IP Alert: The U.S. Enacts Major Changes to the Copyright Laws Regarding Music Licensing and “Pre-1972” Recordings

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Today, President Donald Trump signed into law the "Orrin G. Hatch—Bob Goodlatte Music Modernization Act" (MMA). Lauded by industry and policymakers as the most important music legislation in a generation, the MMA will impact current and past musicians, producers, sound engineers, and mixers, as well all digital music providers, both large and small, by making sweeping changes to music licensing and the U.S. copyright laws.

Passed unanimously by the U.S. House of Representatives on September 25, 2018, and agreed to unanimously in the U.S. Senate on September 18, 2018, the MMA makes the following key changes:

First, it creates a simplified blanket licensing system to make it easier for digital music providers (such as Spotify, Apple Music, Amazon Music, etc.) to obtain a license for songs, while also ensuring that songwriters are paid the royalties owed. For most music, there are two copyrights in each work: 1) the underlying musical composition (notes and lyrics of a work) and 2) the sound recording or recorded performance of the work. The MMA instructs the Copyright Register to oversee creation of a new Mechanical Licensing Collective (Collective) that will gather payments from digital music providers generated under the new law and distribute them accordingly to songwriters.

The MMA also revises outdated songwriter royalty standards to ensure songwriters are paid fair market value for their work and enables rate court judges determining royalties to consider the payments made to recording artists when determining what streaming services will pay songwriters—a modification that is critical for songwriters who, according to the American Society of Composers, Authors, and Publishers, currently make six to 10 times less than recording artists.

The second major pillar of the MMA requires streaming services to pay digital performance rights for sound recordings created prior to 1972 (the year sound recordings received federal copyright protection). Previously, only the songwriters and not the performers of pre-1972 works received royalties when their works were streamed as the pre-1972 sound recordings were only protected state copyright laws that do not account for digital streaming. As part of a last-minute negotiation, the MMA was clarified that it does not

create a federal copyright for such "pre-1972 works" but instead provides a special, *sui generis*, federal form of protection for pre-1972 digital performances.

Lastly, the MMA creates a statutory right for creative professionals such as producers, sound engineers, and mixers that contributed to the sound recording to receive royalties for their additions to musical works.

The MMA completely changes the landscape for digital music providers, large and small. For those who think they may qualify as a digital music provider, understanding the responsibilities and safe harbors of this law is critical.

And, how does the MMA impact everyday musicians? The MMA has a number of "orphan work" provisions addressing what happens when a digital music provider cannot locate the copyright owner. The best way to both secure intellectual property protection for your music and ensure it is able to be found is through a federal copyright registration. Other benefits to federal copyright registration include: the right to bring a copyright infringement suit in court; eligibility for statutory damages, attorneys' fees and costs; and the option for registration with U.S. Customs and Border Protection to protect against the importation of infringing copies.

This bill is a win win win for songwriters, performers, and other musical professionals and will certainly create meaningful changes to the way music is licensed overall.

For more information or questions, contact your attorney in the Intellectual Property, Technology, and Privacy Group at Gray Plant Mooty.

Links

Listen to Donaldson discuss the MMA on MPR's The Current