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Copyright Office

37 CFR Part 210

[Docket No. 2022–5]

Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act

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

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule regarding how the Copyright Act's derivative works exception to termination rights applies to the statutory mechanical blanket license established by the Music Modernization Act. The final rule also addresses other matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties. Among other things, the Office is adopting regulations addressing the mechanical licensing collective's distribution of matched historical royalties and administration of ownership transfers, other royalty payee changes, and related disputes.

DATES: This rule is effective August 8, 2024. However, compliance by the mechanical licensing collective, other than with respect to §§ 210.27(g)(2)(ii)(B)(*1*), 210.29(b)(4)(i)(C), 210.29(k), and 210.30(c)(1)(i)(B), is not required until the first distribution of royalties based on the first payee snapshot taken after October 7, 2024. The Copyright Office may, upon request, extend the compliance deadlines in its discretion by providing public notice through its website.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Office (''Office'') issues this final rule subsequent to a supplemental notice of proposed rulemaking (''SNPRM''), published in the **Federal Register** on September 26, 2023,[1] and a notice of proposed rulemaking (''NPRM''), published in the **Federal Register** on October 25, 2022.[2] This final rule assumes familiarity with the NPRM and SNPRM, as well as the public comments received in response to those notices.[3]

While the final rule retains many elements from the SNPRM, it also adopts a number of changes in response to the public comments, including a scaling back of certain proposals. We have adopted a number of commenter suggestions where reasonable, and have striven to establish a fair and balanced approach to the issues presented in this proceeding. In particular, the Office has endeavored to find solutions to the practical and administrative concerns that were raised by commenters. We are thankful for their participation in this process.

This document first summarizes the Office's earlier proposals and the public comments. It next addresses questions raised regarding our rulemaking authority. Finally, it discusses the different parts of the final rule: termination and the derivative works exception; the copyright owner entitled to blanket license royalties; matched historical royalties; ownership transfers and royalty payee changes; disputes; the corrective royalty adjustment; and the rule's effective date and compliance deadline.

A. The NPRM

The Office commenced this proceeding after the Mechanical Licensing Collective (''MLC'')[4] adopted a termination dispute policy (''Termination Policy'') that conflicted with prior Office guidance and was based on an erroneous interpretation of how the Copyright Act's derivative works exception (''Exception'') to termination rights applies to the statutory mechanical blanket license (''blanket license'') established by the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'').[5] The Office concluded it was necessary to address the legal issues more directly, including how termination law and the Exception intersect with the blanket license.[6] In the NPRM, it explained that clarifying the issues ''would provide much needed business certainty to music publishers and songwriters'' and ''would enable the MLC to appropriately operationalize the distribution of post-termination royalties in accordance with existing law.''[7] The NPRM contained a detailed discussion of the procedural background leading to this rulemaking,[8] the Office's regulatory authority,[9] and legal background about the Copyright Act's termination provisions and the Exception.[10]

The Office then analyzed the application of the Exception in the context of the blanket license and preliminarily concluded that the MLC's Termination Policy was ''inconsistent with the law.''[11] We explained that ''[w]hether or not the Exception applies to a [digital music provider's (''DMP's'')] blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination.''[12] This means that ''the post-termination copyright owner (*i.e.,* the author, the author's heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC.''[13]

The Office proposed a rule to recognize the payee under the blanket license who is legally entitled to royalties following a statutory termination.[14] We also proposed to require the MLC to immediately repeal its Termination Policy in full after concluding that it was ''contrary to the Office's interpretation of current law.''[15] We further proposed to require the MLC to adjust any royalties distributed under the policy within 90

[1] 88 FR 65908 (Sept. 26, 2023).

[2] 87 FR 64405 (Oct. 25, 2022).

[3] The NPRM stemmed from a previous rulemaking, discussed in detail in the NPRM, that involved multiple rounds of public comments through a notification of inquiry, 84 FR 49966 (Sept. 24, 2019), a notice of proposed rulemaking, 85 FR 22518 (Apr. 22, 2020), and an *ex parte* communications process. Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* All rulemaking activity, including public comments, as well as educational material regarding the MMA, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization.* Comments received in response to the NPRM and SNPRM are available at *https://copyright.gov/rulemaking/mma-termination/.* References to the public comments are by party name (abbreviated where appropriate), followed by ''NPRM Initial Comments,'' ''NPRM Reply Comments,'' ''SNPRM Initial Comments,'' ''SNPRM Reply Comments,'' or ''*Ex Parte* Letter,'' as appropriate.

[4] The preamble uses the terms ''Mechanical Licensing Collective'' or ''MLC'' to refer to the currently designated mechanical licensing collective. The regulatory text uses the lowercase statutory term ''mechanical licensing collective,'' as the regulations apply to any designated mechanical licensing collective, including the current or any future designee.

[5] 87 FR 64405, 64407.

[6] *Id.*

[7] *Id.* (''Moreover, without the uniformity in application that a regulatory approach brings, the Office is concerned that the MLC's ability to distribute post-termination royalties efficiently would be negatively impacted.'').

[8] *Id.* at 64406–07.

[9] *Id.* at 64407–08.

[10] *Id.* at 64408–10.

[11] *Id.* at 64410–11.

[12] *Id.* at 64411.

[13] *Id.*

[14] *Id.* at 64411–12.

[15] *Id.* at 64412.

days to make copyright owners whole for any distributions it made based on ''an erroneous understanding and application of current law.'' [16]

After the NPRM was published, the MLC said that it voluntarily ''suspended [its Termination Policy] pending the outcome of the [Office's] rulemaking proceeding'' and will ''hold[ ] all royalties for uses of musical works that are subject to statutory termination claims beginning with the royalties for the October 2022 usage period, which would have been initially distributed in January 2023.'' [17] To the Office's knowledge, the MLC continues to hold such royalties.

B. The NPRM Comments

The Office received over 40 public comments in response to the NPRM. These comments reflected the views of hundreds of interested parties, including songwriters, music publishers and administrators, record companies, public interest groups, academics, and practitioners. Most commenters, including multiple music publishers and administrators, generally supported the NPRM.[18] While some commenters raised concerns with certain aspects of the NPRM,[19] the National Music Publishers' Association (''NMPA'') was the only commenter to oppose the proposed rule more broadly, though it supported the NPRM's goal of ''ensuring that royalties for uses under the Section 115(d) blanket license . . . are paid to the proper copyright owner.'' [20]

Several commenters, including the MLC, sought additional guidance from the Office on various related issues not directly addressed by the NPRM. Examples include the following:

- Application of the Exception to other types of statutory mechanical licenses; [21]
- Application of the Exception to voluntary licenses; [22]
- Procedures for carrying out the proposed corrective royalty adjustment to remedy prior distributions by the MLC based on an erroneous understanding and application of the Exception; [23]
- Procedures concerning notice, documentation, timing, and other matters relating to the MLC's implementation of a termination notification; [24] and
- Procedures concerning termination disputes and related confidential information.[25]

The MLC emphasized the importance of the Office providing guidance regarding its termination-related procedures, explaining that rules addressing these procedures are ''essential to processing royalties in connection with statutory termination claims'' and ''would provide important guidance to parties involved in termination claims.'' [26]

C. The SNPRM

After considering the requests for further guidance and other comments received, the Office issued an SNPRM modifying the NPRM, providing additional detail, and expanding the NPRM's scope. In addition to addressing the Exception, the SNPRM addressed and sought comments on other matters relevant to identifying the proper payee to whom the MLC must distribute royalties. Such matters included issues related to the MLC's distribution of matched historical royalties and administration of ownership transfers, other royalty payee changes, and related disputes. While requests for additional guidance largely pertained to termination-related issues, those requests and other comments suggested that more comprehensive regulations would be beneficial to the MLC, publishers, songwriters, and the wider music industry. As the SNPRM explained, ''[t]he accurate distribution of royalties is a core objective of the MLC'' and ''[a]dopting the [supplemental proposed rule] would establish standards and settle expectations for all parties with respect to such distributions.'' [27] At a high level, the SNPRM provided the following views and proposals beyond those in the NPRM:

- The Office's preliminary views on the application of the Exception to matched historical royalties,[28] pre-2021 statutory mechanical licenses, individual download licenses, and voluntary licenses.[29]
- Additional discussion relating to the Office's preliminary view in the NPRM that the owner at the time of the use is entitled to distributions of blanket license royalties absent an agreement to the contrary, and a related proposal to accommodate and give effect to contractual payment arrangements that may require a different result.[30]
- A proposal that the MLC report and distribute matched historical royalties in the same manner and subject to the same requirements that apply to the reporting and distribution of blanket license royalties.[31]
- A proposal regarding how the MLC should be notified about an ownership transfer or other royalty payee change, with detailed provisions covering different types of changes, such as those relating to contractual assignments, statutory terminations, and other changes (*e.g.,* when parties direct the MLC to pay an alternative designated payee).[32]
- A proposal regarding how the MLC should implement and give effect to such payee changes.[33]
- A proposal regarding the process and documentation for termination-

[16] *Id.*

[17] The MLC, *Policies, https://www.themlc.com/dispute-policy* (last visited June 14, 2024).

[18] *See, e.g.,* Authors All. et al. NPRM Initial Comments at 1–3; BMG Rights Mgmt. NPRM Initial Comments at 1–2; BMG Rights Mgmt. NPRM Reply Comments at 1; ClearBox Rights NPRM Initial Comments at 2, 6–8; Fishman & Garcia NPRM Initial Comments at 1–4; Gates NPRM Reply Comments; Howard NPRM Initial Comments at 1–2; Howard NPRM Reply Comments at 2–3; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments; Landmann NPRM Initial Comments; Miller NPRM Initial Comments; North Music Grp. NPRM Reply Comments at 2–3; NSAI NPRM Initial Comments at 3; Promopub NPRM Initial Comments at 1–2; Promopub NPRM Reply Comments at 1–2; Recording Academy NPRM Reply Comments at 2–3; Rights Recapture NPRM Initial Comments; SGA et al. NPRM Initial Comments at 1–2, 5; SONA et al. NPRM Initial Comments at 2–3; SONA et al. NPRM Reply Comments at 3; Songwriters NPRM Reply Comments at 1; Wixen Music Publ'g NPRM Initial Comments at 1–2.

[19] *See, e.g.,* CMPA NPRM Initial Comments at 1–2; A2IM & RIAA NPRM Reply Comments at 1–2; MPA NPRM Reply Comments at 2–5.

[20] *See generally* NMPA NPRM Initial Comments; NMPA *Ex Parte* Letter (Feb. 6, 2023).

[21] *See, e.g.,* MLC NPRM Initial Comments at 6; MLC NPRM Reply Comments at 2; ClearBox Rights NPRM Initial Comments at 6; ClearBox Rights NPRM Reply Comments at 2; Howard NPRM Initial Comments at 5; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments.

[22] *See, e.g.,* MLC NPRM Initial Comments at 4–6; MLC NPRM Reply Comments at 2; ClearBox Rights NPRM Initial Comments at 6; ClearBox Rights NPRM Reply Comments at 2; Howard NPRM Initial Comments at 5; Rights Recapture NPRM Initial Comments.

[23] *See, e.g.,* MLC NPRM Initial Comments at 6–8; ClearBox Rights NPRM Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023); Howard NPRM Initial Comments at 6; Promopub NPRM Initial Comments at 2; Promopub NPRM Reply Comments at 3; North Music Grp. NPRM Reply Comments at 2.

[24] *See, e.g.,* MLC NPRM Initial Comments at 10–11; ClearBox Rights NPRM Initial Comments at 8; ClearBox Rights NPRM Reply Comments at 5–6; Howard NPRM Initial Comments at 3–5; Howard NPRM Reply Comments at 2–3; SGA et al. NPRM Initial Comments at 2, 6–8.

[25] *See, e.g.,* MLC NPRM Initial Comments at 11–14; ClearBox Rights NPRM Reply Comments at 6.

[26] MLC NPRM Initial Comments at 9–10; *see also* MLC NPRM Reply Comments at 2.

[27] 88 FR 65908, 65909.

[28] Phrases defined in the SNPRM—*e.g.,* ''historical unmatched royalties,'' ''matched historical royalties,'' ''the owner at the time of the use,'' and ''the owner at the time of the payment''—have the same meaning here. *See id.* at 65909–10, 65912–13.

[29] *Id.* at 65910–12.

[30] *Id.* at 65912–14.

[31] *Id.* at 65914.

[32] *Id.* at 65914–65917.

[33] *Id.* at 65917–18.

related disputes initiated with the MLC.[34]

- A proposal regarding the resolution of all types of disputes initiated with the MLC.[35]
- A proposal regarding certain disclosures to be made by the MLC in connection with disputes and other royalty holds.[36]
- A proposal regarding how the MLC should administer a corrective royalty adjustment to cure any distributions it previously made under its since-suspended Termination Policy.[37]

D. The SNPRM Comments

The Office received over 50 public comments in response to the SNPRM from a wide variety of interested parties across the music industry. Some parties supported aspects of the SNPRM,[38] while others were critical of certain provisions. The primary criticism addressed the question of whether the owner at the time of the use or the owner at the time of the payment should receive distributions of blanket license royalties from the MLC.[39] Commenters also took issue with the Office's proposed expansion of the rule beyond the NPRM, with some commenters requesting that those new issues be removed from consideration.[40] The MLC provided a regulatory proposal that shared many similarities with the SNPRM and was ''aimed at implementing certain proposals of the Office concerning statutory terminations, while omitting language concerning'' various other issues that, in its view, ''do not need further regulation.'' [41]

II. Rulemaking Authority

Having considered all relevant comments, the Office concludes that we have appropriate statutory authority to adopt the final rule for the reasons explained in the NPRM and SNPRM, as well as the additional reasons discussed below.[42] As previously explained, section 702 of the Copyright Act specifically grants the Office the authority to ''establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under [title 17].'' [43] Implementation of the MMA is one of those ''functions and duties'' that Congress made the Office's responsibility. Specifically, the Office has been granted the authority to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license.]'' [44] Several commenters explicitly supported the Office's general rulemaking authority.[45] The only commenter to question the Office's authority was NMPA, which offered various arguments for why the Office lacks authority to issue this rule.[46] None are persuasive.

NMPA first argued that the Office has no authority under section 702 of the Copyright Act or the MMA to promulgate rules that involve substantive questions of copyright law.[47] This is clearly incorrect. The Office ''has statutory authority to issue regulations necessary to administer the Copyright Act'' and ''to interpret the Copyright Act.'' [48] As the NPRM detailed, ''[t]he Office's authority to interpret title 17 in the context of statutory licenses in particular has long been recognized.'' [49]

Indeed, as the Office has previously explained, ''[t]he Office exercises its authority under section 702 when it is necessary 'to interpret the statute in accordance with Congress'[s] intentions and framework.' '' [50] That is what the Office is doing here, just as we have done on numerous previous occasions, for example to determine that satellite carriers are not ''cable systems'' within the meaning of section 111 and therefore do not qualify for that statutory license,[51] to state the meaning of ''digital phonorecord delivery'' under

[34] *Id.* at 65919.

[35] *Id.* at 65919–20.

[36] *Id.* at 65919.

[37] *Id.* at 65920–21.

[38] *See, e.g.,* MAC et al. SNPRM Initial Comments at 2, 4 (''The Copyright Office's proposed rules, both initially and as altered here, accurately, clearly, concisely, and properly addresses the implementation of the MMA while maintaining and supporting the significant advances made by the MLC. We continue to enthusiastically support this proposed rule and remain thankful to the Copyright Office for addressing this area of great need by utilizing its oversight and governance authority.''); Howard SNPRM Initial Comments at 1 (''I support the supplemental rulemaking and directives proposed by the Office.'').

[39] *See, e.g.,* MLC SNPRM Initial Comments at 1–16; NMPA SNPRM Initial Comments at 2–13; NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); AIMP SNPRM Initial Comments at 1–4; Combustion Music SNPRM Initial Comments; Endurance Music Grp. SNPRM Initial Comments at 1–2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1–2; Boom Music SNPRM Initial Comments; Jonas Grp. Publ'g SNPRM Initial Comments; Kobalt Music SNPRM Initial Comments at 2; Liz Rose Music SNPRM Initial Comments at 1–2; Big Machine Music SNPRM Initial Comments at 1–2; Legacyworks SNPRM Initial Comments; Me Gusta Music SNPRM Initial Comments at 1–2; Relative Music Grp. SNPRM Initial Comments at 1–2; Harding SNPRM Initial Comments; Moore SNPRM Initial Comments; North Music Grp. SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 2–5; Big Yellow Dog SNPRM Initial Comments; Reservoir Media Mgmt. SNPRM Initial Comments at 1–2; SMACKSongs SNPRM Initial Comments; Sony Music Publ'g SNPRM Initial Comments at 1–5; Spirit Music Grp. SNPRM Initial Comments at 1–3; Turner SNPRM Initial Comments at 1–2; Wiatr & Assocs. SNPRM Initial Comments; Jody Williams Songs SNPRM Initial Comments at 1; Concord Music Publ'g SNPRM Initial Comments at 1–3; ClearBox Rights SNPRM Reply Comments at 4–5; Creative Nation SNPRM Reply Comments at 1–2; The Greenroom Resource SNPRM Reply Comments at 1; MAC et al. SNPRM Reply Comments at 2; Recording Academy SNPRM Reply Comments at 3; SONA SNPRM Reply Comments at 2–5; Universal Music Publ'g Grp. SNPRM Reply Comments at 1–5; Warner Chappell Music SNPRM Reply Comments at 3–8; DLC SNPRM Reply Comments at 2–4.

[40] *See, e.g.,* MLC SNPRM Initial Comments at 17–20; NMPA SNPRM Initial Comments at 3–4; NMPA *Ex Parte* Letter at 2–3 (Jan. 24, 2024); Kobalt Music SNPRM Initial Comments at 3; Big Machine Music SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 1–2; North Music Grp. SNRPM Initial Comments at 1, 3–4; MAC et al. SNPRM Reply Comments at 2–3; MAC *Ex Parte* Letter at 1–2 (Dec. 29, 2023); Recording Academy SNPRM Reply Comments at 1–2; Warner Chappell Music SNPRM Reply Comments at 2–3; ClearBox Rights SNPRM Reply Comments at 3, 10; SONA SNPRM Reply Comments at 5; DLC SNPRM Reply Comments at 1.

[41] MLC SNPRM Reply Comments at 2 & App. A; MLC SNPRM Initial Comments at 17 (stating that ''the Office's procedural guidance on notice and transfer procedures in the terminations context is helpful'' and that ''much of the proposal with respect to terminations generally addresses a regulatory need''); *see also* NMPA *Ex Parte* Letter at 3 (Jan. 24, 2024) (conveying ''its desire for the Office to provide any guidance the MLC has requested'').

[42] 87 FR 64405, 64407–08; 88 FR 65908, 65910.

[43] 17 U.S.C. 702.

[44] *Id.* at 115(d)(12)(A).

[45] *See, e.g.,* ClearBox Rights NPRM Initial Comments at 2; SONA et al. NPRM Initial Comments at 2; SGA et al. NPRM Initial Comments at 2; Howard NPRM Reply Comments at 3; Recording Academy NPRM Reply Comments at 2; Promopub NPRM Reply Comments at 2; MCNA et al. *Ex Parte* Letter at 2 (Mar. 15, 2024).

[46] NMPA NPRM Initial Comments at 7–10. Despite its previous objections, NMPA's SNPRM comments appear to signal a change in its position on the Office's general rulemaking authority, though this is not entirely clear. *See* NMPA SNPRM Initial Comments at 2 & n.2 (stating that ''[t]here is clear industry consensus on the [proposed rule requiring that all post-termination royalties under the blanket license be paid to the post-termination copyright owner], and the [Office] should adopt it immediately,'' but then also noting some of its previous concerns).

[47] *See* NMPA NPRM Initial Comments at 7–8.

[48] *Motion Picture Ass'n of Am., Inc.* v. *Oman,* 750 F. Supp. 3, 6 (D.D.C. 1990), *aff'd,* 969 F.2d 1154 (D.C. Cir. 1992); *see also, e.g., Fox Tel. Stations, Inc.* v. *Aereokiller, LLC,* 851 F.3d 1002, 1011 (9th Cir. 2017) (recognizing that ''the Copyright Office has a much more intimate relationship with Congress [than the courts] and is institutionally better equipped than we are to sift through and to make sense of the vast and heterogeneous expanse that is the Act's legislative history''); *Satellite Broad. & Commc'ns Ass'n of Am.* v. *Oman,* 17 F.3d 344, 345, 347–48 (11th Cir. 1994), *cert. denied,* 513 U.S. 823 (1994) (recognizing the Copyright Office's authority to issue regulations and ''statutory authority to interpret the provisions of the compulsory licensing scheme'' found in 17 U.S.C. 111).

[49] 87 FR 64405, 64408.

[50] 73 FR 40802, 40806 (July 16, 2008) (quoting 57 FR 3284, 3292 (Jan. 29, 1992)).

[51] 57 FR 3284, 3290–92, 3296; *see Satellite Broad. & Commc'ns Ass'n of Am.,* 17 F.3d 344.

the section 115 statutory license,[52] and to determine that internet streaming of AM/FM broadcast signals are not exempted ''broadcast transmissions'' within the meaning of section 114.[53] The Office has done this in the termination context as well, adopting a rule addressing the meaning of ''executed'' under section 203 in the context of gap grants.[54]

Regarding the Office's specific authority under the MMA, we have issued several rules that required analyzing substantive provisions of the statute. For example, the Office determined what constitutes ''the due date for payment'' under section 115(d)(8)(B)(i),[55] how the endorsement criterion for designating the MLC is to be evaluated under section 115(d)(3)(A)(ii),[56] the meaning of ''producer'' under section 115(d)(4)(A)(ii)(I)(aa),[57] and what constitutes minimum ''good-faith, commercially reasonable efforts'' under section 115(d)(4)(B).[58]

NMPA also made a series of arguments based on the premise that any rulemaking authority the Office may have with respect to section 115 or other statutory licenses does not extend to other areas of the Copyright Act, like those dealing with termination.[59] These arguments, and their underlying premise, are similarly unsupported by title 17. The MMA and section 702 provide the Office with ample authority to interpret sections 203 and 304, as well as other provisions of the Copyright Act, in the context of the blanket license and the MLC's operations.[60]

As explained in the NPRM, despite its focus on termination issues, ''this rulemaking ultimately reflects the Office's oversight and governance of the MLC's reporting and payment obligations to copyright owners.'' [61] The Office has exercised its authority in this area before. As discussed in the NPRM, the Office previously issued regulations regarding the MLC's reporting and distribution of royalties to copyright owners with ''no dispute regarding the propriety or authority of the Office to promulgate [them].'' [62] In that prior proceeding, we concluded that we have ''the authority to promulgate these rules under the general rulemaking authority in the MMA.'' [63]

The final rule in this proceeding is no different. It governs how the MLC is to report and distribute royalties to copyright owners, including with respect to identifying the proper royalty payee. The fact that the final rule addresses that core MLC function in a context that raises substantive questions of copyright law (like termination)—and thus requires analysis of various points of substantive copyright law (such as termination and the Exception)—does not deprive the Office of its authority to regulate how the MLC reports and pays royalties. Nor does the fact that parts of the Office's analysis or reasoning could potentially be applied by others in contexts outside the scope of this proceeding.[64]

The flaw in NMPA's argument is highlighted by considering its consequences. If the Office's authority is as limited as NMPA suggested, it would mean that the MLC would be the one (in the absence of a lawsuit) to determine the meaning of any questioned statutory provisions. The Office's oversight of the MLC through regulatory action cannot be frustrated when such oversight may involve addressing substantive issues of copyright law. Concluding otherwise would be contrary to the statute's logic and Congress's intent. Congress intentionally invested the Office with ''broad regulatory authority'' under the MMA, in part to oversee the MLC, such as by ''thoroughly review[ing]'' MLC policies ''to ensure the fair treatment of interested parties.'' [65]

NMPA also specifically challenged the Office's authority to adopt the corrective royalty adjustment, arguing that it is an impermissible retroactive rule and an unconstitutional taking.[66] We disagree with this characterization and address this topic in Part III.F., below.

III. Final Rule

Having reviewed and considered all comments, the Office has weighed the relevant legal, business, and practical implications and equities raised, and pursuant to its authority under 17 U.S.C. 115 and 702 is adopting a final rule regarding MLC royalty distributions. The Office finds it reasonable to adopt much of the SNPRM as final regulations, but with some significant modifications. As discussed in more detail below, the Office is adopting a final rule that is a scaled-down version of the SNPRM and applies a different solution to the issue of identifying the payee to whom the MLC must distribute royalties.

Specifically, in response to the comments that the SNPRM was too broad [67] and the MLC's own regulatory

[52] 73 FR 66173, 66174–75 (Nov. 7, 2008).

[53] 65 FR 77292, 77293–95 (Dec. 11, 2000); *see Bonneville Int'l Corp.* v. *Peters,* 347 F.3d 485 (3d Cir. 2003).

