

# Music Modernization Act Brings Mechanical Licensing into 21st Century

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The widespread availability of fast and reliable broadband Internet access has had a profound impact on the recorded music industry, necessitating a fundamental reevaluation of how copyright law compensates songwriters and musicians in digital age. Once the industry's primary source of revenue, physical sales of music (through CDs, vinyl records, and cassettes) plummeted with the advent of digital music downloads and online streaming services. In the span of just a few years, revenue from music streaming services has grown exponentially, now easily surpassing revenue from physical sales. In the first half of 2018 alone, streaming services accounted for \$3.4 billion dollars in revenue, a figure that represents approximately 75 percent of all industry revenue during that six-month period.

Copyright law has been slow to adapt to the rapidly changing economic realities of music consumption in the Internet age. Mechanical licensing, which governs the right to reproduce and distribute copyrighted musical works through physical formats, digital downloads, and interactive streaming, is, at its core, an antiquated system. In fact, these licenses were originally established to provide copyright owners the ability to control the distribution of player piano rolls at a time when sound recordings were themselves cutting-edge technology (and nearly a century before the advent of digital streaming). This licensing regime had not been significantly overhauled since its inception in 1909; the result was an outdated system that was ill-suited to govern royalty payments for Internet streaming and unable to equitably and efficiently distribute royalties in the current digital marketplace.

In response to the growing need for legislative intervention, Congress recently enacted the Music Modernization Act (MMA), which President Trump signed into law on October 11, 2018. The Act has been celebrated as a truly bipartisan legislative achievement, and it received broad-based support from stakeholders across the music industry, including songwriters, musicians, record labels, and streaming music services—groups whose respective interests often place them at odds on proposed copyright reform measures.

The MMA consists of three constituent pieces of legislation that were ultimately consolidated into a single omnibus bill: the original Music Modernization Act (later renamed the Musical Works Modernization Act to avoid confusion with the omnibus bill); the Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society (CLASSICS) Act; and the Allocation for Music Producers (AMP) Act. Each addresses different issues with music royalty payments in an effort to improve fairness and efficiency in music licensing.

First and foremost, the MMA provides for the creation of a new government body, the Mechanical Licensing Collective (MLC), which will streamline royalty payments by acting as an intermediary between digital music services and rights holders. Like traditional performing rights organizations (PROs), the MLC will issue blanket mechanical licenses to digital music services and, in turn, collect and distribute mechanical royalties to rights holders. The MLC will also create a public database containing song ownership information and serve as a royalty clearinghouse, holding

unclaimed royalties for at least 3 years before distributing them to songwriters on a market-share basis. Each of these reforms is designed to enhance the efficiency of the licensing market and ensure that songwriters actually receive the royalties to which they are entitled.

The Act also establishes a “willing buyer/willing seller” standard for the Copyright Royalty Board when setting the rates for mechanical licenses. This standard is designed to more closely approximate licensing rates that otherwise would have been negotiated in the free market in an effort to increase licensing rates for songwriters in the long run.

In addition, the MMA adjusts the rate-setting process for public performance licenses of musical works, changing the way judges are assigned to oversee rate-setting proceedings and permitting those judges to take into consideration royalty rates for sound recordings when setting rates. Like the adoption of the willing buyer/willing seller standard, these reforms are intended to promote greater parity between royalty rates for musical compositions and those for sound recordings.

Next, the CLASSICS Act will require digital services like Pandora and SiriusXM to pay royalties for the use of sound recordings fixed before February 15, 1972. Because these recordings do not enjoy federal copyright protection, some services are currently not required to pay royalties for the use of those recordings. The CLASSICS Act changes this, making noninteractive digital audio transmissions of these recordings subject to the same copyright protection as post-1972 recordings, preempting a patchwork of state and common-law protections.

Finally, the AMP Act makes it easier for producers and engineers to receive royalty payments for their contributions to sound recordings. It does so by formalizing the process by which recording artists can send “letters of direction,” which instruct SoundExchange to pay producers and sound engineers a portion of the royalties for a recorded work directly.

The Music Modernization Act promises to be one the most significant reforms to copyright law in decades. In light of streaming’s newfound role as a key revenue center for the music industry, the MMA will serve as a much-needed revamp of a previously outdated music licensing regime, bringing copyright law into the digital age and making licensing fairer, simpler, and more efficient.