what they receive from labels, ''that means that the data the MLC receives from the DMPs will itself be 'authoritative' because it comes from the labels.'' [193]

The Office appreciates comments from the various parties on these issues. The interim rule adopts the proposed flexible approach for the MLC to determine the best way to populate the database and display sound recording information. The Office notes, however, that achieving the purpose of the database (*i.e.,* reducing the number of unmatched musical works by accurately identifying musical work copyright owners so they can be paid what they are owed by DMPs operating under the section 115 statutory license) requires accurate information to be presented to musical work copyright owners (and the public) in a user-friendly and meaningful manner. Should a copyright owner be confronted with thousands of entries of the identical sound recording in the database (as opposed to numerous, but different, sound recordings embodying the musical work) that are not linked or associated, and each entry represents a single *use* of a sound recording instead of its *identity,* the Office questions the meaningfulness of such information. The Office is thus encouraged that MLC will work to use unaltered data ''after it begins to receive it in September 2021'' ''as 'keys' to 'roll up' into one set of

Authoritative Source of ISRC Data in the United States (July 22, 2020), *https://www.riaa.com/riaa-designates-soundexchange-as-authoritative-source-of-isrc-data-in-the-united-states/.*

[178] DLC Reply September NOI Comment at 10.

[179] DLC *Ex Parte* Letter #3 at 2.

[180] MLC Initial September NOI Comment at 24.

[181] MLC *Ex Parte* Letter #7 at 2.

[182] 85 FR at 58181.

[183] *Id.; see* SoundExchange Initial September NOI Comment at 5 (''[T]he success of the MLC Database . . . will depend on it having sufficiently comprehensive data of sufficiently high quality that it will be respected and used throughout the industry.''); RIAA Initial September NOI Comment at 11 (record labels ''anticipate making frequent use of the MLC database'').

[184] 85 FR at 58181; *see* 17 U.S.C. 115(d)(3)(E)(i), (ii)(IV)(bb), (iii)(I)(dd). As RIAA explains, ''member labels vary the metadata they send the different DMPs in order to meet the services' idiosyncratic display requirements,'' which if passed to the MLC even in unaltered form, would result in the MLC ''still receiv[ing] conflicting data that it will have to spend time and resources reconciling.'' A2IM & RIAA Reply September NOI Comment at 2.

[185] 85 FR at 58181 (citing 17 U.S.C. 115(d)(3)(E)(i), (ii)(IV)(bb), (iii)(I)(dd)).

[186] *Id.* at 58182.

[187] *Id.*

[188] *Id.*

[189] SoundExchange NPRM Comment at 7.

[190] MLC NPRM Comment at 4.

[191] *Id.* at 4–5.

[192] *Id.* at 5.

[193] *Id.*

metadata different sound recording metadata reported by DMPs in usage reports for an identical sound recording.'' [194] If, after the MLC starts receiving unaltered data from DMPs, it proves appropriate to develop more specific regulatory guidance, the Office is amenable to reconsideration. As even the MLC has acknowledged, sound recording information may be helpful for matching purposes,[195] so its inclusion does not serve only sound recording owners.

D. Access to Information in the Public Musical Works Database

As noted above, the statute directs the Office to ''establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [public] musical works database.'' [196] The database must ''be made available to members of the public in a searchable, online format, free of charge.'' [197] The mechanical licensing collective must make the data available ''in a bulk, machine-readable format, through a widely available software application,'' to digital music providers operating under valid notices of license, compliant significant nonblanket licensees, authorized vendors of such digital music providers or significant nonblanket licensees, and the Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [198] The legislative history stresses the importance of the database and making it available to ''the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.'' [199] It adds that ''[i]ndividual lookups of works shall be free although the collective may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [200] And ''there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.'' [201]

1. Method of Access

The proposed rule required the MLC to ''make the musical works database available to members of the public in a searchable, real-time, online format, free of charge.'' [202] The Office agreed that the MLC should—especially initially, due to its start-up nature—have some discretion regarding the precise format in which it provides bulk access to the public database.[203] Given, however, ''the overwhelming desire for the MLC to provide bulk access through APIs from a broad swatch of organizations representing various corners of the music ecosystem,'' the Office proposed that the MLC must begin providing bulk access to the public database through APIs starting July 1, 2021.[204]

The proposed rule was applauded by commenters.[205] The MLC stated its intention to provide bulk access through an API as proposed, but raised concerns regarding implementation by July 1, 2021.[206] It noted in particular that it ''will not be able to commence the work to develop the API until after it has begun issuing royalty statements in the Spring of 2021'' and requested that the deadline be extended to December 31, 2021 ''to ensure sufficient development time.'' [207] The MLC asks for the extension ''to allow time to conduct proper consultation with stakeholders throughout the industry regarding their requirements, gather their feedback, and then design, test and implement, so as to provide the most useful API,'' but did indicate that ''it will aim to implement API access sooner in 2021 where that is reasonably practical.'' [208] In the meantime, the MLC will be ''providing access through Secure File Transfer Protocol (SFTP) on a weekly basis,'' which is ''expected to be available by January 2021.'' [209] Because the proposed rule requires the MLC to provide bulk access in a ''real-time'' format, the MLC asks that the rule be adjusted to delete the words ''real-time.'' [210]

After carefully considering this issue, the Office agrees that having time to seek industry feedback while developing an API increases the chances of developing one that meets the needs of industry participants. Accordingly, the interim rule provides the MLC until December 31, 2021 to implement bulk access through an API. The Office declines, however, to remove the words ''real-time'' from the rule. The Office raised the issue of ''real-time'' access in response to the DLC's initial proposal that bulk access be provided through a weekly file, and multiple commenters objected, asserting that real-time access to the public database is necessary to meet the goals of the statute and avoid industry reliance upon stale data.[211] Given the regulation, the Office thus encourages the MLC to consider offering bulk access via SFTP on a more frequent basis until the API is available.