[54] 76 FR 32316, 32316–20 (June 6, 2011). While the Office has express authority to regulate the content of notices of termination, we also referred to our authority under section 702 in adopting the rule and stated that the focus of the rulemaking was our recordation practices. *Id.* at 32319–20. Moreover, the rulemaking required the Office to opine on a substantive area of copyright law, namely whether or how the statute's termination provisions apply to gap grants. *Id.* at 32316–17; *see* U.S. Copyright Office, *Analysis of Gap Grants under the Termination Provisions of Title 17* (2010), *https://www.copyright.gov/reports/gap-grant-analysis.pdf.* At least one court appears to have followed the Office's interpretation. *See Mtume* v. *Sony Music Ent.,* 408 F. Supp. 3d 471, 475–76 (S.D.N.Y. 2019).

[55] 88 FR 60587, 60590–91 (Sept. 5, 2023).

[56] 84 FR 32274, 32280–84 (July 8, 2019).

[57] 85 FR 22518, 22532.

[58] 85 FR 58114, 58119 (Sept. 17, 2020). We also note that, in addition to the specific authority granted in section 115 and general authority granted in section 702, Congress gave the Office the responsibility to interpret title 17 when questions of law arise in proceedings before the Copyright Royalty Judges. 17 U.S.C. 802(f)(1)(B)(i), (f)(1)(D) (granting the Office the ability to ''resolve'' any ''novel material question of substantive law concerning an interpretation of those provisions of [title 17] that are the subject of [a] proceeding'' before the Copyright Royalty Judges and to review the Judges' final determinations for ''legal error . . . of a material question of substantive law under [title 17]'').

[59] NMPA NPRM Initial Comments at 8–10.

[60] *See* 17 U.S.C. 115(d)(12)(A), 702; *see also, e.g., Motion Picture Ass'n of Am., Inc.,* 750 F. Supp. at 6; *Aereokiller, LLC,* 851 F.3d at 1011; *Satellite Broad. & Commc'ns Ass'n of Am.,* 17 F.3d at 345, 347–48.

[61] 87 FR 64405, 64408.

[62] *Id.* at 64408 & n.39 (quoting 85 FR 22549, 22550–52 (Apr. 22, 2020)).

[63] 85 FR 22549, 22551 (quoting 17 U.S.C. 115(d)(12)) (observing that ''Congress provided general authority to the Register of Copyrights to 'conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection' '').

[64] At a minimum, this proceeding has demonstrated that it is ''necessary or appropriate'' to ''adopt . . . regulations'' ''to effectuate'' section 115(d)(3)(G)(i)(II), requiring the MLC to ''distribute royalties to copyright owners in accordance with . . . the ownership and other information contained in the records of the [MLC].'' 17 U.S.C. 115(d)(3)(G)(i)(II), (12)(A); *see also, e.g.,* 87 FR 64405, 64407 (discussing need to revisit the termination issue more directly, including ''how termination law intersects with the blanket license''); 88 FR 65908, 65909–10 (explaining that the MLC sought additional regulatory guidance ''necessary'' and ''essential'' to its operations). Thus, the current rulemaking ''is consistent with the Office's practice of promulgating regulations to construe statutory terms that are critical to the administration of a statutory license administered by the Office.'' 73 FR 66173, 66175.

[65] H.R. Rep. No. 115–651, at 5–6 (2018); S. Rep. No. 115–339, at 5 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees 4 (2018) (''Conf. Rep.''), *https://www.copyright.gov/legislation/mma_conference_report.pdf.*

[66] NMPA NPRM Initial Comments at 4–6, 12–13; NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 2 n.2; *see also* CMPA NPRM Initial Comments at 1–2 (arguing against retroactivity); Warner Chappell Music SNPRM Reply Comments at 2–3 (same).

[67] *See, e.g.,* Kobalt Music SNPRM Initial Comments at 3; Big Machine Music SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 1–2; North Music Grp. SNRPM Initial Comments at

Continued

proposal,[68] the Office has narrowed the scope of the rule to provide the guidance the MLC sought without expanding the rule to other areas that do not appear to need regulation at this time based on the current record.[69] While some commenters would prefer that the Office not address any issues beyond those raised in the original NPRM, the Office disagrees. As discussed above, the MLC and several other commenters had requested additional guidance from the Office on various related topics. Consequently, the Office issued the SNPRM seeking public comments on a supplemental proposed rule focused on providing such guidance. When the MLC requests guidance from the Office, we will generally provide it given the oversight role we play under the MMA. The Office finds that it is reasonable and appropriate to provide such guidance here.

To the extent some commenters suggested that the Office is moving too quickly on some of these issues or has not engaged in a sufficient administrative process, the Office disagrees.[70] The Office issued the SNPRM precisely to solicit substantive comments from interested parties about these expanded topics. In doing so, the Office provided for both initial and reply comment periods as well as deadline extensions, ultimately providing parties with over two months to submit written comments. The Office also made itself available for *ex parte* meetings for several months after the period for written comments ended. Given this ample opportunity to engage with the Office on these issues, we see no reason to delay providing the MLC with the guidance it needs to operate. As always, the Office will continue to monitor the effect of the rule, and if there are any unforeseen consequences or should anything not operate as intended, we can consider amending the rule in the future.

Where parties have objected to certain aspects of the SNPRM, the Office has considered those comments and addressed these issues, as discussed below. If not otherwise discussed, the Office has concluded that the relevant proposed provision should be adopted for the reasons stated in the NPRM or SNPRM.

A. Termination and the Exception

In the NPRM, the Office engaged in an extensive preliminary analysis that concluded that ''[w]hether or not the Exception applies to a DMP's blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination.'' [71] We explained that this means that ''the post-termination copyright owner (*i.e.,* the author, the author's heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC.'' [72]

Based on the MLC's and other commenters' requests for additional guidance,[73] the SNPRM contained additional analysis and made further preliminary conclusions, including that: (1) the Exception does not apply to matched historical royalties;[74] (2) with respect to covered activities, record companies' pre-2021 individual download licenses and the authority obtained from them by DMPs are the only pre-2021 statutory mechanical licenses to have continued in effect after the license availability date;[75] (3) the Exception does not apply to individual download licenses;[76] and (4) the Exception may apply to some voluntary licenses, but not others.[77]

Most comments addressing the Office's termination analysis were in response to the NPRM, as parties largely did not comment on the additional analysis from the SNPRM. While many commenters agreed with the Office's analysis,[78] others raised some concerns.[79] Several commenters, even some who raised concerns with the Office's analysis, supported its end result that the post-termination copyright owner is entitled to post-termination royalties under the blanket license.[80]

Having considered all relevant comments, the Office is adopting the termination-related aspects of the SNPRM's proposal as final for the reasons discussed below, as well as the reasoning in the NPRM and SNPRM in relevant part.

1. Blanket Licenses

i. Background

In the NPRM, the Office thoroughly analyzed the Exception in the context of the blanket license. In that analysis, the Office made two overarching conclusions that: (1) the Exception does not apply to blanket licenses; and (2) even if the Exception did apply, under the terms of the blanket license (*i.e.,* the applicable text of section 115 and related regulations), a terminated publisher still would not be entitled to post-termination blanket license royalties.[81]

In concluding that the Exception does not apply, the Office made three further overall conclusions. First, the Office concluded that ''[t]o be subject to termination, a grant must be executed by the author or the author's heirs,'' and that, ''[a]s a type of statutory license, the blanket license is 'self-executing,' such that it cannot be terminated'' under section 203 or 304.[82] The Office explained that ''[i]f a blanket license cannot be terminated, then it cannot be subject to an exception to termination; the license simply continues in effect according to its terms.'' [83]

Second, the Office concluded that ''[s]ection 115's blanket licensing regime is premised on the assumption that DMPs are not preparing derivative works pursuant to their blanket licenses,'' and that ''where no sound recording derivative is prepared pursuant to a DMP's blanket license,

1, 3–4; MAC et al. SNPRM Reply Comments at 2–3; MAC *Ex Parte* Letter at 1–2 (Dec. 29, 2023); Recording Academy SNPRM Reply Comments at 1–2; Warner Chappell Music SNPRM Reply Comments at 2–3; ClearBox Rights SNPRM Reply Comments at 3, 10; SONA SNPRM Reply Comments at 5.

[68] MLC SNPRM Reply Comments at App. A.

[69] To be clear, the Office reserves the right to regulate these other areas in the future should it become necessary or appropriate to do so.

[70] *See, e.g.,* North Music Grp. SNRPM Initial Comments at 1, 3–4; Recording Academy SNPRM Reply Comments at 1–2; ClearBox Rights SNPRM Reply Comments at 3, 10.

[71] 87 FR 64405, 64410–11.

[72] *Id.* at 64411.

[73] 88 FR 65908, 65909–10.

[74] *Id.* at 65910–11.

[75] *Id.* at 65911.

[76] *Id.*

[77] *Id.* at 65911–12.

[78] *See, e.g.,* A2IM & RIAA NPRM Reply Comments at 2; Authors All. et al. NPRM Initial Comments at 2–3; BMG Rights Mgmt. NPRM Initial Comments at 2; ClearBox Rights NPRM Initial Comments at 6–7; Fishman & Garcia NPRM Initial Comments at 1–4; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments; North Music Grp. NPRM Reply Comments at 2; Recording Academy NPRM Reply Comments at 2; SGA et al. NPRM Initial Comments at 2, 5; SONA et al. NPRM Initial Comments at 2–3; King, Holmes, Paterno & Soriano LLP SNPRM Reply Comments.

[79] *See* NMPA NPRM Initial Comments at 2–3; NMPA *Ex Parte* Letter at 2–3 (Feb. 6, 2023); MPA NPRM Reply Comments at 2–5; *see also* A2IM & RIAA NPRM Reply Comments at 2; A2IM & RIAA SNPRM Initial Comments at 1–4; Fishman & Garcia NPRM Initial Comments at 4; NMPA SNPRM Initial Comments at 2 n.2.

[80] *See, e.g.,* NMPA SNPRM Initial Comments at 1–2 (''NMPA supported and continues to support the bright-line rule that the [Office] proposed to establish in the NPRM, requiring that all post-termination royalties under the Blanket License be paid to the post-termination copyright owner.''); Universal Music Publ'g Grp. SNPRM Reply Comments at 5 n.4; Warner Chappell Music SNPRM Reply Comments at 2; Kobalt Music SNPRM Initial Comments at 1; NSAI SNPRM Initial Comments at 2; Promopub SNPRM Initial Comments at 2.

[81] 87 FR 64405, 64410–11.

[82] *Id.* at 64410.

[83] *Id.*

that blanket license is not part of any preserved grants that make the Exception applicable.'' [84] The Office explained that ''[i]f no derivative work is prepared 'under authority of the grant,' then the Exception cannot apply,'' but recognized that ''[p]roponents of the Exception's application to the blanket license might argue that the blanket license should be construed as being included within a so-called 'panoply' of grants pursuant to which a pre-termination derivative work of the musical work was prepared.'' [85] The Office observed that the ''only panoply to which the blanket license could theoretically belong would be the grant (or chain of successive grants) emanating from the songwriter and extending to the record company (or other person) who prepared the sound recording derivative licensed to the DMP.'' [86] After analyzing that possibility, the Office concluded that ''[t]he Exception, as interpreted by [the Supreme Court in *Mills Music, Inc.* v. *Snyder*],[87] should not be read as freezing other grants related to, but outside of, the direct chain of successive grants providing authority to utilize the sound recording derivative, such as the musical work licenses obtained by DMPs,'' and the Office discussed several reasons explaining why.[88]

Third, the Office concluded that applying the Exception to the blanket license in the manner the MLC had done previously, whereby the payee would be frozen in time, would lead to an ''extreme result'' because it would also freeze all other aspects of the license in time.[89] For example, ''it would freeze in time everything from DMP reporting requirements and MLC royalty statement requirements to the rates and terms of royalty payments for using the license set by the [Copyright Royalty Judges].'' [90]

The SNPRM addressed this analysis as well.[91] There, the Office described the NPRM's conclusions about the Exception as ''preliminary,'' making clear that we ''welcome[d] further comments and legal discussion.'' [92] The Office has considered all comments, including those raising concerns with aspects of this analysis. For the reasons discussed below, we find those concerns unpersuasive. Therefore, the Office is adopting the termination analysis from the NPRM and SNPRM as final for the reasons discussed in the NPRM and SNPRM, subject to the further discussion below.

ii. Comments and Discussion

The principal critics of the NPRM's analysis were NMPA and the Motion Picture Association (''MPA''). NMPA asserted that ''[t]he Exception has historically been interpreted by many industry stakeholders to permit the pre-termination musical composition copyright owner to continue to receive mechanical royalties post-termination for uses of those compositions in derivative sound recordings, including in interactive streaming, provided that the mechanical license was issued pre-termination and the recording was prepared pre-termination.'' [93] NMPA said that ''[t]his interpretation was based on, *inter alia,* the Supreme Court's decision in *Mills Music, Inc.* v. *Snyder,* and the Second Circuit's decision in *Woods* v. *Bourne Co.,*'' [94] and that ''[b]ased on this interpretation, before the MMA was enacted, [DMPs], along with other Section 115 statutory licensees, continued to pay mechanical royalties to the pre-termination rights owner for uses of recordings prepared pre-termination pursuant to pre-termination mechanical licenses.'' [95] NMPA stated that it ''never understood the MMA to change or resolve the law of statutory termination or to provide a new or different rule applicable to Blanket Licenses.'' [96] It explained its view that ''the MMA addresses the termination issue in Section 115(d)(9)(A),'' which was intended to ''preserve the status quo.'' [97]

After a full review and analysis, the Office is not persuaded by NMPA's argument. We do not dispute NMPA's assertion that certain publishers may have adopted a different approach to termination, but this approach is not supported by the law in the context of the blanket license. As discussed further below in Part III.F., the Office is not adopting a new position, or changing the law as it relates to termination or the Exception. Nor are we contending that the MMA or blanket license altered the law as it relates to the Exception. The Office is merely stating what the law is and has always been.

In support of its approach, NMPA suggested that its view of the Exception was universally relied on as the status quo. The comments, however, reveal otherwise. For example, ClearBox Rights said that ''there has not been consistency in the history of how these royalties have been paid [with respect to the Exception], so such past practices should not be interpreted as any kind of precedent or guidance into how they should be paid in the future, or adjusted for any given period of time.'' [98] NMPA even described its views with qualifying language, stating that its interpretation of *Mills Music* has been followed by ''some'' copyright owners and that ''legal interpretations of this holding and views as to the applicability of the [Exception] to the [blanket license] may differ.'' [99]

Further, NMPA's claim that section 115(d)(9)(A) supports its position is misplaced. That provision does not speak to the Exception or the preservation of any pre-MMA status quo (outside the narrow context of individual download licenses). As explained in the SNPRM, that provision, read together with section 115(d)(9)(B), provides, with respect to covered activities, that ''only record companies' pre-2021 individual download licenses and the authority obtained from them by DMPs survived the license availability date.'' [100] The Office explained that ''[b]ecause all other pre-2021 statutory mechanical licenses to engage in covered activities are no longer in effect pursuant to their own terms (*i.e.,* the statutory text), any application the Exception may or may not have had while they were in force seems to have no bearing on the MLC's distribution of royalties for post-2021 usage.'' [101]

The statute plainly states that the blanket license was ''automatically substituted for and supersede[d] any existing compulsory license previously obtained under [section 115].'' [102] The

[84] *Id.* at 64410–11.

[85] *Id.*

[86] *Id.*

[87] 469 U.S. 153 (1985).

[88] 87 FR 64405, 64410–11.

[89] *Id.* at 64411.

[90] *Id.*

[91] 88 FR 65908, 65910.

[92] *Id.* at 65912 n.69.

[93] NMPA NPRM Initial Comments at 2–3; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

[94] 60 F.3d 978 (2d Cir. 1995).

[95] NMPA NPRM Initial Comments at 3; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

[96] NMPA NPRM Initial Comments at 3.

[97] *Id.* at 3 n.5.

[98] ClearBox Rights NPRM Reply Comments at 1–2 (further stating that performing rights organizations ''fairly consistently pass through to the *post*-termination rights holder the performance side of these very same [DMP] interactive streams''); *see also, e.g.,* King, Holmes, Paterno & Soriano LLP NPRM Initial Comments at 1 (''We have been concerned for years about some music publishers' claims that the [Exception] entitles the original publisher of a composition to continue to collect indefinitely on mechanical licenses issued pursuant to the compulsory license provisions of the U.S. Copyright Act. Such claims do not comport with the language of the [Exception] itself or the legislative history surrounding it.''); McAnally & North *Ex Parte* Letter at 2 (Mar. 14, 2023) (asserting that views like NMPA's are ''inconsistent with our understanding of how terminations have been treated in the industry regarding payments of mechanical royalties under Section 115'').

[99] NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

[100] 88 FR 65908, 65911.

[101] *Id.*

[102] *See* 17 U.S.C. 115(d)(9)(A).

language NMPA highlighted—that this substitution happened ''without any interruption in license authority enjoyed by [a DMP]''—simply means that the substitution did not cause there to be any gap in a DMP's licensing authority, between the old pre-2021 statutory license and the new blanket license, that could potentially subject the DMP to an infringement claim.[103] If this language meant that all previous licensing authority remains intact indefinitely after the license availability date, then it would render the rest of the provision superfluous. There would be no need to have the blanket license substitute for and supersede the pre-2021 license because the authority provided by the pre-2021 license would continue in effect. It would also directly contradict section 115(d)(9)(B), which states that ''licenses other than individual download licenses obtained under [section 115] for covered activities prior to the license availability date shall no longer continue in effect.'' [104] Thus, the Office disagrees with NMPA's reading of the statute.[105]

NMPA next argued that ''the phrase 'terminated grant' in the statutory text appears to refer to the original grant from the author to the publisher that is being terminated, and not to subsequent grants made by the publisher under the authority of that original grant.'' [106] It asserted that ''[s]ubsequent grants of the right to prepare and use derivative works made by the publisher are not the terminated grant under Sections 203 and 304 and are instead part of the 'panoply' of licenses preserved by the [Exception].'' [107] Thus, in NMPA's view, ''the terminable grant that must be executed by the author is the original license from author to publisher; therefore, whether Section 115 licenses are 'self-executing' would be inapposite to the relevant analysis'' because ''[t]he subsequent grants of the right to prepare derivative works are in virtually all cases not 'executed by the author or the author's heirs.' '' [108]

The Office disagrees. The phrase ''terminated grant'' in the statutory text is not limited solely to the original grant from the songwriter to the publisher. In *Mills Music,* the Supreme Court concluded that all three references to the word ''grant'' in the text of the Exception should be given a ''consistent meaning,'' and that each reference encompasses both the original grant and subsequent grants.[109] That lack of distinction between the original grant and subsequent grants was central to the Court's holding that the Exception preserved ''the total contractual relationship.'' [110] The cornerstone of the Court's opinion was its conclusion that the successive grants were connected to each other in such a way that they both needed to be preserved under the Exception in the context at issue.[111]

In asserting that the NPRM's conclusions about the application of the Exception to the blanket license must be wrong because the subsequent grants of the right to prepare derivative works are almost always not executed by the author or the author's heirs, NMPA misapprehends how the subsequent grants are connected to the original grant. Outside the context of a statutory license, where a songwriter makes a grant to a publisher and the publisher then makes subsequent grants to third parties (*e.g.,* to a record company to prepare a sound recording derivative, to a DMP to make and distribute phonorecords, or an assignment of the full copyright to a different publisher), each of those subsequent grants, despite not being executed by the songwriter or the songwriter's heirs, can still be terminated. This is because the authority for each of those subsequent grants derives from and is dependent upon the authority conveyed by the original grant from the songwriter to the publisher. Thus, when the original grant is terminated, it also terminates the subsequent grants (subject to the possible preservation of certain contractual terms governing the utilization of pre-termination derivative works under the Exception).[112] It is a foundational legal principle that one cannot give what one does not have.[113] In this context, what the publisher possesses with respect to the original grant, and can therefore subsequently convey to third parties, is encumbered by the songwriter's termination rights.[114] This concept is plainly embodied in the statute, which makes reference not only to ''the grantee,'' but also ''the grantee's successor in title.'' [115]

The blanket license, however, operates differently. Unlike voluntary licenses, the authority a DMP has to make and distribute phonorecords of musical works under a blanket license does not derive from and is not dependent upon any authority granted by a songwriter or publisher. The blanket license is self-executing,[116] and a DMP's authority under it is established by Congress.[117] Therefore, if the original grant from the songwriter to the publisher is terminated, it has no effect on the DMP's blanket license

[103] *See id.*

[104] *See id.* at 115(d)(9)(B).

[105] *See also* 85 FR 58114, 58118 (discussing how ''the statutory provisions regarding notices of [blanket] license and the transition to the blanket license must be read together, such that DMPs transitioning to the blanket license must still submit notices of license to the MLC'').

[106] NMPA *Ex Parte* Letter at 3 (Feb. 6, 2023); *see also* NMPA NPRM Initial Comments at 11 n.27.

[107] NMPA *Ex Parte* Letter at 3 (Feb. 6, 2023); *see also* NMPA NPRM Initial Comments at 11 n.27.

[108] NMPA NPRM Initial Comments at 11 n.27.

[109] *Mills Music,* 469 U.S. at 164–67 (concluding that the phrase ''under the terms of the grant after its termination'' ''as applied to any particular licensee would necessarily encompass both the 1940 grant [from the songwriter to the publisher] and the individual license [from the publisher to the record company to prepare a sound recording derivative] executed pursuant thereto''); *see id.* at 164 (explaining that the Exception is ''defined by reference to the scope of the privilege that had been authorized under the *terminated* grant and by reference to the time the derivative works were prepared'') (emphasis added); *id.* at 173 (explaining that ''[p]retermination derivative works—those prepared under the authority of the *terminated* grant—may continue to be utilized under the terms of the *terminated* grant'') (emphasis added); *see also* Howard B. Abrams & Tyler T. Ochoa, 2 The Law of Copyright sec. 12:44 (2023) (''[T]he term ''grant'' is read to include the entire chain of authority for the preparation of a derivative work.'').

[110] *Mills Music,* 469 U.S. at 163–69 (''We are not persuaded that Congress intended to draw a distinction between authorizations to prepare derivative works that are based on a single direct grant and those that are based on successive grants.'').

[111] *Id.* at 166–69 (explaining that, with respect to the particular facts in the case, defining the relevant ''terms of the grant'' as ''the entire set of documents that created and defined each licensee's right to prepare and distribute derivative works'' meant preserving not only the record companies' right to prepare and distribute the derivative works, but also their corresponding duty to pay the publisher any due royalties and the publisher's duty to pay the songwriter's heirs any due royalties, and that if it were otherwise, then there would be no contractual or statutory obligation on the publisher or record companies to pay the songwriter's heirs any royalties).

[112] Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02[C][2] (2023) (''When *A* terminates the original grant to *B,* it follows that *B's* license to *C* will also terminate.'').

[113] *Legal Maxims,* Black's Law Dictionary (11th ed. 2019) (''*Nemo dat quod non habet.* No one gives what he does not have; no one transfers (a right) that he does not possess.'').

[114] Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02[A][4][b] (2023) (''If the original grant from *A* to *B* had by its terms provided for a reversion to *A* thirty-five years after execution, *B* would lack the power to convey rights to *C* beyond such thirty-five-year period. The fact that reversion from *B* to *A* occurs by operation of law rather than by the express terms of the grant to *B* does not enlarge the rights that *B* can convey to *C.*''); *see also Int'l Ribbon Mills, Ltd.* v. *Arjan Ribbons, Inc.,* 325 NE2d 137, 139 (N.Y. 1975) (''It is elementary ancient law that an assignee never stands in any better position than his assignor. He is subject to all the equities and burdens which attach to the property assigned because he receives no more and can do no more than his assignor.'').

[115] *See* 17 U.S.C. 203(a)(4), (b)(4); *id* at 304(c)(4), (6)(D).

[116] *Mills Music,* 469 U.S. at 168 n.36; *see* Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright sec. 11.02 n.121 (2023); Paul Goldstein, Goldstein on Copyright sec. 5.4.1.1.a (3d ed. 2023).

[117] *See also Mills Music,* 469 U.S. at 168 n.36 (referring to section 115 statutory licenses as ''a statutory *right*'' belonging to the *licensee*) (emphasis added).

