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Songwriting and the Law: What Attorneys, Songwriters, and Publishers Need to Know About the MMA

CLE Background Materials

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Music Modernization Act Title I: Music Licensing Modernization Act[1]

Music Licensing Modernization Act

Title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, the Music Licensing Modernization Act, replaces the existing song-by-song compulsory licensing structure for making and distributing musical works with a blanket licensing system for digital music providers to make and distribute digital phonorecord deliveries (e.g., permanent downloads, limited downloads, or interactive streams).

Mechanical Licensing Collective

The legislation establishes a "mechanical licensing collective" ("MLC") to administer the blanket license, and a "digital licensee coordinator" ("DLC") to coordinate the activities of the licensees and designate a representative to serve as a non-voting member on the board of the MLC. The MLC will receive notices and reports from digital music providers, collect and distribute royalties, and identify musical works and their owners for payment. The MLC will establish and maintain a publicly accessible database containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied. In cases where the MLC is not able to match musical works to copyright owners, the MLC is authorized to distribute the unclaimed royalties to copyright owners identified in the MLC records, based on the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for the periods in question.

The operational costs of the MLC will be paid for by digital music providers through voluntary contributions and an administrative assessment set by the Copyright Royalty Judges. The MLC and the DLC are authorized to participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment.

The Copyright Office conducted a rulemaking designating the Mechanical Licensing Collective, Inc. as the MLC, and the Digital Licensee Coordinator, Inc. as the DLC, with the Librarian's approval.

Notices to Obtain License

The existing system for filing notices of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works ("NOIs") with the Copyright Office on a song-by-song basis will remain in place for non-digital uses (e.g., CDs, vinyl). However, the Office will no longer accept NOIs for making a digital phonorecord delivery of a musical work, such as in the form of a permanent download, limited download, or interactive stream. Instead, after a transition period, during which the Register will issue relevant regulations and designate key entities to carry out administration of the license, users will be able to obtain a blanket license (covering all musical works available for compulsory licensing) for digital phonorecord deliveries by submitting a notice of license to the MLC.

[1] Copyright.gov, Home, Music Modernization Act, 115, *Music Licensing Modernization Act,* https://www.copyright.gov/music-modernization/115/ (last visited Feb. 2, 2021).

While the Copyright Office will no longer accept NOIs for making a digital phonorecord delivery of musical works, licensees may still serve NOIs directly on copyright owners.

Interim Period

Prior to the license availability date (January 1, 2021), liability may be limited to royalties due under the compulsory license if the digital music provider complies with certain requirements, including engaging in good-faith, commercially reasonable efforts to identify and locate each copyright owner of a musical work they use on their service.

Rate Standard

The new rate-setting standard applied by the Copyright Royalty Judges will be a market-based willing buyer / willing seller standard, replacing the policy-oriented 801(b)(1) rate-setting standard.

PRO Rate Court Proceedings

The section 114(i) provision that prohibits PRO rate courts from considering licensing fees paid for digital performances of sound recordings in its ratesetting proceedings for the public performance of musical works is partially repealed. This repeal does not apply to radio broadcasters. Additionally, the legislation changes how judges in the Southern District of New York are assigned to the rate court proceedings set forth in the consent decrees for ASCAP and BMI, by assigning each new rate dispute on a rotating basis instead of all disputes being handled by the same judge.

Music Modernization Act Title II: The Classics Protection and Access Act[2]

The Classics Protection and Access Act, Title II of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, brings pre-1972 sound recordings partially into the federal copyright system. The legislation created a new chapter 14 of the copyright law, title 17 United States Code, which, among other things, extends remedies for copyright infringement to owners of sound recordings fixed before February 15, 1972 ("Pre-1972 Sound Recordings") when the recordings are used without authorization. The new chapter includes several limitations and exceptions to the eligibility for these remedies and related administrative procedures, which are addressed below.

Term

The federal remedies for unauthorized use of Pre-1972 Sound Recordings shall be available for 95 years after the year of first publication of the recording, subject to certain additional periods. These periods provide varying additional protection for Pre-1972 Sound Recordings, based on when the sound recording was first published:

- For recordings first published before 1923, the additional time period ends on December 31, 2021.

[2] Copyright.gov, Home, Music Modernization Act, *Classics Protection and Access Act*, https://www.copyright.gov/music-modernization/pre1972-soundrecordings/ (last visited Feb. 2, 2021).

· For recordings first published between 1923-1946, the additional time period is 5 years after the general 95-year term.
· For recordings first published between 1947-1956, the additional time period is 15 years after the general 95-year term.
· For all remaining recordings first fixed prior to February 15, 1972, the additional transition period shall end on February 15, 2067.

Limitations and Exceptions
The legislation applies relevant existing Title 17 limitations on exclusive rights and limitations on liability to uses of Pre-1972 Sound Recordings, including sections 107 (fair use), 108 (libraries and archives), 109 (first sale), 110 (certain public performances), 112(f) (certain ephemeral copies) and 512 (safe harbor provisions for online service providers).

Statutory Licensing
The new law also applies a statutory licensing regime similar to that which applies to post-1972 sound recordings, *e.g.*, the statutory licenses for non-interactive digital streaming services, including Internet radio, satellite radio, and cable TV music services.

Statutory Damages
Rights owners may be eligible to recover statutory damages and/or attorneys' fees for the unauthorized use of their Pre-1972 Sound Recordings if certain requirements are met. To be eligible for these remedies, rights owners must typically file schedules listing their Pre-1972 Sound Recordings ("Pre-1972 Schedules") with the Office, which are then indexed into the Office's public records. The filing requirement is designed to operate in place of a formal registration requirement that normally applies to claims involving statutory damages. The remedies are only available for unauthorized uses of a recording that have occurred more than 90 days after such a schedule has been indexed. For more information on filing schedules for Pre-1972 Sound Recordings see the Pre-1972 Schedules instruction page.

