

The Blanket License – Who Needs It and What You Need to Know

At the center of the Music Modernization Act is a new blanket licensing system for digital music providers. This new blanket license replaces the existing song-by-song compulsory licensing structure for making and distributing musical works, instead allowing digital music providers to make and distribute songs via download or interactive streams pursuant to a single blanket license administered by the Mechanical Licensing Collective.

The blanket license is a crucial step in modernizing music licensing, but while it is appropriate for many digital music providers, **not all providers are eligible nor will all those who are eligible need the blanket license to operate.** Only companies engaged in “covered activities” are eligible for the blanket license. But, among those who qualify, those considered “significant nonblanket licensees” under the law will not use the new blanket license. What are “covered activities”? What makes a company a “significant nonblanket licensee”? How do you know if you need a blanket license or qualify as a significant nonblanket licensee?

Read on to better understand or feel free to jump straight to the flow chart at the bottom of page if you’re more of a visual person

Who might need the Blanket License?

A digital music provider engaged in “covered activities” as defined in 17 USC 115(d), to the extent that digital music provider has not obtained the voluntary licenses necessary to engage in those covered activities.

A “covered activity” is making a [digital phonorecord delivery](#) of a non-dramatic musical work, [including](#) in the form of:

- a permanent download (making a sound recording accessible for listening without restriction as to how long or how often the user listens to it);
- a limited download (making a sound recording accessible for listening only for a limited amount of time or for a specified number of times)
- an interactive stream (allowing on-demand listening)

In addition, a digital music provider must:

- Have a direct contractual, subscription or other economic relationship with listeners or, if not, must exercise direct control over providing the service to the listeners;
- Be able to report revenues (or other consideration) generated by the service; and
- Be able to provide certain reporting on usage of sound recordings of musical work.

Who will not use the Blanket License?

Anyone who is a “Significant Nonblanket Licensee” will not use the new Blanket License. This includes any entity engaged in covered activities (*i.e.*, permanent downloads, limited downloads, interactive streams) that is not operating under a blanket license because it exclusively uses direct licensing, as long as the entity:

- Has a direct contractual, subscription, or other economic relationship with end users or exercises direct control over providing its services to end users; and
- Either: (1) makes more than 5,000 different sound recordings of musical works available through its service in any one day in a calendar month or (2) derives revenue or other consideration from covered activities of more than \$50,000 in a calendar month or more than \$500,000 in the preceding twelve months.
- Note that a Significant Nonblanket Licensee is NOT a public broadcasting entity as defined in Section 118 of the Copyright Act and it is NOT any entity whose covered activity only consists of free-to-the-user streams of sound recordings that are 90 seconds or less, are offered only to facilitate a licensed use of musical works that is not itself a covered activity, and has no revenue directly attributable to the streams constituting the covered activity.

Anyone NOT engaged in digital phonorecord delivery of a nondramatic musical work. These include, among others:

- Those engaged in audiovisual streaming (because the blanket license is limited to audio-only activities).
- Those engaged solely in non-interactive streaming, such as radio stations simulcasting an over-the-air signal online and/or side channels in a traditional radio format, and/or non-interactive streaming services.