(other than the transfer of copyright ownership causing the royalty payee to change). Unlike a voluntary license, the grant of authority provided to the DMP under its blanket license was never encumbered by the songwriter's termination rights, so exercising those rights has no impact on the continuation of the DMP's authority. As a blanket license cannot be terminated under section 203 or 304, whether directly or indirectly, ''it cannot be subject to an exception to termination; the license simply continues in effect according to its terms.'' [118]

MPA's criticism of the NPRM focused on a different issue, namely its concerns that the Office's legal analysis ''could be read as narrowing the holdings [of *Mills Music* and *Woods*] by injecting a 'direct chain' limitation on the pre-termination grants preserved under the [Exception].'' [119] MPA argued that:

> To the extent that the Office's discussion of *Mills* [*Music*] could be read to limit the [Exception] solely to a ''direct chain'' of grants, such a reading would appear to be in tension not only with the [Exception]—which provides that a derivative work prepared under authority of a grant ''may continue to be used under the terms of the grant,'' . . .—but also the Supreme Court's interpretation of that language in *Mills* [*Music*], as well as the Second Circuit's further explication of the [Exception] in *Woods* v. *Bourne. Mills* [*Music*] held that, as used in the [Exception], ''the terms of the grant'' means the ''*entire set of documents* that created and defined *each licensee's* right to prepare and distribute derivative works.'' 469 U.S. at 167. The [Exception] thus encompasses the original grant from author to publisher, as well as the succeeding grants derived therefrom, potentially involving multiple licensees. *See id.* at 165–67 (emphasis added).[120]

MPA further said that ''[i]n some cases, an initial grant by an author to a movie studio or music publisher, and that entity's subsequent grants to third parties to for the use and distribution of derivative works, will generate 'branches' of licensing authority rather than a simple linear chain.'' [121] According to MPA, ''[t]here is nothing in the [Exception] or *Mills* [*Music*] . . . to suggest that a pre-termination publisher is entitled to royalties only if the pre-termination license falls within a single 'direct chain' to the party that prepared the derivative.'' [122]

MPA then pointed to *Woods* for confirmation that ''*Mills* [*Music*] is not so limited.'' [123] It stated that ''[a]s further explicated in *Woods,* the Supreme Court's holding in *Mills* [*Music*] established that 'where multiple levels of licenses govern use of a derivative work, the ''terms of the grant'' encompass *the original grant from author to publisher and each subsequent grant necessary to enable the particular use at issue,*' '' and that ''[t]he effect of *Mills* [*Music*] is to preserve during the post-termination period the panoply of contractual obligations that governed pre-termination uses of derivative works by derivative work owners or their licensees.'' [124] MPA asserted that ''[c]onsistent with its understanding of *Mills* [*Music*], the *Woods* court upheld the pre-termination publisher's right to collect public performance royalties from [the performing rights organization,] ASCAP for post-termination performances in movies and television programs even though ASCAP's licensing relationship was outside of the 'direct chain' of authority by which the original publisher had granted synch rights to the producers of those shows.'' [125] MPA highlighted that the Second Circuit said that ''the 'terms of the grant' included 'the provisions of the grants from [the publisher] to ASCAP and from ASCAP to the television stations' in place at the time of termination,'' and that '' '[t]he fact that the performance right in the Song [was] conveyed separately through ASCAP [was] simply an accommodation' that did not negate the applicability of the [Exception].'' [126] It concluded that ''[n]either the [Exception], nor *Mills* [*Music*] or *Woods,* limits post-termination utilization of a derivative based on the particular configuration of the relevant pre-termination grants'' and that ''[i]n considering the applicability of the [Exception], the correct question is not whether the user prepared the derivative pursuant to some 'direct chain' of authority, but whether the use is permitted under the entire 'set' or 'panoply' of grants emanating from the original grant by the author.'' [127]

The Office disagrees with these assertions to the extent they relate to the blanket license. The blanket license is not part of any so-called ''panoply,'' regardless of whether a panoply is limited to a ''direct chain'' of successive grants or can include ''branches'' of related grants outside of that chain. As discussed above, the blanket license, as a type of statutory license, is fundamentally different from voluntary licenses. Because the authority provided by a blanket license is supplied by law and is divorced from any authority deriving from an author or any terminated grant, it is an intervening grant. It sits outside of any potential panoply of grants authorized by the author and the author's successors, assignees, licensees, and the like that form the overall transaction involving the relevant derivative work and which is subject to termination and possibly the Exception. The blanket license simply is not part of that contractual transaction.[128]

Neither *Mills Music* nor *Woods* holds otherwise, as neither involved a statutory license. In both cases, all of the grants at issue were contractual and emanated from a songwriter's copyright and the authority initially conveyed by the original grant from the songwriter to a publisher.[129] Thus, neither case's holding is directly applicable to the operation of the Exception to a non-contractual intervening grant, like the blanket license. The Supreme Court, in *Mills Music,* noted that statutory licenses are different and were not at issue in the case.[130] And key language in *Woods* specifically refers to ''the panoply of *contractual* obligations.'' [131]

The Office's conclusions about the Exception are fully consistent with *Mills Music,* both as described here and in the NPRM. Neither MPA nor any other commenter addressed the specific points made in the NPRM regarding how the Exception operates with respect to panoplies of grants,[132] other than to assert that the overall conclusion was at odds with *Mills Music* and *Woods.*

Relying on a single out-of-context quote, MPA argued that, because *Mills Music* said that '' 'the terms of the grant' means the '*entire set of documents* that created and defined *each licensee's* right to prepare and distribute derivative works,' '' it must mean that the

[118] 87 FR 64405, 64410. As noted in the NPRM, this ''does not mean that entitlement to royalties is fixed. It travels with ownership of the copyright.'' *Id.* at 64410 n.70.

[119] MPA NPRM Reply Comments at 2.

[120] *Id.* at 4 (citing 17 U.S.C. 203(b)(1), 304(c)(6)(A)).

[121] *Id.*

[122] *Id.*

[123] *Id.* at 4–5.

[124] *Id.* (quoting *Woods,* 60 F.3d at 987).

[125] *Id.* at 5 (citing *Woods,* 60 F.3d at 984).

[126] *Id.* (all alterations, except the last one, in original) (quoting *Woods,* 60 F.3d at 987–88).

[127] *Id.*

[128] *See also* 17 U.S.C. 115(d)(2) (explaining how a DMP may obtain a blanket license based on its unilateral actions).

[129] *Mills Music,* 469 U.S. at 154–58; *Woods,* 60 F.3d at 981–84, 987–88.

[130] *Mills Music,* 469 U.S. at 168 n.36; *see also id.* at 185 n.12 (White, J. dissenting).

[131] *Woods,* 60 F.3d at 987 (emphasis added).

[132] *See* 87 FR 64405, 64410 (''The Exception, as interpreted by *Mills Music,* should not be read as freezing other grants related to, but outside of, the direct chain of successive grants providing authority to utilize the sound recording derivative, such as the musical work licenses obtained by DMPs.'').

Exception ''thus encompasses the original grant from author to publisher, as well as the succeeding grants derived therefrom, potentially involving multiple licensees.'' [133] The Office is not persuaded. Read in its proper context, the Court's reference to ''each licensee'' is not referring to multiple licensees across different branches of grants involved in the preparation and utilization of a single derivative work. Rather, it is plainly referring to a single licensee for each derivative work; specifically, each record company that prepared one of the sound recording derivatives at issue in the case (which involved over 400 voluntary mechanical licenses and the preparation of over 400 sound recording derivatives).[134] This conclusion is apparent not only from reading the opinion as a whole, but from the sentence immediately preceding the one quoted by MPA, which states that ''a fair construction of the phrase 'under the terms of the grant' *as applied to any particular licensee* would necessarily encompass both the 1940 grant [from the songwriter to the publisher] and the *individual* [*voluntary mechanical*] license [from the publisher to the record company] executed pursuant thereto.'' [135]

Other language in the Court's opinion similarly reflects that it was only addressing direct chains of successive grants providing authority to prepare derivative works.[136] For example, the Court was ''not persuaded that Congress intended to draw a distinction between authorizations *to prepare* derivative works that are based on a single direct grant and those that are based on *successive* grants.'' [137] The Court found it to be ''a matter of indifference . . . whether the authority *to prepare* the work had been received in a direct license from an author, or in a *series* of licenses and sublicenses.'' [138] According to the Court, ''Congress saw no reason to draw a distinction between a direct grant by an author to a party *that produces* derivative works itself and a situation in which a middleman is given authority to make subsequent grants to *such producers.*'' [139] It makes sense that the Court's opinion was limited to discussing a direct chain of successive grants because that is what was at issue in the case. We continue to believe that our reading of the statute and *Mills Music,* as well as our analysis and conclusions regarding panoplies and direct chains of successive grants, are correct.[140]

With respect to *Woods,* even if the discussion in that case could be read in the broad manner that MPA suggested, it is not clear that the court's reasoning was correct or involved the same circumstances at issue here. Among other concerns, *Woods* did not speak to all the issues identified in the NPRM.[141] For example, nothing in *Woods* appears to address the fact that if the word ''grant'' is given a consistent meaning within the text of the Exception—which, according to *Mills Music,* it should—it cannot be referring to a grant that did not provide authority to prepare the derivative work at issue.[142]

The *Woods* court did not engage in this level of textual analysis. Instead, it reviewed *Mills Music* and cited a law review article for the proposition that the Exception applies to ''each subsequent grant necessary *to enable the particular use at issue.*'' [143] As discussed above, the Office does not believe *Mills Music* is so expansive. Nor does the cited law review article appear to support such a broad reading.[144] In any event, we emphasize that because *Woods* is distinguishable with respect to section 115 statutory licenses, it is not necessary for the Office to resolve these disagreements to adopt the final rule.

Lastly, Professors Fishman and Garcia, while supportive of most of the Office's analysis, believed that the NPRM overestimated what would happen if the Exception did apply to blanket licenses.[145] They said that the NPRM's suggestion that all of the blanket license's terms ''would be frozen indefinitely'' under the Exception, such as ''the royalty rate to be paid,'' ''would contradict the plain terms established in [section] 115, which explicitly contemplate a variable rate to be determined by the [Copyright Royalty Judges].'' [146] They explained that ''[t]hat variability is a term of the grant,'' and that to conclude otherwise ''would read into the terms of the blanket license a permanently fixed royalty rate that does not exist.'' [147] The professors then noted that the NPRM ''correctly rejected the possibility of freezing the payee on the same basis.'' [148]

Considering this comment, the Office wishes to clarify this point from the NPRM. We meant to illustrate the problems with *the MLC's previous view* of how the Exception would apply—that the Exception would freeze the royalty payee.[149] This portion of the NPRM was intended to explain that if the MLC were correct that the Exception applied in such a manner as to freeze the royalty payee, then the Exception would have to freeze everything else too, which would lead to the ''extreme result.'' [150]

2. Individual Download Licenses

The Office received few comments responding to the SNPRM's analysis regarding individual download licenses. The American Association of Independent Music and the Recording Industry Association of America (''A2IM & RIAA'') sought ''to clarify ambiguity in [the sections of the proposed rule about individual download licenses and voluntary licenses] and to ensure that the proposed rule will not affect the status quo as it applies to record companies' mechanical licensing and payment practices.'' [151] They stated that ''the broadened scope of the current SNPRM in fact could have unintended consequences for record company practices in ways that are contrary to both the law and established industry practice, and in a manner that is not

[133] MPA NPRM Reply Comments at 4 (quoting *Mills Music,* 469 U.S. at 165–67).

[134] *See Mills Music,* 469 U.S. at 158, 167, 168 n.36.

[135] *See id.* at 166–67 (emphasis added).

[136] *See* Howard B. Abrams & Tyler T. Ochoa, 2 The Law of Copyright sec. 12:44 (2023) (explaining that ''the Supreme Court seemed to be using the concept that the series of documents running from the author to the ultimate preparer of the derivative work should best be treated as a single transaction although it was spread over several documents executed at different times'').

[137] *Mills Music,* 469 U.S. at 163–64 (emphasis added).

[138] *Id.* at 173–74 (emphasis added).

[139] *Id.* at 172 (emphasis added).

[140] *See* 87 FR 64405, 64410–11; *see also, e.g.,* Fishman & Garcia NPRM Initial Comments at 1–4 (agreeing with the Office's analysis and conclusions); SONA et al. NPRM Initial Comments at 2–3 (same).

[141] *See* 87 FR 64405, 64410–11.

[142] *See id.* at 64411 (explaining that because ''[t]he Exception's first use of 'grant' is to a 'derivative work prepared under authority of the grant,' '' it ''cannot be referring to the DMP's musical work licenses pursuant to which no derivative work was prepared'').

[143] *See Woods,* 60 F.3d at 986–88 (emphasis added).

[144] *Woods* quotes from a law review article ''describing [the] holding in *Mills Music* as 'preserving the entire paper chain that defines the entire transaction.' '' *Woods,* 60 F.3d at 987 (quoting Howard B. Abrams, *Who's Sorry Now? Termination Rights and the Derivative Works Exception,* 62 U. Det. L. Rev. 181, 234–35 (1985) (''*Abrams*'')). But a few sentences earlier, that article explained that the ''transaction'' being referred to was the ''set of transfers and licenses that ran from the author to a record company.'' *Abrams* at 234.

[145] Fishman & Garcia NPRM Initial Comments at 4.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *See* 87 FR 64405, 64411 (premising the discussion on the observation that if the Exception applies to the blanket license, ''then it is not clear why it would only apply to the payee, *as the MLC's prior rulemaking comments seem to suggest*'') (emphasis added).

[150] *See id.*

[151] A2IM & RIAA SNPRM Initial Comments at 1.

necessary to the Office's regulation of the [MLC].'' [152]

Regarding individual download licenses, A2IM & RIAA agreed with parts of the Office's legal analysis of the Exception, but said that ''in a regulation about the MLC's recognition of deductions from royalties that would otherwise be due under the blanket license, [the] proposed language is opaque and potentially confusing.'' [153] They said that:

> [T]he main point is that a termination pursuant to Section 203 or 304 does not affect an individual download license, so a blanket license royalty deduction for usage pursuant to an individual download license that was appropriate prior to termination remains so after termination. The regulations should state that plainly, rather than the language that is currently proposed. In any event, it should be clear that [this provision] does *not* mean that a record company that relied on an individual download license for the creation of a sound recording cannot continue to rely on that license for distribution of the recording (in download form or otherwise) after termination of the author's publishing agreement.[154]

The Office disagrees that the language is confusing. The provision clearly provides that the Exception does not apply to an individual download license, and further states that, for avoidance of doubt, no one may be understood to be the copyright owner or royalty payee of a work used under an individual download license based on an interpretation or application of the Exception. A2IM & RIAA's statement that a termination ''does not affect an individual download license'' is accurate.[155] But it is important to recognize that, as explained in the NPRM and SNPRM, even though ''the license simply continues in effect according to its terms,'' under those terms, ''entitlement to royalties . . . travels with ownership of the copyright.'' [156] ''[W]henever a change is effectuated, whether via a contractual assignment or by operation of a statutory termination, the new owner becomes the proper payee entitled to royalties under the [individual download] license.'' [157] This provision is meant to clarify the Exception's correct operation in light of the MLC's prior views.[158]

3. Voluntary Licenses

The Office also received few comments regarding the SNPRM's discussion of voluntary licenses. A2IM & RIAA agreed with the SNPRM's description of the complexities involved, noting that ''record companies regularly obtain voluntary mechanical licenses rather than compulsory licenses, and generally pass through download rights to DMPs.'' [159] They asserted that the ''[r]ights that the record company obtains from the pre-termination copyright owner are clearly preserved by the [Exception] when the record company relies on its voluntary mechanical license for the creation of either a first use recording or a cover.'' [160] Based on this, A2IM & RIAA ''question the treatment of voluntary licenses in the proposed rule.'' [161] They said that ''[n]either the pre-termination nor post-termination copyright owner would be motivated to provide the required notice, when the effect of failing to give notice is that the DMP would in effect pay twice—once to the pre-termination copyright owner through the record company and once to the post-termination copyright owner through the MLC.'' [162] They believed that ''[r]oyalty payments would more often be handled appropriately if the default assumption were that the [Exception] *will* apply to rights obtained by a record company under a voluntary license and passed through to a DMP.'' [163]

The Digital Licensee Coordinator (''DLC'') raised similar concerns about potentially paying twice, stating that ''in no event can DMPs be in the position of double-paying the royalties at issue, potentially being subject to late fees as a result of any delay in payment to the correct rightsholder.'' [164] In the DLC's view, ''the most sensible approach'' to dealing with disputes over the application of the Exception to voluntary licenses ''would be to not require any payment from the DMP to the MLC until the dispute is resolved.'' [165]

In subsequent comments, the DLC clarified that its ''concern arises with respect to *the MLC's* ability to demand payment when there is a dispute related to termination that involves one or more voluntary licensors.'' [166] It explained that ''the circumstances where a voluntary license partner has a right to demand royalties notwithstanding who the MLC's records show is entitled to payment is ultimately a matter of private contract between the parties, and there is no industry standard approach to that issue.'' [167] The DLC also said that it did not believe the statute requires the MLC to hold royalties pending the resolution of disputes over the application of the Exception to voluntary licenses because such disputes are not ownership disputes within the meaning of the statute.[168] Based on these comments, the DLC does not appear to take issue with the possibility of double payments under the proposed rule where no dispute is initiated with the MLC.

The Office does not believe that these comments warrant any substantive changes to the provision governing voluntary licenses. First, this provision does not embody a presumption or a default rule about the Exception as A2IM & RIAA suggested. Rather, it is a regulatory application of legal precedent establishing that the pre-termination copyright owner bears the burden of proving that the Exception applies.[169] The Office continues to believe that ''it would not be prudent to attempt to craft a rule trying to account for how the Exception may or may not apply in every possible situation'' and that ''the MLC should not exercise independent judgment regarding the application of the Exception to a voluntary license or its underlying grant of authority.'' [170]

If the Office were to adopt the default assumption A2IM & RIAA requested, it would open the door to default assumptions in other voluntary license contexts. Moreover, doing so would require the MLC to determine, at minimum, whether the licenses at issue were indeed relied upon ''for the creation of either a first use recording or a cover.'' [171] That is precisely the type of fact-finding and independent judgment the Office does not believe the MLC should be required to undertake in this context.

Second, given that the DLC does not appear to share A2IM & RIAA's concern about DMPs potentially double paying, the Office does not believe that any change to this aspect of the rule is warranted. The DLC made clear that this issue is one of private contract between the relevant parties.[172] Even if that were

[152] *Id.*

[153] *Id.* at 2–3.

[154] *Id.* at 3.

[155] *See id.*

[156] 87 FR 64405, 64410–11 & n.70; 88 FR 65908, 65911 & n.67.

[157] 87 FR 64405, 64411; 88 FR 65908, 65911 & n.67.

[158] *See* 87 FR 64405, 64406–07.

[159] A2IM & RIAA SNPRM Initial Comments at 3.

[160] *Id.*

[161] *Id.*

[162] *Id.* at 4.

[163] *Id.*

[164] DLC SNPRM Initial Comments at 3–4.

[165] *Id.* at 4.

[166] DLC *Ex Parte* Letter at 2 (Mar. 4, 2024).

[167] *Id.*

[168] *Id.* at 2–3.

[169] 88 FR 65908, 65912.

[170] *Id.*

[171] *See* A2IM & RIAA SNPRM Initial Comments at 3–4.

[172] DLC *Ex Parte* Letter at 2 (Mar. 4, 2024).

not the case, the possibility of making double payments in this context does not appear to be any different than in other contexts where a DMP may be caught in the middle of a dispute between purported copyright owners. Any time someone claims to be the owner of a copyright purportedly licensed to a DMP by someone else, it will need to decide which party to pay. Depending on the relevant contract's terms, the DMP may well decide to pay both parties to limit its potential liability for failing to pay the party who ultimately prevails in the dispute. Thus, the situation that could arise under the rule does not appear to be a special one necessitating a regulatory solution.

With respect to the DLC's request that DMPs not be required to pay royalties to the MLC to be held pending the resolution of a dispute *initiated with the MLC,* the Office disagrees. As the Office explained in the SNPRM, even though ''a dispute as to the application of the Exception is not a dispute over ownership,'' ''a pre-termination copyright owner [should] be able to initiate a dispute with the MLC over the application of the Exception to a particular voluntary license or its underlying grant of authority, and . . . the MLC should hold applicable royalties pending resolution of such a dispute.'' [173]

Even if such a royalty hold is not required by the statute, the Office nevertheless finds it to be a reasonable and prudent approach to the administration of such disputes, as it ensures that the relevant funds will be available upon the resolution of the dispute. As between allowing a DMP to hold the relevant royalties versus the MLC, the more appropriate approach is for them to be held by the MLC, rather than a DMP with whom the purported copyright owner may have no relationship. Moreover, even if the Office did not require this, a DMP would risk late fees, or even default and termination of its blanket license, if it declined to pay the applicable royalties to the MLC and the voluntary licensor does not prevail in the dispute. Thus, the final rule has been clarified to state that the MLC shall invoice the relevant DMP for the applicable royalties.

The DLC asked that if the Office adopts this approach, we ''provide guidance on how any interest accrued by the MLC during the pendency of a termination dispute is handled.'' [174] Specifically, it requested that ''where resolution of the dispute results in a service paying the voluntary licensor, the interest should be paid back to the service (with any requirement to pay that interest onto the voluntary licensor dictated by the terms of the voluntary license).'' [175] The DLC further said that ''where resolution of the dispute results in payment being made by the MLC to a blanket licensor, then any interest earned should be used to offset the MLC's administrative costs.'' [176]

The Office had proposed that royalties held in connection with these kinds of disputes accrue interest, but did not elaborate further.[177] Our intent was for the MLC to hold royalties in the same manner as any other held royalties under section 115(d)(3)(H)(ii).[178]

The final rule makes three clarifications regarding the funds held due to a termination-related dispute involving a voluntary license. First, the applicable funds shall be held by the MLC in the same manner and at the same interest rate as any other held funds. Second, where the resolution of the dispute results in payment being made by the MLC pursuant to a blanket license, that payment must include accrued interest. In that situation, the Office sees no reason why the MLC or DMPs (through an offsetting of the MLC's costs) should profit from the fact that there was a dispute. Third, where the resolution of the dispute results in a DMP paying royalties to a voluntary licensor, the MLC must promptly return the held funds, including accrued interest, to the DMP, who then may or may not be required to pass that interest on to the voluntary licensor depending on the terms of their agreement.

The Office disagrees with the MLC that ''under the explicit language of [section 115(d)(3)(H)], interest earned . . . *can only be for the benefit of copyright owners,*'' such that ''such accrued interest *cannot* be transmitted to [DMPs] for their own benefit (or to be disposed of in their discretion), even where royalties are ultimately refunded to [DMPs] as associated with voluntary licenses.'' [179] Section 115(d)(3)(H) does not apply in the context of funds held during disputes over the application of the Exception to voluntary licenses.

First, section 115(d)(3)(H) provides requirements for the holding of royalties and accrual of interest with respect to ''unmatched'' works.[180] As discussed above, disputes over the application of the Exception are not ownership disputes.[181] Since ownership is not in question, and the owner would need to already be registered with the MLC for there to even be a dispute of this kind, the works at issue in such a dispute would not be ''unmatched'' within the meaning of the statute.[182]

Second, section 115(d)(3)(H) does not apply through section 115(d)(3)(G)(i)(III)(bb), which provides that the MLC shall ''deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to . . . a pending dispute before the dispute resolution committee of the [MLC].'' [183] Such disputes are described in section 115(d)(3)(K)(i) as ''disputes relating to ownership interests in musical works licensed under this section.'' [184] The Office reiterates that a dispute over the application of the Exception is not an ownership dispute. It is a dispute over the legal effect of a valid termination.[185]

For these reasons, the Office is regulating how the MLC should handle these types of disputes and the associated royalties and interest. With respect to the interest issue, we believe the most equitable approach is for the MLC to pay the interest along with the royalties, regardless of to whom such royalties are paid. The reason for requiring the accrual of interest is to make the applicable party whole for the time-value of money while the dispute is pending resolution. The Office is requiring the interest rate to be the same as for funds held under section 115(d)(3)(H)(ii) because that is a rate that Congress, by enacting it as part of the MMA, has found to be reasonable. Where there is a voluntary license at issue, whether the DMP or the voluntary licensor is to be made whole is up to the relevant agreement. Therefore, depending on the terms of the agreement, either the DMP will be permitted to retain the interest for itself or will be required to pay it through to the voluntary licensor. A voluntary licensor should not gain a benefit beyond the terms of its agreement simply because the Office is requiring the disputed funds to be held at the MLC rather than at the DMP.

[173] 88 FR 65908, 65919.

[174] DLC *Ex Parte* Letter at 3 (Mar. 4, 2024).

[175] *Id.* at 3 n.10.

[176] *Id.*

[177] 88 FR 65908, 65926.

[178] 17 U.S.C. 115(d)(3)(H)(ii)(I).

[179] MLC *Ex Parte* Letter at 5–6 (Mar. 22, 2024).

[180] *See* 17 U.S.C. 115(d)(3)(H).

[181] 88 FR 65908, 65919.

[182] *See* 17 U.S.C. 115(e)(35) (''The term 'unmatched', as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located.'').

[183] *See id.* at 115(d)(3)(G)(i)(III)(bb).

[184] *Id.* at 115(d)(3)(K)(i).

[185] 88 FR 65908, 65919.

B. The Copyright Owner at the Time of the Use Versus the Copyright Owner at the Time of the Payment

In both the NPRM and SNPRM, the Office proposed that the copyright owner at the time of the use is legally entitled to royalty distributions from the MLC unless the MLC is directed otherwise. In response to the SNPRM, the Office received numerous comments from publishers, songwriters, and other industry stakeholders expressing concern with that approach. As discussed below, their concerns related to whether the Office's understanding of the law conflicted with current music industry royalty administration practices or would cause administrative challenges for the MLC. In this final rule, the Office is adopting our earlier proposal with some modifications to address these operational concerns.

