



# Digital Licensee Coordinator

## Proposed Revisions to The MLC's Assessment Allocation

On December 18, 2020, DLC and The MLC filed a joint motion with the Copyright Royalty Judges to revise the existing allocation formula. The complete filing, including proposed new regulations, is available [here](#), but the key points in the proposal are as follows:

- The existing allocation formula, which was agreed upon by DLC and The MLC in November 2019, approved by the Copyright Royalty Judges in December 2019, and finalized via publication in the Federal Register in January 2020, provided:
  - The Annual Assessment paid by all Blanket Licensees and Significant Non-Blanket Licensees to fund the operations of The MLC would be allocated according to each licensee's pro-rata share of the overall Aggregate Total Sound Recording Count as follows:
    - Threshold Licensees – those licensees that report at least 7.5% of the Aggregate Total Sound Recordings count of all Licensees – would be responsible for 50% of the overall annual assessment amount, with each Threshold Licensee paying on pro-rata basis across Threshold Licensees based on each Threshold Licensee's share.
    - All licensees – including Threshold Licensees – would be responsible for 50% of the overall annual assessment amount, with each Licensee paying on pro-rata basis across all Licensees based on each Licensee's share
  - Regardless of the Licensee's allocation, it would pay an annual minimum fee, calculated according to the Licensee's Unique Sound Recording Count (USRC) during the prior calculation period. Any Licensee with a USRC during the prior calculation period below 5,000 would pay a \$5,000 annual minimum fee; those with a USRC above 5,000 during the prior calculation period would pay a \$60,000 annual minimum fee.
- Under the new proposal, there will be two separate assessment allocation schedules: one for permanent download services operating exclusively under pass-through licenses, and one for all other Blanket Licensees and Significant Non-Blanket Licensees (SNBLs):
  - Pass-through download stores will pay a flat annual fee under a tiered system that ranges from \$2,500 to \$60,000, depending on the unique sound recording count.
  - For all other blanket licensees and SNBLs, the fee schedule will provide flat fees of \$2,500 to \$20,000 for licensees that have a USRC of less than 100,000 during the prior Annual Calculation Period. Licensees with a USRC of greater than 100,000 during the prior Annual Calculation Period will pay an annual minimum fee of \$60,000 and will be eligible to pay an additional allocation of The MLC's administrative assessment, to the extent it exceeds the minimum fee. That

additional allocation will be calculated in the same way the existing regulations calculate it—based on pro-rata share of total USRC, but with the biggest services paying 50% among themselves alone.

- The third and fourth tiers for Blanket Licensees and SNBLs (covering USRs between 25,001 and 100,000) – but not download services operating exclusively under pass-thru licenses – sunset after the 2024 fees are assessed. Subsequently, any Blanket Licensee or SNBL with a USRC of 10,001 or above would be an Allocated Licensee, leaving only those Blanket Licensees and SNBLs with a USRC of 10,000 or less as Flat Fee Licensees (with that flat fee being \$2,500).

**Charts showing the tiers for Blanket Licensees/SNBLs operating exclusively under pass-through licenses are at the end of this document.**

- The proposed amendments establish detailed rules for allocating assessments to licensees that begin engaging in covered activities after the license availability date. In particular, the amended rules provide that a new licensee will begin at the lowest applicable tier in the schedules above. But as soon as the new Licensee has reported usage to The MLC that can be used to determine its USRC, it will be reassessed. If its USRC exceeds 100,000 at that point, it will be recharacterized as a licensee that will owe an additional allocation of the assessment.
- The proposal also makes a few other clarifications and technical changes:
  - It clarifies that the USRC is based on “reported” usage by a licensee, rather than “royalty-bearing” usage and that musical works in the public domain do not count towards the USRC. It also provides rules for calculating the USRC when the Licensee is in operation for only part of a calculation period.
  - The 2021 annual fee must be delivered no later than February 15, 2021, rather than being owed with the notice of license or notice of non-blanket activity.
  - Quarterly invoices of the allocated portion of the administrative assessment must be paid within 45 days rather than the later of 30 days or the next calendar quarter.
  - It clarifies that only a single minimum annual fee is to be assessed for the 2021 assessment.

**Revised Allocation for Download Services Operating Exclusively Under Pass-Through Licenses**

<b><u>USR Range</u></b>	<b><u>Minimum Fee</u></b>	<b><u>Eligible for additional allocation</u></b>
< 50,000	\$2,500	NO
50,001-100,000	\$5,000	NO
100,001-250,000	\$10,000	NO
250,001-500,000	\$20,000	NO
> 500,000	\$60,000	NO

**Revised Allocation for All Other Licensees**

<b><u>USR Range</u></b>	<b><u>Minimum Fee</u></b>	<b><u>Eligible for additional allocation</u></b>
< 10,000	\$2,500	NO
10,001-25,000	\$5,000	NO
25,001-50,000	\$10,000	NO
50,001-100,000	\$20,000	NO
> 100,000	\$60,000	YES

Please [contact us](#) with specific questions about these proposed changes.