

MUSIC MODERNIZATION ACT: A BREAKDOWN

as of March 21, 2018

CURRENT SYSTEM	MUSIC MODERNIZATION ACT
<p>Digital service providers (DSPs) such as Spotify and Apple Music can avoid payments for works that aren'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 use NOIs as a loophole to play music while avoiding making payments to songwriters and publishers in the meantime. 45 million notices have been filed to date.</p>	<p>No more NOIs. The MMA creates a single, centralized mechanical licensing entity called a Mechanical Licensing Collective to collect royalties for all 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>Whenever ASCAP and BMI cannot negotiate performance royalties with licensees, each performing rights organization ("PRO") sets its rates before its own single-appointed rate court judge, who decides 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, 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 cannot consider the important market evidence of sound recording rates, which may be negotiated in the free market. This prevents 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 public performances of musical works.</p>
<p>There is no process to identify ownership of unmatched copyrighted works. The DSPs are holding on to millions of dollars in unclaimed and unmatched monies.</p>	<p>The MMA establishes a clear 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 licensing entity, where we have the power to make sure it is distributed fairly. The licensing entity, in turn, will work to match sound recordings with musical compositions to ensure correct payments.</p>

<p>No requirement that songwriters receive royalties for unmatched works - sound recordings where ownership in the underlying musical work has not been identified. Publishers are not always obligated to share unmatched work \$\$ with songwriters.</p>	<p>Songwriters are obligated under law to receive at least 50% of all royalties for unmatched works.</p>
<p>DSPs, while paying mechanical royalties on digital interactive streaming (e.g., Spotify), have recently taken the position in litigation that using music on these services does not require a mechanical license.</p>	<p>The law officially states that digital interactive streaming utilizes the mechanical reproduction right under copyright law. DSPs will never be able to argue this point again.</p>
<p>No right to audit the digital music providers' usage of music and royalty payments.</p>	<p>New licensing entity 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 are 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 reflect market negotiations. This is one of the main provisions in the Songwriter Equity Act, which has been on the table for years in Congress with no traction.</p>
<p>Songwriters have no involvement in or direct influence over the mechanical licensing system.</p>	<p>Songwriters have positions on three boards governing the operation of the licensing entity:</p> <ul style="list-style-type: none"> • Self-published songwriters will have four seats (out of fourteen) on the licensing entity 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 resolves disputes over ownership of musical works and distribution of royalties.
Songwriters and music publishers pay commission to vendors who administer mechanical licenses.	All costs for the licensing entity and its operations are paid for the by DSPs, eliminating commissions and resulting in higher payments to songwriters.
Digital music services risk legal liability for high statutory damages if they use songs on their services where the copyright owner(s) cannot be found.	<p>Digital services that obtain a blanket license from the Mechanical Licensing Collective and comply with licensing requirements will be exempt from liability of statutory damages.</p> <p>This is really the main motivation that the DSPs have 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>
No transparency of mechanical rights ownership information for copyrighted works.	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.
Satellite radio services have been paying rates using the outdated four-part formula (801(b)) noted above with respect to mechanical royalties, resulting in below-market rates.	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.
Owners and artists of sound recordings recorded prior to 2/15/1972 do not enjoy any protection or compensation with respect to digital performances.	The MMA has added a section to its bill from the Act known as: CLASSICs (Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act), effectively giving owners and artists of sound recordings fixed between 1/1/1923 and 2/15/1972 protection against unauthorized digital performances. Users of such sound recordings will need to give copyright owners notice of any such use, pay statutory royalties for such use, and infringers will be subject to all remedies set forth in sections 502-505 as an infringer of copyright.

Although throughout recent years artists have been voluntarily executing and submitting letters of direction (“LODs”) to third party digital performance royalty collection organizations with respect to sound recordings (e.g., SoundExchange), producers, mixers and sound engineers do not have a way to direct or enforce such third parties to account to them for their creative contributions in sound recordings.

The MMA has also now added a section to its bill from the Act known as the AMP Act (Allocation for Musical Producers Act), providing for payment of statutory sound recording performance royalties to producers, mixers and sound engineers. An artist will now submit an LOD to a non-profit collective designated by Copyright Royalty Judges which will keep a central database and oversee the collection and distribution of such monies.

Furthermore, the non-profit collective will withhold a 2% deduction of all receipts collected in connection with the licensing of a transmission of a sound recording that was fixed pre-11/1/95. Following a specified process under the MMA, a producer/mixer/engineer can realize their pro-rata share of such monies in the event that they have otherwise been unsuccessful in obtaining a reply and signed LOD from an artist with respect to such monies.

If an artist payee subsequently objects to any such payments, those payments will stop being made to the applicable producer/mixer/engineer. If there are multiple artist payees for any one sound recording, and only 1 artist objects, the producer/mixer/engineer will still be entitled to receive a pro-rata share of the remaining artists’ share(s).