Note that in cases where a transmitting entity has filed a valid and timely notice of contact information, a rights owner may be eligible to obtain statutory damages and/or attorneys' fees only after sending the transmitting entity a notice stating that it is not legally authorized to use the Pre-1972 Sound Recording, and identifying the Pre-1972 Sound Recording in a schedule conforming to the requirements set forth in the interim rule.

The public may subscribe to the Copyright Office's weekly email notification regarding Pre-1972 Schedules indexed into the public records of the Copyright Office.

The Copyright Office maintains a database of indexed Pre-1972 Schedules.

Filing of Contact Information for Transmitting Entities
A recently issued interim rule establishes the form, content, and procedures for the filing of contact information by any entity that, as of October 11, 2018, was performing a sound recording fixed before February 15, 1972, by means of a digital audio transmission. Contact information must be filed by April 9, 2019.

The Copyright Office maintains an online directory of notices of contact information filed with the Office.

Noncommercial Uses

The legislation also establishes a process for lawfully engaging in noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. To qualify for this exemption, a user must file a notice of noncommercial use after conducting a good faith, reasonable search, and the rights owner of the sound recording must not object to the use within 90 days.

The Copyright Office published a final rule regarding specific steps that a user should take to demonstrate she has made a good faith, reasonable search.

Music Modernization Act Title III: Allocations for Music Producers[3]

Title III, among other things, allows music producers, mixers, or sound engineers to receive royalties collected for uses of sound recordings under the section 114 statutory license by codifying a process wherein the designated collective (Sound Exchange) will distribute those royalties to such parties under a "letter of direction."

Music Modernization Act: Frequently Asked Questions[4]

General

What is the Orrin G. Hatch-Bob Goodlatte Music Modernization Act?

The Music Modernization Act updates the music licensing landscape to better facilitate legal licensing of music by digital services. It also provides certain protections (and exceptions to those protections) to pre-1972 sound recordings, and addresses distribution of producer royalties.

What does the Music Modernization Act do?

The Music Modernization Act has three main sections:

- Title I – The Music Licensing Modernization Act, which creates a blanket license for interactive streaming services, and establishes a mechanical licensing collective (MLC) as well as a digital licensee coordinator (DLC), making it easier for services to obtain licenses and for creators to collect royalties.
- Title II – The Classics Protection and Access Act, which created federal rights for owners of sound recordings made before February 15, 1972.

[3] Copyright.gov, Home, Music Modernization Act, *Allocations for Music Producers* https://www.copyright.gov/music-modernization/amp/ (last visited Feb. 2, 2021).
[4] Copyright.gov, Home, Music Modernization Act, *Frequently Asked Questions*, https://www.copyright.gov/music-modernization/faq.html (last visited Feb. 2, 2021).

· Title III – The Allocation for Music Producers Act (AMP Act), which creates a path to collect certain royalties for music producers, mixers, and sound engineers.

What is the mechanical licensing collective?

The mechanical licensing collective ("MLC") is a nonprofit entity that will administer the new blanket licensing system established by the Music Modernization Act beginning on the "license availability date"—that is, January 1, 2021. The MLC will receive notices and reports from digital music providers, collect and distribute royalties, and identify musical works and their owners for payment. It will establish and maintain a publicly accessible database containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied. In cases where the MLC is not able to match musical works to copyright owners, it is authorized to distribute the unclaimed royalties to copyright owners identified in the MLC records, based on the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for the periods in question.

What is the digital licensee coordinator?

The digital licensee coordinator ("DLC") is a nonprofit entity that coordinates the activities of the licensees and designates a representative to serve as a non-voting member on the board of the MLC. The DLC is authorized to participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment to be paid by digital music providers to operate the MLC.

What entities have been designated as the MLC and the DLC?

Mechanical Licensing Collective, Inc. ("MLCI") is designated as the MLC. Digital Licensee Coordinator, Inc. ("DLCI") is designated as the DLC. Before making these selections, the Copyright Office conducted a public proceeding in which it received proposals from entities seeking to be designated, as well as more than 600 comments from stakeholders throughout the music industry. Information about the designation process is available here. Contact information for the MLC and DLC is available here.

Why did the Register designate MLCI and DCLI?

The Register designated MLCI as the MLC because it demonstrated that it meets each of the statutory criteria, and it was only candidate that satisfied the statute's endorsement requirement. MLCI also demonstrated that it is well positioned to carry out the MLC's administrative and technological functions, including receiving notices and reports from digital music providers, collecting and distributing royalties, matching copyright owners to sound recordings, and maintaining a publicly accessible database. The Register also determined that each of MLCI's proposed board members is well qualified to serve on the board in accordance with the statutory criteria.

Similarly, the Register determined that DLCI fulfills each of the statutory criteria for designation. It was endorsed by service providers and licensees representing the greatest percentage of the relevant market, and it demonstrated the administrative and technological capabilities to perform its required duties. The Register found each of its individual board members to be well qualified.

Who pays for the operational costs of the MLC?

The operational costs of the MLC will be paid for by digital music providers through voluntary contributions and an administrative assessment set by the Copyright Royalty Judges. The MLC and the DLC will be authorized to participate in proceedings before the Copyright Royalty Judges' proceedings to establish the administrative assessment paid for by digital music providers to operate the MLC.

Will the MMA change the rates for the compulsory license under section 115?

The new legislation does not change the rates for the compulsory license under section 115. However, the legislation does establish a new rate setting standard to be applied by the Copyright Royalty Judges. The new market-based willing buyer / willing seller rate setting replaces the policy-oriented 801(b)(1) rate-setting standard. The Copyright Royalty Judges will apply the new standard to rate determination proceedings that commence on or after October 11, 2018.

Can I still file a NOI with the Copyright Office?

