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MECHANICS OF MUSIC MODERNIZATION ACT TAKE SHAPE

The music industry is frequently disharmonious—a characteristic also attributable to Congress. However, in 2018 there was a uniform effort by Congress, musical artists, producers, and streaming companies to pass the "Orrin G. Hatch-Bob Goodlatte Music Modernization Act" ("The Act"). Despite the vast differences among the different players in the music industry, almost everyone involved agreed that in the era of music streaming services, early 1900's copyright law was outdated. Thus, in 2018, the stars aligned and the Music Modernization Act (MMA) was enacted into law, the most significant overhaul to music copyright laws in decades. The Act contains three sections: (1) the Music Modernization Act ("MMA"), (2) the Classics Protection and Access Act ("Classics"), and (3) the Allocation for Music Producers Act ("AMP").

MUSIC MODERNIZATION ACT

The MMA established a mechanical licensing collective ("MLC") that will administer new blanket licenses for digital music services and distribute royalties to songwriters and producers. The U.S. Copyright Office has opened up a rulemaking proceeding to select the entity that will be charged with responsibility to operate the collective. There are two groups vying to operating the collective. One is led by the National Music Publishers Association (NMPA), which represents the world's largest music publishers. The other entity is referring to itself as the American Music Licensing Collective (AMLC) and is a bit of an upstart led by Stewart Copeland, former drummer for The Police. Initial comments on the rulemaking are due March 21, 2019. Replies are due April 22. There will only be one MLC. Who will it be? We'll keep you posted.

The collective will have no authority to issue mechanical licenses for physical copies of a master recording (e.g. CDs) nor to use a musical composition in an audio-visual work (i.e., "sync license"). Moreover, a blanket license issued by the MLC will not authorize digital public performances of musical compositions. Royalties for public

performance of musical compositions will still be administered by performing rights organizations such as ASCAP and BMI.

Overall the MLC will do three things. First, the MLC will collect, distribute and audit mechanical royalties generated by blanket licenses issued to digital music streaming services. Second, the MLC will create and maintain a public database to match songwriters and composers with their works. Finally, rather than let digital music service providers hang on to unclaimed mechanical royalties, the MLC will hold those royalties for a period of three years while making active attempts to find the artist(s) to whom royalties belong.

Royalty rates are another issue addressed by the Act. Section 115 of the Copyright Act has regulated musical compositions since 1909—before recorded music even existed. Every five years, compulsory mechanical royalty rates are established by Copyright Royalty Board, which is a part of the Library of Congress. Prior to the Act, the compulsory mechanical rate was established based on public policy principles set forth under 17 U.S.C. §801(b)(1). However, the Act establishes a new market-based standard based on what a "willing buyer and willing seller" would negotiate in a private negotiation – a common definition of fair market value. Ironically, the Copyright Royalty Board (CRB) just published its new mechanical royalty rates for the next five-year period (January 1, 2018 through December 31, 2022), which include a 44% increase in the "top line" rate that streaming services must pay to songwriters and composers. This decision is subject to appeal by streaming services, which must be filed by March 7, 2019. The new market-based method under the MMA will not be used until the CRB begins its next mechanical rate making docket for the five-year period beginning January 1, 2023.

THE CLASSICS ACT

The Classics Act adds copyright protections for music recordings created before 1972 and continues copyright protection for pre-1972 music recordings until 2067. Under the 1976 Copyright Act, recordings prior to February 15, 1972 were not protected by federal copyright law.

Under the Classics Act, songs recorded prior to 1972 will now receive the same federal copyright protection as songs recorded after. Federal protection for pre-1972 sound recordings will expire 95 years after the date of their first publication, with an additional number of years added to the term depending on when the sound recording was first published. Pre-1923 recordings will enter the public domain over

the next two years; recordings published between 1923 and 1946 will enter the public domain five years after their 95-year copyright expires; and recordings from 1947–1956 remain under copyright protection for another 15 additional years.

THE AMP ACT

The final piece of the MMA is the AMP Act**.** With the decline of physical sales of CD's and records, and the rise of online streaming services, producers found it more difficult to get paid for their services. Usually the only route to receiving payment was through the artist. But under the AMP Act, producers will receive direct payment through Sound Exchange when the recording they worked on is performed on satellite and online radio stations (i.e. non-interactive digital services). However, the AMP Act does not apply to online interactive streaming services.