Next, MAC requests that the regulations require the MLC to provide songwriters with ''access to the same level of certain data as . . . publishers, digital music providers, labels, etc., free of charge.'' [212] Specifically, MAC proposed that any songwriter who has authored or co-authored any musical work should have access ''to the following information at the same time it is provided to the publisher or administrator of record'': (1) The amount of revenue each DSP has paid to the MLC for the work, (2) the amount of revenue the MLC has paid to the respective publisher or administrator, and (3) the total stream count of each work per DSP.[213]

When asked about songwriter access, the MLC made some overtures towards ensuring songwriter access for purposes of correcting data. The MLC confirmed that ''the public musical works database will be viewable by the general public

[194] MLC NPRM Comment at 6. The MLC asked that it be able to defer development on this project until at least October 2021, after it has started receiving and can review unaltered data, to provide it with time to complete development of the database's core functionality. *Id.*

[195] *See* MLC Letter July 13, 2020 at 7 (stating ''[a]ll of the metadata fields proposed in § 210.27(e)(1) will be used as part of the MLC's matching efforts''); *see also* 85 FR 22518, 22541 (Apr. 22, 2020) (sound recording information fields proposed in § 210.27(e)(1)).

[196] 17 U.S.C. 115(d)(3)(E)(vi).

[197] *Id.* at 115(d)(3)(E)(v).

[198] *Id.*

[199] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[200] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[201] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[202] 85 FR at 58189; *see* Muzzey NPRM Comment at 1 (''It is crucial that the MLC database be searchable and completely public-facing . . .''). The MLC has advised that ''[i]n the initial version [of the database], the searchable fields are planned to be: (a) Work Title; (b) Work MLC Song Code; (c) ISWC; (d) Writer Name; (e) Writer IPI name number; (f) Publisher Name; (g) Publisher IPI name number; and (h) MLC Publisher Number,'' and that ''additional searchable fields may be added in the future.'' MLC *Ex Parte* Letter #11 at 3.

[203] 85 FR at 58183.

[204] *Id.* at 58184.

[205] Recording Academy NPRM Comment at 3; SONA NPRM Comment at 7–8; SoundExchange NPRM Comment at 5; ARM NPRM Comment at 4.

[206] MLC NPRM Comment at 7.

[207] *Id.*

[208] MLC *Ex Parte* Letter #11 at 2.

[209] *Id.*

[210] *Id.*

[211] 85 FR at 58182–83 (citing A2IM & RIAA Reply September NOI Comment at 7, FMC Reply September NOI Comment at 3, MAC Initial September NOI Comment at 2, Recording Academy Initial September NOI Comment at 4, SoundExchange Reply September NOI Comment at 9).

[212] MAC NPRM Comment at 3.

[213] *Id.* at 4. The Office notes that to the extent such information is provided in royalty statements to musical work copyright owners from the MLC, as noted above, there are no restrictions on the use of those statements by copyright owners.

without any need to register for the MLC Portal,'' as the portal ''is the platform for copyright owners and administrators of musical works used in covered activities, where they can register their works, claim their shares and provide the necessary information so as to receive royalty distributions.'' [214] The MLC also noted that ''everyone, including songwriters, may participate in the DQI.'' [215] Finally, the MLC said that it intends ''to develop user-friendly methods for songwriters to access information about their musical works and to enable songwriters to notify their administrators of a possible issue with a work's data or registration.'' [216]

Providing songwriters with the ability to review and correct information about their works is important, but the Office also believes that transparency militates in favor of affording songwriters (including those who are not self-published) easier access to information about use of their works. The Office appreciates the MLC's commitment to developing user-friendly methods for songwriters, specifically, to access information about their works. The Office further notes that nothing prevents the MLC from working with publishers and administrators to offer non-self-administered songwriters permissions-based access to view stream count and revenue information for their musical works, and encourages the MLC to explore such options.[217]

2. Marginal Cost

The Office proposed to allow the MLC to determine the best pricing information in light of its operations, so long as the fee does not exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity, which shall not be unreasonable.[218] In rejecting comments suggesting that the cost of gathering data should be factored into these costs, the NPRM stated ''it [was] difficult for the Office to see how Congress intended third parties to offset the larger cost of the collective acquiring the data and aggregating, verifying, deduping and resolving conflicts in the data.'' [219] The Office also noted that the legislative history emphasizes the importance of accessibility to the public database, and that requiring third parties to pay more than the ''marginal cost'' could create commercial disadvantages that the MMA sought to eliminate.[220]

In response, an anonymous commenter stated that the term ''marginal cost'' is vague and should be defined ''by either establishing a monetary limit or a method for the mechanical licensing collective to determine the amount.'' [221] The MLC expressed concern that the phrase ''which shall not be unreasonable'' ''is inconsistent with the requirement that access be provided at 'marginal cost' because, if access is provided at 'marginal cost,' such cost can never be 'unreasonable,'" and that ''the qualifier opens the door to a third party argument that what is, in fact, marginal cost is nevertheless 'unreasonable' cost.'' [222] The MLC does not believe ''marginal cost'' ''authoriz[es] fees to recoup the overhead costs of design and maintenance of the SFTP or API,'' but rather would ''be set at an amount estimated to recoup the actual cost of provision of the bulk data to the particular person or entity requesting it.'' [223] Currently, it estimates the SFTP bulk access to cost approximately $100 ''to cover one-time setup and a single copy of the database, and a monthly standard fee of $25 which offers access to all weekly copies'' (though ''these expected fees may change, as [the MLC] has no precedent for this access and [associated] costs'').[224] The MLC also confirmed that ''it intends to charge the same fee to all members of the public (who are not entitled to free access) for SFTP access,'' though ''it expects API access would be under a different fee structure and amounts than SFTP access, since the marginal costs will be different.'' [225]

After considering the MLC's comments, including its stated plans, the Office agrees that the phrase ''which shall not be unreasonable'' can be deleted from the rule.[226] This aspect of the proposed rule is otherwise adopted without modification.

3. Abuse

The legislative history states that in cases of efforts by third parties to bypass the marginal cost recovery for bulk access (*i.e.,* abuse), the MLC ''may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [227] The MLC and DLC suggested providing the mechanical licensing collective discretion to block third parties from bulk access to the public database after attempts to bypass marginal cost recovery.[228]

In light of these comments, the NPRM proposed that the MLC shall establish appropriate terms of use or other policies governing use of the database that allows it to suspend access to any individual or entity that appears, in the collective's reasonable determination, to be attempting to bypass the MLC's right to charge a fee to recover its marginal costs for bulk access through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database), or misappropriating or using information from the database for improper purposes. To ensure transparency regarding which persons or entities have had bulk database access suspended, the Office also proposed to require the mechanical licensing collective to identify such persons and entities in its annual report and explain the reason(s) for suspension.

[214] MLC *Ex Parte* Letter #11 at 5.