The existing system for filing notices of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works (NOIs) with the Copyright Office on a song-by-song basis will remain in place for non-digital uses (e.g. CDs, vinyl)

However, the Copyright Office will no longer accept NOIs to obtain a compulsory license for making a digital phonorecord delivery of a musical work, such as in the form of a permanent download, limited download, or interactive stream. Instead, after a transition period, during which the Register will issue relevant regulations and designate key entities to carry out administration of the license, the new license becomes available on a blanket basis (covering all musical works available for compulsory licensing). Digital phonorecord deliveries are obtained under the new blanket license by submitting a notice of license to the mechanical licensing collective (MLC). In the interim before the blanket license is available from the MLC, the liability for digital music providers will be limited so long as they comply with certain requirements, including engaging in good-faith, commercially reasonable efforts to identify and locate each copyright owner of a musical work they use on their service. See the below FAQ on what happens during the transition period for more details.

What happens during the transition period?

Prior to the availability of a blanket license from the MLC, a digital music provider can enjoy a limitation of copyright infringement liability for use of a musical work for which the digital music provider was unable to identify or locate the musical work copyright owner, so long as the digital music provider engages in good-faith, commercially reasonable efforts to identify and locate musical work copyright owners. The digital music provider must also be prepared to pay accrued royalties to the musical work copyright owner once they are located. As part of engaging in good-faith, commercially reasonable efforts to identify musical work copyright owners, the digital music provider is required to use one or more bulk electronic matching processes, and must continue using these processes on a monthly basis for so long as the musical work rights owner is unidentified. If the musical work copyright owner is identified or located during this search process, then the digital music provider is required to report and pay that copyright owner any royalties owed. If the musical work copyright owner remains unidentified between the date of

enactment and the date the blanket license is available, then the digital music provider is required to provide a cumulative usage report and accrued royalties to the mechanical licensing collective.

How will I claim my royalties from the MLC?

Once established, the MLC will establish and administer a process by which copyright owners can claim ownership of musical works (and shares of such works). Once an owner of an unmatched work has been identified and located in accordance with the procedures established by the MLC, the musical works database and the other records of the MLC will be updated accordingly. The MLC dispute resolution committee will implement policies and procedures to address and resolve disputes relating to ownership interests in licensed musical works.

The Copyright Office will update its website with more educational information on claiming works.

If I have already registered my work for copyright, do I need to do anything?

Yes, even if you already have a copyright registration, you will still need to register with the MLC (once it is up and running) to receive certain royalties for your work.

My work has not been registered with the Copyright Office. Can I still register with the MLC?

Yes. Musical works do not need to be registered with the Copyright Office to be eligible for certain statutory royalties paid through the MLC. However, to obtain statutory royalties for certain non-digital uses (e.g., CDs, vinyl), your musical works must be in the Copyright Office's records, which may be accomplished through registration. Registering a work for copyright, does offer certain additional protections, such as the ability to pursue statutory damages and attorneys' fees in infringement lawsuits.

My work was used in the past without my permission. Can I seek compensation?

Past infringement liability is limited to royalties due if the digital music provider complies with certain requirements, including good faith attempts to identify and locate the copyright owners. The U.S. Copyright Office does not offer legal guidance on specific infringement cases.

How does the MMA affect terrestrial broadcast radio?

The MMA does not directly affect terrestrial broadcast radio. The existing section 114(i) provision that prohibits performing rights organization (PRO) rate courts from considering licensing fees paid for digital performances of sound recordings in its rate setting proceedings for the public performance of musical works is partially repealed. However, this repeal does not apply to rate settings for terrestrial broadcast radio.

Title II of the MMA, the Classics Protection and Access Act, expressly preserves the current preemptive effect, or lack thereof, that title 17 may have regarding any cause of action arising from the nonsubscription broadcast transmission of sound recordings under the common law or statutes of any State for activities that do not qualify as covered activities under Chapter 14 of title 17.

How does the MMA affect performing rights organizations or the ASCAP and BMI consent decrees?

The section 114(i) provision that prohibits PRO rate courts from considering licensing fees paid for digital performances of sound recordings in its rate setting proceedings for the public performance of musical works is partially repealed. This repeal does not apply to radio broadcasters. Additionally, the legislation changes how judges in the Southern District of New York are assigned to the rate court proceedings set forth in the consent decrees for ASCAP and BMI, by assigning each new rate dispute on a rotating basis instead of all disputes being handled by the same judge.

Title II Classics Protection and Access Act (Federal remedies for pre-1972 sound recordings)

What is the term of protection for pre-1972 sound recordings?

The federal remedies for unauthorized use of pre-1972 sound recordings shall be available for 95 years after the year of first publication of the recording, subject to certain additional periods. These periods provide varying additional protection for pre-1972 sound recordings, based on when the sound recording was first published:

- For recordings first published before 1923, the additional time period ends on December 31, 2021.
- For recordings first published between 1923-1946, the additional time period is 5 years after the general 95-year term.
- For recordings first published between 1947-1956, the additional time period is 15 years after the general 95-year term.
- For all remaining recordings first fixed prior to February 15, 1972, the additional transition period shall end on February 15, 2067.

Do I need to register pre-1972 sound recordings?

No. There is no obligation to register. However, to be eligible to recover statutory damages and/or attorneys' fees, the new section 1401(e)(5) typically requires that rights owners file schedules listing their pre-1972 sound recordings with the Copyright Office (a rule recently established the Office's filing requirements). This requirement takes the place of a formal registration requirement that normally applies to claims involving statutory damages. Rights owners filing these schedules must include the rights owner's name, the sound recording title, featured artist, and, if known and practicable, the International Standard Recording Code ("ISRC"). The rule also establishes how individuals may request timely notification of when rights owners file such schedules with the Office. Note that in cases where a transmitting entity has filed a valid and timely notice of contact information, a rights owner may be eligible to obtain statutory damages and/or attorneys' fees only after sending the transmitting entity a notice stating that it is not legally authorized to use the pre-1972 sound recording, and identifying the pre-1972 sound recording in a schedule conforming to the requirements set forth in the rule.

