

Overview of the Music Modernization Act

The bill reforms the music licensing landscape in four main dimensions.

Section 115 Reform

This section of the bill ends the bulk Notice of Intent (NOI) process through the Copyright Office, which can prevent songwriters from being compensated or compensated in a timely manner for uses of their works.

Under the Music Modernization Act, the digital services would fund a Mechanical Licensing Collective (MLC), and, in turn, be granted blanket mechanical licenses for interactive streaming or digital downloads of musical works. The MLC would be governed by publishers and self-published songwriters. The MLC would address the challenges digital services face today when attempting to match songwriters and publishers with recordings.

The bill would also create business efficiencies for the digital services by providing a transparent and publicly accessible database housing song ownership information. Additionally, because the database would publicly identify songs that have not been matched to songwriters and/or publishers, publishers would also be able to claim the rights to songs and get paid for those songs. Songwriters and publishers would also be granted an audit right, which they don't currently have under Section 115.

Willing Buyer/Willing Seller Standard

Section 115 of the Copyright Act has regulated musical compositions since 1909—before recorded music even existed. Section 115 allows anyone to seek a compulsory license to reproduce a song in exchange for paying a statutory rate. Current law directs the Copyright Royalty Board (CRB)—the government body responsible for setting the statutory rate—to apply a legal standard to determine rates that does not reflect market value.

The Music Modernization Act replaces the current flawed legal standard with a standard that requires the court to consider free-market conditions when determining rates.

The “Wheel” Approach

Currently, ASCAP and BMI are each assigned to a single, respective rate court judge. Every case must be adjudicated before each performance rights organization's (PRO's) respective designated consent decree judge.

Under the Music Modernization Act, a district judge in the Southern District of New York would be randomly assigned from the wheel of district judges for rate setting disputes. The “wheel” approach would enable BMI and ASCAP, as well as licensees, to go before any judge in the Southern District of New York on a rotating basis—rather than being assigned to a single judge—for the purpose of rate setting disputes. This “wheel” approach ensures that the judge will find the facts afresh for each rate case based on the record in that particular case, without impressions derived from prior cases.

Section 114(i) Repeal

Currently, Section 114(i) of the Copyright Act forbids the federal rate courts overseeing the consent decrees that govern the two major PROs from considering certain evidence when setting

performance royalty rates for songwriters and composers. The rate court judges are barred from considering sound recording royalty rates as a relevant benchmark when setting performance royalty rates for songwriters and composers. As a result, the playing field is uneven, at the expense of songwriters.

The Music Modernization Act repeals Section 114(i), moving the industry to a fairer system under which PROs and songwriters would have the opportunity to present evidence about the other facets of the music ecosystem to judges for their consideration. This repeal creates the opportunity for songwriters to obtain fairer rates for the public performances of their musical works.