[215] *Id.*

[216] *Id.; see* SONA NPRM Comment at 3 (''[I]t is important that songwriters have access to data information available to music publishers and musical work administrators, such as the MLC's Data Quality Initiative ('DQI').'').

[217] The Office has long rejected the suggestion to place a confidentiality requirement on copyright owners receiving statements of account under the section 115 license due to the inclusion of ''competitively sensitive'' information (*e.g.,* licensees' overall revenues, royalty payments to record companies and performance rights organizations, and overall usage). 79 FR 56190, 56206 (Sept. 18, 2014). Rather, ''once the statements of account have been delivered to the copyright owners, there should be no restrictions on the copyright owners' ability to use the statements or disclose their contents.'' *Id.* In a recent parallel rulemaking, the Office again declined to adopt confidentiality restrictions on copyright owners receiving statements of account. 85 FR at 22561.

[218] 85 FR at 58184.

[219] *Id.*

[220] *Id.; see* Conf. Rep. at 7 (''Given the importance of this database, the legislation makes clear that it shall be made available to the Copyright Office and the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.'').

[221] Anonymous NPRM Comment at 1.

[222] MLC NPRM Comment at 8.

[223] MLC *Ex Parte* Letter #11 at 3.

[224] *Id.*

[225] *Id.*

[226] CISAC & BIEM ''strongly encourage the Office to . . . include CMOs as significant copyright owners among the entities which will have access to the Database and UP files in bulk format free of charge, as is currently the proposed rule for 'significant licensees.' '' CISAC & BIEM NPRM Comment at 3. The Office notes that the regulations mirror the statute in granting bulk access free of charge to those entities enumerated in the statute (*i.e.,* digital music providers, significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and the Office). *See* 17 U.S.C. 115(d)(3)(E)(v)(I)–(IV).

[227] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

[228] MLC Initial September NOI Comment at 25; MLC April NOI Comment at 15; DLC Reply September NOI Comment Add. at A–17; DLC April NOI Comment at 5.

In response, while ARM ''wholeheartedly support[s] giving the MLC the authority to suspend database access for individuals or entities that appear to be engaging in unlawful activity,'' it expresses concern about terms of use or restrictions ''inadvertently disadvantag[ing] bona fide users of the database or creat[ing] unintended barriers to legitimate uses of the data,'' and encouraged the Office to consider an appeals process for those whose access the MLC seeks to suspend or restrict, or ''some sort of graduated sanctions regime, whereby repeat offenders are subjected to increasingly stringent penalties while inadvertent, or one-time, offenders are subjected to less stringent penalties.'' [229] On the other hand, the MLC ''strongly opposes any change to the rule that would prevent the MLC from restricting access to users who have violated the terms of use, which could impede the MLC's ability to prevent fraud and abuse.'' [230] The MLC stated ''that it will have terms of use for the website, the Portal, and the bulk access to the musical works database,'' noting that the ''current version of the website Terms of Use is accessible at *https://www.themlc.com/terms-use.*'' [231]

After considering this issue, the Office has largely adopted this aspect of the proposed rule without modification. The Office agrees that the MLC should have flexibility to block third parties where persons have engaged in unlawful activity with respect to the database and that in the cases of fraud the MLC may need to take immediate action. The Office encourages the MLC, however, in developing its terms of use for the database, to create an appeals process for those who have had access suspended to reduce the likelihood of good-faith users being denied access. Should the MLC fail to create an appeals process and the Office learns of individuals or entities being unreasonably denied access to the database, the Office is willing to consider whether further regulatory action on this issue is warranted.

4. Restrictions on Use

The MMA directs the Office to issue regulations regarding ''usage restrictions'' with respect to the database.[232] Comments have been mixed in response to the Office's solicitations on this issue, generally centering around whether the Office should specify conditions the MLC should or should not include in its database terms of use.

The DLC argues that ''licensees should be able use the data they receive from the MLC for any legal purpose,'' [233] and that ''abusive access can be adequately addressed by empowering the MLC to block efforts to bypass marginal cost recovery.'' [234] Music Reports agrees that data in the public database should be available for any legal use.[235] By contrast, CISAC & BIEM seek ''regulations defining strict terms and conditions, including prohibition for DMPs to use data for purposes other than processing uses and managing licenses and collaborating with the MLC in data collection,'' and generally ''prohibiting commercial uses and allowing exclusively lookup functions.'' [236] FMC is ''inclined to want to see some reasonable terms and conditions'' regarding use of the public database, and suggests that ''[i]t's entirely appropriate for the Office to offer a floor.'' [237]

The MLC agrees that ''there should be some reasonable limitation on the use of the information in the MLC database to ensure that it is not misappropriated for improper purposes,'' and intends to ''include such limitation in its terms of use in the database.'' [238] To avoid abuse by bad actors, the MLC ''does not intend to include in the public database the types of information that have traditionally been considered PII, such as Social Security Number (SSN), date of birth (DOB), and home address or personal email (to the extent those are not provided as the contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III)),'' and ''further intends to protect other types of PII.'' [239] But the MLC also asks that it ''be afforded the flexibility to disclose information not specifically identified by statute that would still be useful for the database but would not have serious privacy or identity theft risks to individuals or entities.'' [240]

As noted, the Office proposed requiring the MLC to establish appropriate terms of use or other policies governing use of the database that allow it to suspend access to any individual or entity that appears, in the MLC's reasonable determination, to be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. The MLC must identify any persons and entities in its annual report that have had database access suspended and explain the reason(s) for such suspension. In issuing the proposed rule, the Office also noted that ''database terms of use should not be overly broad or impose unnecessary restrictions upon good faith users.'' [241]

The MLC states ''that it will have terms of use for the website, the Portal, and the bulk access to the musical works database,'' and that the ''current version of the website Terms of Use is accessible at *https://www.themlc.com/terms-use.*'' [242] In reviewing the MLC's terms of use for its website, the Office notes that multiple provisions would not be appropriate to apply to the public musical works database, and so the Office directs the MLC to develop separate terms of use for the database and make them publicly available. For example, the terms of use for the MLC's website states that that a user may ''not download, reproduce, redistribute, retransmit, publish, resell, distribute, publicly display or otherwise use or exploit any portion of the website in any medium without The MLC's prior written authorization,'' and that ''any use . . . of any of The MLC Materials and website other than for [ ] personal use is strictly prohibited.'' [243] In addition, the website's terms of use state that ''[t]he website, including all content . . . are owned and/or licensed by The MLC and are legally protected.'' [244] Use of information from the musical works database for commercial purposes would not be misappropriating or using that information for an improper purpose, and the MLC and its vendors do not own the data in the musical

[229] ARM NPRM Comment at 5.