What is the noncommercial use exception for pre-1972 sound recordings?

The legislation establishes a process for lawfully engaging in noncommercial uses of pre-1972 sound recordings that are not being commercially exploited. To qualify for this exemption, a user must submit a

notice of noncommercial use after conducting a good faith, reasonable search, and the rights owner of the sound recording must not object to the use with 90 days.

After soliciting three rounds of public comments through a notice of inquiry and a notice of proposed rulemaking, the Office issued a final rule identifying the specific steps that a user should take to demonstrate she has made a good faith, reasonable search.

How long will it take for the Office to index the schedules of pre-1972 sound recordings submitted by rights owners under the interim rule?

The Copyright Office will index a schedule of pre-1972 sound recordings promptly following receipt of the schedule in proper form, and the prescribed fee.

Title III Allocation for Music Producers Act (payment mechanism for producers, mixers, and engineers)

What does the AMP Act mean for producers, mixers, or engineers?

Title III of the MMA, the Allocation for Music Producers Act ("AMP Act"), will allow music producers, mixers, or engineers who were part of the creative process that made a sound recording but who were not by statute receiving royalties under section 114, to receive compensation from royalties collected for uses of sound recordings under the section 114 statutory license. It does this by codifying a process wherein the collective designated to collect and distribute royalties (currently, Sound Exchange) will distribute a portion of royalty payments directly to a producer, mixer, or engineer pursuant to a "letter of direction" from an authorized artists payee. The AMP Act also directs the collective (SoundExchange) to adopt a policy that, in the absence of a letter of direction, allows for statutory royalties for certain pre-1995 sound recordings to be paid to producers, mixers, or engineers from the featured artist's share if certain requirements are satisfied, including that the artist payee is notified and does not object.

How the Mechanical Licensing Collective Works[5]

All music publishers, administrators, self-administered songwriters, composers, lyricists and Ex-US CMO's will need to become members of the MLC in order to access their data via the MLC Portal and receive payment from the MLC. "Connect to Collect."

Members of the MLC are encouraged to "Play Your Part," ensuring that data regarding their musical work is accurate and complete. The MLC has two initiatives to help members do this—the Data Quality Initiative (DQI) and the Music Data Organization Form. Members will be able to register new musical works, review and update existing works, and identify new sound recordings that feature their works through the MLC Portal.

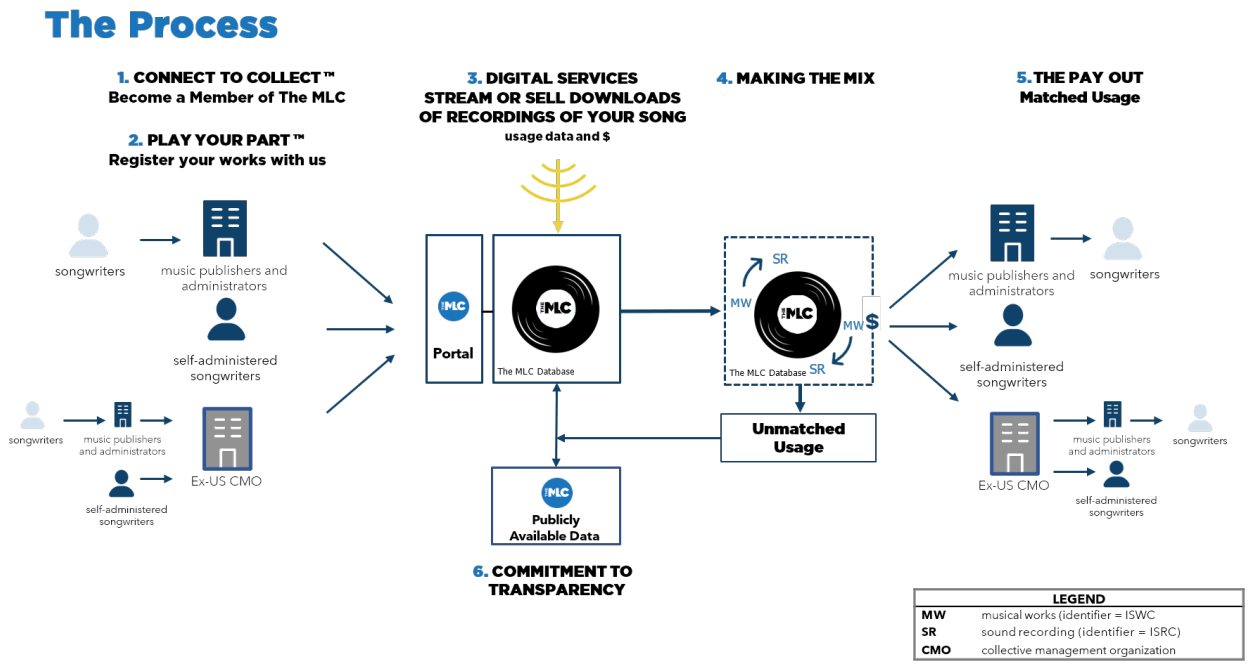
Digital Service Providers (DSPs) that operate under the MLC's blanket license are required to send the MLC monthly usage data files, and the corresponding royalties for each time a sound recording of an MLC member is streamed or downloaded through the DSP's services.

[5] *The MLC Process*, THE MLC, https://www.themlc.com/how-it-works (last visited Feb. 3, 2021).

The MLC's will strive to link the musical works data in the MLC database with the usage data received from DSPs for sound recordings that were streamed or downloaded on their services and then determine the royalties due for each work.

Once the MLC determines the royalties due for each work, they will be distributed to music publishers, administrators, self-administered songwriters, composers, lyricists, and Ex-US CMOs.

The MLC is committed to transparency. It will make data on unclaimed works and unmatched uses available to be searched by registered users of the MLC Portal and the public at large. Registered users will also be able to submit claims for unmatched activity that they believe relates to their musical works through the MLC Portal. The MLC will continue to reprocess unmatched activity regularly, using any new data and claims received. The goal is to match as much activity as possible, leaving no royalties unaccounted.



