

## What Digital Service Providers Need to Know about The MLC

### Background on the Music Modernization Act

The Music Modernization Act (MMA) was enacted into U.S. law on October 11, 2018, heralding the most significant changes to U.S. music licensing in this century. It updates the copyright law to make statutory licensing more efficient for digital service providers (DSPs), and to make royalty accounting to copyright owners more accurate and transparent.

Prior to enactment of the MMA, the system for song-by-song compulsory mechanical licensing was deeply problematic. The MMA replaces the previous song-by-song system with a blanket mechanical license for digital uses (“Blanket License”).

In order to administer that Blanket License, the MMA provides for the Mechanical Licensing Collective (MLC), which is tasked with collecting and distributing royalties under Blanket Licenses and maintaining a publicly available musical works ownership database. The MLC is funded by DSPs and run by a board composed of music publisher, songwriter and trade group representatives.

The MMA also provides for the Digital Licensee Coordinator (DLC). The DLC is tasked with coordinating DSPs in activities related to the MLC’s operations, and assisting in the collection of each DSP’s share of the funding of the MLC, as determined by federal regulations.

### What does the Blanket License cover?

The Blanket License covers digital mechanical uses, defined as “covered activities” under Section 115 of US Code Title 17. That means the Blanket License only covers digital (no physical), audio only (no audiovisual or sync), musical works (no drama or spoken word). It is also limited to digital downloads, ringtones and interactive streams (no noninteractive radio). Licensing outside of this covered activity would need to be obtained outside of the Blanket License.

### DSP requirements concerning The MLC and the Blanket License

If you are a DSP offering music to consumers through interactive streaming or digital downloads, you are most likely required by U.S. law to interact with The MLC.

Unless your service provides less than 5,000 unique sound recordings to U.S. consumers each month and has 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, then **you are required by U.S. law to report usage to The MLC and contribute towards the funding of The MLC, beginning in January 2021.**

This requirement exists even if you choose not to obtain a Blanket License. However, if you choose not to obtain a Blanket License, you will also not obtain statutory benefits of Blanket License coverage for covered activities, such that:

- You cannot benefit from the limitation on liability for copyright infringement for prior unlicensed uses.
- Going forward, you will be liable for copyright infringement for the use of musical works for which you do not have a valid direct license.
- If you use any musical works in covered activities without a valid direct license, you will be precluded from obtaining a Blanket License for three years.

Obtaining a Blanket License does not affect your voluntary licensing practices. Direct licenses between DSPs and publishers for interactive streaming services continue in effect, and new direct licenses may be executed. Royalties for uses that are covered by direct licenses are “carved out” of the Blanket License by The MLC and can be paid directly under the terms of the voluntary agreements.

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.

However, regardless of the use of voluntary licenses, DSPs must report all of their usage to The MLC. The MLC will then match the usage and identify who are the proper copyright owners. Usage that matches to copyright owners who have direct licenses will be carved out, and royalties will be due to The MLC for usage that matches to copyright owners with who a DSP has no direct license.

### **What do DSPs need to do next?**

DSPs that do not fall below the cutoff listed above must file a notice with the MLC, commence monthly usage reporting beginning with January 2021 usage, and remit payment of their allocated shares of the MLC’s funding in early 2021. Moreover, DSPs who wish to obtain the Blanket License and who also have direct licenses must identify their voluntary licenses **by November 17, 2020** in order to have such direct licenses carved out from the Blanket License for January 2021 usage.

DSPs that wish to obtain the Blanket License must file a Notice of License, and a DSP that wishes to forego the Blanket License must file a Notice of Nonblanket Activity. The MLC will be providing links to online forms for each of these Notices. U.S. federal regulations lay out the information to be provided, which includes basic details about the DSP and its consumer offerings, and also an identification of the musical work copyright owners for which a voluntary license is in effect (whether directly or through a pass-through license from a record company).

For voluntary licenses that will be in effect for January 2021 Usage, a Blanket Licensee must send the information concerning direct licenses by November 17, 2020. The Notice of License or Notice of Nonblanket Activity is due by February 15, 2021.

After receiving the DSP Notices, The MLC will calculate funding allocations and send out invoices to DSPs for payment of allocated shares of The MLC’s funding, with payment due by April 1, 2021. Subsequent payments will be due at the start of each calendar quarter. Note that the obligation for DSPs to pay

shares of The MLC's funding is part of U.S. law (37 C.F.R. 390); it is not optional. Failure to pay an allocated share in full and on time would be a default under the Blanket License, and could lead to termination of the Blanket License, liability for copyright infringement for covered activities, and preclusion from obtaining a Blanket License in the future.

Also starting with January 2021 usage, DSPs must submit monthly reports of usage to The MLC, no later than 45 days after the end of each calendar month, detailing all usage of covered activities (digital, audio, musical works for downloads, ringtones and on demand streams). There will be two formats available for this reporting:

- DDEX DSRF. Preferable for international DSPs, as other CMOs around the world will accept this format. This is maintained by DDEX and you can find the specification here: <https://kb.ddex.net/display/GBK/DSR+Basic+Audio+Profile>.
- SURF (Simple Usage Reporting Format). Reporting format specific for reporting to The MLC. It's designed for smaller DSPs that do not have the capability or means to produce DSRFs or for US only DSPs that are not looking to expand internationally yet. It's simple enough to be completed in Excel if necessary.

If you are a Blanket Licensee, starting with January 2021 usage, you are also required to pay mechanical royalties to the MLC within 45 days after the end of every month. This can be achieved in two ways:

- If you send your reports of usage by day 15 after the end of the month, the MLC will send you an invoice by day 40 after the end of the month that carves out any direct licenses that you have timely identified, and identifies how much you must remit to The MLC for uses that do not fall under direct licenses. Payment of each invoice will be due by day 45 after the end of the month.
- Alternatively, you will need to send payment to the MLC together with the report of usage within 45 days after the end of the month. This means you will need to compute and estimate the royalties that you owe.

If you are a Blanket Licensee, you also have a one-time opportunity to obtain a limitation on liability for copyright infringement due to unlicensed usage prior to January 1, 2021. In order to obtain this limitation on liability, you must follow strict guidelines set out in the MMA for the accrual and handling of unmatched royalties which culminate with the transfer of the unmatched royalties (and associated usage reporting) to the MLC by February 15, 2021. The U.S. Copyright Office is expected to promulgate regulations with details on precisely what reporting will be required in connection with this transfer.

Sources:

- <https://www.law.cornell.edu/uscode/text/17/115>
- <https://www.copyright.gov/rulemaking/mma-notice-reports/>

Additional materials:

- <https://www.copyright.gov/music-modernization/mma-title-1-overview.pdf>
- <https://digitallicensecoordinator.org/faq/>
- <https://blogs.loc.gov/copyright/2020/04/the-breakdown-what-songwriters-need-to-know-about-the-music-modernization-act-and-royalty-payments/?loclr=eanco>