

Announcement Concerning Interim Mechanical Royalty Rates Pending the Outcome of Copyright Royalty Board Remand Proceedings in Phonorecords III

01.13.21

The Mechanical Licensing Collective (MLC) has consulted with the U.S. Copyright Office (USCO) regarding the rates and terms that should be applied under the new blanket mechanical license during the remand process occurring before the Copyright Royalty Board (CRB) as a result of the appeal of the *Phonorecords III* rate proceeding by digital service providers.

Accordingly, the rates and terms that will be applied by the MLC to the blanket license during this period – effective January 1, 2021 until the outcome of the CRB's *Phonorecords III* remand proceeding – will be those established under the *Phonorecords II* proceeding. Once there is a final determination of rates and terms by the CRB pursuant to the remand, those final rates and terms will be used by The MLC and will also apply retroactively back to January 1, 2018.

Background

On January 1, 2021, the MLC began administering blanket mechanical licenses for musical works to eligible digital interactive streaming and download services in the United States (digital service providers or DSPs). The MLC will collect the royalties due under those licenses from DSPs and distribute them to copyright owners of the musical works.

Under the Music Modernization Act, the mechanical royalty rates and terms at which The MLC collects and distributes these royalties are set by the Copyright Royalty Board (CRB) under 17 U.S.C. 115, in an administrative proceeding that takes place every five years. The rates and terms set in the last proceeding, known as *Phonorecords III* and which set rates for the period 2018-2022, were appealed by digital service providers to the United States Court of Appeals for the D.C. Circuit.

In a decision on that appeal, the D.C. Circuit vacated and remanded in part the CRB's *Phonorecords III* determination, sending it back to the CRB for further proceedings. The CRB is currently presiding over those remand proceedings, which are scheduled to run at least into the second half of 2021. The CRB's eventual remand determination will be retroactive back to January 1, 2018, the beginning of the *Phonorecords III* rate period. However, neither the D.C. Circuit nor the CRB have explicitly stated the interim rates and terms that are applicable pending the outcome of the CRB's remand proceedings.

In light of the fact that the D.C. Circuit and CRB have not addressed this question of interim rates, The MLC requested guidance from the USCO concerning the issue. Following consultation with the USCO, on an interim basis from January 1, 2021 until the outcome of the CRB's *Phonorecords III* remand proceeding, the MLC will be collecting and distributing mechanical royalties at the rates and terms established in the CRB's previous *Phonorecords II* determination.

Once the CRB issues its determination after the *Phonorecords III* remand proceeding, the MLC will apply the rates and terms in that remand determination and will also retroactively adjust historical royalty collections and distributions for the full *Phonorecords III* rate period, so that they match those final rates and terms from the CRB.

The *Phonorecords II* rates and terms can be found in full [here](#).

About The Mechanical Licensing Collective (MLC)

The Mechanical Licensing Collective (The MLC) was designated by the U.S. Register of Copyrights in July 2019 pursuant to the Music Modernization Act of 2018. The MLC is responsible for administering the new blanket compulsory license for the use of musical works by digital music services. Starting in January 2021, mechanical royalties from streaming in the U.S. will be processed and paid out by The MLC at no cost to songwriters or music publishers.

The MLC is governed by a Board of Directors comprised of songwriters and representatives of music publishers. For more background on The MLC and its Board and Committee members, go to www.TheMLC.com.

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