[6]

Mechanical Licensing Collective: Frequently Asked Questions[7]

What is the Mechanical Licensing Collective?

In 2021, a new entity called The Mechanical Licensing Collective (The MLC) will begin collecting digital audio mechanical royalties from eligible streaming and download services in the United States who elect to secure blanket licenses from the MLC. The MLC will strive to ensure that music publishers and self-

[6] *Id.*
[7] *The MLC Frequently Asked Questions*, THE MLC, https://www.themlc.com/faqs/categories/mlc (last visited Feb. 3, 2021).

administered songwriters, composers and lyricists receive their share of the mechanical royalties that The MLC collects from these services accurately and as soon as possible.

Where is the MLC Located?

While our headquarters is in Nashville, we also have team members based in other cities. We already have team members based in Los Angeles, Miami, New York City and London. We will strive to reach the music publishers and self-administered songwriters, composers and lyricists we serve wherever they are located.

When will the MLC begin operating?

The MLC has already begun building its team and operations, and we continue to grow each month. Work is also well underway developing The MLC Portal and royalty processing systems.
Despite the COVID-19 pandemic, The MLC remains on track to begin issuing blanket licenses to DSPs in January 2021. The MLC expects to begin receiving blanket license royalty payments from DSPs in February 2021 and will then begin matching and distributing those royalties.

What types of licenses does the MLC administer?
The MLC administers blanket mechanical licenses to eligible streaming and download DSPs in the United States. The MLC is not involved in any other types of licenses or royalties, including public performance licenses or royalties, synchronization licenses or royalties, or record royalties.

Will record companies continue to secure mechanical licenses and pay mechanical royalties?

Record companies will still need to secure mechanical licenses and pay mechanical royalties for mechanical uses of musical works in physical products, like CDs and vinyl records. Under the U.S. copyright law, the blanket licenses The MLC will issue could include permanent download use, but the DSPs could also continue to rely on record companies to provide those licenses and pay those royalties.

How are HFA and ConsenSys involved in the work of the MLC?

The Harry Fox Agency (HFA) and ConsenSys were selected by The MLC Board after an extensive RFI/RFP process, to help build The MLC Portal and leverage HFA's existing data set.
An RFI process was initiated in November 2018, resulting in submissions from over a dozen technology companies. A thorough review of responses to the initial RFI was undertaken beginning in December 2018. RFI participants were broadly vetted by numerous members of the copyright owner community, including the music publisher members of the Operations Advisory Committee, who, as a group, have experience with each of the vendor's services and capabilities. Additional input was provided on request by major DSPs, including Amazon, Apple, Google, Spotify and Pandora, each of whom also have significant experience with vendors in this space. The MLC then selected 7 of the companies who submitted RFIs to submit RFPs. The MLC's team spent thousands of hours collectively evaluating vendors, meeting with them, reviewing technical materials and assessing their experience and capacities. And the end of the review process, HFA and ConsenSys were selected.

HFA is helping us onboard music publishers, administrators, and self-administered songwriters, composers and lyricists, and their catalogs to The MLC Portal, manage the matching of digital uses to musical works, and distribute mechanical royalties. ConsenSys is the software developer, building The MLC Portal.

How is the mechanical royalty rate that the MLC will pay determined?

The royalty rates for the blanket licenses issued by The MLC are determined by the United States Copyright Royalty Board.

When does the MLC collect and pay royalties?

The DSPs send sound recording usage data, and accompanying mechanical royalties, to The MLC on a monthly basis. The MLC then matches the usage data to the musical works data in The MLC database. Once the data is matched, The MLC pays out the mechanical royalties to music publishers, administrators, and self-administered songwriters, composers and lyricists.
Songwriters, composers and lyricists who have assigned their right to collect mechanical royalties in the United States to music publishers or administrators receive mechanical royalties directly from the music publisher or administrator.

How often will the MLC distribute mechanical royalties?

The MLC will distribute mechanical royalties on a monthly basis.

Do I need to register with the MLC in order to view musical works data in the MLC database?

The MLC's public database will allow anyone to see the musical works data we have compiled, regardless of whether they are registered users of The MLC Portal.

Does the MLC keep a portion of my royalties to cover its operating costs?

No, The MLC does not keep a portion of the mechanical royalties it collects to cover its operating costs. The operational costs of The MLC are paid for by DSPs through an administrative assessment set by the United States Copyright Royalty Board. The MLC distributes 100% of the mechanical royalties it collects.

Will the MLC be handling historical unmatched royalties?

The Music Modernization Act of 2018 offers a limitation of liability for past copyright infringement to those DSPs who turn over to the MLC all of their historical unmatched royalties by February 2021. As a result, The MLC expects to receive historical unmatched royalties from DSPs. We will then begin working to match the unmatched uses to the corresponding musical works and pay the corresponding royalties to the proper copyright owners.

How does the MLC plan to educate music publishers, administrators, and self-administered songwriters, composers, and lyricists about getting registered?

The MLC is engaged in many different outreach activities. These include working with music industry organizations to get the word out to their members in newsletters, webinars, and social media posts; holding information sessions at music industry conferences; advertising and securing editorial coverage in music-focused online and print publications; working with companies who provide goods or services to music publishers and songwriters, composers and lyricists; and providing educational content to organizations dedicated to teaching music publishing to songwriters, composers and lyricists and future music industry professionals.

Will the MLC's musical works data be available to connect to other industry databases?

The MLC's musical works data will be publicly available in bulk and can therefore be copied and incorporated into other industry databases.

Will blockchain be used in the management of the MLC data?

The MLC does not have any current plans to incorporate blockchain technology into its systems.

Is it possible to connect to the MLC database using an API?

While it is not currently possible to connect to The MLC database using an API, The MLC is planning to develop that capacity in collaboration with the international standards setting organization DDEX.

