

## PRESIDENT TRUMP SIGNS THE MUSIC MODERNIZATION ACT INTO LAW

Highlighting a rare instance of bipartisanship in 2018, Donald Trump has officially signed into law the Music Modernization Act (MMA) which was passed unanimously by Congress last month.

The MMA is a momentous development for the music industry, and while it primarily addresses songwriters and digital streaming platforms, a closer look at the law reveals a number of ramifications for content creators utilizing music in their audiovisual productions, such as commercials, films, television programs and the like.

### WHAT IS THE MUSIC MODERNIZATION ACT?

The MMA reflects years of negotiations between music rights holders and music streaming services, known as digital service providers (DSPs). The music rights holders claimed that certain provisions of the Copyright Act dating from the 1970's failed to adequately compensate artists and songwriters for the use of their songs on digital platforms. The MMA modernizes that process by creating a compulsory, blanket licensing rate system paid by the DSPs through a central clearinghouse called the Mechanical Licensing Collective (MLC). In exchange for DSPs making mandatory license payments, the MMA provides a shield to DSPs against copyright infringement liability. The MMA also updates processes for how

### THE BOTTOM LINE

The Music Modernization Act is getting a lot of press, and for good reason: it is one of the most significant updates to music law in decades. While the impact of the MMA will primarily be felt by DSPs, artists and songwriters, the creation of the Mechanical Licensing Collective and adjustments to how public performance royalties are calculated will affect all types of content creators using music in their productions.

mechanical royalties are calculated and split among the artists and songwriters.

While the MMA primarily affects the practice of streaming and digital distribution in the form of downloads, there are a number of other developments in the MMA that audiovisual content producers should be aware of.

### THE MLC WILL HELP STREAMLINE MUSIC LICENSING

The MLC will serve as a publicly-accessible repository for music rights holder information. In addition to helping people more quickly identify songwriters and publishers, musical compositions will be matched to master recordings, making it faster and easier for those seeking to license music to identify and contact all the

relevant rights holders. Putting aside questions of reliability, the MLC has the potential to significantly streamline the entire music licensing process.

### UPDATES TO PUBLIC PERFORMANCE ROYALTIES

One of the more newsworthy elements of the MMA is the expansion of public performance royalties to pre-1972 master recordings. This development settles years of litigation between DSPs and artists with respect to songs recorded prior to 1972, who claimed they were entitled to compensation for the digital performance of their recordings. Now these recordings will be entitled to statutory royalties. However, content creators generally won't see a change, as this expansion of public performance rights only applies to audio-only transmissions.

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The repeal of Section 114(i) of the Copyright Act, on the other hand, will affect more than just audio-only performances. Section 114(i), which dealt with the calculation of public performance royalties, prohibited rate court judges from considering master recording royalties when setting rates. Master recording rates, unlike public performance royalties, are not set by judges and therefore may be negotiated in the free market. The repeal of Section 114(i) allows rate court judges to take into consideration

master recording rates, meaning that public performance royalties could increase.

This should serve as a reminder to agencies and brands that license music to clarify their responsibility for royalty payments in connection with the public performance of songs used in advertising, as increased royalty rates may result in more scrutiny by licensors to ensure the collection of those royalties.

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