[230] MLC *Ex Parte* Letter #11 at 5.

[231] *Id.*

[232] 17 U.S.C. 115(d)(3)(E)(vi).

[233] DLC Initial September NOI Comment at 21.

[234] DLC April NOI Comment at 5.

[235] Music Reports April NOI Comment at 7.

[236] CISAC & BIEM NPRM Comment at 4; *see* CISAC & BIEM Initial September NOI Comment at 4; CISAC & BIEM April NOI Comment at 3.

[237] FMC April NOI Comment at 3.

[238] MLC April NOI Comment at 15; *see* MLC Reply September NOI Comment at 37.

[239] MLC April NOI Comment at 16. CISAC & BIEM contend that ''the Regulations [should] include clear language on the MLC's full compliance with data protection laws, and in particular with the European General Data Protection Regulation, as the MLC will process personal data of EU creators.'' CISAC & BIEM NPRM Comment 3. As noted by the Office in the September NOI, the MLC has ''committed to establishing an information security management system that is certified with ISO/IEC 27001 and meets the EU General Data Protection Regulation requirements, and other applicable laws.'' 84 FR at 49972; *see* Proposal of Mechanical Licensing Collective, Inc. at 50, U.S. Copyright Office Dkt. No. 2018–11.

[240] MLC April NOI Comment at 16 n.9.

[241] 85 FR at 58186.

[242] MLC *Ex Parte* Letter #11 at 5.

[243] The MLC, Terms of Use, *https://www.themlc.com/terms-use* (last visited Dec. 18, 2020).

[244] *Id.*

works database. Accordingly, while the Office is adopting its proposed approach of providing the MLC flexibility to develop reasonable terms of use, the interim rule clarifies the Office's expectation that the MLC's terms of use or other policies governing use of the database must comply with the Office's regulations.

E. Transparency of MLC Operations; Annual Reporting

The legislative history and statute envision the MLC ''operat[ing] in a transparent and accountable manner'' [245] and ensuring that its ''policies and practices . . . are transparent and accountable.'' [246] The MLC has expressed its commitment to transparency, both by including transparency as one of its four key principles underpinning its operations on its current website,[247] and in repeated written comments to the Office.[248] The Office has noted that one main avenue for MLC transparency is through its annual report.[249] By statute, the MLC must publish an annual report ''[n]ot later than June 30 of each year commencing after the license availability date,'' setting forth information regarding: (1) Its operational and licensing practices; (2) how royalties are collected and distributed; (3) budgeting and expenditures; (4) the collective total costs for the preceding calendar year; (5) its projected annual budget; (6) aggregated royalty receipts and payments; (7) expenses that are more than ten percent of the annual budget; and (8) its efforts to locate and identify copyright owners of unmatched musical works (and shares of works).[250] The MLC must deliver a copy of the annual report to the Register of Copyrights and make this report publicly available.[251] The MLC itself has previously recognized that its annual report is one way in which it intends to ''promote transparency.'' [252] Although the phrase ''[n]ot later than June 30 of each year commencing after the license availability date'' could be read as requiring the first annual report to cover the first year of operations after the license availability date (*i.e.,* issued in June 2022 for year 2021), as discussed below, a number of reasons compel the Office to adjust the interim rule to require the MLC to issue a written public update in December 2021, albeit shortened, regarding its operations.

In response to overwhelming desire for increased transparency regarding the MLC's activities expressed by commenters, and the ability of the annual report to provide such transparency, the proposed rule required the MLC to disclose certain information in its annual report besides the statutorily-required categories of information.[253] In response to comments suggesting the creation of a ''feedback loop'' to receive complaints,[254] the Office noted that the statute already requires the mechanical licensing collective to ''identify a point of contact for publisher inquiries and complaints with timely redress.'' [255] The proposed rule emphasized this responsibility by codifying the requirement and expanding it to include a point of contact to receive complaints regarding the public musical works database and/or the collective's activities.[256] The name and contact information for the point of contact must be made prominently available on the MLC's website.[257] In addition, the Office noted that it ''always welcomes feedback relevant to its statutory duties or service,'' and that ''[m]embers of the public may communicate with the Office through the webform available *https://www.copyright.gov/help*'' for inquiries or comments with respect to the MLC or MMA.[258]

Commenters overall approved of the proposed rule.[259] The MLC ''generally agree[d] with the proposed rules as they concern annual reporting, and believes that the Office's additions to what is required in the statute . . . will aid in providing the transparency that the MMA envisions and that the MLC is committed to providing.'' [260] The DLC similarly voiced support, adding, ''[i]t will be critical, however, for the Office to enforce not just the bare letter of the regulations, but the spirit of full transparency that animates those regulations.'' [261] Two commenters commended the Office for requiring disclosure of any application of unclaimed royalties on an interim basis to defray current collective total costs, as permitted under the MMA, ''subject to future reimbursement of such royalties from future collections of the assessment.'' [262] MAC and the Recording Academy welcomed requirements to disclose the appointment and selection criteria of new board members,[263] and the Recording Academy also applauded disclosure requirements for average

[245] S. Rep. No. 115–339, at 7.

[246] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[247] The MLC, Mission and Principles, *https://themlc.com/mission-and-principles* (last visited Dec. 18, 2020) (''The MLC will build trust by operating transparently. The MLC is governed by a board of songwriters and music publishers who will help ensure our work is conducted with integrity.''). *See also* The MLC, The MLC Process, *https://themlc.com/how-it-works* (last visited Dec. 18, 2020) (''The MLC is committed to transparency. The MLC will make data on unclaimed works and unmatched uses available to be searched by registered users of The MLC Portal and the public at large.'').

[248] *See, e.g.,* MLC Reply September NOI Comment at 42–43 (''The MLC is committed to transparency and submits that, while seeking to enact regulations is not an efficient or effective approach, the MLC will implement policies and procedures to ensure transparency.'').

[249] 85 FR at 58186; 85 FR at 22572.

[250] 17 U.S.C. 115(d)(3)(D)(vii)(I)(aa)–(hh); Conf. Rep. at 7.