1. Background

In addressing whether the owner at the time of the use or the owner at the time of the payment is entitled to blanket license royalties, the NPRM stated that a copyright owner is entitled to blanket license royalties at the moment in time when the use of the relevant musical work by a DMP occurs.[186] The Office refers to this understanding as the ''owner at the time of the use'' approach.

The SNPRM provided further analysis of this approach, concluding that ''it appears that, absent an agreement to the contrary, the copyright owner who can sue a DMP for infringement due to non-payment of royalties under the blanket license is the copyright owner at the time the infringement was committed—*i.e.,* at the time of the use. It, therefore, seems reasonable to the Office for that owner to be the one to whom such royalties are paid by the MLC.'' [187] The Office's conclusion that the owner at the time of the use is entitled to the royalty distribution was based on both the MMA and broader copyright law principles.[188] The SNPRM proposed regulatory text identifying the owner at the time of the use as the legally entitled party.

The Office, recognizing the importance of giving effect to private contracts that may call for different payment arrangements, also proposed that the rule ''would only establish the owner at the time of the use as the *default* payee—*i.e.,* the proper payee to whom the MLC must distribute royalties and any other related amounts under the blanket license in the absence of an agreement to the contrary.'' [189] We then proposed additional provisions to govern notification of the MLC about alternative payee designations, such as through letters of direction, ''to accommodate and give effect to contractual payment arrangements that deviate from this default rule.'' [190]

Finally, the NPRM also proposed that the MLC should use the last day of the relevant monthly reporting period to identify the proper copyright owner for that month's royalty distribution. The Office suggested that doing so would be in line with the monthly reporting and royalty distribution process created by the MMA and our regulations and would make the rule reasonably administrable for the MLC, compared to requiring the MLC to identify the copyright owner entitled to royalties on a day-to-day basis.[191] The Office sought comments on this proposed approach, including whether some other point in time might be appropriate.[192]

2. Comments

Comments from publishers, songwriters, and other industry stakeholders expressed concern with the owner at the time of the use approach.[193] Many of these parties favored an approach where royalties would be distributed to the copyright owner identified in the MLC's records as of the date of each monthly royalty distribution. The Office refers to this as ''the owner at the time of the payment'' approach.

At a high level, commenters' primary concerns with the owner at the time of the use approach were practical ones. Specifically, they asserted that this approach is not a standard practice in the music industry and is contrary to how industry contracts generally work, that it will be burdensome and disruptive across the industry (including to the MLC), and that it will result in inaccurate and delayed payments (including to songwriters).[194]

A few commenters supported the Office's legal conclusions regarding the proper copyright owner who is entitled to blanket license royalties.[195] Others suggested a bifurcated approach to addressing the issue. For example, the Music Artists Coalition (''MAC'') said that, in the termination context, the payee should be the owner at the time of the use, but for everything else, it should be the owner at the time of the payment.[196] Similarly, NMPA, as a ''compromise,'' proposed regulatory text based on the NPRM that ''applies a time of use rule solely in the termination context.'' [197] It argued, however, ''that a rule providing for payment to the owner at the time of distribution in all contexts is the more appropriate one.'' [198]

3. Legal Entitlement to Blanket License Royalties

Despite the lack of support from commenters, few addressed the

[186] 87 FR 64405, 64412.

[187] 88 FR 65908, 65913.

[188] *See id.* at 65912 (reflecting the Office's statutory analysis).

[189] *Id.* at 65913.

[190] *Id.* at 65913–14, 65916–17.

[191] 87 FR 64405, 64412.

[192] *Id.*

[193] *See, e.g.,* MLC SNPRM Initial Comments at 1–16; NMPA SNPRM Initial Comments at 2–13; NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); AIMP SNPRM Initial Comments at 1–4; Combustion Music SNPRM Initial Comments; Endurance Music Grp. SNPRM Initial Comments at 1–2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1–2; Boom Music SNPRM Initial Comments; Jonas Grp. Publ'g SNPRM Initial Comments; Kobalt Music SNPRM Initial Comments at 2; Liz Rose Music SNPRM Initial Comments at 1–2; Big Machine Music SNPRM Initial Comments at 1–2; Legacyworks SNPRM Initial Comments; Me Gusta Music SNPRM Initial Comments at 1–2; Relative Music Grp. SNPRM Initial Comments at 1–2; Harding SNPRM Initial Comments; Moore SNPRM Initial Comments; North Music Grp. SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 2–5; Big Yellow Dog SNPRM Initial Comments; Reservoir Media Mgmt. SNPRM Initial Comments at 1–2; SMACKSongs SNPRM Initial Comments; Sony Music Publ'g SNPRM Initial Comments at 1–5; Spirit Music Grp. SNPRM Initial Comments at 1–3; Turner SNPRM Initial Comments at 1–2; Wiatr & Assocs. SNPRM Initial Comments; Jody Williams Songs SNPRM Initial Comments at 1–2; Concord Music Publ'g SNPRM Initial Comments at 1–3; ClearBox Rights SNPRM Reply Comments at 4–5; Creative Nation SNPRM Reply Comments at 1–2; The Greenroom Resource SNPRM Reply Comments at 1; MAC et al. SNPRM Reply Comments at 2; Recording Academy SNPRM Reply Comments at 3; SONA SNPRM Reply Comments at 2–5; Universal Music Publ'g Grp. SNPRM Reply Comments at 1–5; Warner Chappell Music SNPRM Reply Comments at 3–8; DLC SNPRM Reply Comments at 2–4.

[194] Examples of other issues raised by the comments include that: it may upset commercial expectations and cause problems with financial modeling and reporting; it may lead to an increase in fraudulent claims; implementation would require the development of new data and processing systems and new reporting formats and standards across the entire industry that will be costly and time-consuming to create; once a publisher's or administrator's rights period expires, they should not be burdened with the expense and liability of needing to ensure that any future income they receive flows through to the current owner to whom rights have been transferred; former publishers and administrators are not set up to distribute royalties to former songwriter partners, and practically would not have current contact or banking information available to make such distributions to their former songwriters; the choice of songwriters to change publishers or administrators should be honored, and they should not be forced to continue a relationship with their former representative with respect to these royalties that may be inefficient or lack transparency and accountability; it will lead to lower match rates and more unmatched royalties at the MLC, especially for pre-2021 periods.

[195] *See, e.g.,* Howard SNPRM Initial Comments at 1–2; King, Holmes, Paterno & Soriano LLP SNPRM Reply Comments.

[196] MAC *Ex Parte* Letter at 2 (Dec. 29, 2023).

[197] NMPA *Ex Parte* Letter at 2 (Jan. 24, 2024).

[198] *Id.*

statutory text or the Office's legal analysis. Only NMPA and the MLC provided substantive arguments that the MMA's statutory language and legislative history support the MLC distributing royalties to the owner at the time of the payment.[199]

NMPA conceded that the Office's proposal ''is not based on an unreasonable legal interpretation.'' At the same time, it asserted that ''unless the statute is clear, a legal interpretation of relevant statutory provisions should not cause disruption in a private, functioning market.'' [200] It also disagreed with the Office's statutory analysis and proposed a different reading. NMPA's statutory arguments referred to sections 115(d)(3)(G)(i)(II) and 115(d)(3)(J)(i) (provisions governing royalty distributions), stating that they must be read together with sections 115(d)(3)(E)(i) and 115(d)(3)(E)(ii)(II)–(III) (provisions governing the MLC's ownership database). Relying on those provisions, NMPA stated:

> The MLC is . . . not directed by statute to maintain . . . historical copyright ownership or chain of title information within its musical works database. Because the MLC does not maintain in the musical works database records that would enable it to identify the ''copyright owner'' at the precise time of use, and the ''copyright owner'' as identified in the musical works database is always the then-current copyright owner (and not the owner at the time of use or at some other prior time), the direction to pay ''copyright owners in accordance with . . . the ownership and other information contained in the records of [the MLC]'' should be read as a direction to pay the owner at the time of payment.[201]

NMPA then referred to section 115(d)(3)(I), asserting that ''once a match is made, all the accrued royalties with respect to such previously unmatched work are paid to the then-current copyright owner to which the work has been matched. There is no requirement for the MLC to determine which portion of those royalties may relate to uses made at a time when a different (potentially not yet identified) copyright owner owned the work.'' [202] NMPA concluded by stating that it ''does not believe that the sections referred to by the [Office] support a different conclusion,'' as those provisions ''do not address the issue of who has the statutory right to receive Blanket License royalty payments.'' [203]

The MLC made similar statutory arguments, referencing some of the MMA's same sections,[204] as well as its legislative history.[205] Similar to NMPA, the MLC asserted that ''[t]he MMA directive to distribute royalties based on the 'information in [its] records' is most appropriately read to mean that The MLC is to distribute royalties to the copyright owners' current registered payee.'' [206]

The Office acknowledges the practical consequences of our analysis in the SNPRM. However, those practicalities do not create legal entitlements or change the terms of title 17, absent contractual or other arrangements. While sections 115(d)(3)(G)(i)(II) and 115(d)(3)(I) provide the ''copyright owner'' with legal entitlement to the royalties, neither they nor the other cited provisions speak to *which* copyright owner possesses such entitlement between the owner at the time of the use or the owner at the time of the payment.[207] That is why the Office engaged in the analysis it did in the NPRM and SNPRM.[208]

The MMA's references to the MLC's records do not resolve this issue. They merely provide instructions as to *how* the MLC shall distribute royalties to legally entitled copyright owners. Such distributions must be made to such copyright owners ''in accordance with . . . the ownership and other information contained in the records of the [MLC].'' [209] Those records contain important information about how to make the distribution, including contact, banking, and other information about the owner, as well as whether payment is to be made to an administrator or other representative or designee.[210]

Of course, the statute's direction to the MLC to make distributions based on the information in its records does not resolve any underlying dispute regarding who is entitled to the royalty distribution. Clearly, the MLC can only distribute royalties based on known information. But what the MLC ''knows,'' based on its records, could turn out to be wrong, for example, if an imposter managed to successfully register a fraudulent ownership claim, or a legitimate copyright owner accidentally but erroneously claimed a work in good faith. If the statute is understood to confer entitlement to the royalties on whomever is identified in the MLC's records, it creates a conflict with the rest of the statutory text that confers this entitlement on the copyright owner. Moreover, such a reading would provide perverse incentives for parties to race to submit as many fraudulent claims to the MLC as possible in the hope of gaining such legal entitlement. Congress did not intend to create such an absurd scheme, whereby claimants who may be intentionally lying can obtain legal entitlement to royalties for uses of copyrighted works instead of the actual copyright owners.

Thus, while the individual or entity legally entitled to the royalties and the individual or entity actually receiving the distribution from the MLC will, in most cases, be the same, this will not always be the case. If they are not the same, being identified in the MLC's records alone will not alter or prejudice the true copyright owner's legal entitlement to those royalties. The Office concludes that this is the only reasonable way to read the MMA's

[199] NMPA SNPRM Initial Comments at 11–13; MLC SNPRM Initial Comments at 4–11. NMPA also made an argument based on language used by the Office in the NPRM's analysis of the Exception which stated that the ''current copyright owner'' is entitled to blanket license royalties, that owner ''can change over time'' and, after such a change, ''the new owner becomes the proper payee.'' NMPA SNPRM Initial Comments at 11 (citing 87 FR 64405, 64411; 88 FR 65908, 65912). To clarify, the Office's use of the term ''current'' was intended to identify that the proper payee is the copyright owner concurrent with the time the work was used. While the last copyright owner in time may be the proper payee, we were not suggesting that this is necessarily always the case.

[200] NMPA SNPRM Initial Comments at 11.

[201] *Id.* at 12 (second and third alterations in original).

[202] *Id.* at 12–13.

[203] *Id.* at 13.

[204] MLC SNPRM Initial Comments at 4–7 (referencing 17 U.S.C. 115(d)(3)(G)(i)(II), 115(d)(3)(J)(i), 115(d)(3)(E)(i)–(ii), and 115(d)(3)(I)).

[205] *Id.* at 4–11. Regarding legislative history, the MLC primarily pointed to there being ''no mention or contemplation of the creation of a database that includes temporal histories of past ownership'' and that a description of the provisions concerning market share-based distributions of unclaimed royalties ''conveys an understanding that royalties would be paid to the entities that *currently represent* songwriters, not to an entity that may have represented the songwriter in the past but is no longer authorized to do so.'' *Id.* at 8–9 (citing H.R. Rep. No. 115–651, at 7–9, 13 and S. Rep. No. 115–339, at 8–9, 14).

[206] *Id.* at 5–6.

[207] Nor do these provisions necessarily require that there be only a single payee contained in the MLC's records for each work (or share). At best, these provisions are silent on that issue. The MLC's reliance on legislative history is similarly misplaced, as their cited references also do not appear to directly speak to this issue. In particular, market share-based distributions of unclaimed royalties are a unique feature of the MMA, and whatever the meaning of the specific provisions governing that special type of distribution—which is a matter beyond the scope of this proceeding—they do not speak to the legal entitlement to or distribution requirements for blanket license royalties that have not yet become ''unclaimed'' within the meaning of the statute. *See* 17 U.S.C. 115(d)(3)(J), (e)(34).

[208] 88 FR 65908, 65912 (explaining that the analysis regarding the owner at the time of the use versus the owner at the time of the payment issue concerned the Office's proposal ''[t]o codify its preliminary conclusion that the statute entitles the 'current copyright owner' to the royalties under the blanket license'').

[209] *See* 17 U.S.C. 115(d)(3)(G)(i)(II).

[210] *See, e.g.,* 37 CFR 210.31(b)(1)(iii), (b)(1)(v)(D).

instructions to the MLC regarding distributions.

With respect to the Office's further analysis contained in the NPRM and SNPRM, to the extent NMPA or the MLC is suggesting that Congress meant to establish a special exception regarding copyright ownership or royalty entitlement in connection with the blanket license, the Office disagrees. As explained in the SNPRM, reading section 501(b) in conjunction with section 115(d)(4)(E)(ii)(II) (which directly references section 501), ''it appears that, absent an agreement to the contrary, the copyright owner who can sue a DMP for infringement due to non-payment of royalties under the blanket license is the copyright owner at the time the infringement was committed—*i.e.,* at the time of the use.'' [211] This is the best reading of the statute: that Congress expected the party who is legally entitled to the royalties and the party who is legally permitted to sue a DMP for infringement for the nonpayment of such royalties to be one and the same. That understanding is best reflected in section 115(d)(4)(E)(ii)(II)'s cross reference to section 501. If Congress had intended an exception to the operation of section 501(b) for infringement cases related to the blanket license, it would have articulated one. The Office recognizes that legal entitlements can be varied by contract, but that variation is not relevant to understanding how the statute works absent any such agreement's terms.

Some commenters suggested to the Office that potential concerns over the time of use approach are addressed *through contract.*[212] But contract terms stating that acquiring publishers will be paid royalties for pre-acquisition uses of musical works imply agreement with the Office's conclusions about default royalty entitlement *in the absence* of a relevant agreement. Additionally, most of the comments addressing the time of use approach focused on concerns related to business practices (*e.g.,* paperwork, royalty processing, data tracking) rather than the law. While such concerns are relevant to the practical administrability of the rule, and support certain changes the Office ultimately made to the final rule (which are discussed below), they have no bearing on the statutory analysis discussed above or in the NPRM or SNPRM.

Based on the foregoing, as well as the relevant discussion in the NPRM and SNPRM, the Office is adopting the owner at the time of the use rule as final, but only with respect to identifying who is legally entitled to blanket license royalties under the statute as a default matter. Unlike the SNPRM, the final rule does not mandate that the MLC may only make distributions to either the owner at the time of the use or an alternative payee specifically designated by such owner.[213] Rather, it contains a new provision (detailed in the section below) governing how the MLC is to make royalty distributions based on the information in its records.

As discussed above, the MLC's records are not determinative with respect to who is legally entitled to royalties. At the same time, the Office agrees with NMPA and the MLC that section 115(d)(3)(G)(i)(II) directs the MLC to make distributions in accordance with the information in its records.[214] The Office has therefore decided to adopt two provisions—one that describes who is legally entitled to the royalties and another that directs to whom the MLC shall distribute royalties. The two provisions avoid confusion, making clear that the MLC's distribution does not mean that the recipient is legally entitled to those royalties, but instructing the MLC regarding the distributions that it should make. Adopting regulations directing the MLC to act, unaccompanied by regulations identifying who is legally entitled to the royalties, could create a misunderstanding regarding proper application of the law. But, as discussed below, aligning the legal entitlement with the directive to the MLC in all cases would be administratively infeasible. The new distribution provision instead enables the MLC to make royalty distributions to the owner at the time of the payment in accordance with the standard industry practice for which commenters expressed virtually universal support.

Some commenters continued to voice concerns with the Office articulating who is legally entitled to the royalties as a default matter, even when coupled with the new distribution provision discussed below.[215] The Office has considered these concerns, but declines to remove the entitlement provision from the final rule. Especially considering the new distribution provision discussed below, the Office believes it is important to provide a clear statement of the party who is legally entitled to blanket license royalties as a default matter.

First, the Office is always mindful of potential unintended consequences that may stem from its rules. To the extent the Office's legal conclusions may differ from the practices of certain industry participants, those differences seem to be based on expectations arising out of contracts or business norms, not title 17. Moreover, failure to explain that entitlement to royalties is based on the time of the use could lead to confusion and the mistaken impression that the MLC's royalty distributions, which are based on information in its records at the time of the payment—principally for administrative convenience—reflects a determination of entitlement. On balance, the best way to minimize confusion is for the Office to articulate our interpretation of the statute.

Second, the Office disagrees with the argument that the rule is unnecessary because private agreements will govern anyway. That argument presupposes that every private agreement will speak to this issue. Nothing in the record indicates that this is universally true, indicating there is at least some subset of contracts as to which this provision will be applicable.[216] Moreover, this argument presupposes that all transfers are contractual, which is incorrect.

Finally, the Office disagrees that the existence of non-contractual transfers, like intestate succession or bankruptcy, weigh against this rule, as their existence does not change the statutory analysis discussed above and in the SNPRM. The Office has, however, clarified in the final rule that the entitlement to royalties can be

[211] 88 FR 65908, 65913.

[212] *See, e.g.,* MLC SNPRM Initial Comments at 11; NMPA SNPRM Initial Comments at 4–5 & n.4, 10; Kobalt Music SNPRM Initial Comments at 2; Reservoir Media Mgmt. SNPRM Initial Comments at 1; Sony Music Publ'g SNPRM Initial Comments at 1–2; Spirit Music Grp. SNPRM Initial Comments at 1; Concord Music Publ'g SNPRM Initial Comments at 2; Universal Music Publ'g Grp. SNPRM Reply Comments at 2.

[213] Despite this change, the final rule still provides that the relevant owner is the owner as of the last day of the monthly reporting period in which the work is used pursuant to a blanket license. While the Office's original reasoning for that was partially based on concerns about requiring the MLC to manage day-to-day ownership changes occurring mid-month, it also rested on the fact that the MMA established a monthly-based reporting scheme for DMPs. 87 FR 64405, 64412. The Office relies on the latter in adopting the final rule. *See* 17 U.S.C. 115(d)(4)(A).

[214] 17 U.S.C. 115(d)(3)(G)(i)(II).

[215] *See* NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); MLC *Ex Parte* Letter at 3 (Feb. 5, 2024); MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024).

[216] The Office, of course, does not mean to suggest that this provision should in any way override the intent of contracting parties if an agreement is ambiguous. If the parties disagree as to whether an agreement conveyed the entitlement to the applicable royalties, the usual standards under applicable state law for construing private contracts would still apply. The MLC should treat any such disagreement like an ownership dispute.

transferred and that the default royalty entitlement provided for is subject to any such transfer.

4. The MLC's Distribution of Royalties Based on Its Records

As mentioned above, the final rule includes a new provision to address the MLC's royalty distributions based on the information in its records, as required by section 115(d)(3)(G)(i)(II). The new regulation has four main parts summarized here.

i. Default Royalty Distribution Practices Regarding Ownership and the MLC's Records

The first part of the regulation provides that, when making a distribution, the MLC shall treat the individual or entity identified in its records as of the date of the payee snapshot used for the applicable distribution as legally authorized to receive the distribution (*e.g.,* meaning that such party is the owner at the time of the use (or such owner's representative or designee) or a successor in interest to such owner's entitlement to the royalties (or such successor's representative or designee)). In other words, the MLC is to distribute royalties based on its records and to assume that whoever is in its records is legally entitled to the distribution, subject to the additional provisions below. By making royalty distributions to the owner reflected in the MLC's records on the date of the payee snapshot (*i.e.,* at the time of the payment), the MLC will be acting in accordance with widespread industry practice without contravening the statute. One commenter called it ''an elegant solution.'' [217]

This default distribution provision is both consistent with the language of the statute and responsive to the MLC's request for the ''inclusion of a provision confirming that [it] can distribute royalties for a musical work to the current payee registered in its database.'' [218] The Office concludes that the new provision is a reasonable and appropriate approach which facilitates the MLC's administration of royalty distributions. Moreover, this result was overwhelmingly supported by commenters. The comments made clear that the party identified in the MLC's records at the time of the payee snapshot (or its representative or designee) will be the party who is legally entitled to the distribution in the vast majority of cases.[219] Permitting the MLC to act on the information in its records will lead to accurate payments without overburdening copyright owners and the MLC with new, potentially significant, data, reporting, and payment requirements, which could result in a delay in royalty distributions.[220]

Additionally, the comments suggested that at least some publishers do not wish to receive such royalties due to the administrative burdens involved in sharing those royalties with former songwriter partners. *See, e.g.,* NMPA SNPRM Initial Comments at 8; Kobalt Music SNPRM Initial Comments at 3 (''In our experience, former administrators in general are not set up to distribute royalties to their former songwriters, and almost no one—not even the former administrators themselves—wants them to continue to receive those royalties once all rights periods expire.''); Big Machine Music SNPRM Initial Comments at 1–2 (''The collection and re-distribution of this income to the new owner creates an additional administrative burden for our company, taxes the human resources of my team and creates an unwanted liability for us without any benefit.''); Me Gusta Music SNPRM Initial Comments at 2; Relative Music Grp. SNPRM Initial Comments at 1. By including these royalties within the MLC's default distribution provision, it allows publishers

[217] MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024); *see also* MCNA et al. *Ex Parte* Letter at 1–2 (Mar. 15, 2024) (articulating qualified support for this solution in the termination context and subject to other various caveats, calling it ''a reasonable and practical solution that accounts for both business considerations and the protection of creators' rights under the law in termination rights situations'').

[218] MLC *Ex Parte* Letter at 3–4 (Feb. 5, 2024); *see also* MLC *Ex Parte* Letter at 1 (Feb. 21, 2024); MLC *Ex Parte* Letter at 1 (Mar. 22, 2024); Warner Chappell Music SNPRM Reply Comments at 5–6 (''[I]n light of the undisputed comments to the SNPRM detailing how and why the U.S. and international music publishing industry is universally built on maintaining current information for—and paying—the then-current owner or administrator, Warner Chappell advocates for adopting that as a default rule.''); NMPA SNPRM Initial Comments at 10 (''[A] 'default rule' should be the rule that applies in the vast majority of cases, and should not be the rule that applies only in exceptional cases.'').

[219] *See, e.g.,* MLC SNPRM Initial Comments at 11 (''[I]n most industry agreements the current payee typically has the right to receive royalties for all periods (both prospective and historical). Thus, a default rule that provides for payments to be made to the current payee (a result that is consistent with most industry agreements) would produce more accurate results than a default rule that provides for payments to be made to a historical payee (a result that does *not* align with most industry agreements.''); NMPA SNPRM Initial Comments at 4–5 (''[T]he custom and practice in the music industry is for royalties to be paid to the owner of the copyright at the time of payment rather than at the time of use, unless a different arrangement is agreed to between that copyright owner and a different payee, *e.g.,* the prior owner/assignor of the copyright. This custom and practice is memorialized in industry contracts and the royalty and administration systems of publishers, administrators, and CMOs are built around that custom and practice. In other words, the industry 'default rule' is the opposite of the 'default rule' proposed in the SNPRM.''); Kobalt Music SNPRM Initial Comments at 2 (''The administrator who is registered at the time of a distribution is nearly always the entity that all royalties should be paid to, and this is how industry contracts and CMOs generally operate. Any exceptions to this practice would be the distinct minority.''); Sony Music Publ'g SNPRM Initial Comments at 1–2 (''The Prior Owner Rule is inconsistent with the contracts around which the music publishing industry is built. . . . When music catalogues are bought and sold, the terms of the acquisition documents generally provide that the acquiring party has the right to collect all income after the date of sale.''); Universal Music Publ'g Grp. SNPRM Reply Comments at 2 (''Under industry contracts, where rights are transferred or revert, the right to receive royalties (including those previously earned but not yet paid) generally follows the rights. . . . The Time of Use Rule will therefore . . . usually result in payment to the wrong party under the relevant contractual arrangements.''); Warner Chappell Music SNPRM Reply Comments at 5 (''[A]ny rule that would establish the 'default payee' as anyone other than the current rightsholder at the time of the payment will, by definition, carry a real and inherent risk of compelling payment to someone not entitled to received it. . . . [T]he U.S. and international music publishing industry is universally built on maintaining current information for—and paying—the then-current owner or administrator.''); Big Machine Music SNPRM Initial Comments at 2 (''I have never seen a copyright transfer that doesn't include a letter of direction to effectively set out the process for the new owner to receive all future income.''); Reservoir Media Mgmt. SNPRM Initial Comments at 2 (''There is nothing to gain from some of these changes beyond a mirage of accuracy that is not in alignment with actual collection rights.''); SONA SNPRM Reply Comments at 3 (''Songwriters, publishers, and other third parties acquiring and/or licensing publishing rights in the music industry transfer rights, including the right to administer and collect royalty income, as of a specific date of transfer so that the party that is newly entitled to administer, collect and receive income in connection with the particular works will do so as of that specific effective date *regardless of when those monies were earned.*''). Other commenters also noted that this practice is not completely universal, and that there may be exceptions. *See, e.g.,* MLC SNPRM Initial Comments at 11; NMPA SNPRM Initial Comments at 4–5; Kobalt Music SNPRM Initial Comments at 2; Sony Music Publ'g SNPRM Initial Comments at 1–2; Universal Music Publ'g Grp. SNPRM Reply Comments at 2; Warner Chappell Music SNPRM Reply Comments at 6 (''In the rare instance where parties actually intend for someone other than the current owner or administrator to receive an MLC distribution, those parties are best positioned to so notify the MLC.'').