Do I need to affiliate with HFA in order to receive mechanical royalties from the MLC?

No, you do not need to affiliate with the Harry Fox Agency (HFA) in order to receive mechanical royalties from the MLC.

Will companies like HFA and Music Reports continue to handle mechanical licenses and royalties for digital uses?

While the MLC is the only entity that will administer the blanket mechanical license, other companies will still have the ability to administer voluntary licenses between DSPs and music publishers, including voluntary mechanical licenses for digital uses.

Does a record company need to report anything to the MLC?

Record companies are not required to directly deliver their sound recording data to The MLC, but to the extent that they may also operate a DSP or music publisher, they may need to do so in connection with those activities.

Will the MLC audit DSPs?

The MLC has the right to audit each DSP operating under a blanket mechanical license once every three years.

What are unmatched or unclaimed royalties?

The term "unmatched," as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located. The term 'unclaimed accrued royalties' means accrued mechanical royalties eligible for distribution under section 115 of the U.S. Copyright Law. The distribution of unmatched or unclaimed royalties will not happen for at least 3 years. In the near term, our focus is on matching as much as possible.

How will the MLC resolve ownership disputes?

The MLC will not resolve disputes over copyright ownership. Pursuant to the MMA, the MLC will have a policy for placing royalties on hold when a substantiated dispute has been raised, but the parties to the dispute, or the courts, will decide questions of ownership, not the MLC.

Mechanical Licensing Collective to be Headquartered in Nashville[8]

The Mechanical Licensing Collective has chosen Nashville as the home base for the organization, with plans to add up to 100 full-time employees, with the majority of those to be based in Nashville.

The Mechanical Licensing Collective is still determining a specific office location within Nashville. In January, it was announced the organization would be led by CEO Kris Ahrend. "Locating the MLC's headquarters in Nashville further cements the city's reputation as the national hub for the music industry," Ahrend said in a statement. "Nashville is an extraordinary city with a strong talent pool and a terrific entrepreneurial spirit, and we're excited to build a brand new, globally recognized data and technology startup right here in the Music City."

A graduate of Binghamton University and the Washington & Lee School of Law, Ahrend worked as a law clerk for the Western District of the Virginia District Court and the Second Circuit Court of Appeals before joining the Intellectual Property & Litigation Group of Simpson Thacher & Bartlett, LLP in New York. Ahrend began his career in the music industry working in the Law Department at Sony Music, where he provided legal services to all of Sony's US divisions, including its publishing company. He subsequently worked in the business and legal affairs department at Sony BMG Music Entertainment before accepting a senior executive role at Rhino Entertainment.

[8] Jessica Nicholson, *Mechanical Licensing Collective To Be Headquartered in Nashville*, MUSICROW (Apr. 29, 2020) https://musicrow.com/2020/04/mechanical-licensing-collective-to-be-headquartered-in-nashville/.

In 2013, Ahrend left Rhino to assume a senior executive role within Warner Music Group, where he led a large legal, financial, and administrative shared services organization that he helped to create. In 2016, Ahrend was promoted to President of U.S. Shared Services and tapped to lead the development and launch of Warner Music's new Center of Excellence for Shared Services in Nashville, where he oversaw the operations of 15 functional teams providing a variety of administrative, financial, and legal services to Warner Music's U.S.-based publishing teams, record labels, and corporate divisions.

He serves on the boards of the Nashville Chamber of Commerce and the Nashville Downtown Partnership, and is a member of the Music City Music Council.

The Mechanical Licensing Collective was designed by the United States Copyright Office, and created by U.S. music publishers and songwriters (backed by the National Music Publishers' Association), as a new entity to license and administer rights under the Music Modernization Act which was signed into law in 2018. The law ensures that the mechanical rights of songwriters and music publishers are properly licensed, and royalties fully paid by digital services, and it improves how those royalty rates are determined. It also establishes a publicly accessible mechanical rights database to ensure accurate, transparent copyright ownership information.

A Giant Step Forward: Nashville Picked for National Hub Dedicated to Getting Songwriters Paid[9]

A new organization dedicated to ensuring songwriters are paid 100% of the royalties they earn from digital streaming and download services like Spotify will call Nashville home.

The nonprofit Mechanical Licensing Collective is now searching for offices to locate about 100 employees near downtown and Music Row. They will process online licensing and royalty payments for all U.S. songwriters and their publishers.

The collective was born from landmark copyright legislation, the Music Modernization Act, signed into law in 2018 by President Donald Trump. It's the first central organization focused on administering royalties for songwriters whose work is published online.

Its goal is to fix the long-standing problem of widespread unpaid royalties by Spotify and other streaming services.

"This is one of those really significant changes in the music industry that happens once in a generation or two," Mechanical Licensing Collective CEO Kris Ahrend said. "Now Nashville isn't just the hub for the creative part of the music business, we're the hub of administration for licensing and payment of royalties."

Music performers receive royalties through separate performing rights organizations.

'A giant step forward'
Songwriters are especially excited about the collective because they are well represented in its leadership,

[9] Sandy Mazza, *A Giant Step Forward: Nashville Picked for National Hub Dedicated to Getting Songwriters Paid*, TENNESSEAN (Apr. 29, 2020), https://www.tennessean.com/story/money/2020/04/29/nashville-picked-new-national-hub-pay-songwriter-royalties-spotify-other-services/3041494001/.

said Bart Herbison, executive director of Nashville Songwriters Association International and a member of the collective's Board of Directors.

"It's important for songwriters because they have a say in the governance rules and how it operates," Herbison said. "It's a much fairer distribution method. The Mechanical Licensing Collective is a giant step forward in terms of songwriters' rights."

Streaming services have struggled to keep up with all the writers of the many tracks on their platforms, and sometimes songwriters' names aren't publicized.

"There was a disconnect. Services were not able to determine who to pay," Ahrend said. "That created a massive problem for songwriters because the money wasn't getting through to them."