[251] 17 U.S.C. 115(d)(3)(D)(vii)(I), (II).

[252] The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Sept. 1, 2020) (web page no longer available) (noting that the MLC will ''promote transparency'' by ''[p]roviding an annual report to the public and to the Copyright Office detailing the operations of The MLC, its licensing practices, collection and distribution of royalties, budget and cost information, its efforts to resolve unmatched royalties, and total royalties received and paid out'').

[253] 85 FR at 58187. This information included selection of board members, selection of new vendors, any application of unclaimed accrued royalties on an interim basis to defray MLC costs, average processing and distribution times for distributing royalties, and any suspension of access to an individual or entity attempting to bypass the MLC's right to charge a fee for bulk access to the public database. 85 FR at 58187.

[254] Castle April NOI Comment at 16 (contending the Office should create ''a complaint webform with someone to read the complaints as they come in as part of the Office's oversight role''); Lowery Reply September NOI Comment at 11 (stating ''regulations should provide for a feedback loop that songwriters can avail themselves of that the Copyright Office must take into account when determining its re-designation'').

[255] 85 FR at 58187–88 (quoting 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb)).

[256] *Id.* at 58188.

[257] *Id. See* U.S. Copyright Office, Section 512 of title 17 159 (2020), *https://www.copyright.gov/policy/section512/section-512-full-report.pdf* (suggesting that Congress could thus ''modify the language of section 512(c)(2) to provide that the designated agent's information be not just 'on its website in a location accessible to the public,' but also 'prominently displayed' ''); 17 U.S.C. 512(c)(2).

[258] 85 FR at 58188.

[259] *See, e.g.,* MLC NRPM Comment at 8; DLC NRPM Comment at 1; Recording Academy NRPM Comment at 3–4.

[260] MLC NRPM Comment at 8.

[261] DLC NRPM Comment at 1.

[262] *See* Castle NRPM Comment at 17; Recording Academy NRPM Comment at 3–4; 17 U.S.C. 115(d)(7)(C).

[263] MAC NRPM Comment at 2; Recording Academy NRPM Comment at 3–4. MAC also made some suggestions regarding MLC Board membership, including songwriters receiving notifications when Board member vacancies become available, and having the MLC's website identify any vacant seat(s) and describing the application process. MAC NRPM Comment at 2–3. The MLC has advised that ''it posts information about such vacancies on its website and uses its many channels of outreach to push information about such vacancies to the industry.'' MLC *Ex Parte* Letter #11 at 6. The MLC also stated that ''it accepts through its website suggestions for candidates for board and advisory committee seats, to ensure that candidates may be considered for a seat when one becomes available,'' and that the ''suggestion form is available at[ ] *https://themlc.com/get-involved*.'' *Id.*

processing and distribution times for distributing royalties, stating it 'will promote accountability and hopefully give songwriters confidence in the new system.'' [264]

A number of commenters sought broader disclosure requirements regarding the MLC's vendors hired to help administer the statutory license, expressing concern about their potential commercial advantage. For example, FMC stated that ''Congress intended to encourage a healthy competitive marketplace for other kinds of licensing businesses and intermediaries,'' and so ''it's important that MLC's chosen vendors not be able to leverage their status with the MLC to advantage themselves in other business activities not covered under the MMA.'' [265] SoundExchange similarly expressed concern about potential commercial advantage of MLC vendors, noting that Congress ''intended to preserve a vibrant and competitive marketplace for intermediaries [besides the MLC] who provide other license administration services,'' and this intent would be frustrated ''[i]f the MLC's vendors were to receive an unfair advantage in the music licensing marketplace through means such as preferred access to digital music providers or referrals by the MLC for extrastatutory business opportunities in a manner not available to their competitors.'' [266] SoundExchange proposes requiring the MLC to disclose additional vendor information, including ''[a] description of all work performed by the existing vendors for the MLC in the previous year and the current year; [s]teps the MLC has taken and will take to ensure separation between the MLC and its vendors; and [s]teps the MLC has taken to ensure transferability of functions from one vendor to another, and an assessment of any risks to transferability that the MLC foresees.'' [267] The DLC expresses similar concern about MLC vendors ''gain[ing] a special competitive advantage in related marketplaces—such as the administration of voluntary licenses—merely by dint of their association with the collective responsible for licensing all mechanical rights in the United States.'' [268] Finally, MAC recommends that ''information regarding the selection of vendors should be made available prior to vendors being selected'' to provide opportunity for interested parties to weigh in on potential vendors.[269]

While not opposing general disclosure requirements relating to vendors, the MLC balks at disclosing ''any performance reviews'' of the MLC's vendors that are ''performing materially significant technology or operational services related to the [MLC's] matching and royalty accounting activities.'' [270] The MLC contends that ''performance reviews might include sensitive or confidential information, including about individuals who work for any such vendor,'' and requests that the rule instead ''permit the MLC to summarize or extract the key findings of any reviews, and to include such summaries or extracts in the annual report rather than the full performance reviews themselves.'' [271]

The Office appreciates the overwhelming desire from commenters to have the MLC's annual report include information about the performance and selection of its vendors. The Office accepts the MLC's representation that vendor performance reviews may include sensitive or confidential information. The interim rule thus retains the requirement that the MLC disclose the criteria used in deciding to select its vendors to perform materially significant technology or operational services, but adjusts the language so as to require summaries and key findings from any vendor performance reviews rather than the verbatim reviews. To address concerns of MLC vendors gaining an unfair competitive advantage by virtue of being MLC vendors, in a parallel rulemaking, the Office has proposed a rule prohibiting vendors of the MLC (as well as its agents, consultants, and independent contractors) from using confidential information for any purpose other than the ordinary course of their work for the MLC.[272] In addition, the interim rule in this proceeding clarifies that agents, consultants, vendors, and independent contractors of the MLC must pay the marginal cost to acquire bulk access to the information in the musical works database for purposes other than the ordinary course of their work for the MLC. Beyond the requirements codified in this interim rule, the Office encourages the MLC to consider the commenters' requests for additional disclosure, including information about soliciting and choosing vendors in advance of any vendor selection, and engaging in the highest level of transparency consistent with operational realities and protection of confidential information.[273]

Commenters recommended certain additional disclosures. CISAC & BIEM suggest requiring publication of the MLC Dispute Resolution Committee's rules and procedures,[274] as well as disclosure of the amount of unclaimed royalties received by the MLC [275] and any audits and their results of the MLC or blanket licensees.[276] SoundExchange proposes that the annual report ''include a certification by the MLC that it is in compliance with the statute's limitation that the collective may only administer blanket mechanical licenses and other mechanical licenses for digital distribution.'' [277] SGA & SCL express concern that the proposed rule did not reflect its request for the MLC annual report to include ''an independent report by the board's music creator representatives on their activities in support of songwriter and composer interests, the handling of conflict-related problems by the board and its various controlled committees, and the issues of conflict that remain to be addressed and resolved.'' [278] The DLC

[264] Recording Academy NRPM Comment at 4.