[220] The Office acknowledges that this default distribution provision could lead to the ''wrong'' result with respect to the narrow category of post-termination royalties paid for pre-termination uses. In such cases, the pre-termination copyright owner remains entitled to those royalties absent a contrary agreement because the reversion of the copyright by operation of law does not encompass the additional entitlement to those royalties. The Office nevertheless finds the default distribution provision to be reasonable in these cases in light of the reduced burden it places on the MLC, the various exceptions to the default distribution provision discussed below, as well as comments from publishers suggesting agreement with the end-result of having the MLC distribute post-termination royalties for pre-termination uses to the post-termination owner. *See, e.g.,* NMPA NPRM Initial Comments at 6; CMPA NPRM Initial Comments at 2 (''Although it may not be in the financial interest of the pre-termination owner, . . . it would be CMPA's recommendation that any and all adjustments of this nature be paid to the current copyright owner (that being the post-termination owner) at the time of the payment, and not at the time when the usage was made.''); *see also* NMPA SNPRM Initial Comments at 5 (''[I]t is the custom and practice in the industry for the new owner or the songwriter to whom rights have been assigned or reverted to be paid all unpaid royalties regardless of when they were earned.'').

However, the Office recognizes that there may be instances where the MLC's distribution of royalties to the owner at the time of the payment under the default distribution provision would result in an improper party being paid. Therefore, the Office has included clarifications and limitations. First, any distribution made by the MLC is not a determination of a party's legal entitlement to the royalties and does not prejudice any such party's legal claim. The purpose of the default distribution provision is to reduce burdens, gain efficiencies, and enhance accuracy by applying industry practice to the MLC's distributions. It does not alter anyone's underlying legal rights—especially if the MLC, in relying on this provision, ends up distributing royalties to an individual or entity who is not legally entitled to them. The MLC specifically supported the inclusion of such a provision.[221]

Second, the default distribution provision does not apply where there is a dispute between parties or an investigation by the MLC covering the applicable works (or shares) or payees. The reference to an investigation is meant to include situations where the MLC may be looking into, for example, a potentially fraudulent registration or claim. The purpose is to make clear that where the MLC has knowledge that there is a cloud over the ownership of the relevant work (or share), it must continue holding royalties until that cloud has cleared.

Third, the default distribution provision does not apply if the MLC has been ''notified otherwise.'' This language is meant to cover circumstances where the MLC receives information that would indicate to a reasonable person that the payee identified in its records is not in fact entitled to the royalty distribution. In enacting the statutory requirement for the MLC to distribute royalties pursuant to its records, Congress did not intend for the MLC to knowingly make inaccurate payments after being expressly informed otherwise.[222] Whether particular information received is sufficient, or whether any such information is adequately substantiated, for the MLC to actually be ''notified'' is a matter the Office leaves to the MLC's reasonable discretion based on its experience, practices, and policies, subject to the Office's guidance.[223]

ii. The Default Distribution Provision Does Not Change the MLC's Duty To Verify the Accuracy of Royalty Distributions

The next part of the provision states that despite the default distribution provision, the MLC must continue to engage in reasonable efforts to verify the information provided to it and to combat against fraudulent registrations and claims. This provision is not intended to require the MLC to engage in additional efforts beyond those it currently undertakes, but rather to ensure that it continues to engage in such efforts after the rule is enacted.[224] An examination of the MLC's current such efforts and their sufficiency is beyond the scope of this proceeding.

iii. The MLC Must Still Correct Its Own Errors

The final part of the provision is meant to codify and clarify a point made in the SNPRM that ''[w]here the MLC distributes royalties to the wrong payee due to an error on the MLC's part . . . , the MLC must correct its error in a timely fashion.'' [225] The regulation makes clear that the applicable type of error is one caused by the MLC's actions, as opposed to where the MLC acts in accordance with the default distribution provision or otherwise reasonably relies on information provided to it by others that turns out to be inaccurate.[226] The reference to the MLC's actions encompasses the actions of its employees, but the Office also intends for it to cover actions of others acting on its behalf.

C. Matched Historical Royalties

Outside the context of the owner at the time of the use versus the owner at the time of the payment issue, the Office received few comments regarding our proposal that the MLC report and distribute matched historical royalties in the same manner and subject to the same requirements that apply to the reporting and distribution of blanket license royalties.[227] Notably, the MLC supported this proposal by including it in its own regulatory proposal and no commenters appear to have objected.[228] The Office is, therefore, adopting this portion of the SNPRM as final for the reasons stated in the SNPRM.[229]

D. Ownership Transfers and Royalty Payee Changes

The final rule retains the overall framework and structure from the SNPRM with respect to the provisions governing notice to and implementation by the MLC of ownership transfers and other royalty payee changes.[230] The Office, however, has made several changes from the SNPRM.

1. Notice of a Change to the MLC

The SNPRM contained detailed and tailored notice requirements based on the type of payee change at issue. It proposed such requirements for the following circumstances: (1) transfers of copyright ownership other than by will or operation of law; (2) transfers of copyright ownership by statutory termination; (3) other transfers of copyright ownership; and (4) designations of alternative royalty payees.[231]

In response to the SNPRM, several commenters criticized the non-termination-related notice requirements, including on the ground that the Office does not need to regulate standard operational processes, like those concerning contractual transfers and letters of direction, for which the MLC has well-functioning systems in place.[232] Commenters also contended

to choose for themselves how they would like to handle these situations. They can do nothing, and the royalties will be distributed to the post-termination owner. Or, if they wish to assert their entitlement to the royalties, they can defeat the default distribution provision and obtain them by simply notifying the MLC, as discussed below.

[221] MLC *Ex Parte* Letter at 2 (Feb. 21, 2024).

[222] *See* H.R. Rep. No. 115–651, at 9 (referring to ''the efficient and accurate collection and distribution of royalties'' as the MLC's ''highest responsibility''); S. Rep. No. 115–339, at 9 (same); Conf. Rep. at 7 (same).

[223] While the MLC suggested that such notifications will always take the form of disputes, the Office cautions that this might not always be the case. *See* MLC *Ex Parte* Letter at 1–2 (Mar. 22, 2024). That is why the final rule provides separate explicit provisions for both disputes *and* where the MLC is notified otherwise. The notification provision is meant to be broader to encompass other possible scenarios outside of a formal dispute. While the degree of overlap between the two provisions may be substantial, it is not necessarily total.

[224] *See* MLC *Ex Parte* Letter at 5 (Feb. 21, 2024) (explaining that the MLC ''has substantial review processes in place to prevent fraudulent or improper claiming and diversion of royalties''); *see also* U.S. Copyright Office, *Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective* iii, 60 (2021), *https://copyright.gov/policy/unclaimed-royalties/unclaimed-royalties-final-report.pdf* (''[T]he MLC should have mechanisms in place to help review, verify, and quality-check information, and recognize problems like conflicts, inconsistencies, inaccuracies, and potential fraud.'').

[225] 88 FR 65908, 65918 n.137.

[226] *See* MLC *Ex Parte* Letter at 2 (Mar. 22, 2024).

[227] *See* 88 FR 65908, 65914.

[228] *See* MLC SNPRM Reply Comments, App. A. at iii–iv.

[229] 88 FR 65908, 65914.

[230] *See id.*

[231] *Id.* at 65914–17.

[232] *See e.g.,* Kobalt Music SNPRM Initial Comments at 3; Spirit Music Grp. SNPRM Initial Comments at 2; Reservoir Media Mgmt. SNPRM Initial Comments at 2; ClearBox Rights SNPRM Reply Comments at 10.

that the SNPRM's requirements were unworkable or unduly burdensome.[233]

The MLC echoed these comments and submitted a regulatory proposal that largely retained the Office's proposed requirements for termination-related transfers, but replaced the other notice requirements with a catch-all provision providing that such notice be made in accordance with requirements established by the MLC.[234] Few commenters supported the Office's proposal with respect to non-termination-related notices.[235]

Based on these comments, the Office has scaled back the notice requirements, generally in line with the MLC's proposal. Outside of the termination context, it does not appear that regulation is currently necessary. Instead, the Office is issuing a rule directing the MLC to adopt a written policy reflecting its practices and requirements for non-termination-related notices. The Office will monitor this area and will consider potentially adopting regulations in the future if presented with a record reflecting a need to intervene.

i. Non-Termination-Related Transfers of Copyright Ownership and Royalty Payee Changes

As discussed above, the final rule omits the previously proposed requirements for non-termination-related notices and replaces them with a directive for the MLC to adopt and publish requirements for such notices. More specifically, the final rule provides that parties seeking to make payee changes outside the context of a termination must notify the MLC pursuant to such reasonable requirements as it establishes and makes publicly available on its website. To the extent the MLC does not already have such a policy on its website as of the date this final rule is published in the **Federal Register**, the MLC will have 60 days to adopt one and make it public, unless the Office permits an extension.

Additionally, there is one aspect of the SNPRM regarding non-termination-related notices that the final rule retains. In response to the NPRM, the Songwriters Guild of America et al. (''SGA et al.'') proposed specific requirements to apply where the MLC is asked by the terminating party to implement an agreement directing it to pay post-termination royalties to the pre-termination copyright owner.[236] SGA et al. was concerned about contractual overreach by publishers requiring the execution of anticipatory letters of direction as part of publishing deals.[237] The Office included the proposal as part of the SNPRM, explaining that ''[b]ased on the current record, the proposal seems to be a reasonable safeguard, even if there is no such overreach at present.'' [238] No commenter specifically opposed this proposal, and the MLC included it in its regulatory proposal.[239] The Office has, thus, retained most of the proposal in the final rule with some minor conforming edits.[240]

ii. Transfers of Copyright Ownership by Statutory Termination

In contrast to the Office's proposal on non-termination-related notices, commenters generally did not oppose the Office's proposal on notices to the MLC about payee changes resulting from statutory terminations. Indeed, multiple commenters affirmatively supported it.[241] For example, MAC et al. said that they ''fully support the Office's proposal,'' calling it ''simple, practical and efficient.'' [242] The MLC ''welcome[d] regulatory clarity from the Office'' on this topic [243] and said that ''[m]uch of the provisions concerning termination procedure are consistent with MLC practice, or could be implemented.'' [244] The MLC and other commenters, however, proposed modifications to the Office's proposal to address discrete concerns.

Based on the comments and the discussion in the SNPRM, the Office is adopting as final the proposed notice requirements regarding payee changes resulting from statutory terminations with the modifications discussed below.

a. Whether the Notice Requirements Should Be a Floor

The Office disagrees with the MLC's proposal to turn the notice requirements into a floor.[245] While the Office acknowledged in the SNPRM that the proposed information that must be submitted to the MLC might not provide sufficient information to process and implement the ownership change in some cases, the Office also proposed a means by which the MLC could obtain the minimum necessary information to implement the change.[246] In doing so, the Office explained that ''[t]his may be a better approach than requiring terminating parties to provide additional information to the MLC at the outset that they may not readily have and which may not be needed to implement the change.'' [247]

The Office continues to believe that this is the most appropriate approach. Turning the requirements into a floor would allow the MLC to request additional and potentially unnecessary information that may be challenging to produce up front, which was precisely the concern that led to the Office's proposal.[248] As further discussed below, if the initial submission to the MLC lacks what it needs, the MLC can request additional information at that point.

b. Treatment of Notices Containing Multiple Works

The Office agrees with Linda Edell Howard that the rule should be clarified to recognize that a single notice—whether a change notice to the MLC or a statutory notice of termination submitted to the Office for recordation—may identify more than one musical

[233] *See e.g.,* NMPA SNPRM Initial Comments at 4, 14–15; Spirit Music Grp. SNPRM Initial Comments at 2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1; Warner Chappell Music SNPRM Reply Comments at 7–8; Universal Music Publ'g Grp. SNPRM Reply Comments at 2 n.1; Reservoir Media Mgmt. SNPRM Initial Comments at 2.

[234] MLC SNPRM Reply Comments at 3–5, App. A at iv–xii; MLC SNPRM Initial Comments at 18–20; MLC *Ex Parte* Letter at 2 (Mar. 22, 2024) (explaining ''the need for flexibility to incorporate evolving industry practices into processes to effectuate the various types of transfers and payee changes that occur in the normal course of business for rightsholders'').

[235] *See, e.g.,* Promopub SNPRM Initial Comments at 5.

[236] 88 FR 65908, 65917.

[237] *Id.*

[238] *Id.*

[239] MLC SNPRM Reply Comments, App. A. at vi–vii.

[240] The final rule does not include the requirement that such a notice must include ''a clear statement stipulating that neither the notice nor the distribution of royalties by the mechanical licensing collective in accordance with the notice prejudices the rights of either party'' as such a requirement would be unnecessary, considering that the regulations also require the notice to be signed after the effective date of termination.

[241] *See, e.g.,* MLC SNPRM Initial Comments at 20; MLC SNPRM Reply Comments at 3; MAC et al. SNPRM Initial Comments at 2–3; Promopub SNPRM Initial Comments at 5. Despite its general support, Promopub also expressed concern that ''[i]f the terminating party has already been subjected to a dispute process at the MLC, the pre-termination copyright owner/prior payee should not have another opportunity to add salt to the wound by way of the proposed Rule creating another notification and dispute cycle.'' Promopub SNPRM Initial Comments at 5. To clarify, these notice requirements and the dispute mechanism contained within them are only effective prospectively. This means that if a terminating party previously notified the MLC about an effective termination and the MLC acknowledged the sufficiency of that notice, then nothing in the final rule would require the terminating party to submit a new notice to the MLC.

[242] MAC et al. SNPRM Initial Comments at 2–3.

[243] MLC SNPRM Reply Comments at 3.

[244] MLC SNPRM Initial Comments at 20.

[245] *See* MLC SNPRM Reply Comments, App. A at v.

[246] 88 FR 65908, 65915–16.

[247] *Id.* at 65916.

[248] *Id.* at 65915–16.

work, and that the relevant statuses of those works may be different.[249] The final rule makes clear that, in such cases, any implication as to one work does not affect another listed in the same notice. Each work must be treated independently. This is clarified throughout the final rule, including in the notice, implementation, and dispute provisions.

For example, if there is a dispute as to one work, but not another in the same change notice submitted to the MLC, the MLC must still implement and give effect to the change with respect to the work that is not in dispute (assuming that there are no other issues). The same is true where the MLC has sufficient information to implement the change as to one work, but not for another from the same notice. As another example, if a notice of termination identifying multiple musical works is timely recorded in the Office as to some works but not others, assuming that there are no other issues, the MLC should implement the termination of those as to which the notice is timely recorded, even though the works with untimely recorded notices cannot be terminated.

c. Requirement To Provide the Statutory Notice of Termination

Linda Edell Howard asserted that it can sometimes be difficult or expensive to obtain a copy of the notice of termination submitted to the Office for recordation.[250] She did not, however, make any alternative suggestions. The Office continues to believe that providing a copy of the actual notice of termination is reasonable and not unduly burdensome.

d. Requirement To Provide Proof of Recordation or Proof of Submission to the Office for Recordation

The Office agrees with the MLC's proposal to clarify that the proof of submission of the statutory notice of termination to the Office must reflect that it was submitted before the effective date of termination.[251] For a notice of termination to be timely recorded, it must be received by the Office before the effective date.[252]

The Office disagrees with ClearBox Rights that the proof of recordation requirement should be dropped because it is ''cumbersome and potentially not necessary.'' [253] ClearBox Rights made three arguments to support its position. First, it contended that it ''would prove to be an administrative burden on the MLC to maintain a schedule of such notices to be delivered.'' [254] This argument is unpersuasive given that the MLC did not object to this requirement and included it in its regulatory proposal.[255] Moreover, the rule does not require the MLC to maintain any such schedule.

Second, ClearBox Rights asserted that ''there may be instances where the Copyright Office has not yet recorded such documents for various reasons, including that perhaps one copyright out of many on the notice is under review or possibly not valid.'' [256] It argued that the ''lack of recordation or delay of recordation of one document with many copyrights because one or more copyrights is in question for further review should not negatively impact the other copyrights on that document.'' [257] The Office does not believe that these concerns are grounds for eliminating the proof of recordation requirement. While the Office agrees, as discussed above, that the rule should accommodate notices identifying multiple works and that each work should be handled individually, timely recordation is still required by the statute ''as a condition to [the termination] taking effect.'' [258] Thus, the MLC should not implement a change as to a particular work until proof of recordation of the relevant notice of termination for that work is delivered.

Third, ClearBox Rights noted that ''recordation of the termination at the Office may never happen.'' [259] It said that it has ''seen instances where a notice of termination was filed, and the pre-termination owner acknowledges the termination to be effective even though there was an issue in the notice filing or recordation.'' [260] ClearBox Rights explained that ''[s]ometimes the pre-termination owner will simply overlook the technical issues of the termination process and grant the rights back to the post-termination party.'' [261] Linda Edell Howard made similar statements, noting that sometimes the pre-termination copyright owner ''waives the recordation requirement.'' [262]

The Office does not believe that these possible problems provide any basis to not require proof of recordation. As noted above, timely recordation is a statutory condition for the termination to be effective.[263] If the termination is not effective, no rights change hands pursuant to section 203 or 304. To the extent the pre-termination copyright owner nevertheless acquiesces to the *attempted* termination, that may simply result in an ordinary transfer of copyright ownership from the pre-termination copyright owner to the terminating party. As such, it would be subject to the requirements for notifying the MLC about a non-termination-related change, rather than a termination-related change.

Based on the foregoing discussion, however, the Office concludes that the final rule should clarify that a termination-related payee change notice submitted to the MLC can be withdrawn or converted into a non-termination-related payee change notice pursuant to such reasonable requirements as the MLC establishes and makes publicly available on its website. The scenarios raised by the commenters demonstrate a need for flexibility.

Regarding Ms. Howard's question about what proof will qualify if notices of termination are recorded with the Office though electronic means,[264] the Office reiterates that ''[a]dequate proof of timely recordation could be demonstrated by either providing the MLC with a copy of the certificate of recordation or the record as reflected in the Office's online public catalog,'' and that ''[a]dequate proof of submission to the Office for recordation could take the form of courier tracking or a delivery confirmation, a return receipt from the Office, or some other communication from the Office confirming receipt.'' [265] The eventual ability to submit notices of termination through the Office's online Recordation System will not impair the availability of adequate proof. For example, while courier tracking or delivery confirmation would not be available, the remitter would instead have such proof in the form of an electronic communication from the Office confirming receipt.

e. Requirement To Identify the Relevant Works

The Office declines the MLC's proposal to add a requirement to

[249] *See* Howard SNPRM Initial Comments at 4, 6, 8.

[250] *Id.* at 4.

[251] *See* MLC SNPRM Reply Comments, App. A at v.

[252] *See* 37 CFR 201.10(f)(1)(ii)(A), (f)(3).

[253] *See* ClearBox Rights SNPRM Reply Comments at 9–10.

[254] *Id.* at 9.

[255] *See* MLC SNPRM Reply Comments, App. A at v.

[256] ClearBox Rights SNPRM Reply Comments at 10.

[257] *Id.*

[258] *See* 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

[259] ClearBox Rights SNPRM Reply Comments at 10.

[260] *Id.*

[261] *Id.*

[262] Howard SNPRM Initial Comments at 4.

[263] 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

[264] Howard SNPRM Initial Comments at 4.

[265] 88 FR 65908, 65915.

provide ''[a] satisfactory identification of all musical works subject to the notice of termination identified by appropriate unique identifiers.'' [266] The MLC said that this is needed because it ''cannot implement a change in ownership of musical works without knowing *which* musical works are subject to the change in ownership.'' [267] As the Office previously explained in the SNPRM, the regulations governing the content of statutory notices of termination (which must be submitted to the MLC as part of the change notice) already provide for an identification of each work.[268] While the Office acknowledged in the SNPRM that such identification might not provide the MLC with sufficient information to process and implement the ownership change in some cases, the Office also proposed a means, further discussed below, by which the MLC could obtain the minimum necessary information.[269] The Office agrees with other commenters ''that the default position should be to make it as easy as possible for a terminating songwriter to comply with processes to effect their right.'' [270] Thus, we decline to include a requirement that unique identifiers for all musical works must be provided up front. As further discussed below, if the MLC ultimately needs them for certain works, it can request them after attempting to implement the change based on the information in the notice.

f. The MLC's Duty To Request Additional Necessary Information

In the SNPRM, the Office proposed that where a compliant termination-related change notice does not provide the MLC with sufficient information to process and implement the ownership change, the MLC should engage in best efforts to identify the minimum necessary information, including through correspondence with both the terminating party and pre-termination copyright owner (or their respective representatives).[271] The MLC expressed concern with this proposal, stating that it is ''not clear if this reference to 'best efforts' is meant to imply a responsibility to make findings as to what works are subject to termination.'' [272] The MLC said that the requirement to correspond with the relevant parties ''is a reasonable step'' and that it ''does not object to making reasonable efforts to reach out to parties where paperwork is incomplete.'' [273] It said, however, that it ''cannot itself identify the 'relevant musical works,' make decisions itself about what is contained in private contracts that may be subject to termination, or determine what works are, or are not, subject to termination in any particular disputed case.'' [274]

The Office is clarifying this portion of the rule in light of the MLC's comments. To eliminate any confusion, the ''best efforts'' language has been eliminated in the final rule, while the requirement to correspond has been retained. In doing so, the Office emphasizes that the final rule's reference to information that is ''insufficient to enable the [MLC] to implement and give effect to the termination'' is meant to be interpreted narrowly. In some cases, submitted information can be sufficient to enable the MLC to act, even if it must undertake certain reasonable efforts. For example, even if the identification of the works in the notice of termination does not appear sufficient on its face, perhaps lacking unique identifiers, the information is nevertheless considered sufficient if the MLC can act on the information after undertaking reasonable efforts to attempt to match the works identified in the notice of termination with the corresponding works in its records. The Office is not mandating that the MLC engage in exhaustive efforts or do this in all cases, but in the termination context, it should provide assistance within reason.

Additionally, Promopub noted that there is no time limit on the MLC in this provision and said that ''delay should be assiduously avoided.'' [275] It proposed that ''the MLC give notice of receipt of an appropriately documented claim within 15 calendar days of receipt'' and that, ''[i]f more information is required to process the claim, that explanatory notice should be given within 30 calendar days of receipt.'' [276] It also wanted the MLC to establish a ''hot line'' and dedicated web pages that terminating parties can access for assistance.[277] The Office agrees that the MLC should have dedicated web pages and other member support for terminating parties, and strongly encourages it to provide such support as soon as reasonably possible. The final rule adds the word ''promptly'' to signal that the MLC should move expeditiously, since, as discussed above, the Office expects the MLC to undertake some reasonable efforts in addition to correspondence. Should the Office become aware of widespread unreasonable delays, we can reconsider a specific timing requirement at a later date.

Lastly, the Office understands that this approach may lead to longer lead times before the MLC ends up implementing a change than if additional information were required to be submitted at the outset. As discussed above and in the SNPRM,[278] the Office continues to believe that this is the better approach. However, we wish to encourage terminating parties to voluntarily provide additional useful information to the MLC, such as unique identifiers, as part of their initial notice submission if it is possible to do so. To that end, in amending its form for submitting termination-related payee change notices based on the final rule, the MLC could include fields for additional information it believes would be helpful in implementing the change, provided that the form clearly identifies those non-required fields as being optional.

g. The Meaning of ''Terminating Party''

The final rule clarifies the definition of ''terminating party.'' Throughout the rule, this term is used to refer to parties entitled to royalties from the MLC based on an effective termination and who may notify the MLC of such entitlement. This term is not defined by reference to who singed and served the statutory notice of termination.

