

# **The MLC**

## **Notice and Dispute Policy: Statutory Terminations**

**September 2021**

## Table of Contents

1. Overview .....	3
2. Scope of Policy .....	3
3. Definitions .....	4
4. Notice Process .....	7
5. Substantiating Documentation .....	7
6. Dispute Assessment Process.....	8
7. Disposition of Termination Claims.....	9
8. Impact of Legal Proceedings .....	10
EXHIBIT A .....	11

## **1. Overview**

1.1 This Policy outlines the processes the Mechanical Licensing Collective (“The MLC”) uses to (a) analyze Termination Claims, and (b) determine how to administer Royalties for Works/Shares that are subject to Termination Claims or Termination Disputes. All capitalized terms are as defined below.

1.2 As a matter of Policy, The MLC will not judge or resolve Termination Disputes, or participate in the substantive resolution of Termination Disputes. The MLC will, however, rely on its view of the current state of the law and the sufficiency of Substantiating Documentation to determine whether a legitimate dispute exists. The MLC encourages Terminating Claimants and Existing Claimants to engage in dispute resolution processes and may provide information on outside dispute resolution resources.

## **2. Scope of Policy**

2.1 This Policy applies to Termination Claims and Termination Disputes.

2.2 The MLC will endeavor where appropriate in its discretion to narrow the scope of potential Termination Disputes to specifically identified Shares rather than an entire Work, and to specifically identified uses of those Works or Shares where possible. The MLC will implement any agreement between a Terminating Claimant and Existing Claimant where a Termination Dispute relates to a particular Share of a particular Work (and not to the Work in its entirety) or to a particular use of such Work or Share. The MLC will encourage the applicable parties to reach an agreement where practicable.

2.3 The MLC may address potential Termination Disputes regarding multiple Works or Shares, or uses thereof, together where appropriate.

2.4 The MLC may, in its reasonable discretion, modify the processes described in this Policy regarding any particular Termination Dispute. Any such modification may be based on an order of any tribunal reviewing a Legal Claim, due to force majeure or extenuating circumstances, or for other good cause.

2.5 This Policy and the processes described herein, and the MLC’s exercise of discretion in administering such, shall not limit or diminish any legal or equitable rights or remedies available to any relevant rightsowner concerning, inter alia, ownership of any Work/Share or entitlement to royalties for any uses of any Work/Share. In addition, this Policy and the processes described herein shall not supersede any applicable laws currently existing or hereinafter enacted. A voluntary agreement among the respective Terminating Claimant and Existing Claimant will be implemented in the place of the processes in this Policy.

### **3. Definitions**

#### 3.1 Active License Date

For the relevant use of the Work/Share in question, one of the following:

(a) If the DMP is operating under a compulsory license that was initially secured by serving an NOI on the Existing Claimant, the date on which such NOI was served, regardless of the fact that the DMP subsequently obtained a Blanket License covering the use of the Work/Share, unless the compulsory license obtained thereby has been superseded by a voluntary license;

(b) If the DMP is operating under an enforceable voluntary license, the effective date of a then-currently enforceable voluntary license, unless the voluntary license has been superseded by the Blanket License; or

(c) If the DMP is operating under the Blanket License, the Blanket License Effective Date, unless an NOI was served on the Existing Claimant before the Blanket License Effective Date.

#### 3.2 Blanket License

Any and all blanket licenses administered by The MLC pursuant to 17 U.S.C. 115 for the use of Works in Covered Activity.

#### 3.3 Blanket License Effective Date

The later of (a) the date the DMP submitted a notice of license to The MLC pursuant to 17 U.S.C. 115(d)(2)(A) and (b) the License Availability Date, as defined in 17 U.S.C. 115(e)(15).

#### 3.4 Covered Activity

As defined in 17 U.S.C. 115(e)(7).

#### 3.5 DMP

Digital Music Provider as defined in 17 U.S.C. 115(e)(8).

#### 3.6 EDT

The effective date of termination of the grant of transfer or license to the Existing Claimant for a particular Work/Share as set forth in the Statutory Termination Notice, or as otherwise agreed by the Terminating Claimant and the Existing Claimant.

#### 3.7 Existing Claim

A claim of ownership with respect to a Work/Share registered with The MLC.

#### 3.8 Existing Claimant

A party with an Existing Claim.

