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## Music Modernization Act looks to bring harmony to copyright disputes

In the midst of political stagnation in most respects, we find progress in the Music Modernization Act, which President Donald Trump signed into law on Oct. 11. The law represents an essential step in modifying an antiquated Copyright Act, which has failed to keep up with the constantly changing music industry.

Understanding the MMA is critical for those who make their living creating and exploiting music.

The MMA represents the most comprehensive reform to music copyright law in decades. Primary among these changes are provisions that modernize the way music is licensed by interactive streaming platforms like Spotify, provisions that provide copyright protection for older sound recordings and provisions that recognize music producers, mixers and engineers in the Copyright Act for the first time in history. The law is lengthy and complex and cannot be fully explored in this article. We will, however, briefly discuss several primary provisions of the MMA.

### Pre-1972 sound recording protection

For context, sound recordings fixed before Feb. 15, 1972, have never been protected by federal copyright law. Instead, owners of these "pre-'72" sound recordings could only enforce rights available to them under various state laws. This created substantial confusion as to the actual scope of these rights, and in recent years, musicians and record labels filed a series of class actions against companies like SiriusXM and Pandora in which they claim these platforms must pay for their use of these pre-'72 recordings pursuant to state law.

The MMA brings pre-'72 sound recordings within the scope of federal copyright law.

Thus, owners of these recordings now possess the same rights as every other sound recording owner under the Copyright Act. This means that owners of pre-'72 sound recordings will receive royalty payments in connection with exploitation of their recordings on digital platforms such as SiriusXM.

It should be noted that several companies, including SiriusXM, have been paying royalties for their use of pre-'72 recordings pursuant to settlements reached with copyright owners. These settlement rates will stay in effect for a time before being adjusted alongside newer sound recordings.

Finally, as a last-minute compromise to ensure this part of the MMA passed the Senate, the statute will phase pre-'72 recordings into the public domain over a period of time. For example, recordings first published before 1923 will enter the public domain Jan. 1, 2022. Recordings published in 1923 and after will enter into the public domain on a variety of dates based on their age. Regardless of the date on which a recording was fixed or published, all pre-'72 recordings will have entered the public domain by Feb. 15, 2067.

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### Recognition of producers and engineers

The MMA incorporates legislation previously referred to as the Allocation for Music Producers Act, or AMP Act, which statutorily recognizes the contributions of music producers, mixers and engineers for the first time in the history of the Copyright Act. Specifically, the MMA requires SoundExchange to accept letters

### IN THE LIMELIGHT

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of direction, or LODs, from artists, which instruct it to pay a portion of the artists' revenues directly to their producers, mixers and engineers.

SoundExchange is an organization that collects and distributes royalties related to the public performance of sound recordings played on noninteractive digital streaming platforms like SiriusXM and Pandora. While

who must submit an LOD. Thus, the MMA allows producers and engineers who worked on recordings created before Nov. 1, 1995, to submit documentation directly to SoundExchange so they may receive their royalties even though no LOD was submitted.

To accomplish this, a producer, mixer or engineer must submit to SoundExchange a written contract entered into with a record company or artist concerning the recording, along with a certification under penalty of perjury that he or she contributed to creation of the recording at issue and made efforts to contact the artist for no less than 120 days in an attempt to obtain an LOD.

Following receipt of this certification, SoundExchange must also attempt to notify the artist for at least 120 days. Assuming these steps are followed, SoundExchange will deduct 2 percent of all the receipts payable to the featured artist for the recording, which will then be paid to the qualified producer, mixer and sound engineer.

### Mechanical licensing collective

Every artist should become familiar the new mechanical licensing collective, or MLC, being created to address a business-wide problem caused by a compulsory mechanical license process that requires on-demand digital service providers like Spotify to license compositions on a song-by-song basis to legally exploit them. The MLC is designed to substantially streamline this process.

For context, everyone, from individual artists to international streaming platforms, must secure a mechanical license to reproduce an audio-only version of a composition. Under the current legislative landscape, this must be done on a song-by-song basis.