Songwriters to get credit, back pay
The commission will begin administering mechanical blanket license agreements for platforms to use songs on streaming and download audio services on Jan. 1.

Then, they will collect royalties and pass them onto independent writers and music publishers. The collective itself is funded by the streaming and download services, so it doesn't take a cut of the royalties.

A database of musical works crediting songwriters will streamline the payment process and clear up errors in the existing data.

Songwriters will also receive unclaimed funds held in escrow by platforms.

"A lot of songwriters who have never bothered claiming their mechanical royalties are excited about it," Herbison said. "It's very hard to do if you're not in the business of doing it – like taxes. (The collective) is a place you can go to with expertise and they do it for free.

"Songwriters should be writing and creating the songs instead of worrying about ingesting lots of ones and zeros."

How Music Publishers Can Prepare for Mechanical Licensing Collective Database | Opinion[10]

Now that the U.S. Copyright Office has designated the NMPA, NSAI, and SONA-backed Mechanical Licensing Collective (MLC) to begin implementation of the Music Modernization Act (MMA), the time has come for the music publishing industry to get its act together regarding data.

One of the MLC's chief duties will be to create and maintain a database of music composition copyrights and their respective owners, allowing the group to collect mechanical royalties from digital service providers (DSPs) like Spotify and Apple Music and distribute them to the right parties.

The MLC will open its virtual doors on January 1, 2021, and it will have three years to attribute and distribute the current "black box" of unpaid royalties. If music publishers want their money quickly, they need to get their song metadata in top shape now.

Currently, publishing data is spread across multiple databases, each with a different structure, making cross-compatibility a major headache. In addition, many publishers do not have data on the various recordings of their compositions, and vice versa at record labels. Further, the quality of existing data

[10] Guy Barash, *How Music Publishers Can Prepare for Mechanical Licensing Collective Database | Opinion*, TENNESSEAN (Oct. 7, 2019), HTTPS://WWW.TENNESSEAN.COM/STORY/OPINION/2019/10/07/HOW-MUSIC-PUBLISHERS-CAN-IMPROVE-THEIR-DATA-HYGIENE/3896091002/.

leaves much to be desired. For example, one of my clients kept track of royalty payments by putting symbols after the writer's name, or even worse, creating duplicates.

The problems these techniques cause are too numerous to mention, including missed payments to songwriters, lack of transparency, an inability to audit payments, and cluttered databases that are difficult to sort through and understand.

Of course, that's all on top of traditional metadata problems such as misspelled or incorrectly listed artist names and song titles, missing rights information, and the like. It is imperative that these issues be addressed so that all data is consistent, properly stored, and easily retrievable - not just for the MLC and digital mechanical royalties, but to expedite all kinds of licensing and royalty payments.

Many music publishers are thinking that they will just let the MLC clean up their data for them. Theoretically, that works if you want to slow implementation and the flow of royalty monies to you and your songwriters. And in this era, data maintenance should be a core capability of any copyright-based company.

So, how can music publishers practice better data hygiene now? By focusing on a simple objective: collect publishing, recording, and other related data and aggregate it in an easily accessible internal data warehouse for efficient monitoring, retrieval, and distribution.

This can be accomplished in three steps:

Cleanup
Organizations such as DDEX and Apple provide guidelines to improve the quality of metadata in a noble attempt to establish a universal standard, but the key is training: train users to conform with these guidelines and follow best practices.

This guarantees not only that songwriters and other rights-holders will be paid quickly and efficiently but also that any data publishers send to the MLC will be as up-to-date and accurate as possible. While this approach may be good going forward, historical data remains a challenge. To normalize it may seem like an insurmountable task, but fear not, there are companies such as Gracenote and Exactuals who have created products and services that can speed up the process.

Development
Once metadata is in tip-top shape, each music publisher should create its own internal authoritative source of data to eliminate the need to gather data from multiple sources and then manually normalize it, which as we all know, is a tedious and time-consuming process.

Once created, this one source will feed all other internal and external databases, including that of the MLC. It is essential, however, that these databases be created with sharing in mind, meaning they must utilize standards such as Open Database Connectivity (ODBC) that aim to make it easier for various databases to "talk" to each other. The goal, in my opinion, should be to form a network that will allow real-time validation of the data, as some aspects, such as ownership, change from time to time.

Distribution
Finally, as a network of publisher databases is formed, they will be able to share their data with members of their own team internally, members of the community, and outside sources such as DSPs, PROs, e-commerce outlets, and others. This, as mentioned, will ensure all parties have access to verified composition data, with the idea being that each party would then receive the data they need to finalize their own internal data source.

Blockchain technology, for example, despite the negative reputation it has recently gained, embodies a concept that should guide us in this process: leverage the power of connected networks to constantly validate information. When data is constantly checked and verified, publishers and, in turn, the MLC will have all the information they need to collect and distribute royalties with a new level of speed and accuracy.

In the end, the MMA represents a huge step forward for songwriters, publishers, and other music rights-holders, and the MLC database stands to improve royalty collection and distribution on a massive scale. It behooves publishers to get the database up and running as quickly as possible, and the best way to do that is to clean up their own data now.

Copyright Alternative in Small-Claims Enforcement Act[11]

Copyright Claims Board

There is established in the Copyright Office the Copyright Claims Board, made up of three full-time Copyright Claims Officers, which shall serve as an alternative forum in which parties may voluntarily seek to resolve certain copyright claims regarding any category of copyrighted work, as provided in this chapter. The register of Copyrights shall hire not fewer than two full-time Copyright Claims attorneys to assist in the administration of the Copyright Claims Board.

Authority and Duties of the Copyright Claims Board

The functions of the Copyright Claims Officers are to render determinations on the civil copyright claims, counterclaims, and defenses that may be brought before them; conduct hearings and conferences; facilitate the settlement by the parties of claims and counterclaims; and award monetary and injunctive relief.

