

INSIGHTS

House Unanimously Passes Music Modernization Act – Paves the Way for Major Updates to Digital Music Royalty Ecosystem

May 1, 2018

By: [Jonathon K. Hance](#)

A major upgrade for music copyright and licensing laws is one step closer to reality with the U.S. House of Representative's unanimous passage of [HR 5447](#), dubbed the Music Modernization Act ("MMA"), which is aimed at revolutionizing the way digital music royalties are collected and how songwriters get paid.

The MMA updates the legal framework for how digital music streaming services, like Spotify, Amazon Music, and Apple Music, pay royalties to musicians. Hailed as a "[**supersized**](#)" bill, the MMA is a compilation of three music-related bills recently introduced in the House that would update the U.S.' antiquated mechanical licensing system, create a statutory right to compensation for behind the scenes players like sound engineers and producers, and give digital streaming royalty protection to pre-1972 music which is not entitled to streaming royalties under current federal copyright laws.

The MMA's most significant change is the creation of a blanket mechanical license for digital streaming services along with an agency to assign rights and assure proper payments to songwriters and publishers.

Under current copyright law, digital music streaming services are required to pay mechanical royalties to songwriters for every song they stream. Streaming services, however, routinely complain that identifying these songwriters is challenging, if not impossible. Consequently, these streaming services regularly take advantage of an "address unknown" loophole in section [**115\(c\)\(1\)**](#) of the Copyright Act, called a "Notice of Intention" or "NOI," that allows them to use the music without paying royalties until the songwriter identifies him or herself. This structure has led to lawsuits against Spotify and other digital music services from publishers and songwriters who say that they were [**not properly paid**](#) for their music.

Rather than filing NOIs for various songs, the Music Modernization Act would allow music streaming services to pay for a broad blanket license covering every song they stream. The MMA would create a single governing body, called the Mechanical Licensing Collective, charged with granting these blanket licenses and distributing royalties to the rightful songwriters.

The MMA also would offer streaming services a safe harbor from copyright infringement lawsuits (provided the streaming service has a blanket license), effectively removing the ever-

looming threat of statutory copyright damages to the music streaming business model. Further, the MMA would ensure that music royalty rate court cases are rotated among the various federal judges in the Southern District of New York as opposed to the current practice of assigning a single judge to each performance rights organization (ex., ASCAP, BMI, etc.).

The MMA, which was introduced by House Judiciary Committee Chairman Bob Goodlatte (R-VA), and Ranking Member Jerry Nadler (D-NY), contains portions of the previously introduced ***Music Modernization Act***, as well as the ***CLASSICS (Compensating Legacy Artists for their Songs, Service, & Important Contributions to Society) Act***, which aimed to require digital services to pay labels and performers for their use of recordings made before 1972, and the ***AMP (Allocation for Music Producers) Act***, which focused on ensuring that producers and engineers receive royalties on recordings they produced.

The MMA is **widely supported** by the music industry, including the National Music Publishers' Association, the Recording Academy, the RIAA, ASCAP, BMI, the American Association of Independent Music and the American Federation of Musicians. Satellite radio provider Sirius XM has been a notable holdout, arguing that the MMA is **anti-competitive** and ultimately harmful to public interest and consumers.

The MMA now moves on to the Senate, which is already considering **similar bills**. The Senate is expected to address the MMA sometime in May. Considering the undivided support for the MMA in the House, odds are the Senate will have a similar response.

If you have questions or need assistance with copyright issues, please contact your Bracewell lawyer.