

MUSIC MODERNIZATION ACT: A BREAKDOWN

| <u>CURRENT SYSTEM</u> | <u>MUSIC MODERNIZATION ACT</u> |
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| <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>When ASCAP and BMI cannot negotiate performance royalties with licensees, they go in front of the same two rate court judges, who decide their royalty rates.</p> | <p>When ASCAP and BMI go to rate court, they can be randomly assigned to any federal judge instead of being stuck with the same one who decides their rates. This is referred to as "the wheel" and benefits us because the DSPs and other licensees won't be able to game the system by going to a judge they believe will give them a more favorable rate.</p> |
| <p>Rate Courts setting public performance royalties for musical works cannot consider all market evidence, including sound recording rates, when determining songwriter compensation.</p> | <p>Courts can now consider all market evidence, including sound recording royalties, when setting rates for public performances of musical works. This was another key provision in the Songwriter Equity Act which should help songwriters get higher payments going forward.</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> |

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| <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 two seats on the licensing entity board of directors. • Originally, we had NO seats and the board was comprised entirely of publishers – two seats was the compromise. • Songwriters have four seats on an advisory committee overseeing the unclaimed royalties process. • Songwriters comprise half of a dispute resolution committee, which oversees and resolves disputes over ownership of musical works and distribution of royalties. |

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| 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. | 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. 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. |
| No transparency of ownership information for copyrighted works. | A free, public, searchable database of musical works with ownership information. This will help songwriters get paid accurately for use of their works. |