



## How to conduct business in the US under the MMA #2 - April 2021

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The "Music Modernization Act" (MMA), promulgated in October 2018, established the blanket licensing one-stop shop for the management of digital audio mechanical royalties from eligible streaming and download services, including for the management of royalties paid for direct licensing.

The MMA also includes provisions to be developed by regulations issued by the US Copyright Office (USCO). In this perspective, the Copyright Office published notices of inquiry within a public consultation process. Within the process, the USCO then issues proposed rulemakings that are also submitted to comments prior to publication and implementation of the regulation.

The Music Licensing Collective, "The MLC", started its operations on 1 January 2021, whereas several interim rulings remain to be published by the USCO.

### **What is the status of CMOs under The MLC membership?**

In the case of exclusive assignment of rights to CMOs by creators and rights owners, CMOs are deemed to be the "copyright owners" of works with respect to mechanical rights, within the meaning established in US law. As such, certain non-US CMOs can gain membership to the MLC like publishers and self-administered rights owners.

CMOs are now able to register with the MLC as 'Members', upload their repertoire in the MLC public database and obtain the royalties due to the creators they represent.

In addition, recognition of CMOs as a copyright holder avoids disclosure of certain sensitive information related to the creator such as his/her share in a work. Publicly available information on the work shall only display the CMO's share.

### **What does it mean to be a Member of The MLC for a CMO?**

In the context of The MLC, the term 'Member' means **holding an account to access the website**.

In addition, even when the rights have not been granted to The MLC, the latter still has a legal obligation to intervene. This allows CMOs to check the accuracy and completeness of the repertoire of each CMO and ascertain that creators are duly and promptly remunerated for the exploitation of their works in the US.<sup>1</sup>

### **What is the commission rate of The MLC?**

The MLC, being funded by the DSPs, does not charge any commission rate against the payment of the royalties.

### **CMOs' membership registration to the MLC**

The MLC requests that CMOs be assigned an IP Name Number as part of their data exchange process. CMOs can use their generic IP Name Number to identify their shares (e.g., SOCIETY share, SOCIETY part, etc...) if they have one already. If not, they can register a new one at the IPI Centre, like any Interested Party.

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<sup>1</sup> For the services/exploitation covered by The MLC.

## What about a possible contractual framework between the CMOs and The MLC?

The opportunity to enter into a contractual relationship with The MLC was raised and a standard unilateral representation contract was sent to initiate discussions. The MLC however indicated that it could not enter into an agreement of that kind. Most of the provisions agreed between societies through representation agreements are already either regulated by the MMA or subject to a provision to be set by the US Copyright Office.

*However, BIEM and CISAC outlined the necessity to enter into standard contractual clauses to align with **data protection laws** in force outside the US, such as those provided by the European Commission. They explained the legal regime for EEA societies and the potential sanctions they could face in case of non-compliance with GDPR provisions. So far, The MLC has always stated that it will comply with data protection laws; however, the commitment of The MLC should be formalised in writing. An answer from The MLC is currently still pending.*

## The Public Database

### 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 works and use the information for whatever purposes.

CISAC and BIEM comments to the USCO notices underlined the need to implement strict rules for the use of data available on the MLC database by the public, prohibiting commercial use.

However, a recent interim rule<sup>2</sup> does not prevent that the **regular documentation information sent to The MLC can be used by anyone for any commercial purpose whatsoever with no restrictions.**

*CISAC and BIEM have asked the US Copyright Office about the possibility of introducing specific wording in the MLC's Terms of Use to clarify to users of the bulk download that the data cannot be used for commercial purposes, that is, building a new business on this data.*

### Bulk access price

The MMA provides for free bulk access to the data for the entities funding the MLC (the DSPs) and a marginal cost for others. The price has been set by the USCO at **25 USD per month** or **100 USD for a standalone** download.

Bulk download is inexpensive but only allows downloading the full database, which goes beyond the business needs of the CMOs.