The SNPRM defined the term as ''the new musical work copyright owner.'' [279] That language did not, however, account for the fact that the termination may not yet be effective at the time the payee change notice is submitted to the MLC, meaning that the relevant party is not the new owner at that point in time. The SNPRM's definition also did not clearly provide that a successor in interest to a terminating author or heir (*e.g.,* their new publisher or administrator) can also be a ''terminating party'' within the meaning of the rule. Including successors in interest is necessary because there may be times where the termination becomes effective and reverted rights are re-granted before the MLC is notified. The final rule makes these clarifications.

The Office disagrees with Linda Edell Howard that the term ''terminating party'' ''should include only those who signed the notice of termination, not

[266] MLC SNPRM Reply Comments, App. A at v.

[267] *Id.* at 3.

[268] 88 FR 65908, 65915 & n.112 (citing 37 CFR 201.10(b)(1)(iii), (b)(2)(iv)).

[269] *Id.* at 65915–16.

[270] MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024).

[271] 88 FR 65908, 65915–16.

[272] MLC SNPRM Initial Comments at 20.

[273] *Id.* at 20–21.

[274] *Id.* at 21.

[275] Promopub SNPRM Initial Comments at 5–6.

[276] *Id.* at 6.

[277] *Id.*

[278] 88 FR 65908, 65915–16.

[279] *Id.* at 65924.

those non-signatory heirs or authors,'' because ''[t]he non-signatory statutory heirs or authors are represented by those who signed and served the notice of termination.'' [280] As noted above, this misunderstands the way the term ''terminating party'' is used throughout the rule.

The Office also disagrees that ''[i]nformation concerning non-signatories should not be required to implement a change in copyright ownership and payee status, or reduce the percentage to be paid out.'' [281] Each terminating party must be treated independently, just like any other copyright owner when there is more than one. That is why the MLC is only required to implement a change as to those terminating parties whose information is provided in the notice of change. That being said, to the extent a particular terminating party is in fact represented by another terminating party, as Ms. Howard suggested, or by someone else, then the information provided to the MLC would be for that representative.[282]

h. Verification Obligations

In the SNPRM, the Office proposed that where the MLC has good reason to doubt the authenticity of the information submitted, such as the statutory notice of termination or proof of recordation, it should seek verification from the Office.[283] The MLC proposed instead to require the submitter to seek verification from the Office and deliver documentation of such verification to the MLC.[284] The MLC asserted that ''it would be inappropriate to shift to The MLC the role of monitoring and obtaining ownership documentation,'' and that ''[m]embers must remain primarily responsible for the completeness and accuracy of their works registrations and claims, and it would be inefficient to shift this task to The MLC.'' [285]

The Office agrees with the MLC's position. While we have endeavored to minimize the burden on a terminating party to have their termination implemented by the MLC, on reflection, it is more appropriate for the submitter to obtain whatever verification may be necessary. Therefore, the final rule provides that where authenticity is in doubt, the MLC shall either seek verification from the Office or request that the submitter provide such verification.

i. Dispute-Related Issues

In the SNPRM, the Office proposed that where the MLC receives a payee change notice from the terminating party, it must inform the pre-termination copyright owner within 15 days of receiving either the notice or the last piece of information necessary to implement the change, whichever is later.[286] After being so notified, a pre-termination copyright owner who disputes the termination would have 30 days to initiate its dispute with the MLC before the MLC must implement the change.[287] The Office agrees with Linda Edell Howard that the terminating party should be contemporaneously alerted when the MLC informs the pre-termination copyright owner.[288] This way, the terminating party will know when the 30-day dispute period commences. We disagree, however, with Ms. Howard's proposal to shorten the 30-day period to 15 days.[289] While the pre-termination copyright owner should already be on notice about the termination generally, the Office believes that 30 days is a reasonable amount of time after being notified that a change is being sought *at the MLC,* in case they wish to initiate a dispute, which requires providing specific documentation to the MLC that may take time to assemble.

2. Implementation of a Change by the MLC

The SNPRM proposed various requirements to govern how the MLC implements and gives effect to a payee change, both in termination and non-termination contexts.[290] Commenters generally did not oppose these requirements, though some raised discrete questions.[291] The MLC generally supported the proposed requirements, including those for non-termination-related changes.[292] Based on the comments and the discussion in the SNPRM, the Office is adopting the proposed implementation requirements as final with the modifications discussed below.

i. Prospective Versus Retroactive Implementation

In the SNPRM, the Office proposed that, where a relevant change is effective prior to the MLC's implementation, the MLC should be permitted, but not required, to implement it going back to its effective date, if requested in the notice to the MLC.[293] In response, MAC et al. said that ''the MLC can and should implement payee changes going back to the date of the change, regardless of when implemented,'' and disagreed that it is too burdensome for the MLC to do so.[294] Linda Edell Howard raised concerns about lag times in notifying the MLC in the termination context.[295] The MLC ''welcome[d]'' the Office's proposal.[296]

The Office is not persuaded to alter the rule. In the SNPRM, the Office considered similar comments and weighed them against the MLC's concerns about such a requirement being overly burdensome.[297] We were ''inclined to agree with the MLC that retroactive implementation may be too administratively burdensome to require for every payee change,'' and noted that our regulations require only prospective implementation by the MLC in processing DMP voluntary licenses.[298] The Office also ''welcome[d] further comments on this issue,'' including on ''what is standard in the industry.'' [299] The minimal comments received in response to the SNPRM do not meaningfully grow the record in a way that persuades the Office to impose this requirement on the MLC at this time.

ii. Timing

In its regulatory proposal, the MLC proposed to soften the implementation deadlines the Office proposed, by replacing requirements to implement a change within a specified period of time with language requiring only ''reasonable efforts to'' do so.[300] While the MLC's comments do not explain why they requested this change,

[280] *See* Howard SNPRM Initial Comments at 6.

[281] *See id.*

[282] The Office further declines Ms. Howard's proposal to make the identification of the terminating party plural throughout the rule because ''[r]arely is the terminating party one individual.'' Howard SNPRM Initial Comments at 4. There are already specific provisions in the rule speaking to the case of multiple terminating parties (*e.g.,* 37 CFR 210.30(c)(2)(v)), which means that the rest of the rule contemplates the possibility of there being more than one. Moreover, ''[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise,'' ''words importing the singular include and apply to several persons, parties, or things.'' 1 U.S.C. 1.

[283] 88 FR 65908, 65915.

[284] MLC SNPRM Reply Comments at 3–4, App. A at v.

[285] *Id.* at 4.

[286] 88 FR 65908, 65916.

[287] *Id.*

[288] *See* Howard SNPRM Initial Comments at 5.

[289] *See id.*

[290] 88 FR 65908, 65917–18.

[291] *See, e.g.,* MAC et al. SNPRM Initial Comments at 3; Howard SNPRM Initial Comments at 8–9.

[292] MLC SNPRM Reply Comments at 5, App. A at vii–ix, xi–xii; MLC SNPRM Initial Comments at 18 n.25.

[293] 88 FR 65908, 65918.

[294] MAC et al. SNPRM Initial Comments at 3.

[295] Howard SNPRM Initial Comments at 9.

[296] MLC SNPRM Reply Comments at 5.

[297] 88 FR 65908, 65918.

[298] *Id.*

[299] *Id.*

[300] MLC SNPRM Reply Comments, App. A at vii.

presumably it is to avoid technical violations of the regulations, such as due to circumstances beyond its control or where it inadvertently makes a mistake without realizing it (*e.g.,* where an employee accidentally fails to enter the change into the system).[301]

The Office declines to adopt the MLC's proposal, but has modified the final rule to address this issue. The provision's purpose is to set expectations for how the MLC will act, and that entails meaningful deadlines that parties to a payee change can rely on in conducting their business. The Office has imposed deadlines on the MLC's actions in other contexts and sees no reason not to do so here. We are not opposed, however, to providing the MLC with some leeway if an implementation deadline is accidentally missed.

Under the final rule, in such a situation, the MLC must implement the change as soon as reasonably practicable, but no later than the next regular monthly royalty distribution that occurs either: (1) after the original implementation deadline; or (2) at least 30 days after the date that the MLC learns that the change was not implemented on time—whichever is later. The Office believes that this solution gives the MLC reasonable flexibility without being so open-ended that the parties to a change have no idea when their change will be implemented.

Importantly, the rule further provides that if the MLC is late in implementing the change, it must do so retroactively to the date of the original implementation deadline. The rule does not provide a separate deadline for making any corrective royalty adjustment. Rather, the Office expects the MLC to make any such adjustments in accordance with its regular practices. Regardless of any associated burdens, we believe this is a fair burden to place on the MLC when it fails to meet the rule's deadlines, even if that failure is accidental.

iii. Additional Provisions for Termination-Related Changes

In the SNPRM, the Office proposed that where a compliant notice is accompanied by proof that the statutory notice of termination was submitted to the Office for recordation, but not proof that it was timely recorded, the MLC should hold applicable royalties pending receipt of proof of timely recordation.[302] After the MLC receives proof of timely recordation, it would need to implement the change, which would include distributing the held funds to the terminating party.[303] If, on the other hand, the Office refuses to record the notice or it is recorded on or after the effective date of termination, the MLC would need to release the funds to the pre-termination copyright owner.[304] The Office further proposed that if proof of timely recordation is not received within 6 months, the MLC should contact the Office to confirm the status of the relevant recordation submission.[305]

No commenter objected to this proposal, but the MLC took exception to the part requiring it to contact the Office to confirm the status of the recordation submission.[306] For the same reasons discussed above in Part III.D.1.ii.h., it proposed instead that the submitter be required to check the status with the Office and provide the MLC with documentation of the confirmed status.[307] The MLC proposed that if the submission still remains pending, the submitter should provide monthly updates to the MLC.[308] It further proposed that if the submitter fails to provide a monthly status confirmation, the MLC must then act in accordance with the other implementation provisions.[309]

On reflection, as with the provision discussed above in Part III.D.1.ii.h., the Office agrees with the MLC's general position that the obligation to confirm the status of the submission is more appropriately placed on the submitter. The Office, however, disagrees with the MLC's specific proposal. It would be unnecessary and overly burdensome for the terminating party to be required to contact the Office and provide the MLC with monthly updates. Instead, the final rule provides that the MLC may request periodic updates at its discretion.

Additionally, the Office disagrees that if the terminating party fails to provide an update, the MLC should simply act in accordance with the rest of the implementation regulations. That would result in the funds being released to the pre-termination copyright owner. The Office does not believe the MLC should release the funds while the recordation status remains pending. Instead, the final rule provides that the MLC must hold the funds until it is informed of the notice of termination's final recordation status and then act accordingly. The rule purposefully does not specify who must provide that final status to the MLC. Where the result is a timely recordation, the terminating party will be incentivized to provide confirmation of the final status, but in other situations (*e.g.,* where recordation is refused), the pre-termination copyright owner would be incentivized to provide it so that the royalties do not remain on hold. Additionally, nothing prevents the MLC from contacting the Office directly, if it chooses to.

Though not raised by commenters, the final rule also clarifies that the royalty hold should be lifted where the recordation submission to the Office is withdrawn by the remitter. There is no reason to hold royalties pending recordation where the recordation submission has been resolved. The omission of that scenario from the SNPRM was an unintentional oversight.

E. Disputes

1. Process and Documentation for Termination-Related Disputes

The Office received few comments on our proposal for the handling of termination-related disputes. The MLC generally supported this aspect of the SNPRM.[310] Another commenter, Linda Edell Howard took issue with the idea that the MLC could substantiate a dispute claim without hearing from the terminating party, and raised concerns about the power imbalance between the pre-termination copyright owner and terminating party in this context.[311] While the Office appreciates these concerns, we decline to address these broader issues in the current proceeding for the reasons discussed in Part III.E.2. below. Moreover, some of Ms. Howard's concerns are connected to a subject of inquiry in a separate, open proceeding reviewing the MLC's statutory designation.[312]

Based on the comments and the discussion in the SNPRM, the Office is adopting the proposed requirements

[301] If the MLC wanted more time for all implementations, the Office believes it would have made that request more specifically. Notably, the SNPRM proposed to give the MLC at least 30 days to implement all changes, which was in line with an earlier request from the MLC. *See* MLC NPRM Initial Comments at 10–11. The proposal was also in line with the Office's rules governing the MLC's processing of DMP voluntary licenses. *See* 37 CFR 210.24(f).

[302] 88 FR 65908, 65917–18.

[303] *Id.* at 65918.

[304] *Id.*

[305] *Id.*

[306] MLC SNPRM Reply Comments at 3–4, App. A. at viii–ix.

[307] *Id.*

[308] *Id.* at App. A at viii–ix.

[309] *Id.*

[310] *Id.* at 5, App. A at ix–x.

[311] Howard SNPRM Initial Comments at 5–6 & n.3, 8 (discussing, among other things, how there is a one-sided ability to hold up royalties in a dispute to give the pre-termination copyright owner leverage over the terminating party).

[312] *See* 89 FR 5940, 5943 (Jan. 30, 2024) (requesting ''information regarding: (1) any steps that the [MLC] is taking to protect against the incidence of fraudulent ownership claims and frivolous ownership disputes; and (2) whether these steps have been successful'').

pertaining to termination-related disputes as final. In doing so, and as discussed above in Part III.A.3., we have added language to clarify the operation of the provision in the context of disputes concerning the application of the Exception to voluntary licenses.

In adopting the final rule, the Office requests that the MLC's dispute resolution committee, which the MMA tasks with establishing the MLC's dispute policies, promptly establish a new policy for termination-related disputes that adheres to the requirements adopted in this final rule. The final rule sets certain key requirements based on the issues raised by commenters, but it is not a substitute for a comprehensive dispute policy.

2. Dispute Resolution

The Office has decided to omit the proposed provisions about how disputes should be resolved from the final rule.[313] Instead, unless and until the Office regulates in this area, disputes are to be resolved pursuant to the MLC's dispute policies. No one specifically supported the SNPRM proposal, and some commenters raised concerns with it.[314] Other commenters raised other concerns and sought various regulations to address them. For example, North Music Group asked for the MLC to ''be prohibited from creating disputes on its own motion,'' or for there to at least be ''some process and constraints applicable to its actions.'' [315] The record on these issues, however, is thin.

We do not take these dispute-related concerns lightly, but given the record of the proceeding, we decline to take up these issues at this time. The Office may, however, consider addressing them in a future proceeding where they can be more fully explored to determine whether any regulatory action may be needed. In the meantime, the Office requests that the MLC's dispute resolution committee consider the concerns raised by commenters, as well as the SNPRM's proposal to require ongoing active dispute resolution. In doing so, the Office asks the committee to: (1) examine whether such issues are arising in connection with disputes initiated with the MLC; (2) evaluate how these issues are addressed elsewhere in the industry; and (3) determine whether the MLC's dispute policies should be amended to address any of them.

3. Disclosure and Confidentiality

In responding to the NPRM, the MLC asked for guidance about whether it ''should be required to disclose information about the royalties being held to the parties involved'' and stated that it ''typically does not disclose the amount of royalties on hold to the parties in a dispute pending agreement or resolution of a dispute.'' [316] ClearBox Rights stated that the MLC should disclose the royalties on hold to parties involved in a dispute.[317]

Based on these comments, the SNPRM proposed amending the Office's confidentiality regulations to require that the MLC ''disclose the amount being held and reason for the hold to any individual or entity with a bona fide legal claim to such funds or a portion thereof.'' [318] The Office reasoned that this requirement would put the parties ''on equal footing in developing a strategy for resolving the dispute, including the negotiation of a settlement.'' [319] The Office also proposed that the MLC ''provide the equivalent of monthly royalty statements for the amounts held along with monthly updates concerning the status of the hold.'' [320] These proposed disclosure requirements were not exclusive to termination-related disputes.

Commenters on this provision generally supported it, recognizing the value of disclosing the amount of royalties on hold to parties involved in the dispute.[321] The MLC, however, voiced concerns over administrability and potential misuse.

The MLC stated that the proposed rule would be burdensome, involve significant manual processing, and divert resources from other duties.[322] The MLC also stated that providing ''every party to a dispute'' with ''confidential information could . . . result in disclosure of confidential information to improper parties in some situations, and would be ripe for abuse,'' [323] and that it had not received member complaints ''around such disclosures in the context of disputes or holds.'' [324] Further, the MLC was concerned that the proposed regulation's use of the term ''bona fide legal claim'' was not a clear enough standard to administer, and that passing judgment on what is ''bona fide'' could expose it to liability.[325] Finally, the MLC shared a general preference for prioritizing confidentiality and claimed that parties could obtain confidential information by agreement or via the legal process.[326]

The MLC later stated that, in the context of a termination-related dispute, it could ''provide summary-level information to both the pre- and post-termination copyright owners'' at ''the outset of a dispute.'' [327] This information would ''identify the approximate amount of royalties to be distributed to a work in the first distribution occurring after the hold is requested and will be based upon information in the monthly reports of usage that The MLC received and processed at the time of the request.'' [328] The MLC noted its preference that the Office not include provisions governing periodic (or initial) updates, including until it ''has time to scope and develop a workable, systematic way to provide this information.'' [329] If the Office were to retain such a requirement, those updates ''should be limited to where a disclosure has been affirmatively requested and should not be more frequently than quarterly, to limit the burden and diversion of resources from critical path activities.'' [330]

Based on the foregoing, the Office is retaining a version of this rule, while

[313] *See* 88 FR 65908, 65919–20.

[314] *See, e.g.,* MLC *Ex Parte* Letter at 5 (Feb. 5, 2024); Kobalt Music SNPRM Initial Comments at 3; Spirit Music Grp. SNPRM Initial Comments at 2; MAC et al. SNPRM Initial Comments at 3; Howard SNPRM Initial Comments at 8–9.

[315] North Music Grp. SNPRM Initial Comments at 3; *see also, e.g.,* Howard SNPRM Initial Comments at 6, 8–9 (discussing concerns with power imbalances and how disputes could affect litigation with respect to ripeness and the statute of limitations).

[316] MLC NPRM Initial Comments at 13–14.

[317] ClearBox Rights NPRM Reply Comments at 6.

[318] 88 FR 65908, 65919, 65927.

[319] *Id.* at 65919.

[320] *Id.*

[321] *See* Spirit Music Grp. SNPRM Initial Comments at 2 (''We do agree with the [Office's] position to disclose earnings and to provide royalty statements that are in suspense due to conflicts and disputes. We also agree the MLC portal should make this information visible.''); Promopub SNPRM Initial Comments at 7 (''In the context of a dispute, we agree with the Office that if royalties are being held, the MLC should disclose the held amounts to the parties and provide updates as necessary during the pendency of the dispute. This information may be valuable to the parties for purposes of resolving the dispute.'').

[322] MLC SNPRM Reply Comments at 8; MLC *Ex Parte* Letter at 4 (Feb. 21, 2024). *But see* MLC *Ex Parte* Letter at 4–5 (Feb. 21, 2024) (suggesting that the MLC regularly discloses total amounts of royalties on hold to interested parties).

[323] MLC SNPRM Reply Comments at 7.

[324] MLC *Ex Parte* Letter at 3 (Mar. 22, 2024).

[325] MLC SNPRM Reply Comments at 7–8.

[326] *Id.* at 6–7.

[327] MLC *Ex Parte* Letter at 2 (Mar. 22, 2024). The MLC previously stated that it could ''provide the total amount of royalties being held in connection with disputed works'' in certain ''discrete and low-volume'' circumstances, namely ''situations of agreement or legal process.'' MLC SNPRM Reply Comments at 8.

[328] MLC *Ex Parte* Letter at 2 (Mar. 22, 2024); *see also* MLC *Ex Parte* Letter at 4–5 (Feb. 21, 2024). Notwithstanding this offer, the MLC reiterated its concern that providing this information to parties for all disputes—*i.e.,* not limited to parties in a termination-related dispute—would be burdensome. MLC *Ex Parte* Letter at 5 (Feb. 21, 2024).

[329] MLC *Ex Parte* Letter at 2 (Mar. 22, 2024).

[330] *Id.*

narrowing its scope to make it easier for the MLC to administer. The final rule only applies to termination-related disputes, and limits disclosure requirements to the total amount of royalties being held and not the more granular information that would be contained in a royalty statement. It also reduces the periodic update requirement to apply only when requested by either party and only once a quarter. As the final rule applies to royalties being held pursuant to a termination-related dispute, the phrase ''bona fide legal claim'' was eliminated from the regulatory text.

F. Corrective Royalty Adjustment

1. Background

In the NPRM, the Office proposed a corrective royalty adjustment that would have ''require[d] the MLC to adjust any royalties distributed under [its now-suspended Termination Policy], or distributed in a similar manner if not technically distributed pursuant to the [Termination Policy], within 90 days.'' [331] At the outset, the Office notes that the MLC estimates the corrective adjustment to involve ''less than $2 million'' and the ''total amounts that would likely change hands'' to terminating songwriters ''would be less than $1 million.'' [332]

The NPRM explained that the adjustment provision was intended ''to make copyright owners whole for any distributions the MLC made based on an erroneous understanding and application of current law.'' [333] Responding to the NPRM, parties asked the Office for further guidance regarding ''how the proposed corrective royalty adjustment should work'' in practice.[334] The SNPRM subsequently proposed ''a more detailed [regulation] that would lay out the operational procedures for the corrective royalty adjustment.'' [335]

The SNPRM proposed that ''the corrective adjustment would apply where the MLC's prior erroneous application of the Exception, whether or not through its [Termination Policy], affected: (1) the distribution of blanket license royalties or matched historical royalties; (2) the holding of such royalties; or (3) the deduction from a DMP's payable blanket license royalties made by matching usage to voluntary licenses or individual download licenses.'' [336] For previously distributed overpayments made pursuant to the Termination Policy, the MLC would be required to notify the prior payee of the overpayment within thirty days, the prior payee would have thirty days to return the overpayment, and then the MLC would distribute those royalties to the proper payee with the next regular monthly royalty distribution. If the prior payee failed to repay the MLC, then the MLC would debit the prior payee's future royalties—up to 50% of payable royalties each month—until it recovered the overpayment.[337] The SNPRM also proposed that the royalty recovery and distribution instructions would apply where the MLC matched usage to a voluntary licensee or individual download licensee who was not the proper payee under the rule.[338] For royalties that were held by the MLC following the suspension of its Termination Policy, the SNPRM proposed that they would be paid to the proper payee no later than thirty days after the final rule's effective date.[339] Finally, the SNPRM included a savings clause that would preserve the proper payee's right to recover the overpayment outside of the corrective adjustment process.[340]

The SNPRM did not propose ''any specific procedures'' addressing circumstances where ''a publisher [*e.g.,* a prior payee] has already distributed a portion of the applicable royalties to its songwriters'' because that ''is a possibility with any type of adjustment for an overpayment.'' [341] The Office, however, expressly sought further comments on that issue, including on a commenter's proposal that the MLC only recoup the publisher's share of those royalties.[342]

2. Comments

Several commenters, including songwriters, publishers, and others, favored a rule that includes a corrective adjustment.[343] Promopub suggested a relatively more aggressive approach to the corrective adjustment. First, where ''a *prior payee's* accrued royalties for a month exceed the full amount owed to the *proper payee* by at least twenty-five [percent],'' it would require the MLC ''to deduct the full amount owed to the *proper payee* from such monthly accrued royalties.'' [344] It also proposed that, if the proper payee was not paid back in full within six months of the MLC's initial corrective adjustment payment, the Office ''should require the terminated publisher to repay the balance to the MLC within 30 calendar days for the MLC to, in-turn, distribute to the proper payee within 30 calendar days of receipt.'' [345]

Other commenters, however, disagreed that there should be a corrective adjustment, even though some of them supported post-termination copyright owners receiving post-termination royalties going forward.[346] These commenters' concerns focused on the burdens associated with administering a corrective adjustment and the Office's authority to require such an adjustment. Regarding the Office's authority, NMPA had concerns that the corrective

[331] 87 FR 64405, 64412.

[332] MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

[333] 87 FR 64405, 64412.

[334] 88 FR 65908, 65920 (citing MLC NPRM Initial Comments at 6–8; ClearBox Rights NPRM Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023); Howard NPRM Initial Comments at 6; Promopub NPRM Initial Comments at 2; Promopub NPRM Reply Comments at 3; North Music Grp. NPRM Reply Comments at 2).

[335] 88 FR 65908, 65920.

[336] *Id.* at 65921.

[337] *Id.*

[338] *Id.* at 65923.

[339] *Id.*

[340] *Id.*

[341] *Id.* at 65921.

[342] *Id.* (citing ClearBox Rights *Ex Parte* Letter at 3–4 (June 28, 2023); ClearBox Rights NPRM Reply Comments at 3–4).