### 3.9 First Utilization Date

The date on which a sound recording was first used by a particular DMP as indicated by one of the following dates and determined on a product by product basis:

(a) the date on which the applicable sound recording was first reproduced by the DMP on its server for the product concerned (“Server Fixation Date”),<sup>1</sup>

(b) the date on which the product embodying the sound recording was first released on the DMP’s service (“Street Date”),<sup>2</sup> or

(c) If neither of the dates specified in (a) or (b) above is reasonably available, the date that, in the assessment of the DMP, provides a reasonable estimate of the date the product embodying the sound recording was first distributed on the DMP’s service within the United States (“Estimated First Distribution Date”).<sup>3</sup>

The MLC may rely on monthly usage data provided by an applicable DMP<sup>4</sup> as conclusive evidence that the First Utilization Date occurred during the first month for which usage of an applicable sound recording was reported.

### 3.10 Interim Suspense

An interim status where The MLC accrues and holds certain Royalties for uses of a Work/Share at issue in a Termination Dispute.

### 3.11 Legal Proceeding

A Termination Dispute that is the subject of a legal proceeding before a tribunal of appropriate jurisdiction, including courts of law and/or arbitration panels.

### 3.12 NOI

A notice of intention to obtain a compulsory license under 17 U.S.C. 115 for Covered Activity.

### 3.13 Royalties

Mechanical royalties The MLC has collected pursuant to (a) the Blanket License or (b) the transfer of accrued historical unmatched mechanical royalties that are ready to be distributed.

### 3.14 Share

A specified portion of a Work identified as a percentage of such Work.

### 3.15 Statutory Termination Notice

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<sup>1</sup> 37 CFR 210.27(m)(3)(i)(A)(1).

<sup>2</sup> 37 CFR 210.27(m)(3)(i)(A)(2).

<sup>3</sup> 37 CFR 210.27(m)(3)(i)(B).

<sup>4</sup> 37 CFR 210.27(m)(3)(i).

The notice of termination that the Terminating Claimant has served upon the Existing Claimant and recorded in the Copyright Office in accordance with 17 U.S.C. 203(a)(4) or 304(c)(4).

3.16 Substantiated Termination Claim

A Termination Claim involved in a Termination Dispute for which the Terminating Claimant has submitted adequate Substantiating Documentation during the Documentation Period.

3.17 Substantiating Documentation

Documentation set forth in Section 5 below.

3.18 Suspense

A status describing where The MLC accrues and holds certain Royalties pending resolution of a Termination Dispute.

3.19 Termination Claim

A claim of ownership with respect to a Work/Share based on the assertion of a termination right arising under Section 203 or 304 of the U.S. Copyright Act that conflicts with an Existing Claim. Termination Claims must be submitted to The MLC in accordance with Section 4.1 below.

3.20 Terminating Claimant

A party who has properly submitted a Termination Claim. Note that while any party may initiate a Termination Claim, The MLC cannot pay Royalties to any party for uses of a Work/Share at issue until such party has become a member of The MLC and registered the relevant Work/Share with The MLC.

3.21 Termination Dispute

An actual conflict between a Terminating Claimant and an Existing Claimant regarding a Termination Claim as determined by The MLC following the completion of the Termination Dispute Assessment Process.

3.22 Termination Dispute Assessment Process

Together, the processes described in Section 4 (Notice Process) and in Section 6 (Dispute Assessment Process) in connection with a Termination Dispute.

3.23 Termination Notice Form

A completed Termination Notice Form, available [here](https://pages.themlc.com/termination-notice-form).<sup>5</sup> The form must contain complete responses to the fields marked as required.

3.24 Work

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<sup>5</sup> Link is <https://pages.themlc.com/termination-notice-form>

A musical composition, including any accompanying lyrics. Works can include original musical compositions and original arrangements, as well as new versions of original musical compositions and arrangements to which new copyrightable authorship has been added.

3.25 Work/Share

A Work or Share, as applicable.

## **4. Notice Process**

4.1 A party asserting a Termination Claim with respect to a given Work/Share shall initiate such a claim with The MLC by submitting:

- a. A properly completed Termination Notice Form found [here](#); and
- b. Each of the following Substantiating Documentation: (1) a copy of the relevant Statutory Termination Notice, (2) proof of submission or recordation with U.S. Copyright Office, and (3) any additional documents or information related to the Termination Claim being asserted that The MLC may, in its discretion, require.