This is not terribly burdensome when an artist or label seeks to record one composition and sell it in a physical format (say CD or vinyl record) or by digital download. In this case, the licensor will secure a direct license from the song's publisher, or a compulsory license through Harry Fox, and will pay a royalty that is currently nine-tenths of a cent per digital download or physical pressing of the recording in which the composition is embodied.

This becomes more complicated for on-demand streaming platforms, which must license hundreds of millions of compositions to legally offer subscribers access to their vast music libraries. Under the Copyright Act, it is the streamers' responsibility to license and pay the mechanical license fees required to stream these compositions, which is not a flat fee, but rather a percentage of the streamers' monthly revenues.

To accomplish this, streaming platforms retain the services of third parties to secure the mechanical license on their behalf, collect the streamers' monthly licensing fee and distribute these royalties to the copyright owners. Spotify, for example, hired Harry Fox to serve as its licensing agent, whereas other platforms, like Amazon, use Music Reports Inc.

Unfortunately, this process is plagued with issues, which resulted in the streamers' failure to properly license many compositions and their use of other compositions without accurate information concerning the identity of those who should be paid

for their exploitation. This resulted in a number of copyright infringement actions against companies like Spotify.

To address these issues, the MMA calls for creation of the mechanical licensing collective, a nonprofit entity operated by a 14-member board comprised of music publishers, professional songwriters and nonvoting representatives from the National Music Publishers Association, Digital Media Association and a songwriter trade association.

On Dec. 28, the U.S. Copyright Office formally put out a request for information to assist it in designating members of both the Mechanical Licensing Collective, or MLC, and the digital licensee coordinator. This process will provide interested parties until March 21 to submit proposals as to who should serve on the board of these organizations, and until April 22 for the public to comment on those submissions.

Once formalized, the MLC must demonstrate to the copyright register that it will have the administrative and technological capabilities to perform its required functions before Jan. 1, 2021.

The MLC's primary function is to administer blanket licenses to streaming platforms, which it will do by selecting an organization to act as the exclusive entity to issue these licenses. The streamers will send this entity monthly usage reports and royalty payments and the entity will then identify and pay the publishers and songwriters entitled to receive a portion of these blanket license fees.

To efficiently implement this

procedure, the MLC must create and maintain a publicly accessible song database populated with pertinent licensing information for every musical sound recording and composition, which should include the identity and location of all persons who own or control an interest in these songs.

Thus, the MLC will establish the largest and most comprehensive database of music rights holders that has ever existed, which should benefit every facet of the music industry.

Many commentators and stakeholders disagree as to whom the MLC should select to manage the licensing process. Some companies, including Harry Fox and SoundExchange, have expressed interest in being considered for this task, while some stakeholders argue that an entirely new organization should be formed.

There is also debate as to how the MLC database should store and update information, since compositions are frequently sold, which will require the database to be able to easily track these changes.

Of great importance, composition owners must register their songs with the MLC or else they risk losing the ability to be paid for exploitation of their music. This is because streaming platforms that properly secure blanket licenses in compliance with the MMA will be exempt from copyright infringement actions arising from their use of compositions not contained within the database.

Thus, songwriters who fail to properly register their music

with the MLC could eventually lose the right to recover any revenues generated through the interactive streaming of their music. Of note, the MLC will hold onto royalties for unmatched songs that cannot be distributed into a royalty bearing account for three years. It will then distribute unmatched royalties to owners based on their market share of royalties collected for the period in question.

Also, publishers who receive distributions for unmatched royalties must pay or credit at least 50 percent of this money to their songwriters regardless of what their publishing agreement says, which will put money in the pockets of songwriters signed to publishing deals even if their account is unrecouped.

The MMA demonstrates how positive change can be accomplished when traditional adversaries take a break from attacking each other and instead collaborate to build something beneficial to everyone.

It is the result of stakeholders from all ends of the music industry coming together to present a consensus bill to Congress, which voted unanimously in favor of the law. It is not perfect and represents compromises reached to address a variety of concerns voiced by all interested parties, from songwriters to streamers. But this is not the end of the story. Rather, it is the beginning of the next chapter in the ever-evolving music industry. And this author personally can't wait to see what comes next.

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