The functions of the Copyright Claims Attorneys are to provide assistance to the Copyright Claims Officers in the administration of their duties; provide assistance to members of the public with respect to the procedures and requirements of the Copyright Claims Board; and provide information to potential claimants who are contemplating bringing a permissible action before the Copyright Claims Board.

The Copyright Claims Officers and the Copyright Claims Attorneys shall, in the administration of their duties, be under the general direction of the Register of Copyrights.

Nature of Proceedings

Participation in a Copyright Claims Board proceeding is entirely voluntary. The right of any party to pursue a claim, counterclaim, or defense in a district court of the United States and to seek a jury trial is not affected by the existence of the Copyright Claims Board.

The Copyright Claims Board may render determinations with respect to the following claims, counterclaims, and defenses:

(1) A claim for infringement of an exclusive right in a copyrighted work provided under section 106 by the legal or beneficial owner of the exclusive right at the time of the infringement.
(2) A claim for a declaration of noninfringement of an exclusive right in a copyrighted work provided under section 106.

[11] Copyright Alternative in Small-Claims Enforcement Act of 2019, H.R. 2426, 116th Cong. § 1 (2019).

(3) A claim under section 512(f) for misrepresentation in connection with a notification of claimed infringement or a counter notification seeking to replace removed or disabled material.
(4) A counterclaim that is asserted solely against the claimant in a proceeding
    a. pursuant to which the counterclaimant seeks damages, and that arises under section 106 or section 512(f) and out of the same transaction or occurrence that is the subject of a claim of infringement, a claim of noninfringement, a claim of misrepresentation; or
    b. that arises under an agreement pertaining to the same transaction or occurrence that is the subject of a claim of infringement if the agreement could affect the relief awarded to the claimant.
(5) A legal or equitable defense in response to a claim or counterclaim asserted under this section.
(6) A single claim or multiple claims permitted under this section by one or more claimants against one or more respondents, but only if all claims arise out of the same allegedly infringing activity and do not, in the aggregate, result in the recovery of damages that exceed the limitations under this section.

The Copyright Claims Board may not render determinations with respect to the following claims and counterclaims:

(1) A claim or counterclaim that is not a permissible claim or counterclaim under this section.
(2) A claim or counterclaim that has been finally adjudicated by a court of competent jurisdiction or that is pending before a court, unless a stay has been granted to permit the claim or counterclaim to proceed before the Copyright Claims Board.
(3) A claim or counterclaim by or against a Federal or State governmental entity.
(4) A claim or counterclaim asserted against a person or entity residing outside of the United States, except when that person or entity initiated the proceedings before the Copyright Claims Board and is subject to the permissible counterclaims.

The Copyright Claims Board may grant monetary and injunctive relief in rendering its determinations.

With respect to monetary damages, the Copyright Claims Board may either award actual damages and profits or statutory damages. Actual damages are to take into consideration whether the infringing party has agreed to cease the infringing activity, and otherwise be determined in accordance with section 504(b). Statutory damages are not to exceed $15,000 for each infringed work that is timely registered with the U.S. Copyright Office. Statutory damages for works that are not timely registered with the Copyright Office are not to exceed $7,500 for each infringed work, or a total of $15,000 in any one proceeding. No claimant may seek or recover damages that exceed $30,000 for any one or more claims, not including attorneys' fees and costs.

At any time before final determination is rendered, the claimant or counterclaimant must elect to recover actual damages and profits or statutory damages or elect not to recover damages.

With respect to injunctive relief, the Copyright Claims Board may impose a requirement to cease infringing conduct if, in the related proceedings, a party agrees to cease activity that is found to be infringing or to cease sending a takedown notice or counter notice if that notice was found to be a knowing material misrepresentation.

Protecting Lawful Streaming Act[12]

Protecting Lawful Streaming Act
It shall be unlawful to willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that is primarily designed for the purpose of publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law.

It shall be unlawful to willfully, and for purposes of commercial advantage or private functional gain, offer or provide to the public a digital transmission service that has no commercially significant purposes or use other than to publicly perform works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law.

It shall be unlawful to willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that is intentionally marketed by or at the direction of that person to promote its use in publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law.

Any person who violates these rules, in addition to any penalties provided for under title 17 of any other law, shall be fined under this title, imprisoned not more than 3 years, or both; or fined under this title, imprisoned not more than 5 years, or both, if the offense was committed in connection with one or more works being prepared for commercial public performance, if the person knew or should have known that the work was being prepared for commercial public performance; or fined under this title, imprisoned not more than 10 years, or both, if the offense is a second or subsequent offense under this section.

The provisions of this Act are designed to target criminal conduct committed with criminal intent. Lawful internet and streaming services, licensees, mainstream businesses, and users engaged in ordinary activities are not at risk of prosecution under this Act. Only those engaged in conduct that is primarily designed, intentionally marketed, or has no commercially significant purpose or use other than illegal streaming are at risk. Any who engage in noncommercial activities are not at risk of prosecution. Likewise, this statute does not apply to any person acting in good faith and with an objectively reason able basis in law to believe that their conduct is lawful.

Criminal sanctions are only appropriate in cases of copyright infringement with respect to certain types of infringement—generally when the infringing party knows the infringement is wrong, and when the infringement is particularly serious, or civil enforcement by copyright owners would be especially difficult. As such, criminal prosecution in copyright infringement cases has been reserved for serious,

[12] Protecting Lawful Streaming Act of 2020, H.R. 8337, 116th Cong. Rec S. 7931 (2020).

large-scale commercial infringements. It is not designed to target ordinary businesses or infringements that can be adequately addressed through civil litigation.

Providers of broadband internet access service would not be subject to prosecution under this statute based on the attributes or features of its service. A service provider could not be prosecuted based on the misuse of its services by customers or others in furtherance of an infringement, so long as the service provider does not share the requisite criminal intent of the infringing users. Similarly, a service that streams content uploaded by users would not be subject to prosecution simply because some users independently upload infringing content.