[265] FMC NRPM Comment at 2; *see also id.* (''The Office can require the MLC to disclose what it is doing to prevent any vendor from being too operationally enmeshed with the MLC that it either enjoys an unfair advantage through that relationship, or that it would be practically impossible for another vendor to step in.'').

[266] SoundExchange NRPM Comment at 8; *see also id.* (''[I]t is in the public's interest, including the interest of publishers, songwriters, and DMPs, to ensure that the operations of the MLC do not become so inextricably intertwined with its vendors that DMPs believe that they must turn to the MLC's vendors for extrastatutory licensing requirements or that it becomes difficult if not impossible for the MLC to switch vendors in the future.'').

[267] SoundExchange NRPM Comment at 9.

[268] DLC NPRM Comment at 2.

[269] MAC NRPM Comment at 3.

[270] MLC NRPM Comment at 9.

[271] *Id.*

[272] 85 FR at 22565. The definition of ''confidential information'' in the proposed rule would cover financial information disclosed to the mechanical licensing collective by copyright owners, including publishers. *Id.* at 22566–67.

[273] *See* The MLC, Mission and Principles, *https://themlc.com/mission-and-principles* (last visited Dec. 18, 2020) (''The MLC will build trust by operating transparently.'').

[274] CISAC & BIEM NPRM Comment at 4.

[275] *Id.* at 5

[276] Castle NRPM Comment at 21.

[277] SoundExchange NRPM Comment at 9.

[278] SGA & SCL NPRM Comment at 10; *see also* Castle NRPM Comment at 20.

SGA & SCL also suggests the MLC's bylaws ''indicate an enormous bias in favor of near-total control by the music publisher board majority over—among other things— the selection of songwriter members of the board's advisory committees, and the election of songwriter board members themselves.'' SGA & SCL NPRM Comment at 10. Under the MLC's existing bylaws, songwriter members of the MLC's board of directors are recommended for appointment by a vote of the ''Songwriter Directors of the Board'' and recommendations for MLC Board appointments ''shall be sent to the Register of Copyrights'' and are appointed ''[i]f the Register of Copyrights approves and the Librarian of Congress appoints . . .'' The MLC, The MLC Bylaws, *https://themlc.com/sites/default/files/2020-05/Bylaws%20of%20The%20MLC.pdf* (last visited Dec. 18, 2020).

In addition, SGA, SCL & Music Creators North America, Inc. (''MCNA'') ''formally petition and

suggests that the Office ''invit[e] comments on the MLC's annual reports, to get insight from a broad range of stakeholders both about whether the report fulfills the MLC's transparency obligations and whether it raises (or fails to raise) any issues related to the sound functioning of the mechanical licensing system.'' [279]

After carefully considering these comments, the Office concludes that some suggestions are already addressed by the statute, and some may not need to be addressed by regulation. For example, the statute already requires the MLC to submit to periodic audits, which must be made publicly available.[280] Likewise, the MLC's database will provide insight into the amount of unmatched usages reported to the MLC, as well as a mechanism for claiming such works. Similarly, as the statute prohibits the MLC from administering licenses apart from the mechanical license, requiring the MLC to certify that it is in compliance with the law appears unnecessary. The Office agrees it could be beneficial for the rules and procedures for the MLC's Dispute Resolution Committee to be made publicly available, and encourages their publication as soon as practicable given the MLC's obligation to have ''transparent and accountable'' policies and procedures.[281] Though the interim rule, like the proposed rule, does not require an independent report from the board's music creator representatives, the Office reiterates its expectation that ''the MLC . . . give voice to its board's songwriter representatives as well as its statutory committees, whether through its annual reporting or other public announcements.'' [282] Songwriters on the MLC's board of directors are not a separate entity and should participate with other members of the board to represent and collectively address songwriter concerns and interests.

For its part, the MLC seeks modification of the proposed requirement to disclose ''the average processing and distribution times for distributing royalties to copyright owners,'' calling it ''somewhat confusing.'' [283] The MLC argues that ''there are many different types of averages and methods of calculating averages, leaving room for misunderstanding,'' and that ''the rule should accommodate the inclusion in the annual report of the actual [ ] dates on which distributions were made to copyright owners during the preceding calendar year, as such information will inform copyright owners and other interest[ed] parties of the timeliness of payment.'' [284] The MLC ''intends to and will include in the annual report the dates on which distributions were made to copyright owners during the preceding calendar year, which will inform copyright owners and other interest parties of the timeliness of payment'' and requests that the rule be modified to permit that information instead of ''average processing and distribution times.'' [285] The MLC suggests removing the word ''average'' as one possible solution.[286]

The Office believes that the proposed rule would allow the MLC to determine and explain the metrics it relies upon when reporting processing and distribution times. Indeed, the Office itself reports a variety of average processing times for copyright registration, with accompanying explanatory methodology material.[287] The MLC's core function is to collect and distribute royalties for covered activities; simply reporting the months in which the MLC distributes royalties—without disclosing *how long* the process of matching and distribution of royalties takes—provides limited meaningful insight into how the blanket license is functioning under the MLC's administration (including for example, by identifying external dependencies that may be contributing to delays in the MLC's ability to identify musical works embodied in particular sound recordings and identify and locate corresponding musical work copyright owners).[288] Accordingly, this aspect of the interim rule retains the general requirement, but in order to avoid any confusion, clarifies that the MLC has discretion as to the metrics it measures when reporting average times by stating that the MLC must disclose the manner in which it calculates processing and distribution times.

