Summary of H.R. 1551, the Music Modernization Act (MMA)

H.R. 1551, the Orrin G. Hatch—Bob Goodlatte Music Modernization Act (MMA), which is an amended version of S. 2823, combines three previously introduced bills: the Music Modernization Act of 2018 (S.2334), the Classics Protection and Access Act (S.2393), and the AMP Act (S.2625). The bill passed the House, as H.R. 5447, on April 25, 2018, by a vote of 415-0 and passed the Senate with unanimous consent on September 18, 2018. It was signed into law on October 11, 2018.

This bill helps creators across the music industry to make a living through their creativity by:

- improving compensation to songwriters and streamlining how their music is licensed;
- enabling legacy artists (who recorded music before 1972) to be paid royalties when their music is played on digital radio; and
- providing a consistent legal process for studio professionals—including record producers and engineers—to receive royalties for their contributions to music that they help to create.

Title I: Music Licensing Modernization

(the Musical Works Modernization Act; formerly the Music Modernization Act of 2018)

Originally introduced as the Music Modernization Act of 2018 (S.2334), this Act, now called the Musical Works Modernization Act (to avoid confusion with the omnibus music bill) creates a blanket license for digital music providers to make permanent downloads, limited downloads, and interactive streams, creates a collective to administer the blanket license, and makes various improvements to royalty rate proceedings.

Blanket License: The compulsory blanket mechanical license created by the Act covers activities related to the making of permanent downloads, limited downloads, and interactive streams of musical works embodied in sound recordings ("covered activities"). Parties may also engage in these covered activities by striking voluntary licensing deals or by obtaining authority for a permanent download of a musical work from a record company subject to an individual download license. Currently, such licenses can only be obtained on a song-by song basis. The rates for this new blanket license will be determined through a willing buyer/willing seller standard (a market-based standard).

Mechanical License Collective: The Act also authorizes the Register of Copyrights to designate a mechanical licensing collective ("MLC") to issue and administer the new blanket and voluntary licenses for digital downloads and reproductions. The MLC will (i) collect, distribute, and audit the royalties generated from these licenses to and for the respective musical work owners; (ii) create and maintain a public database that identifies musical works with their owners along with ownership share information; (iii) provide information to help with and engage in matching musical works with their respective sound recordings; and (iv) hold unclaimed royalties for at least 3 years before distributing them on a market-share basis to copyright owners as reflected by royalty payments made by digital music providers for the covered activities in question. The MLC will be funded by administrative assessment fees paid out by blanket licensees and by "significant nonblanket licensees."

Uniform rate setting standard: The Act establishes a uniform "willing buyer willing seller" rate setting standard for §114 licenses. Currently, the rates for "pre-existing services" are set using a separate standard that does not approximate rates that would have been negotiated in a free market.

Improvements to Royalty Rate Proceedings: Currently, ASCAP and BMI are each assigned a judge for life who oversees these rate proceedings that are part of consent decrees that govern the organizations. Under the bill, district court judges from the Southern District of New York will be randomly assigned to oversee the public performance royalty rate proceedings that ASCAP and BMI are subject to. The assigned judges will continue to oversee non-rate proceedings, such as questions of consent decree interpretation. The bill additionally permits performance royalty rate setting judges to consider sound recording royalty rates when determining the rates for performance of musical works by digital audio music services.

Title II: CLASSICS Protection and Access Act

The Classics Protection and Access Act (originally called the Compensating Legacy Artists for Their Songs, Service, and Important Contributions to Society Act (CLASSICS Act)) provides a new exclusive federal right for sound recordings fixed before February 15, 1972 ("pre-72 sound recordings"), which are currently not protected under federal copyright law. Noninteractive digital audio transmissions of pre-72 sound recordings would be subject to the same statutory licensing provisions that currently apply to sound recordings protected by federal copyright law. The Act provides that 50 percent of payments received from noninteractive digital performances be distributed directly to artists via SoundExchange.[1]

This Act preempts actions for state and common law claims for pre-72 sound recordings for activities taken on or after the enactment date and covered under the statutory license for digital audio transmissions of post-72 sound recordings. The Act preempts state copyright law claims regarding mechanical and distribution rights for pre-72 sound recordings as well. Unauthorized performances of pre-72 sound recordings would be subject to exceptions and limitations under federal copyright law, including fair use and §108 of the Copyright Act, safe harbors under §512 of the Copyright Act, and limitations on actions under §507 of the Copyright Act. Remedies for infringement of copyrighted works found in §§502-505 of the Copyright Act would be available to owners of pre-72 sound recordings. The Act creates a procedure to enable persons to engage in the noncommercial use of pre-72 sound recordings that are not in the public domain and are not being commercially exploited. The Act includes a rolling timeline for pre-72 sound recordings to enter the public domain, with sound recordings receiving protection for a period of at least 95 years after publication.

Title III: AMP Act
(Allocation for Music Producers Act)

The AMP Act requires SoundExchange to receive instructions called "letters of direction" from recording artists who have agreements to distribute a portion of the royalties they receive to any contracted producer who was involved in the creative process of making a sound recording the recording artist was featured on. Upon acceptance of a letter of direction from a recording artist by SoundExchange, a portion of royalties an artist receives for a sound recording will instead be distributed directly to producers involved in the making of that sound recording. For sound recordings fixed before November 1, 1995, if certain requirements are met SoundExchange will allocate 2% of royalties for a sound recording to be paid to producers involved in the making of that sound recording absent a letter of direction.

[1] SoundExchange is the entity in charge of collecting an distributing digital performance royalties for copyright owners of sound recordings.