

DSP Obligations under The Music Modernization Act of 2018

The Music Modernization Act of 2018 (the “MMA”) imposes a number of legal obligations on digital service providers (DSP) that make music available to consumers in the U.S. via interactive streaming or digital download services (“digital audio services”). These legal obligations will require those services to interact directly with The MLC.

Reporting and Payment Obligations

The MMA requires almost every DSP that operates a digital audio service in the U.S. to report usage data for their services to The MLC effective January 2021. The only DSPs that will not be required to report their usage data to The MLC will be services that: (1) make fewer than 5,000 unique sound recordings available to U.S. consumers each month and (2) generate less than \$50,000 in revenue each month (and less than \$500,000 in revenue in any 12-month period) from U.S. covered activities (“Small DSPs”). DSPs that secure the new blanket license established by the MMA will also be required to pay the mechanical royalties due under that license to The MLC.

Finally, the MMA also requires that all DSPs contribute toward funding The MLC’s operating costs. The MLC’s operating budget has already been set by The U.S. Copyright Royalty Board, an independent unit within the Library of Congress that is comprised of a panel of three judges. The MLC will collect these contributions directly from DSPs. The obligations to provide usage reporting and contribute toward The MLC’s operating costs apply regardless of whether a DSP elects to secure the new blanket license established by the MMA or not.

The New Blanket License

Effective January 1, 2021, DSPs are eligible to secure a blanket license that covers their use of musical works in digital audio services in the U.S. DSPs that secure the blanket license and maintain it through compliance with the MMA and the corresponding regulations established by the U.S. Copyright Office will not be liable for copyright infringement arising from their use of musical works on their eligible digital audio services.

Obtaining a blanket license does not preclude services from maintaining or entering into new voluntary licenses directly with music publishers or other musical works rightsholders. The MMA permits DSPs to continue to license musical works rights directly should they so choose, as long as they provide The MLC with the required written notice and data regarding those direct licenses, so The MLC can determine which musical works on those services are covered by those voluntary licenses rather than the blanket license. Services that maintain voluntary licenses will be able to “carve out” from the blanket license the uses that are covered by those voluntary licenses, and pay the associated royalties directly to their direct licensors at the rates and terms of their voluntary licenses.

Likewise, for permanent digital downloads and ringtones, record companies may continue to obtain compulsory mechanical licenses on a song-by-song basis, and a DSP may continue to obtain voluntary mechanical licenses from record companies who are authorized and choose to “pass through” mechanical licenses to the DSP.