

## Workplace ISSUES

# Implementation of the Music Modernization Act: Copyright Office issues solicitation for Mechanical Licensing Collective

Signed into law on Oct. 11, 2018, the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA) reforms U.S. Copyright law in significant ways that will affect the licensing of digital music. Under pre-MMA copyright law, “mechanical” licenses for reproduction and distribution of musical works in phonorecords were obtained by licensees on a per-work, song-by-song basis. Under the MMA, Section 115 of the Copyright Act, which covers compulsory licenses for making and distributing phonorecords, has been modified to provide for a new blanket license for digital music providers — such as Spotify, Apple Music, Pandora, SiriusXM, Amazon Music, Google Play, TIDAL and others — to engage in specific covered activities.

What is a mechanical license? It is the means by which rights are granted to reproduce and/or distribute a song that is not yours. Pre-MMA, a digital music provider wishing to obtain a license to record and distribute a protected work had to either negotiate directly with the copyright owner to procure a voluntary license or obtain a compulsory license under 17 U.S.C. 115.

However, the compulsory license system was frequently criticized for being difficult to administer, unfair and under compensating owners of musical compositions, as noted in a Congressional report on MMA bill prior to its enactment,



By **ANNETTE KAHLER**  
Daily Record  
Columnist

with and do not adequately reward the artists and professionals responsible for creating American music.”

Under Title I of the MMA, a broad blanket license to reproduce and distribute digital music through downloading or interactive streaming will be implemented. Licensing of music distribution via physical media such as CDs and vinyl will still operate on a per-work, individual song license, basis. It is envisioned that the new blanket license system will take approximately two years to implement, with a target license availability date of Jan. 1, 2021. A transition period will be established, allowing digital music providers to limit copyright infringement liability provided they engage in good-faith, commercially reasonable efforts to identify and pay musical work copyright owners.

“[t]he current statutory scheme applies inconsistent rules that place certain technologies at a disadvantage and result in inequitable compensation variances for music creators. These inconsistencies have drawn criticism that music copyright and licensing laws are too difficult to comply

The initial step in implementation of the MMA is the designation of a Mechanical Licensing Collective (MLC)—essentially a quasi-governmental agency—that will administer the new system. Among its duties, the MLC will collect and distribute royalties from digital music providers, establish a musical works database that will be publicly available and is expected to become the most comprehensive database in the music industry, and administer a system by which copyright owners can claim ownership of musical works and receive royalties they are due.

Once the blanket licensing model is put into effect, a licensee must report usage and pay royalties to the MLC on a monthly basis. The MLC will then distribute royalties to copyright owners that can be identified and located. For any royalties that cannot be distributed, the MLC will deposit the royalties into an interest-bearing account for “unclaimed accrued royalties.” After a minimum period of three years, if a copyright owner who is due unclaimed accrued royalties cannot be identified and located, these royalties may be distributed on a pro rata share to other copyright owners receiving royalties through the mechanical licensing collective.

It is important to note that only digital mechanical licenses will be licensed by the MLC. Other types of license, such a

synchronization licenses, public performance licenses, lyric licenses, derivative licenses and hybrid licenses will not be licensed by the MLC. In addition, digital music providers still have the option to obtain a voluntary license directly with a copyright owner or his/her representative; however, an administrative assessment fee may be due to MLC if the volume of such direct licenses is considered significant.

Details of the MLC requirements and a corresponding request for proposals was published by the U.S. Copyright Office in the Dec. 21, 2018 Federal Register. Under the MMA, the MLC should be a nonprofit entity governed by a board of directors that is created and endorsed by copyright owners in the relevant music industry and can demonstrate that it has the administrative and technological capabilities to perform the required functions under the statute.

In addition, the Register of Copyright is empowered to designate a digital license coordinator (DLC) to represent

digital music providers in the administration of the new blanket mechanical license. Among the duties of the DLC will be to help locate and identify copyright owners who are due unclaimed accrued royalties and ensure proper payment to those parties.

Initial proposals for the MLC must be received by March 21, 2019, and the Register of Copyrights is directed to designate the MLC by July 8, 2019, or 270 days from the enactment of the statute.

In addition to music licensing modernization, Title II of the MMA, known as the "Compensating Legacy Artists for their Songs, Services & Important Contributions to Society" or "CLASSICS" Act changes the law with respect to pre-1972 sound recordings. Specifically, it means federal remedies for copyright infringement will be available to owners of sound recordings fixed before Feb. 15, 1972. Such remedies will be available for 95 years after first publication of the recording. In addition, a statutory licensing regime for pre-1972 sound record-

ings will be implemented to require that songwriters, performers and record labels will all be paid royalties when such sound recordings are played on digital radio, including internet radio, satellite radio and cable TV music services.

Title III of the MMA, the Allocation for Music Producers (AMP) Act provides an allocation of royalties for music producers of sound recordings that are used on digital radio.

As with all significant revisions to law, the devil is in the details, and the quality of the implementation of the MMA will greatly influence its success. Members of the public who wish to share information with the Register of Copyrights, or submit a suggestion or proposal for the MLC or DLC, are invited to do so.

*Annette I. Kahler is of counsel at the law firm of Heslin Rothenberg Farley & Mesiti P.C. with experience in technology, law and business. Annette can be reached at (518) 452-5600 or at [annette.kahler@hrfmlaw.com](mailto:annette.kahler@hrfmlaw.com).*