



How to conduct business in the US under the MMA – December 2020

Legal Background

Which exploitations are concerned by the MMA?

The Music Modernization Act (MMA) that passed into law in October 2018, modified section 115 of the US Copyright Law.

Section 115 covers digital downloads, interactive and semi-interactive audio streaming services (such as Spotify or Apple Music), but not audiovisual content as you see on YouTube, Facebook or Netflix.

What is new under the MMA?

The MMA aims to streamline mechanical licensing in the U.S. and ends the Notice Of Intention (“NOI”) process for musical works mechanical licensing on digital platforms for “digital phonorecord deliveries”¹. To do so, it introduces a blanket licence for Digital Music Providers (DMPs); and creates a mechanical licensing collective that will operate the blanket licensing regime and the Public Musical Database (“MLC Database”) as of January 1st, 2021. The MLC Database is intended to support MLC’s activities and will be public.

What is the entity in charge of the management of the Blanket licensing?

A non-profit Music Licensing Collective designated by the U.S. Copyright Office, called “The MLC”, will be responsible for issuing blanket licences to DMPs, and collecting and distributing compulsory mechanical royalties to the correct copyright owners. Blanket licences will be available for all uses for which compulsory mechanical licensing is available in the US. DMPs will no longer have liability for the use of such works or face the risk of infringement claims and possibility of large class-action lawsuits for failure to pay mechanical royalties, provided they enter into blanket licences with the MLC.

Rightsholders will have the choice between registering with the MLC to receive royalties OR entering into a direct voluntary licences with DMPs. In both cases the MLC will be in charge of processing the unclaimed royalties (see below), until they find the rights owners or by default (after a certain period of time) to distribute the unclaimed monies to all rights owners on a per market share basis.

Creation of the Public Database

How BIEM CMOs can ascertain their repertoire is included in the MLC Database?

The MLC was designed in July 2019 with 18 months to set up the Public Database required in the MMA. In order to achieve it, the MLC selected HFA as a vendor to build and leverage its database.

¹ The MMA **does not change** the NOI process for mechanical royalties for physical products.

CMOs having concluded representation contracts with HFA, will be/have been asked if they wish to opt in for the transfer of their data to the MLC.

If yes, all the data in the HFA database will flow to the MLC and be included in the Public Database with which the MLC will work as of 1st January 2021.

CMOs that are not sure that their account information has been transferred to the MLC, they can contact Indi Chawla (Head of International Relations at the MLC -indi.chawla@themlc.com), who will be able to check and confirm the status of their information within The MLC

How BIEM CMOs can update and complete their data already included in HFA database?

CMOs could (or will be able to) keep on contacting HFA to complete and update their data (depending on the rights granted in the representation contract). As long as HFA will remain a vendor of the MLC, all information will flow automatically to the MLC database. The MLC does not currently accept direct loading of copyright data.

In parallel, the MLC has initiated a 'Data Quality Initiative' (DQI) to allow Rightsholders including those with big repertoire such as major publishers and CMOs to conduct sample checks of the data included so far in the MLC database and to correct any mistakes.

To perform a DQI with the MLC, please contact Indi Chawla, Head of International Relations at the MLC (indi.chawla@themlc.com).

Will CMOs be able to enter into a representation agreement with the MLC?

The MLC has yet only considered membership (see definition below) as a possible relationship with rightsholders, based on the MMA which only describes two categories of rightsholders existing in the USA (self-administered song writers and Publishers). Today, any rightsholders can become member of the MLC. However, membership in the sense of the MMA law means to get an account with the MLC and does not require the signature of a membership agreement per say.

The opportunity to enter into a contractual relationship with the MLC has been raised with it directly. In any case the representation arrangement (contract, MoU, etc..), if any, will only be made on a unilateral basis, as the MLC has not authority to license outside the USA. This discussion is still pending.

Access to the data on the MLC portal

According to the MMA, the MLC Database is public, which means that anybody can access, look at, register work and use the information for whatever purpose they want. Hence the need for a clear contractual relationship between BIEM CMOs and the MLC.

CISAC and BIEM have repeatedly said that there is confidential and commercially valuable information that should not be made public, and/or constitute personal data that shall be processed in compliance with data protection laws. This question remains subject to a future regulation by the US Copyright Office.

CMOs will be allowed a bulk access to the data at a marginal cost (not determined yet).

How data will be presented to the public in the public database?

Regulations have not yet been finalised; this point still calls for further clarification.

CMOs having opted in, have been invited to a demo of the MLC Database on the MLC portal. To organise a dedicated demo, please contact Indi Chawla, Head of International Relations at the MLC (indi.chawla@themlc.com).

Formats

Copyright registration

MLC will offer similar functionalities to HFA: ingestion through CWR for CMOs' repertoire. In parallel HFA e-song will also remain available and CMOs can update on the MLC portal directly.

Externalisation Format

The format to be used for the retrieval of the bulk data is currently under development by the *DDEX licensing WG*.

Distribution format societies

The MLC has designed its own distribution format which has not yet been communicated to BIEM.

Unmatched/unclaimed accrued Royalties

How will the information be provided to CMOs?

Information on unidentified works will be made available on the MLC portal. This functionality will be launched in the spring. Additionally (as part of the DDEX format), there will be specific tables and fields describing the unmatched/unclaimed that will be made available at a marginal cost (still to be determined) to be integrated into CMOs' DB systems.

How will past unclaimed/unmatched accrued royalties will be transferred to the MLC?

The MMA allows the DMPs to turn over any historical unmatched to the MLC if they want to get a limitation on their liability.

DMPs will be able to report all the data and money on unidentified works linked to past usages up to 15 February 2021. It remains an optional decision on the DMPs and not a pre-condition to obtain a blanket licence. In the meantime, they have a legal obligation to try and re-match historic usages up to 31 January 2021.

If they decide to do so, the information on unclaimed/unmatched accrued royalties and the corresponding usage period, will be included and identified in the monthly usage report, and processed like for any other works.

Planning

The MLC will begin issuing blanket licences on 1st January 2021 and expect to receive payment in February, with a first distribution expected in the spring. During the first quarter of 2021, the MLC will focus on the processing ahead of the historical match.

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For more information on the implementation of the MMA and preparation of the remaining regulations by the US Copyright Office: refer to the BIEM website².

For more information on the functioning of the MLC, please also refer to FAQs³ and Webinars⁴ on the MLC website.

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² https://www.biem.org/index.php?option=com_k2&view=item&id=430&Itemid=106&lang=en

³ <https://themlc.com/frequently-asked-questions>

⁴ <https://themlc.com/resources>