



MUSIC MODERNIZATION ACT: A BREAKDOWN

As of June 5, 2019

OLD SYSTEM	MUSIC MODERNIZATION ACT
<p>Digital service providers (DSPs) such as Spotify and Apple Music avoided payments for works that weren't registered with the Copyright Office by sending large quantities of Notices of Intent (NOIs) to the Copyright Office. Rather than determining how to properly make payments, they used NOIs as a loophole to play music while avoiding making payments to songwriters and publishers in the meantime. Over 70 million notices were filed.</p>	<p>No more NOIs. The MMA creates a single, centralized mechanical licensing entity called the Mechanical Licensing Collective ("MLC") to administer, collect, distribute and audit royalties for songs played by DSPs. DSPs are now required to pay for all uses of your works, even if they cannot find an owner, rather than avoiding payments through the NOI loophole.</p> <p><u>The MLC will:</u></p> <ul style="list-style-type: none"> • Create and maintain a public database that identifies songs with ownership shares; • Provide information to help with and engage in matching musical works with their respective sound recordings; • Hold unclaimed royalties for at least 3 years before distributing them on a market-share basis to copyright owners.
<p>Whenever ASCAP and BMI could not negotiate performance royalties with licensees, each performing rights organization ("PRO") set its rates before its own single-appointed rate court judge in New York, who decided all of that PRO's royalty rate disputes with every class of customer.</p>	<p>When ASCAP and BMI go to rate court, their rate proceedings will be assigned randomly to any available federal judge in New York, except for the respective judges appointed to oversee the PROs' consent decrees. This will ensure that the same single judge does not decide every single rate for the PROs.</p>

<p>ASCAP and BMI consent decree rate courts setting blanket license fees for the public performance of musical works by digital services could not consider the important market evidence of sound recording rates, which may be negotiated in the free market. This prevented rate courts from addressing the huge disparity in rates.</p>	<p>ASCAP and BMI rate courts can now consider all market evidence, including sound recording royalties, when setting rates for digital public performances of musical works other than digital performances by terrestrial broadcasters.</p>
<p>There was no required process to identify ownership of unmatched copyrighted works. The DSPs have been holding on to millions of dollars in unclaimed and unmatched monies.</p>	<p>The MMA establishes a process through which copyright owners can claim ownership of songs and receive royalties. Rather than allowing the DSPs to keep the unclaimed, unmatched money indefinitely, the money goes to the MLC, where we have the power to make sure it is distributed fairly. The MLC will work to match sound recordings with musical compositions to ensure correct payments.</p>
<p>There was no requirement that songwriters receive royalties for unmatched works (sound recordings where ownership in the underlying musical work has not been identified). Publishers were not always obligated to share unmatched work \$\$ with songwriters.</p>	<p>Songwriters are to receive at least 50% of all royalties paid to publishers for unmatched works.</p>
<p>DSPs, while paying mechanical royalties on digital interactive streaming (e.g., Spotify), had taken the position in litigation that using music on these services did not require a mechanical license.</p>	<p>The law confirms that digital interactive streaming utilizes the mechanical reproduction right under copyright law. DSPs will never be able to argue this point again.</p>
<p>There was no right to audit the digital music providers' usage of music and royalty payments.</p>	<p>The MLC can audit digital services to ensure proper reporting and payment of royalties.</p> <p>Copyright owners will be able to audit the licensing entity to ensure that they are being paid accurately.</p> <p>Both audit rights ensure that songwriters are able to get answers about whether they are being paid accurately.</p>
<p>Mechanical royalty rates were set using an outdated four-part formula (801(b)), resulting in below-market rates.</p>	<p>Rates will be based on what a willing buyer and a willing seller would agree to in a free market. This is one of the main provisions in the Songwriter Equity Act, which had been on the table for years in Congress with no traction.</p>

<p>Songwriters had no involvement in or direct influence over the mechanical licensing system.</p>	<p>Songwriters have positions on three entities governing the operation of the MLC:</p> <ul style="list-style-type: none"> • Self-published songwriters will have four voting seats (out of fourteen) on the MLC board of directors. (Originally, we had NO seats and the board was comprised entirely of publishers – four seats was the compromise.) • Songwriters comprise half of an advisory committee (five of ten seats) overseeing the unclaimed royalties process. • Songwriters comprise half of a dispute resolution committee (three of six seats), which oversees and addresses disputes over ownership of musical works and distribution of royalties.
<p>Songwriters and music publishers had to pay commissions to vendors who administer mechanical licenses.</p>	<p>All costs for the licensing entity and its operations are paid for the by DSPs, eliminating commissions and resulting in higher payments to songwriters.</p>
<p>Digital music services risked legal liability for high statutory damages if they used songs on their services where the copyright owner(s) could not be found.</p>	<p>Digital services that obtain a blanket license from the MLC and comply with licensing requirements will be exempt from liability for statutory damages for copyright owners who cannot be found.</p> <p>This is really the main motivation that the DSPs had for endorsing the legislation and agreeing to pay all costs in connection with the new licensing entity—so that they can avoid further multimillion-dollar class action lawsuits. In turn, as discussed above, we have assurance that they will pay for every use of every composition rather than using loopholes to avoid making payments.</p>
<p>There was no transparency of mechanical rights ownership information for copyrighted works.</p>	<p>The MLC will have a free, public, searchable database of musical works with mechanical rights ownership information. This will help songwriters get paid accurately for use of their works.</p>
<p>Satellite radio services have been paying royalties to SoundExchange for the digital performance of sound recordings using the outdated four-part formula (801(b)) noted above with respect to mechanical royalties, resulting in below-market rates.</p>	<p>Satellite radio services will move their rate standards to what a willing seller and willing buyer would pay in a free market, resulting in payment of royalties more commensurate with a market rate.</p>

<p>Owners and artists of sound recordings recorded prior to 2/15/1972 did not enjoy any federal protection or compensation with respect to digital performances.</p>	<p>The MMA includes a section known as the Classics Protection and Access Act, giving owners and artists of sound recordings fixed before 2/15/1972 federal protection against unauthorized uses, including digital public performances. Users of such sound recordings will need to take licenses and pay royalties, and infringers will be subject to the infringement remedies set forth in sections 502-505 of the Copyright Act.</p>
<p>Although in recent years artists have been voluntarily executing and submitting letters of direction (“LODs”) to SoundExchange, producers, mixers and sound engineers did not have a statutory means for SoundExchange to account to them and pay them directly for their creative contributions to sound recordings.</p>	<p>The MMA includes the AMP Act (Allocation for Music Producers Act), providing for payment of statutory sound recording performance royalties to producers, mixers and sound engineers. An artist can now submit an LOD to SoundExchange, which will oversee the distribution of such monies.</p> <p>Furthermore, for a sound recording that was fixed pre-11/1/95, following a specified process under the MMA, a producer/mixer/engineer can be paid a share of such monies (up to 2% of collected royalties) in the event that they have been unsuccessful in obtaining a signed LOD from an artist with respect to such monies.</p>

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