Finally, as noted above, while the phrase ''[n]ot later than June 30 of each year commencing after the license availability date'' could be read as not requiring the first annual report until June 2022 (to cover year 2021), a number of reasons compel the Office to adjust the interim rule to require the MLC to issue a written public update regarding its operations in December 2021, in a potentially abbreviated version. Because the MLC was designated in July 2019,[289] if the first annual report is issued in June 2022, that could mean three years without a formal written update on the MLC's operations. This may frustrate the noted desire from commenters for transparency regarding the MLC's operations.[290] The Office is also mindful of the statutory five-year designation process for periodic review of the mechanical licensing collective's performance.[291] Additional written information from the MLC may help inform both the Office's and the public's understanding with respect to that period of the MLC's performance. Finally, for musical works for which royalties have accrued but the copyright owner is unknown or not located, the

request that the [Office] consider recommending to Congress that the board of the MLC be expanded by six songwriter members, selected for service in a fair and open manner by the music creator community under the oversight of the USCO and the Librarian of Congress, to ensure at least the possibility of equity and fairness in the conduct of MLC activities that only a balanced board can provide.'' SGA & SCL NPRM Comment at 13. For such statutory proposals, the Office encourages SGA, SCL & MCNA to participate in future roundtables for the Office's congressionally-mandated policy study that will recommend best practices that the MLC may implement to effectively identify and locate copyright owners with unclaimed royalties of musical works, encourage copyright owners to claim accrued royalties, and ultimately reduce the incidence of unclaimed royalties. *See* 85 FR 33735 (June 2, 2020).

[279] DLC NRPM Comment at 2.

[280] 17 U.S.C. 115(d)(3)(D)(ix)(II)(aa), (cc). The Office also declines to require publication of audit results of blanket licensees, and notes such a requirement may implicate confidentiality obligations.

[281] *Id.* at 115(d)(3)(D)(ix)(I)(aa).

[282] 85 FR at 58186 n.266.

[283] MLC NRPM Comment at 8.

[284] MLC *Ex Parte* Letter #11 at 6.

[285] MLC NRPM Comment at 8.

[286] MLC *Ex Parte* Letter #11 at 6.

[287] *See, e.g.,* U.S. Copyright Office, Registration Processing Times, *https://www.copyright.gov/registration/docs/processing-times-faqs/april-1-2020-september-30-2020.pd* (last visited Dec. 20, 2020); *see also* ASCAP, My ASCAP Membership, *https://www.ascap.com/help/my-ascap-membership* (last visited Dec. 20, 2020) (''For writers, there is a time lag of approximately seven (7) to eight (8) months between performances and royalty processing. . . . For publishers, there is a time lag of approximately six (6) months between performance and royalty processing.'').

[288] *See* 17 U.S.C. 115(d)(3)(C) (authorities and functions of mechanical licensing collective); 17 U.S.C. 115(d)(3)(B)(ii) (establishing five-year designation process for the Office to periodically review the mechanical licensing collective's performance).

[289] 84 FR at 32274.

[290] *See, e.g.,* DLC September NOI Reply Comment at 28; MAC Initial September NOI Comment at 2; Music Innovation Consumers (''MIC'') Coalition Initial September NOI Comment at 3; Screen Composers Guild of Canada (''SCGC'') Reply Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001;* Iconic Artists LLC Initial Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001; see also* The MLC, Mission and Principles, *https://themlc.com/mission-and-principles* (last visited Dec. 18, 2020) (''The MLC will build trust by operating transparently.'').

[291] 17 U.S.C. 115(d)(3)(B)(ii).

MLC must hold such royalties until at least January 1, 2023.[292] If the first written report were received in June 2022, that may provide a short runway for public disclosure and feedback prior to the MLC potentially ''engag[ing] in diligent, good-faith efforts to publicize'' ''any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made.'' [293] Accordingly, the interim rule requires the MLC to issue by no later than December 31, 2021 and make available online for a period of not less than three years, a one-time report that contains, at a minimum, many of the categories of information required to be disclosed in the MLC's annual report.

The Office recognizes that certain categories of information for the annual report may not be applicable for the first six months after the license availability date, as the MLC would not have engaged in certain activities (*e.g.,* aggregated royalty receipts and payments). Accordingly, the interim rule states that if it is not practicable for the MLC to provide a certain category of information that is required for the MLC's annual report, the MLC may so state but shall explain the reason(s) for such impracticability and, as appropriate, may address such categories in an abbreviated fashion.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Add §§ 210.31 through 201.33 to read as follows:

§ 210.31 Musical works database information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide information relating to musical works (and shares of such works), and sound recordings in which the musical works are embodied, in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and to increase usability of the database.

(b) *Matched musical works.* With respect to musical works (or shares thereof) where the copyright owners have been identified and located, the musical works database shall contain, at a minimum, the following:

(1) Information regarding the musical work:

(i) Musical work title(s);

(ii) The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;

(iii) Contact information for the copyright owner of the musical work (or share thereof), which can be a post office box or similar designation, or a ''care of'' address (*e.g.,* publisher);

(iv) The mechanical licensing collective's standard identifier for the musical work; and

(v) To the extent reasonably available to the mechanical licensing collective:

(A) Any alternative or parenthetical titles for the musical work;

(B) ISWC;

(C) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for matched musical works;

(D) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(E) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter, and administrator;

(F) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(G) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied, to the extent reasonably available to the mechanical licensing collective:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works.

(c) *Unmatched musical works.* With respect to musical works (or shares thereof) where the copyright owners have not been identified or located, the musical works database shall include, to the extent reasonably available to the mechanical licensing collective:

(1) Information regarding the musical work:

(i) Musical work title(s), including any alternative or parenthetical titles for the musical work;

(ii) The ownership percentage of the musical work for which an owner has not been identified;

(iii) If a musical work copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;

(iv) The mechanical licensing collective's standard identifier for the musical work;

(v) ISWC;

[292] 85 FR at 33738; 17 U.S.C. 115(d)(3)(H)(i), (J)(i)(I).

[293] 17 U.S.C. 115(d)(3)(J)(iii)(II)(dd).

(vi) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for unmatched musical works;

(vii) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(viii) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter and administrator;

(ix) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(x) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.

(d) *Field labeling.* The mechanical licensing collective shall consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion, particularly regarding information relating to sound recording copyright owner. Fields displaying PLine, LabelName, or, if applicable, DPID, information may not on their own be labeled ''sound recording copyright owner.''

(e) *Data provenance.* For information relating to sound recordings, the mechanical licensing collective shall identify the source of such information in the public musical works database. For sound recording information received from a digital music provider, the MLC shall include the name of the digital music provider.