[343] *See, e.g.,* BMG NPRM Initial Comments at 2 (''BMG fully supports . . . the requirement[] that . . . the MLC must pay post-termination royalties to those parties who own the U.S. copyrights in the works at issue and adjust these parties' accounts in order that they may receive every dollar previously paid in error to terminated publishers.''); BMG NPRM Reply Comments at 1; Christian Castle NPRM Reply Comments at 4–5 (''Any curative action required by the Office should, of course, be retroactive.''); Promopub NPRM Reply Comments at 1–2 (noting that it ''fully supports the proposed repeal of the [MLC's Termination] Policy and the corresponding proposed royalties adjustments'' and that ''other collecting organizations regularly employ retroactive royalty adjustments when music publishing royalties have been paid erroneously''); North Music Grp. NPRM Reply Comments at 2 (supporting the rule's corrective adjustment); Miller NPRM Initial Comments at 1 (supporting 90-day adjustment period for the MLC); NSAI SNPRM Initial Comments at 2 (supporting corrective adjustments made ''retroactively''); SONA et al. NPRM Reply Comments at 3 (supporting the rule's corrective adjustment); ClearBox Rights NPRM Reply Comments at 3–4 (supporting the rule's corrective adjustment provision and noting disagreement with NMPA and CMPA); McAnally & North *Ex Parte* Letter at 3–4 (Mar. 14, 2023) (voicing that these parties ''categorically disagree'' that the rule should not be ''retroactive''); MAC et al. SNPRM Initial Comments at 3–4; Howard SNPRM Initial Comments at 2; ClearBox Rights SNPRM Reply Comments at 8–9.

[344] Promopub SNPRM Initial Comments at 3. Promopub suggested these amendments, based on its concern that publishers may not return overpayments immediately and would ''instead rely on the piecemeal monthly process offered.'' *Id.*

[345] *Id.; see also* Spirit Music Grp. SNPRM Initial Comments at 3 (''[A]pplying 50% of the debt to the erroneous party, who may be earning only a few dollars, will result in never ending debt for the erroneously paid party. We realize the USCO is concerned with the financial impact to the incorrect party, but it is at the expense of the entitled party.'').

[346] *See, e.g.,* CMPA NPRM Initial Comments at 1–2; NMPA NPRM Initial Comments at 4–6; NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 1–2 & n.2; NMPA *Ex Parte* Letter at 2 (Jan. 24, 2024); Warner Chappell Music SNPRM Reply Comments at 2–3.

adjustment would be an impermissible ''retroactive'' rule and may also be an unconstitutional ''taking.'' [347]

Regarding songwriters' and publishers' ability to engage in a corrective adjustment, commenters stated that portions of these royalties would have already been distributed to songwriters and would be difficult to recover.[348] Warner Chappell added that ''retroactive debits would wreak havoc where songwriter contracts are royalty- or recoupment-based, as when recoupment has triggered the end of a contract's term, or when a publisher has paid a contractually-due advance or bonus because the writer received a certain sum of royalties,'' and that ''[p]ublishers, songwriters, and others who'd received such payments would also bear tax and accounting obligations on income 'wrongly' received and already spent.'' [349]

Commenters further suggested that it would also be administratively burdensome for the MLC to carry out a corrective adjustment.[350] The MLC requested that the Office ''take into consideration the impact of its rule on [its] regular royalty processing operations and timelines,'' which are ''orders of magnitude larger than the total sums that would be involved in corrective adjustments for statutory terminations.'' [351] The MLC suggested a ''more efficient'' solution that ''would avoid the problems associated with clawing back royalties from songwriters.'' [352] This ''alternative approach'' would involve the MLC providing information to the prior payee and proper payee regarding the royalties distributed to the prior payee for post-termination periods.[353] The parties would then voluntarily be able to make any corrective royalty adjustments themselves (a ''voluntary adjustment'').[354] The MLC also said that a ''claw-back and redistribution approach'' could be used in combination with its proposal to incentivize compliance ''if a significant period elapsed without resolution by the parties.'' [355]

3. The Final Rule's Approach

Having considered all comments on this issue, the Office is adopting a final rule with an approach to corrective royalty adjustments that is similar to the SNPRM's proposal for the reasons stated in the NPRM and SNPRM, but with certain modifications, as discussed below. Other corrective adjustment provisions proposed in the SNPRM are included in the final rule, with minor conforming adjustments.

While the Office appreciates concerns regarding potential administrative burdens associated with a corrective adjustment, we continue to ''disagree with commenters suggesting that there should not be *any* corrective adjustment because of the potential burdens involved.'' [356] As the Office previously explained, ''[c]orrective royalty adjustments are common in the music industry and explicitly contemplated by the statute and the Office's existing regulations.'' [357]

The Office notes that the MLC already has guidelines to address the circumstances when it needs to make royalty distribution adjustments, including, for example:

• when there was ''an incorrect match of a sound recording to a [musical work] registration'';

• where there was an under- or overpayment ''attributable to a clerical or administrative error''; or

• in ''other situations that The MLC may determine from time to time in its discretion.'' [358]

These guidelines allow the MLC to adjust royalty distributions for uses going back to the first date the blanket license was available (*i.e.,* January 1, 2021).[359]

Moreover, the Office must consider not only the burdens to the MLC and publishers, but also fairness to terminating songwriters, and the comparative efficiency associated with the corrective adjustment. Without a corrective adjustment, proper payees could be forced to bring their terminated publishers to court to unwind the MLC's erroneous payments. This would lead to a multiplicity of lawsuits and associated unnecessary costs incurred by songwriters and publishers. It may also be illusory, as songwriters who were proper payees are less likely to sue to recover royalties that, in total, may be less than the cost of hiring an attorney to litigate the matter.[360]

i. Voluntary Adjustments

The first modification adopts the MLC's suggestion to build in a voluntary process to reduce potential burdens on the parties or the MLC associated with any corrective adjustment. The initial step in this process is for the MLC to notify the relevant parties (*i.e.,* the prior payee, proper payee, and any successors in interest) of the overpayment within 30 days of the final rule's effective date. Such notice must include: (1) a summary of the Office's conclusions regarding the Exception; (2) a description of the corrective adjustment process laid out in the final rule, including the option for the parties to engage in a voluntary adjustment in lieu of an MLC-administered adjustment; (3) for each musical work at issue, the amounts that were erroneously paid to the prior payee that are subject to being adjusted; and (4) the respective contact information for the parties contained in the MLC's records. With this information, the parties will have the opportunity to make the corrective adjustment themselves.

The parties would notify the MLC within another 30 days regarding whether the parties are engaging in a voluntary adjustment, were unable to reach such an agreement, or are still attempting to do so. If the parties engaged in a voluntary adjustment, the MLC will not make any adjustments in connection with the overpayment, but will retain records related to the voluntary adjustment. If the parties do not elect the voluntary adjustment option or if the MLC does not receive the required notice from the parties, the MLC will commence implementing the adjustment process within 30 days of

[347] NMPA NPRM Initial Comments at 2, 4–6; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 2 n.2.

[348] CMPA NPRM Initial Comments at 2; Warner Chappell Music SNPRM Reply Comments at 2–3; *see also* NMPA NPRM Initial Comments at 5; MLC *Ex Parte* Letter at 3 (Mar. 22, 2024).

[349] Warner Chappell Music SNPRM Reply Comments at 2–3.

[350] NMPA NPRM Initial Comments at 5 (noting that a corrective adjustment ''would create a significant administrative and financial burden on the MLC, as well as on publishers or other recipients of these royalty payments who likely already distributed some portion of those amounts pursuant to their contractual obligations with their songwriters''); CMPA NPRM Initial Comments at 2 (explaining that ''retroactive accounting might cause an undue hardship on The MLC as it would be well above its normal workload''); *see also* MLC *Ex Parte* Letter at 3–4 (Feb. 21, 2024); MLC *Ex Parte* Letter at 3–5 (Mar. 22, 2024).

[351] MLC SNPRM Reply Comments at 2–3.

[352] MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

[353] *Id.*

[354] *Id.* at 4–5.

[355] *Id.* at 5.

[356] 88 FR 65908, 65920–21.

[357] *Id.* at 65921; *see* MAC et al. SNPRM Initial Comments at 3–4; Howard SNPRM Initial Comments at 2 (agreeing with Office's position).

[358] The MLC, *Guidelines for Adjustments* secs. 2.1, 3.4 (Jan. 2022), *https://f.hubspotusercontent40.net/hubfs/8718396/files/2022-02/MLC%20Guidelines%20for%20Adjustments.pdf.*

[359] *Id.* at sec. 3.4.

[360] *See* U.S. Copyright Office, *Copyright Small Claims* 1 (2013) (noting that ''federal litigation is expensive and time-consuming, and therefore out of reach for many copyright owners'' and that the problems of enforcement of modest claims ''appears to be especially acute for individual creators''); *id.* at 118 (noting that songwriters would benefit from an alternative to Federal court to enforce the Copyright Act's termination provisions (citing statement of Charles Sanders, SGA)); *see also, e.g.,* Howard SNPRM Initial Comments at 6 (noting perceived power and sophistication imbalances between authors and publishers).

the end of the voluntary adjustment period. If the parties notify the MLC that they are continuing efforts to reach an agreement, the MLC will not commence the corrective adjustment process unless and until it receives a subsequent notice that the parties were unable to reach an agreement. If such a subsequent notice is received more than 18 months after the effective date of the rule, the MLC may, but is not required to, adjust the overpayment.

The Office believes that it is reasonable to give the prior and proper payees an opportunity to engage in the adjustment process themselves, but that option would be ineffective without also requiring the MLC to implement a corrective adjustment as an alternative. Further, even if one party was willing to engage in a voluntary adjustment, the other party may wish to have the MLC implement the corrective adjustment for tax or accounting purposes.[361]

While parties should jointly be able to determine the method they want to pursue to complete the adjustment, the Office does not believe that decision should be unbounded in time. Parties must decide whether the MLC is going to engage in a corrective adjustment (and notify the MLC of that decision) within 18 months of this rule's effective date. After that time, the MLC will not be required to initiate the corrective adjustment process.[362] The Office believes that the MLC should not be required to undertake the corrective adjustment indefinitely.

Finally, the Office is not adopting Promopub's repayment proposals for the corrective adjustment, as it wishes to first monitor how the adjustment process is working in practice, before making any significant amendments. We are, however, incorporating in the final rule Promopub's requested clarification that the MLC must provide royalty statements to proper payees when it makes a corrective adjustment.[363]

ii. Limiting Recovery of the Overpayment to the Publisher's Share

The Office did not receive significant comments directly responding to ClearBox Rights' proposal that the MLC may only recover the publisher's share of the overpayment to make the corrective adjustment.[364] Consequently, that provision is not included as a *requirement* in the final rule. The Office, however, sees no reason why songwriters, publishers, and the MLC could not agree to this type of agreement as a type of voluntary solution. Nothing in this rule prohibits the prior payee, proper payee, and MLC from all agreeing to engage in a corrective adjustment that only recovers and distributes the publisher's share of the overpayment.

The Office notes that the MLC stated that the rule envisioned a process that ''requires a songwriter to pay back royalties to the pre-termination publisher'' before that publisher returns funds to the MLC.[365] The MLC claimed that this could be problematic for songwriters as ''the process could lead to songwriters having to use funds to temporarily pay back royalties paid to them years ago, and then wait several months or more to get those funds back.'' [366] It also noted that it does not ''know the terms of the private contracts between the parties or how much was paid to the songwriter out of the total initial distribution,'' [367] making it problematic to recover only the publisher's share in any corrective adjustment procedure.

The MLC's comments imply that the rule *requires* songwriters (or other downstream royalty payees) to repay the prior payee before that prior payee would need to remit royalties to the MLC for further processing and distribution to the proper payee. Such an initial songwriter-repayment procedure, however, was not a requirement of the proposed rule and is not included in the final rule.

iii. Voluntary Licenses

The final rule does not require the MLC to make a corrective adjustment with respect to any amounts deducted, or held pending deduction, in connection with voluntary licenses. As discussed in Part III.A.3. above, the Office believes that voluntary licenses should be treated differently than section 115 statutory licenses.

3. The Final Rule Is Not an Impermissible Retroactive Rule or an Unconstitutional Taking

As an initial matter, the Office recognizes the unusual circumstances that led to this rule, namely that a government-designated collective adopted and distributed royalties pursuant to a policy that embodied a legal interpretation of the Exception, in conflict with the Office's prior guidance. While the MLC may have intended to ensure ''prompt and uninterrupted royalty payments'' with its actions,[368] it is the Office (and not the MLC) that has authority to interpret the Copyright Act, including with respect to the Act's termination provisions in the context of the blanket license.[369] As discussed at length above, the Office finds that the MLC's Termination Policy was based on an unreasonable reading of the Act, specifically regarding its understanding of the Exception. The final rule's corrective adjustment fixes that legal error.[370]

With that background, the Office now turns to the NMPA's objection that promulgating the proposed corrective adjustment provision is outside the Office's authority. First, NMPA suggested that this provision ''may arguably be an unconstitutional taking in violation of the Fifth Amendment,'' as ''it effectively takes property interests that pre-termination copyright owners may have had and transfers them to the post-termination copyright owner.'' [371] Second, it stated that a rule that required the MLC to make an

[361] *See* Warner Chappell Music SNPRM Reply Comments at 2–3.

[362] As the final rule makes clear, the MLC will discontinue any recovery efforts if it is notified that the overpayment was recovered outside of the corrective adjustment process (*e.g.,* where there was a subsequent agreement or settlement) or a legal proceeding was commenced seeking recovery of the overpayment.

[363] Promopub SNPRM Initial Comments at 3.

[364] 88 FR 65908, 65921. *But see* MAC et al. SNPRM Initial at 3–4 (stating that '' 'where a publisher has already distributed a portion of the applicable royalties to its songwriters,' we believe the Office's proposal regarding recovery of overpayment by the MLC is the proper course'' (quoting 88 FR 65908, 65921)).

[365] MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

[366] *Id.*

[367] *Id.*

[368] 87 FR 64405, 64407 (noting that ''[i]n meetings with the Office, the MLC described its policy as a middle ground and explained that the policy was intended, in part, to avoid circumstances where parties' disputes could cause blanket license royalty payments to be held, pending resolution of the dispute, to the disadvantage of both songwriters and publishers'').

[369] While the Office acknowledges that, in the notice of proposed rulemaking in the earlier rulemaking proceeding about DMP reporting obligations, we suggested that the ''MLC's interpretation of the [Exception] seems at least colorable,'' the Office's intention was to ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments,'' 5 U.S.C. 553(c), without prejudging the rulemaking's outcome, especially as termination was ''one of the more complicated [topics] in [that earlier] proceeding'' and parties had not provided much commentary on the MLC's theory. 85 FR 22518, 22532 n.210, 22533.

[370] *See, e.g., Farmers Tel. Co.* v. *FCC,* 184 F.3d 1241, 1250 (10th Cir. 1999) (holding that when the FCC established an organization to prepare and file access tariffs, whose board was comprised of industry participants, and that organization issued an interpretation of a regulation which was later overruled by the agency, the agency's interpretation did not implicate the prohibition on retroactive rulemaking, including because the organization had ''no authority to perform any adjudicatory or governmental functions'').

[371] NMPA NPRM Initial Comments at 12.

adjustment to previously distributed royalties would be an impermissibly ''retroactive'' rule because it would ''expressly undo royalty payments already made under the Blanket License pursuant to the MLC's [then-]current [Termination Policy].'' [372]

i. ''Takings'' Concerns

The Constitution's Takings Clause prohibits the government from ''depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.' '' [373] It is self-evident that, for there to be a taking, a party must possess (and then be deprived of) a vested property right.

That is not what the corrective adjustment does. It merely applies the law as it existed at the time the MLC made the royalty distributions at issue. As the Office's legal analysis in the NPRM, SNPRM, and Part III.A.1. above make clear, prior payees never had a vested property right to the post-termination royalties the MLC distributed to them. These royalties always belonged to the post-termination copyright owner. Because prior payees have no vested property right in the erroneous overpayments they received, recovering those amounts so they can be properly distributed in accordance with the law is not a ''taking'' within the meaning of the Takings Clause.[374]

ii. ''Retroactivity'' Concerns

The Office disagrees that the final rule's corrective adjustment process to remedy improper prior MLC distributions constitutes an impermissible retroactive rule. NMPA is correct that, generally, a ''statutory grant of legislative rulemaking authority will not . . . be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.'' [375] The Office is not, however, adopting a new retroactive rule regarding the effect of termination on section 115 statutory licenses. Instead, we are adopting a rule applying the law as it existed at the time that the improper royalty distributions were made, and implementing the law by requiring parties to act in accordance with their legal obligations.

Promulgating the corrective adjustment process is the most efficient, reasonable, and least burdensome, means of fixing the MLC's legal error. Far from establishing *new* obligations, the Office is merely enforcing *preexisting* obligations to ensure that parties who should have received the applicable payments from the start can obtain them.[376]

In promulgating this rule, the Office has considered any reasonable reliance interests and expectations of the prior payee and proper payee. We conclude that any disruption caused by the corrective adjustment process adopted in this rule is likely to be modest, and that any reliance interests or expectations are minimized by several factors. First, the MLC's interpretation of the law was in doubt no later than September 2020, when the Office warned that parties viewed its interpretation as being ''legally erroneous.'' [377] Second, as the SNPRM noted, ''[c]orrective royalty adjustments are common in the music industry and explicitly contemplated by the statute[,] the Office's existing regulations,'' and the MLC's own guidelines.[378] Third, the MLC only started distributing royalties in 2021, its Termination Policy reflects a September 2021 date,[379] and it was suspended in November 2022.[380] To the extent that the corrective adjustment is potentially burdensome to prior payees, as discussed in Part III.F.2. above, the Office has both weighed that burden against the proper payees' interests and taken steps to alleviate those burdens by adjusting the rule's regulatory language. We believe that the final rule's corrective adjustment provision embodies the most reasonable course of action, as it implements the law as it already existed, while accounting for various administrability concerns.

G. Effective Date and Compliance Deadline

As is typical for many rules enacted by the Office, this final rule is effective 30 days after being published in the **Federal Register**. However, because the Office agrees with the MLC that it will need more than 30 days to update its processes and systems before it can reasonably be expected to implement most of the final rule,[381] its compliance deadline is extended to the first distribution of royalties based on its first payee snapshot after the date that is 90 days after the rule is published in the **Federal Register**. This deadline is based on the timing requested by the MLC [382] and is consistent with the Office's practice of providing reasonable transition periods where MMA-related rules necessitate significant process changes and system updates and development.[383]

This later compliance deadline does not apply to four sections of the final rule: (1) the provision embodying the Office's legal conclusions about how the Exception operates in connection with blanket licenses; (2) the provision embodying the Office's legal conclusions about how the Exception operates in connection with individual download licenses; (3) the corrective royalty adjustment remedying the MLC's previous misapplication of the

[372] *Id.* at 5. NMPA also argued that directing the MLC to pay the copyright owner at the time of the use would ''impact all subsequent adjustments and accrued interest payments made based on usage not only prior to a valid termination, but also prior to any other type of ownership transfer.'' *Id.* This second point is discussed in depth in Part III.B. above.

[373] *Landgraf* v. *USI Film Prods.,* 511 U.S. 244, 266 (1994) (referencing U.S. Const. Amend. V).

[374] *See Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1027 (1992) (observing that, under a takings claim, compensation is not owed where the government is depriving a person of something that they were not entitled to in the first place).

[375] NMPA NPRM Initial Comments at 5, n.8 (quoting *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988)).

[376] Moreover, this rule does not alter any party's royalty entitlements. Although the Copyright Office is directing the MLC to adjust the amounts distributed to various entities, the MLC's distributions do not constitute a final determination of the amounts to which any entity is entitled.

[377] 87 FR 64405, 64407.

[378] 88 FR 65908, 65921.

[379] The original version of the MLC's Termination Policy has a September 2021 date, *The MLC, Notice and Dispute Policy: Statutory Terminations* (Sept. 2021), *https://www.themlc.com/hubfs/Marketing/website/Original.pdf,* while the current version has an August 2022 date, *The MLC, Notice and Dispute Policy: Statutory Terminations* (Aug. 2022), *https://www.themlc.com/hubfs/Marketing/website/MLC%20Statutory%20Terminations%20Policy%20v1.2.pdf.* The Office is not aware when the MLC started making distributions based on an erroneous view of the Exception.

[380] The MLC, *October Member Updates* (Nov. 1, 2022) (on file with the Office) (noting that ''The MLC is immediately suspending its [Termination] Policy pending the outcome of the rulemaking proceeding initiated by the U.S. Copyright Office'' and that it would be placing all royalties associated with work shares previously subject to that policy on hold ''effective with the first distribution of blanket license royalties related to October 2022'').

[381] *See* MLC *Ex Parte* Letter at 3–4 (Mar. 22, 2024) (''This estimated timeframe accounts for basic code development, testing phases, and the general integration of new processes into The MLC's end-to-end overlapping distribution cycle process. This estimate also recognizes that, particularly regarding the distribution of royalties from periods after the effective date, the rule as currently proposed requires The MLC to operationalize nuanced practices and processes including requirements that must be met before implementing a change, requirements for confirming receipt of appropriate notice of a change, and timelines for implementing a change (among others).'').

[382] *Id.* The Office does not believe the MLC needs the longer transition period it requested ''[i]f the final rule directs The MLC to distribute royalties to a pre-termination owner and/or a post-termination owner, depending on when corresponding usage occurred, regardless of which party is the current payee registered in The MLC database.'' *See id.* at 4. While that might be a possibility under the final rule going forward, it would appear to only arise in the context of adjustments, which the MLC is only required to make once annually. *See* 37 CFR 210.29(b)(2). Thus, the MLC has ample time to complete those particular updates.

[383] *See, e.g.,* 37 CFR 210.27(e)(2)(i), (e)(3)(ii), (e)(5).

Exception; and (4) the provision requiring the MLC to adopt notice requirements for non-termination-related payee changes.

The first two provisions are carved out because they state the accurate interpretation of the law with respect to the Exception and section 115 statutory licenses. Because the MLC has already suspended its Termination Policy and, to the best of the Office's knowledge, is not currently making distributions in a manner inconsistent with these provisions, it should not need any additional time to comply with the prohibitions they contain.

The second two provisions are carved out because those provisions have their own separate timing requirements written into the regulatory text. With respect to the corrective adjustment, the MLC is required to send and receive certain notices sooner than the general compliance deadline, which the Office believes is reasonable to require given the relatively low burden involved. Additionally, the rule requires the MLC to distribute amounts currently on hold sooner than the general compliance deadline because it did not explain why it needed more time for that particular action and the equities weigh in favor of terminating parties obtaining their royalties in a timely manner.

The Copyright Office may, upon the MLC's request, extend the compliance deadlines in our discretion by providing public notice through our website.[384]

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Final Regulations

For the reasons set forth in the preamble, the U.S. 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. Amend § 210.22 as follows:

■ a. Redesignate paragraphs (d), (e), (f), (g), (h), (i), and (j) as paragraphs (e), (g), (h), (i), (j), (n), and (p), respectively; and

■ b. Add new paragraphs (d) and (f) and paragraphs (k), (l), (m) and (o).

The additions read as follows:

§ 210.22 Definitions.

* * * * *

(d) The term *derivative works exception* means the limitations contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A).

* * * * *

(f) The term *historical unmatched royalties* means the accrued royalties transferred to the mechanical licensing collective by digital music providers pursuant to 17 U.S.C. 115(d)(10) and § 210.10.

* * * * *

(k) The term *matched historical royalties* means historical unmatched royalties attributable to a musical work (or share thereof) matched after being transferred to the mechanical licensing collective.

(l) The term *payee snapshot* means the royalty payee information in the mechanical licensing collective's records as of a particular date used for a particular monthly royalty distribution.

(m) The term *pre-termination copyright owner* means the owner of the relevant copyright immediately prior to:

(1) The effective date of termination for an effective termination under 17 U.S.C. 203 or 304; or

(2) The purported effective date of termination for a claimed, disputed, or invalid termination under 17 U.S.C. 203 or 304.

* * * * *

(o) The term *terminating party* means:

(1) A party entitled under 17 U.S.C. 203 or 304 to terminate a grant, who is seeking to terminate such a grant under such provisions;

(2) A party who has effectuated termination of a grant under 17 U.S.C. 203 or 304;

(3) A party to whom rights have reverted or are expected to revert pursuant to the effective termination of a grant under 17 U.S.C. 203 or 304; or

(4) A successor in interest to a party identified in paragraph (o)(1), (2), or (3) of this section (*e.g.,* a subsequent publisher or administrator).

* * * * *

■ 3. Amend § 210.27 by redesignating paragraph (g)(2)(ii) as paragraph (g)(2)(ii)(A) and adding paragraph (g)(2)(ii)(B).

The addition reads as follows:

§ 210.27 Reports of usage and payment for blanket licensees.

* * * * *

(g) * * *

(2) * * *

(ii)(A) * * *

(B) To the extent applicable to the mechanical licensing collective's efforts under paragraph (g)(2)(ii)(A) of this section:

(*1*) The derivative works exception does not apply to any individual download license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception.

(*2*) The derivative works exception does not apply to any voluntary license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception, unless and only to the extent that the mechanical licensing collective is directed otherwise pursuant to:

(*i*) The resolution of a dispute regarding the application of the derivative works exception to a particular voluntary license or its underlying grant of authority; or

(*ii*) A notice submitted under § 210.30(c)(1).