4.2 Upon receipt of the materials described in Section 4.1 above, The MLC will notify the Existing Claimant that a Termination Claim has been initiated and share with the Existing Claimant copies of the Termination Notice Form and any and all Substantiating Documentation that the Terminating Claimant has submitted to The MLC pursuant to Section 4.1 above.

## **5. Substantiating Documentation**

5.1 Substantiating Documentation may include, without limitation:

- a. Copies of the grants that the Terminating Claimant claims have been terminated by the Statutory Termination Notice;
- b. Proof of service and recordation of the Statutory Termination Notice;
- c. Copies of agreements or other documentation demonstrating that the Terminating Claimant or its assignor(s) own(s) the termination interest under 17 U.S.C. 203 or 304;
- d. Copies of agreements or other documentation supporting the Existing Claimant's right to continued ownership of the relevant Work/Share, notwithstanding the Statutory Termination Notice (e.g., copies of agreements showing that the relevant post-termination rights were

regranted to the Existing Claimant, copies other relevant non-terminated grants, or copies of relevant pre-termination licenses);

- e. Copies of relevant voluntary licenses;
- f. Notarized declarations explaining the reasons why other Substantiating Documentation cannot be submitted, along with an explanation of any relevant ownership details being asserted and any chain of title or relevant licensing history for the applicable Work/Share; and/or
- g. Additional documentation a Terminating Claimant or Existing Claimant believes to be relevant to the Termination Dispute.

5.2 The MLC will not verify the validity or legitimacy of the Substantiating Documentation or the merits of Termination Claims, but The MLC will assess whether the Substantiating Documentation, on its face, is sufficient to evidence that a legitimate dispute between the parties actually exists.

5.3 The MLC may accept Substantiating Documentation as submitted and retains discretion to reasonably determine if a submission constitutes Substantiating Documentation to support or oppose a Termination Claim.

## **6. Dispute Assessment Process**

6.1 If, after receiving from The MLC the Termination Notice Form and related Substantiating Documentation, the Existing Claimant wishes to challenge the Termination Claim in whole or in part, the Existing Claimant must send The MLC a written reply describing the basis for their challenge and provide any relevant Substantiating Documentation within thirty (30) days.

6.2 The MLC may require additional Substantiating Documentation from the Terminating Claimant and/or Existing Claimant to determine whether a Termination Dispute exists and/or to determine the scope of the potential Termination Dispute. The MLC may, in its discretion, share any Substantiating Documentation received from one party to with any other party/ies to a potential Termination Dispute.

6.3 If The MLC determines, in its discretion, that either (a) there is no Termination Dispute or (b) the Termination Dispute can be limited to certain uses of the Work/Share at issue, then the MLC may proceed to the Disposition of Termination Claims process (described in Section 7).

6.4 In all cases where The MLC requests information hereunder, if the party receiving the request does not respond within thirty (30) days (or such other period specified by The MLC), The MLC will send a reminder notice to such party, and the receiving party shall have an additional thirty (30) days (or such other period reasonably specified by The MLC) to respond to the reminder notice. If the receiving party again fails to respond to the reminder



notice, The MLC, in its discretion, may presume that such receiving party consents to the relevant assertion(s) made by the other party. The failure by a receiving party to respond to any of the notices described herein will not prevent such party from reasserting its positions in the future by initiating its own dispute pursuant to this dispute Policy or another applicable dispute Policy published by The MLC.

6.5 The MLC may, in its discretion, place Royalties into Interim Suspense pending the completion of the Termination Dispute Assessment Process.

## **7. Disposition of Termination Claims**

7.1 Upon completion of the Termination Dispute Assessment Process, The MLC will determine whether a Termination Dispute exists with respect to any uses of an applicable Work/Share.