*CISAC and BIEM will investigate the possibility of limiting bulk downloads to CMOs own repertoire.*

## Formats/Codes

### Society Code for The MLC

CISAC has assigned the Society Code 708 to The MLC. This code can be used in data exchanges between The MLC and societies.

### Copyright registration

The MLC will offer similar functionalities as HFA currently provides ingestion through CWR for CMOs' repertoire. In parallel, e-song will be used for self-administrated rightsowners.

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<sup>2</sup> Interim rule on the public Musical Works (MW) database and the transparency of the Mechanical Licensing Collective (31/12/2020)

However, the direct ingestion process to The MLC database is currently limited to 300 works at a time, meaning that it is highly unlikely for the database to be accurate and completed in the short term.

One of HFA's obligations as a vendor of the MLC is to continue to share new musical works that they receive with The MLC for as long as the vendor relationship remains in place.

### **Externalisation format**

The MLC is making its database of musical works available in a bulk, machine-readable format. The format to be used for the retrieval of the bulk data was developed in cooperation with DDEX. It is called BWARM (Bulk Work and Recordings Metadata) standard.

Learn more about the BWARM [here](#).

It is not currently possible to connect to The MLC database using an API, but they are planning this capacity.

### **Distribution format societies**

The MLC has designed its own proprietary distribution format in TSV, different from the international CRD standard.

*CISAC is evaluating the option to include TSV in the current CRD Conversion Tool.*

### **Initial Distribution Plan**

Distribution of royalties collected by The MLC for January 2021 usages is planned for the second half of April. Distribution will be based on a snapshot of the database made on 10 February 2021.

The working group has raised concerns about the initial distribution due to obvious delays in updating the database (cf supra). This means that the database is neither complete nor accurate and will potentially generate numerous errors in the distribution.

*The working group will draw the attention of The MLC and propose solutions to best handle this issue.*

### **Royalty Rate applied by The MLC**

The royalty rates & terms for the blanket licences administered by The MLC, are determined by the US Copyright Royalty Board (CRB). The rates & terms set in the last proceeding known as *Phonorecords III* and which set rates for the period 2018-2022, were appealed by the digital service providers.

After consultation with the US Copyright Office, on **an interim basis** from January 1 2021, until the outcome of the CRB's *Phonorecords III* remand proceeding, the MLC will be collecting and distributing mechanical royalties at the rates and terms established in the CRB's previous *Phonorecords* determination.

The CRB's eventual remand determination will be retroactive back to January 1, 2018, the beginning of the *Phonorecords III* rate period; meaning that the MLC will apply the new rates and terms and

will also **retroactively adjust historical royalty collections and distributions** for the full *Phonorecords III* rate period, so that they match those final rates and terms from the CRB.

**Unmatched/unclaimed accrued royalties**

**Past unclaimed/unmatched accrued royalties have been transferred to The MLC**

On 16 February 2021, the MC published the amounts and the list of the DPS having transferred their historical unmatched/unclaimed royalties (see [here](#)).

The articulation between the amounts transferred to the MLC and the past settlements still needs to be clarified. CMOs having opted out from prior class actions should still be eligible for royalties due to their members.

The distribution of unmatched or unclaimed royalties will not happen in the coming months. In the near term, focus is on matching as much as possible. An online claiming portal is being developed that will allow MLC Members to identify any unmatched works & then claim for these works.

**Identification process of unclaimed/unmatched royalties**

The US Copyright Office has been tasked by the MMA to recommend best practices that the MLC may implement to effectively identify and locate musical work copyright owners with unclaimed royalties held by the MLC, encourage musical work copyright owners to claim their accrued royalties, and ultimately reduce the incidence of unclaimed royalties.

Some regulations on this matter are still to be published. The USCO held roundtable discussions on this matter at the end of March, and BIEM and CISAC societies were represented by members of the working group.

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