* * * * *

■ 4. Amend § 210.29 as follows:

■ a. In paragraph (a), remove ''reporting obligations'' and add in its place ''reporting and payment obligations'' and add two sentences at the end; and

■ b. Add paragraphs (b)(4), (j), and (k).

The additions read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) * * * This section also prescribes reporting and payment obligations of the mechanical licensing collective to copyright owners for the distribution of matched historical royalties. This section does not apply to distributions of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J).

(b) * * *

(4)(i)(A) The copyright owner of a musical work (or share thereof) as of the last day of a monthly reporting period in which such musical work is used pursuant to a blanket license is entitled to all royalty payments and other distributable amounts (*e.g.,* accrued interest), including any subsequent adjustments, for the uses of that musical work occurring during that monthly reporting period, unless such entitlement has been transferred to another individual or entity. As used in the previous sentence, the term *uses* means all covered activities engaged in under blanket licenses as reported by blanket licensees to the mechanical licensing collective.

(B)(*1*) For the purpose of making any distribution of royalties or other amounts (*e.g.,* accrued interest), as a matter of reasonable administrability, the mechanical licensing collective, in

[384] Any extensions will be reflected on the Copyright Office's website at *https://copyright.gov/rulemaking/mma-termination/.*

the absence of a dispute or investigation, shall treat the individual or entity identified in its records as of the date of the payee snapshot used by the mechanical licensing collective for the applicable distribution as legally authorized to receive such distribution, unless the mechanical licensing collective is notified otherwise.

(*2*) Nothing in paragraph (b)(4)(i)(B)(*1*) of this section shall be construed as absolving the mechanical licensing collective of its responsibility to engage in reasonable verification and antifraud efforts in connection with the registration and claiming of musical works (or shares thereof).

(*3*) No distribution made by the mechanical licensing collective shall alter or prejudice any party's legal entitlement to any of the distributed funds or such party's ability to collect such funds from someone other than the mechanical licensing collective if such funds were not distributed to such party by the mechanical licensing collective.

(*4*) Notwithstanding any other provision of this section, where the mechanical licensing collective distributes royalties to the wrong party and that error is caused by the actions of the mechanical licensing collective, the mechanical licensing collective shall promptly correct its error upon learning of it. For purposes of this paragraph (b)(4)(i)(B)(*4*), an error is not caused by the mechanical licensing collective where it acts in accordance with paragraph (b)(4)(i)(B)(*1*) of this section or otherwise reasonably relies on information provided to it by others that turns out to be inaccurate.

(C) The derivative works exception does not apply to any blanket license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to a blanket license based on the derivative works exception.

(ii) Subject to the requirements of and except to the extent permitted by § 210.30, the mechanical licensing collective shall not distribute royalties in a manner inconsistent with paragraph (b)(4)(i) of this section.

* * * * *

(j) *Matched historical royalties.* The mechanical licensing collective shall report and distribute matched historical royalties and related accrued interest and adjustments in the same manner and subject to the same requirements that apply to the reporting and distribution of royalties for musical works licensed under the blanket license, as if such matched historical royalties were royalties payable for musical works licensed under the blanket license, but subject to the following clarifications:

(1) Matched historical royalties shall be treated as accrued royalties distributable under paragraph (b)(1)(ii) of this section and shall be separately identified in applicable royalty statements.

(2) With respect to the requirements of paragraph (b)(2) of this section, royalty distributions based on adjustments to matched historical royalties reflected in cumulative statements of account delivered to the mechanical licensing collective by digital music providers pursuant to § 210.10(b)(3)(i) shall be made by the mechanical licensing collective at least once annually, upon submission of one or more statements of adjustment delivered to the mechanical licensing collective by digital music providers pursuant to § 210.10(k), to the extent any such statement of adjustment is delivered to the mechanical licensing collective during such annual period.

(k) *Corrective royalty adjustment.* Any distribution under paragraph (b) of this section (including any distribution of matched historical royalties, or related accrued interest or adjustments) or deduction under § 210.27(g)(2)(ii) (other than a deduction related to a voluntary license) made by the mechanical licensing collective before August 8, 2024 and based on an application of the derivative works exception that is inconsistent with paragraph (b)(4)(i)(C) of this section (including as such paragraph applies to matched historical royalties through paragraph (j) of this section) or § 210.27(g)(2)(ii)(B)(*1*), as each of those provisions exist on August 8, 2024, shall be subject to adjustment by the mechanical licensing collective. Any amounts held by the mechanical licensing collective in connection with such application of the derivative works exception as of August 8, 2024 shall also be subject to adjustment. The adjustment process shall be as follows:

(1)(i) To the extent required by this paragraph (k), where a royalty payee (the *prior payee*) received amounts from the mechanical licensing collective that such prior payee would not have received had the distribution been made in a manner consistent with the application of the derivative works exception embodied in paragraph (b)(4)(i)(C) of this section, the mechanical licensing collective shall, except as otherwise provided for by this paragraph (k), recover such overpayment from such prior payee and shall distribute it to the royalty payee (the *proper payee*) who is entitled to such funds under the application of the derivative works exception embodied in paragraph (b)(4)(i)(C) of this section.

(ii) The mechanical licensing collective shall notify each prior payee and proper payee (collectively, the *parties*) of the overpayment no later than August 8, 2024. Such notice shall contain at least the following information:

(A) A summary of the Copyright Office's conclusions embodied in paragraph (b)(4)(i)(C) of this section and § 210.27(g)(2)(ii)(B);

(B) A description of the adjustment process detailed in this paragraph (k), including the option for the parties to reach a voluntary agreement concerning the overpayment;

(C) For each musical work (or share thereof) at issue, the amount of the overpayment; and

(D) The respective contact information for each of the parties contained in the mechanical licensing collective's records.

(iii) After receiving such notice, the parties may attempt to reach a voluntary agreement with respect to the overpayment. Before September 9, 2024, the parties shall notify the mechanical licensing collective that:

(A) The parties reached a voluntary agreement with respect to the overpayment;

(B) The parties are in the process of attempting to reach a voluntary agreement with respect to the overpayment; or

(C) The parties did not reach a voluntary agreement with respect to the overpayment.

(iv) The mechanical licensing collective shall act as follows in connection with such notice:

(A) If the mechanical licensing collective receives notice that the parties reached a voluntary agreement with respect to the overpayment, it shall not make any adjustment in connection with the overpayment.

(B) If the mechanical licensing collective receives notice that the parties are in the process of attempting to reach a voluntary agreement with respect to the overpayment, it shall not take any action unless and until it receives a subsequent notice. If the subsequent notice states that the parties reached a voluntary agreement with respect to the overpayment, the mechanical licensing collective shall not make any adjustment in connection with the overpayment. If the subsequent notice states that the parties did not reach a voluntary agreement with respect to the overpayment, the mechanical licensing collective shall commence the adjustment process described in paragraph (k)(1)(v) of this section. If such a subsequent notice is received after August 8, 2024, the mechanical licensing collective shall not be required to make any adjustment in connection with the overpayment.

(C) If the mechanical licensing collective receives notice that the parties did not reach a voluntary agreement with respect to the overpayment, it shall commence the adjustment process described in paragraph (k)(1)(v) of this section.

(D) If the mechanical licensing collective does not receive a timely notice under paragraph (k)(1)(iii) of this section, it shall commence the adjustment process described in paragraph (k)(1)(v) of this section.

(v) Where, pursuant to paragraph (k)(1)(iv) of this section, the mechanical licensing collective is required to commence an adjustment process with respect to the overpayment, the following requirements shall apply:

(A) Not later than October 7, 2024 or 30 calendar days after receiving an applicable subsequent notice under paragraph (k)(1)(iv)(B) of this section, whichever is later, the mechanical licensing collective shall notify the prior payee that the adjustment process has commenced and request that the prior payee return the overpayment no later than November 6, 2024 or 30 calendar days after receiving the notice, whichever is later. Any returned amounts shall be distributed, accompanied by an appropriate royalty statement, to the proper payee with the next regular monthly royalty distribution to occur at least 30 calendar days after any such amounts are returned.

(B) If such overpayment is not returned in full in accordance with paragraph (k)(1)(v)(A) of this section, then beginning with the first distribution of royalties to occur at least 30 calendar days after the deadline specified in that paragraph, 50 percent of any and all accrued royalties and other distributable amounts (*e.g.,* accrued interest) that would otherwise be payable to the prior payee from the mechanical licensing collective each month, regardless of the associated work (or share), shall instead be distributed, accompanied by an appropriate royalty statement, to the proper payee until such time as the full amount of the overpayment is recovered. Where the amount to be recovered under this paragraph during a monthly royalty distribution constitutes less than 50 percent of the applicable accrued royalties and other distributable amounts, the mechanical licensing collective shall recover the full amount of the overpayment. Where more than one proper payee is entitled to a corrective royalty adjustment from the same prior payee for different musical works, any amounts recovered and distributed under this paragraph (k)(1)(v)(B) shall be apportioned equally among such proper payees.

(2) Where, as of August 8, 2024, the mechanical licensing collective is holding amounts that would constitute an overpayment under paragraph (k)(1) of this section if such amounts had been distributed to the prior payee, such amounts shall be distributed, accompanied by an appropriate royalty statement, to the proper payee no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after August 8, 2024.

(3) The recovery and distribution processes described in paragraphs (k)(1) and (2) of this section shall also apply, as applicable, to amounts deducted, or held pending deduction, by the mechanical licensing collective under § 210.27(g)(2)(ii), other than with respect to amounts relating to voluntary licenses, where the proper payee is not the payee to whom the relevant usage was originally matched. For purposes of this paragraph (k)(3), the payee to whom the relevant usage was originally matched shall constitute the *prior payee* as that term is used elsewhere in this paragraph (k).

(4) Nothing in this paragraph (k) shall be construed as prejudicing the proper payee's right or ability to otherwise recover such overpayment from the prior payee outside of the adjustment process detailed in this paragraph (k). Where the overpayment is recovered outside of such adjustment process or a legal proceeding is commenced seeking recovery of the overpayment, the mechanical licensing collective must be notified. Upon receipt of such notice, the mechanical licensing collective shall discontinue any recovery efforts engaged in under this paragraph (k).

(5) Notwithstanding the adjustment process detailed in this paragraph (k), the parties and the mechanical licensing collective may voluntarily agree to an alternative adjustment process.

■ 5. Revise § 210.30 to read as follows:

§ 210.30 Transfers of copyright ownership, royalty payee changes, and related disputes.

(a) *General.* This section prescribes rules governing the mechanical licensing collective's administration of transfers of copyright ownership, other royalty payee changes, and related disputes.

(b) *Requirements for the mechanical licensing collective to implement a change.* The mechanical licensing collective shall not take any action to implement or give effect to any transfer of copyright ownership (including a transfer resulting from an effective termination under 17 U.S.C. 203 or 304) or other change to a royalty payee, unless the requirements of paragraph (c) of this section are satisfied or the mechanical licensing collective is acting in connection with the resolution of a dispute. Where the requirements of paragraph (c) of this section are satisfied, the mechanical licensing collective shall implement and give effect to such transfer or other change in accordance with paragraph (d) of this section.

(c) *Notices of change.* The mechanical licensing collective must be appropriately notified in writing with respect to any transfer or other change described in paragraph (b) of this section. Subject to the further requirements of this paragraph (c), such notice must comply with any reasonable formatting and submission requirements that the mechanical licensing collective establishes and makes publicly available on its website. No fee may be charged for submitting such a notice. Upon submitting such a notice, or any additional information related to such notice, the submitter shall be provided with a prompt response from the mechanical licensing collective confirming receipt of the notice, or any additional information related to such notice, and the date of receipt.

(1)(i)(A) Subject to paragraph (c)(1)(ii) of this section, for any transfer or other payee change not addressed by paragraph (c)(2) of this section, the mechanical licensing collective shall be notified of such transfer or payee change in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(B) If such requirements are not publicly available on the mechanical licensing collective's website as of July 9, 2024, the mechanical licensing collective shall adopt such requirements and make them available as soon as reasonably practicable, but no later than September 9, 2024, unless the Copyright Office allows for an extension in its discretion. The mechanical licensing collective shall make such requirements publicly available on its website at least 30 calendar days before such requirements become effective.

(C) The mechanical licensing collective shall make any amendment to such requirements publicly available on its website at least 30 calendar days before such amendment becomes effective, unless the mechanical licensing collective can articulate good cause for not providing such advanced notice. In no case shall an amendment be effective before being published on the mechanical licensing collective's website.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, any notice seeking to change the royalty payee from a terminating party (or its designee) to a corresponding pre-termination copyright owner (or its designee) is subject to the following additional requirements:

(A) The notice must be signed after the effective date of termination.

(B) The notice must set forth in plain language an acknowledgement that the requested action alters the royalty payee from that established by § 210.29(b)(4)(i).

(2) Specific requirements for notices about transfers of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 are as follows:

(i) The required notice shall include all of the following information:

(A) A true, correct, complete, and legible copy of the signed and as-served notice of termination submitted to the Copyright Office for recordation pursuant to § 201.10.

(B) A true, correct, complete, and legible copy of the statement of service submitted to the Copyright Office for recordation pursuant to § 201.10, if one was submitted.

(C) Either:

(*1*) Proof, as to a particular musical work, that the notice of termination was recorded in the Copyright Office before the effective date of termination. Where the notice of termination identifies more than one musical work, each musical work shall be treated independently; or

(*2*) If the Copyright Office has not yet recorded the notice of termination, proof, as to a particular musical work, that the notice of termination was submitted to the Copyright Office for recordation before the effective date of termination, provided that proof, as to such musical work, that the notice of termination was recorded in the Copyright Office before the effective date of termination is delivered to the mechanical licensing collective at a later date. Where the notice of termination identifies more than one musical work, each musical work shall be treated independently.

(D) The terminating party, identified by name and any known and appropriate unique identifiers, appropriate contact information for the terminating party or their administrator or other representative, and, if the terminating party is not already receiving royalty distributions from the mechanical licensing collective, any additional information that is necessary for the terminating party to receive royalty distributions from the mechanical licensing collective.

(ii) With respect to the information required by paragraphs (c)(2)(i)(A) through (C) of this section, providing an official Copyright Office certification for any such information shall not be required. If the mechanical licensing collective has good cause to doubt the authenticity of any such information, the mechanical licensing collective shall either seek verification from the Copyright Office or request that such verification be provided to the mechanical licensing collective by the submitter.

(iii) Where the information required by paragraph (c)(2)(i) of this section is insufficient to enable the mechanical licensing collective to implement and give effect to the termination with respect to a particular musical work, the mechanical licensing collective shall promptly correspond with the terminating party and the pre-termination copyright owner (or their respective representatives) to attempt to obtain the minimum necessary information.

(iv) The required notice shall be submitted and signed by either the terminating party or the pre-termination copyright owner (or their respective duly authorized representatives). Such signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that they have appropriate authority to submit the notice to the mechanical licensing collective and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith. If the notice is submitted by the terminating party, the following additional steps shall be required:

(A) The mechanical licensing collective shall notify the pre-termination copyright owner about the terminating party's notice within 15 calendar days of receiving either the notice or the last piece of information necessary for the mechanical licensing collective to implement the change as to a particular musical work, whichever is later, and shall contemporaneously alert the terminating party that such notice was sent to the pre-termination copyright owner.

(B) If the pre-termination copyright owner does not initiate a dispute with the mechanical licensing collective regarding the termination, in accordance with paragraph (e) of this section, within 30 calendar days of receiving such notice, the mechanical licensing collective shall implement and give effect to the transfer of copyright ownership resulting from the termination, in accordance with paragraph (d) of this section. Nothing in this paragraph (c)(2)(iv)(B) shall prevent the pre-termination copyright owner from disputing the termination with the mechanical licensing collective at a later date or challenging the termination in a legal proceeding.

(v) Where there is more than one terminating party or pre-termination copyright owner, the required notice shall include a satisfactory identification of any applicable ownership shares for each musical work subject to the termination. Where there is more than one terminating party, the notice shall be effective only as to those terminating parties whose information is provided in accordance with paragraph (c)(2)(i)(D) of this section. Where there is more than one terminating party, a notice that is signed and certified by any one terminating party in accordance with paragraph (c)(2)(iv) of this section is sufficient as to all terminating parties.

(vi)(A) A notice submitted to the mechanical licensing collective pursuant to this paragraph (c)(2) may be withdrawn in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(B) A notice submitted to the mechanical licensing collective pursuant to this paragraph (c)(2) may be converted into a notice under paragraph (c)(1) of this section in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(C) Such requirements shall comply with the requirements of paragraphs (c)(1)(i)(B) and (C) of this section.

(d) *Implementation of a change.* Upon receiving a notice that complies with the requirements of paragraph (c) of this section, the mechanical licensing collective shall implement and give effect to the identified transfer or other payee change on a per work basis as follows:

(1)(i) Except as provided by paragraph (d)(1)(ii) of this section, where the mechanical licensing collective receives the notice before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties for such reporting period.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, where the mechanical licensing collective receives the notice at least 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties for such reporting period.

(2)(i) Except as provided by paragraph (d)(2)(ii) of this section, where the mechanical licensing collective receives the notice on or after the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the mechanical licensing collective receives the notice.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, where the mechanical licensing collective receives the notice less than 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the pre-termination copyright owner's deadline to dispute under paragraph (c)(2)(iv)(B) of this section.

(3) Where additional information related to the notice is required to enable the mechanical licensing collective to implement and give effect to the change, and such information is received after receipt of the notice, the timing requirements described in paragraphs (d)(1) and (2) of this section shall be based on the date that the last piece of necessary information is received by the mechanical licensing collective.

(4) Where the change is effective as to one or more monthly reporting periods for which the mechanical licensing collective distributed royalties before implementing and giving effect to the change, the mechanical licensing collective may, but is not required to, make a corrective royalty adjustment if the notice requests one.

(5) If the mechanical licensing collective does not implement and give effect to the change in accordance with the deadlines prescribed by paragraphs (d)(1) through (3) of this section, the mechanical licensing collective shall implement and give effect to the change as soon as reasonably practicable, provided that the change is implemented and given effect by the mechanical licensing collective no later than the next regular monthly royalty distribution to occur either after the implementation deadline that originally applied under paragraphs (d)(1) through (3) of this section, as applicable, or at least 30 calendar days after the date that the mechanical licensing collective learns that the change was not implemented on time, whichever is later. In such cases, the mechanical licensing collective shall implement and give effect to the change as of the implementation deadline that originally applied under paragraphs (d)(1) through (3) of this section, as applicable, including by making any necessary corrective royalty adjustments.

(6) No action or inaction by the mechanical licensing collective with respect to implementing and giving effect to a transfer or other payee change shall alter or prejudice any party's rights to royalties pursuant to such change or such party's right to collect such royalties from someone other than the mechanical licensing collective if such royalties were not distributed to such party by the mechanical licensing collective.

(7) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted under paragraph (c)(2) of this section, and the notice is accompanied by proof that the notice of termination was submitted to the Copyright Office for recordation, but the notice is not accompanied by proof that it was recorded in the Copyright Office before the effective date of termination, the mechanical licensing collective shall act as follows:

(i) Upon subsequent receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination, the mechanical licensing collective shall treat the proof of recordation as a type of additional information under paragraph (d)(3) of this section. The mechanical licensing collective shall not implement or give effect to any such termination unless and until such proof is received.

(ii) Until receipt of the proof described in paragraph (d)(7)(ii)(B) or (C) of this section, as the case may be, and subject to paragraph (d)(7)(ii)(D) of this section the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination as follows:

(A) The mechanical licensing collective shall commence holding such amount no later than the implementation deadline that would apply under paragraphs (d)(1) through (3) of this section, as applicable, if proof of recordation had been provided with the notice.

(B) After receiving proof that the notice of termination was recorded in the Copyright Office before the effective date of termination is received, the mechanical licensing collective shall implement and give effect to the termination as provided by paragraphs (d)(1) through (5) and (d)(7)(i) of this section, as applicable.

(C) After receiving proof that the Copyright Office refused to record the notice of termination, the recordation submission was withdrawn, or the notice of termination was recorded on or after the effective date of termination, the mechanical licensing collective shall release the held funds to the pre-termination copyright owner.

(D) If the mechanical licensing collective does not receive the proof described in either paragraph (d)(7)(ii)(B) or (C) of this section within 6 months after the mechanical licensing collective commences holding applicable accrued royalties and accrued interest, the mechanical licensing collective shall request that the terminating party provide an update about the status of the relevant recordation submission. If the submission remains pending at that time, the mechanical licensing collective may continue to request periodic updates from the terminating party in its discretion. Upon receiving the proof described in either paragraph (d)(7)(ii)(B) or (C), the mechanical licensing collective shall act in accordance with paragraph (d)(7)(ii)(B) or (C), as the case may be.

(iii) Where a notice of termination identifies more than one musical work, whether the notice is timely recorded in the Copyright Office shall be determined on a per work basis with respect to each musical work identified in the notice.

(e) *Termination disputes.* The following requirements shall apply to any dispute initiated with the mechanical licensing collective regarding a termination under 17 U.S.C. 203 or 304:

(1) Such a dispute must be with regard to the validity of the termination or the application of the derivative works exception to a particular voluntary license or its underlying grant of authority.

(2) Only a pre-termination copyright owner (or its representative) may initiate such a dispute.

(3)(i) If a pre-termination copyright owner (or its representative) initiates such a dispute and delivers the information required to substantiate the dispute to the mechanical licensing collective under paragraph (e)(4) of this section, the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending resolution of the dispute.

(ii) With respect to any dispute concerning the application of the derivative works exception to a particular voluntary license or its underlying grant of authority:

(A) The mechanical licensing collective shall, as needed and on an ongoing basis, invoice any applicable digital music provider for the royalties associated with the dispute.

(B) The mechanical licensing collective shall hold such royalties in the same manner and at the same interest rate as any other funds held pursuant to 17 U.S.C. 115(d)(3)(H)(ii).

(C) Where the resolution of the dispute results in payment being made by the mechanical licensing collective pursuant to a blanket license, the payment must include any accrued interest. Where the resolution of the dispute results in a digital music provider paying a voluntary licensor, the mechanical licensing collective must promptly return the held amount, including any accrued interest, to the digital music provider accompanied by notice that the dispute has been resolved in such manner.

(4) The minimum information that must be delivered to the mechanical licensing collective to substantiate a termination-related dispute shall consist of the following:

(i) A cognizable explanation of the grounds for the dispute, articulated with specificity.

(ii) Documentation sufficient to support the grounds for the dispute, which shall consist of the following:

(A) A true, correct, complete, and legible copy of each grant in dispute.

(B) A true, correct, complete, and legible copy of any other agreement or document necessary to support the grounds for the dispute.

(C) Such other documentation or substantiating information as the mechanical licensing collective may reasonably require pursuant to a dispute policy adopted under 17 U.S.C. 115(d)(3)(K).

(iii) A satisfactory identification of each musical work in dispute.

(iv) A certification that the submitter has appropriate authority to initiate the dispute with the mechanical licensing collective and that all information submitted in connection with the dispute is true, accurate, and complete to the best of the submitter's knowledge, information, and belief, and is provided in good faith.

(v) The following additional information if the dispute concerns the application of the derivative works exception to a particular voluntary license or its underlying grant of authority:

(A) A true, correct, complete, and legible copy of each voluntary license at issue.

(B) A satisfactory identification of each relevant sound recording that constitutes a derivative work within the meaning of 17 U.S.C. 101 that was prepared pursuant to appropriate authority.

(C) The date of preparation for each such sound recording, which must be before the effective date of termination.

(5) Notwithstanding anything to the contrary that may be contained in § 210.34, any and all documentation provided to the mechanical licensing collective pursuant to paragraph (e)(4) of this section shall be disclosed to all parties to the dispute. If a party to the dispute is not a party or successor to a party to an otherwise confidential document, such disclosure shall be subject to an appropriate written confidentiality agreement.

(6) Any dispute initiated with the mechanical licensing collective under this paragraph (e) shall be limited to those musical works identified pursuant to paragraph (e)(4)(iii) of this section. The existence of such a dispute shall not affect the implementation of a change with respect to any other musical work identified in the same notice of change and that is not subject to a dispute.

■ 6. Amend § 210.34 as follows:

■ a. In paragraph (c)(5), remove ''to paragraph (c)(4) of'' and add in its place ''to paragraph (c)(4) or (6) of''; and

■ b. Add paragraph (c)(6).

The addition reads as follows:

§ 210.34 Treatment of confidential and other sensitive information.

* * * * *

(c) * * *

(6) Notwithstanding paragraph (c)(1) of this section, where the mechanical licensing collective places any amount on hold pursuant to a dispute initiated under § 210.30(e), the mechanical licensing collective shall promptly disclose the total amount held for each disputed work (or share thereof) to the parties to the dispute, which shall include an identification of the approximate amount of royalties expected to have been distributed for each disputed work (or share thereof) in the first monthly distribution to occur after the initiation of the hold. Upon the written request of any party to the dispute, the mechanical licensing collective shall provide an update about the amount held to all parties to the dispute within a reasonable period of time, except that the mechanical licensing collective is not required to provide such an update more frequently than once every three months.

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Dated: June 25, 2024.

Suzanne Wilson,

General Counsel and Associate Register of Copyrights.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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