(f) *Historical data.* The mechanical licensing collective shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time. The mechanical licensing collective shall determine, in its reasonable discretion, the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database.

(g) *Personally identifiable information.* The mechanical licensing collective shall not include in the public musical works database any individual's Social Security Number (SSN), taxpayer identification number, financial account number(s), date of birth (DOB), or home address or personal email to the extent it is not musical work copyright owner contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III). The mechanical licensing collective shall also engage in reasonable, good-faith efforts to ensure that other personally identifying information (*i.e.,* information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to such specific individual), is not available in the public musical works database, other than to the extent it is required by law.

(h) *Disclaimer.* The mechanical licensing collective shall include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording information, and explains the labeling of information related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields.

(i) *Ownership.* The data in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E) is public data not owned by the mechanical licensing collective or any of the collective's employees, agents, consultants, vendors, or independent contractors.

§ 210.32 Musical works database usability, interoperability, and usage restrictions.

This section prescribes rules under which the mechanical licensing collective shall ensure the usability, interoperability, and proper usage of the public musical works database created pursuant to 17 U.S.C. 115(d)(3)(E).

(a) *Database access.* (1)(i) The mechanical licensing collective shall make the musical works database available to members of the public in a searchable, real-time, online format, free of charge. In addition, the mechanical licensing collective shall make the musical works database available in a bulk, real-time, machine-readable format through a process for bulk data management widely adopted among music rights administrators to:

(A) Digital music providers operating under the authority of valid notices of license, and their authorized vendors, free of charge;

(B) Significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and their authorized vendors, free of charge;

(C) The Register of Copyrights, free of charge; and

(D) Any other person or entity, including agents, consultants, vendors, and independent contractors of the mechanical licensing collective for any purpose other than the ordinary course of their work for the mechanical licensing collective, for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.

(ii) Starting December 31, 2021, the mechanical licensing collective shall make the musical works database available at least in a bulk, real-time, machine-readable format under this paragraph (a)(1) through application programming interfaces (APIs).

(2) Notwithstanding paragraph (a)(1) of this section, the mechanical licensing collective shall establish appropriate terms of use or other policies governing use of the database that allows the mechanical licensing collective to suspend access to any individual or entity that appears, in the mechanical licensing collective's reasonable determination, to be attempting to bypass the mechanical licensing collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or

misappropriating or using information from the database for improper purposes. The mechanical licensing collective's terms of use or other policies governing use of the database shall comply with this section.

(b) *Point of contact for inquiries and complaints.* In accordance with its obligations under 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb), the mechanical licensing collective shall designate a point of contact for inquiries and complaints with timely redress, including complaints regarding the public musical works database and/or the mechanical licensing collective's activities. The mechanical licensing collective must make publicly available, including prominently on its website, the following information:

(1) The name of the designated point of contact for inquiries and complaints. The designated point of contact may be an individual (*e.g.,* ''Jane Doe'') or a specific position or title held by an individual at the mechanical licensing collective (*e.g.,* ''Customer Relations Manager''). Only a single point of contact may be designated.

(2) The physical mail address (street address or post office box), telephone number, and email address of the designated point of contact.

§ 210.33 Annual reporting by the mechanical licensing collective.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide certain information in its annual report pursuant to 17 U.S.C. 115(d)(3)(D)(vii), and a one-time written update regarding the collective's operations in 2021.

(b) *Contents.* Each of the mechanical licensing collective's annual reports shall contain, at a minimum, the following information:

(1) The operational and licensing practices of the mechanical licensing collective;

(2) How the mechanical licensing collective collects and distributes royalties, including the average processing and distribution times for distributing royalties for the preceding calendar year. The mechanical licensing collective shall disclose how it calculated processing and distribution times for distributing royalties for the preceding calendar year;

(3) Budgeting and expenditures for the mechanical licensing collective;

(4) The mechanical licensing collective's total costs for the preceding calendar year;

(5) The projected annual mechanical licensing collective budget;

(6) Aggregated royalty receipts and payments;

(7) Expenses that are more than 10 percent of the annual mechanical licensing collective budget;

(8) The efforts of the mechanical licensing collective to locate and identify copyright owners of unmatched musical works (and shares of works);

(9) The mechanical licensing collective's selection of board members and criteria used in selecting any new board members during the preceding calendar year;

(10) The mechanical licensing collective's selection of new vendors during the preceding calendar year, including the criteria used in deciding to select such vendors, and key findings from any performance reviews of the mechanical licensing collective's current vendors. Such description shall include a general description of any new request for information (RFI) and/or request for proposals (RFP) process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP. In connection with the disclosure described in this paragraph (b)(10), the mechanical licensing collective shall not be required to disclose any confidential or sensitive business information. For the purposes of this paragraph (b)(10), ''vendor'' means any vendor performing materially significant technology or operational services related to the mechanical licensing collective's matching and royalty accounting activities;

(11) Whether during the preceding calendar year the mechanical licensing collective, pursuant to 17 U.S.C. 115(d)(7)(C), applied any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs, including the amount of unclaimed accrued royalties applied and plans for future reimbursement of such royalties from future collection of the assessment; and

(12) Whether during the preceding calendar year the mechanical licensing collective suspended access to the public database to any individual or entity attempting to bypass the collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. If the mechanical licensing collective so suspended access to the public database to any individual or entity, the annual report must identify such individual(s) and entity(ies) and provide the reason(s) for suspension.

(c) *December 31, 2021 Update.* No later than December 31, 2021, the mechanical licensing collective shall post, and make available online for a period of not less than three years, a one-time written report that contains, at a minimum, the categories of information required in paragraph (b) of this section, addressing activities following the license availability date. If it is not practicable for the mechanical licensing collective to provide information in this one-time report regarding a certain category of information required under paragraph (b) of this section, the MLC may so state but shall explain the reason(s) for such impracticability and, as appropriate, may address such categories in an abbreviated fashion.

Dated: December 21, 2020.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–28958 Filed 12–30–20; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–4189–F]

RIN 0938–AT94

Medicare Program; Secure Electronic Prior Authorization For Medicare Part D

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule names a new transaction standard for the Medicare Prescription Drug Benefit program's (Part D) e-prescribing program as required by the ''Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act'' or the ''SUPPORT Act.'' Under the SUPPORT Act, the Secretary is required to adopt standards for the Part D e-prescribing