- a. If The MLC determines that a Termination Dispute exists, The MLC will place the applicable Royalties for the disputed uses in Suspense. Such Royalties will remain in Suspense until The MLC receives: (a) a written agreement executed by and between all parties to the Termination Dispute with specific instructions to The MLC on how to distribute the applicable Royalties, or (b) a legal order, legal decision, or legal judgment resolving the Termination Dispute or otherwise directing The MLC to adjust the status of the Work/Share and associated Royalty payments.
- b. If The MLC determines that a Termination Dispute does not exist, (i) The MLC will distribute the applicable Royalties after the EDT on a prospective basis upon determination of the disposition of Royalties as set forth in the Table attached hereto as Exhibit A (Possible Scenarios for Royalty Disposition), or (ii) if the Work/Share is subject to a voluntary license, The MLC will designate the appropriate claimant to receive royalties in the response file delivered to the applicable DMP as set forth in the Table attached hereto as Exhibit A (Possible Scenarios for Royalty Disposition).
- c. A claim raised by either party challenging the disposition of Royalties in accordance with the Table attached hereto as Exhibit A shall not constitute a Termination Claim hereunder, nor shall it provide any basis for finding the existence of a Termination Dispute hereunder.

7.2 If (i) a DMP is operating under a voluntary license, (ii) the Active License Date and the First Utilization Date are before the EDT, and (iii) the EDT falls during the term of that voluntary license, then The MLC will match Royalties for all uses of the Work/Share after the EDT to the Existing Claimant, until the term of the voluntary license expires or is terminated (as evidenced by Substantiating Documentation). Thereafter, if the applicable DMP secures a Blanket License, the MLC will match Royalties for all uses of the Work/Share by such DMP that are covered by such Blanket License to the Terminating Claimant.

7.3 If the applicable Work/Share was licensed by a DMP pursuant to an NOI served on the Existing Claimant or the U.S. Copyright Office (and there was no intervening voluntary license covering the applicable Work/Share) before the Blanket License Effective Date, then the Blanket License will not constitute a new grant of rights with respect to any Covered Activities.

## **8. Impact of Legal Proceedings**

8.1 At any time, if The MLC receives notice that a Legal Proceeding has been initiated with respect to a Termination Claim, The MLC will notify all affected parties and place all Royalties for uses of the corresponding Work/Share in Suspense pending resolution of the Legal Proceeding.

8.2 Notwithstanding the initiation of a Legal Proceeding as described in Section 8.1 above, The MLC may, in its discretion, commence, continue, or complete the Termination Dispute Assessment Process.

**EXHIBIT A**  
**Possible Scenarios for Royalty Disposition**

Scenarios	Party to Whom Royalties will be Paid or Matched (in the absence of a Legal Proceeding or a voluntary agreement among the parties)
(1) Active License Date and First Utilization Date are both before the EDT of the Work/Share subject to the Statutory Termination Notice	Existing Claimant
(2) Active License Date is before the EDT of the Work/Share subject to the Statutory Termination Notice and The MLC has not received any data from an applicable DMP regarding the First Utilization Date, and relying on monthly usage reports from the applicable DMP, The MLC determines that the First Utilization Date fell in a month before the EDT of the Work/Share subject to the Statutory Termination Notice	Existing Claimant
(3) Active License Date is before the EDT of the Work/Share subject to the Statutory Termination Notice and The MLC has not received any data from an applicable DMP regarding the First Utilization Date, and relying on monthly usage reports from the applicable DMP, The MLC determines that the First Utilization Date occurred in the same month as the EDT of the Work/Share subject to the Statutory Termination Notice, and the parties do not otherwise agree on the First Utilization Date	<p>The MLC will hold Royalties for uses of the Work/Share in a sound recording that was first utilized during the month of the EDT (and all subsequent months) in Suspense pending receipt of the First Utilization Date for the applicable DMP or an agreement between the parties directing The MLC how to pay the Royalties in Suspense</p> <p>If uses of a Work/Share are subject to a voluntary license, The MLC will proceed as set forth in Section 7.1(b)(ii) herein</p>
(4) Active License Date is before the EDT of the Work/Share subject to the Statutory Termination Notice and The MLC has not received any data from an applicable DMP regarding the First Utilization Date, and relying on monthly usage reports from the applicable DMP, The MLC determines that the First Utilization Date fell in a month after the EDT of the Work/Share subject to the Statutory Termination Notice	Terminating Claimant
(5) Active License Date is before the EDT, but First Utilization Date is after the EDT of the Work/Share subject to the Statutory Termination Notice	Terminating Claimant

(6) Active License Date is after the EDT of the Work/Share subject to the Statutory Termination Notice	Terminating Claimant
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