



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 25, 2018

H.R. 5447 **Music Modernization Act**

As ordered reported by the House Committee on the Judiciary on April 11, 2018

SUMMARY

Under current law, a digital music provider (such as Spotify, Apple Music, or Pandora) must pay the copyright owner a royalty fee to use a protected work of music. If it does not otherwise have a voluntary license agreement with the copyright owner to use the work, the music provider must file a notice of intent—on a song-by-song or record-by-record basis—with the copyright owner or the U.S. Copyright Office when it seeks to use any copyrighted digital musical work.

H.R. 5447 would eliminate notice-of-intent licensing for digital musical works and direct the Copyright Office to designate a nonprofit entity—a mechanical licensing collective, or MLC—to administer a new blanket-licensing system. Under such a license, a digital music provider could use certain copyrighted musical works without filing a notice of intent to do so. H.R. 2447 also would require the MLC to collect royalties from digital music providers using the blanket license and distribute them to copyright owners.

CBO estimates that enacting H.R. 5447 would increase deficits by \$47 million over the 2021-2028 period. That amount comprises an increase in direct spending of \$222 million and an increase in revenues of \$175 million. In addition, CBO estimates that, over the 2019-2023 period, it would cost less than \$500,000 to implement the bill, subject to the availability of appropriated funds.

Because enacting H.R. 5447 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 5447 would not increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5447 would impose intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), in the form of preemptions of state laws, but CBO estimates that the costs of those mandates would fall well below the threshold established

in UMRA for intergovernmental mandates (\$80 million in 2018, adjusted annually for inflation).

The bill would impose private-sector mandates on companies that provide digital music services by:

- Requiring those companies to pay fees when they apply for licenses issued by the MLC to cover the administrative costs of the organization;
- Requiring those companies to provide usage reports to the MLC each month detailing the artists and works that have been streamed; and
- Changing the processes used to resolve disputes over claims of copyright infringement in certain cases.

Because the effect on settlements due to copyright holders under the new dispute resolution process is uncertain, CBO cannot determine whether the aggregate cost of the mandates on private entities would exceed the annual threshold established in UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of H.R. 5447 is shown in the following table. The costs of the legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars											2019-	2019-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028
INCREASES IN DIRECT SPENDING													
Estimated Budget Authority	0	0	0	20	28	28	29	29	30	31	31	76	227
Estimated Outlays	0	0	0	17	27	28	29	29	30	31	31	72	222
INCREASES IN REVENUES													
Estimated Revenues	0	0	0	16	22	22	22	23	23	23	24	59	175
NET INCREASE IN THE DEFICIT FROM INCREASES IN DIRECT SPENDING AND REVENUES													
Effect on the Deficit	0	0	0	1	5	6	6	7	7	7	8	13	47

CBO estimates that discretionary spending to implement H.R. 5447 would total less than \$500,000 over the 2019-2023 period, subject to the availability of appropriated funds.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 5447 will be enacted near the end of fiscal year 2018, that the necessary amounts will be appropriated each year, and that estimated spending will follow historical patterns for similar activities.

Under H.R. 5447, the Copyright Office would designate an entity to act as the MLC and the judges of the Copyright Royalty Board would establish an administrative assessment to be paid by users of the blanket license and by certain other large users of copyrighted digital musical works. That assessment would be designed to cover the costs of establishing, maintaining, and operating the MLC. Payment of the assessment would be compulsory and could be enforced through a court order. In CBO's view, in keeping with guidance in the 1967 *Report of the President's Commission on Budget Concepts*, the cash flows from the assessment and subsequent spending should be recorded in the federal budget.¹ Under the bill, the initial administrative assessment would be effective on January 1 two years after the date of enactment of the legislation and CBO expects that collections would begin in fiscal year 2021.

H.R. 5447 would make several changes to royalty rates and to protections for certain copyright holders of sound recordings and musical works. Because royalty amounts collected by the U.S. Copyright Office or its designated agents and later distributed to copyright owners are not recorded in the federal budget, CBO estimates that implementing those provisions would have no budgetary effect.

Direct Spending

H.R. 5447 would authorize the MLC to spend amounts collected under the administrative assessment levied by the Copyright Royalty Judges, without further appropriation, to cover the MLC's costs. Such expenditures would be considered direct spending. For this estimate, CBO expects that the Copyright Royalty Judges would estimate the operating costs of the MLC accurately and set an assessment rate to equal those costs each year. Using information from industry experts and the administrative costs to operate entities that engage in similar activities, CBO estimates that expenditures by the MLC would average \$30 million annually and would total \$227 million over the 2021-2028 period.

Revenues

H.R. 5447 would authorize the Copyright Royalty Judges to levy an assessment on digital music providers with blanket licenses and on certain other digital music providers that instead obtain voluntary licenses to use specific copyrighted musical works. The

1. For more information, see Congressional Budget Office, *How CBO Determines Whether to Classify an Activity as Governmental When Estimating Its Budgetary Effects* (June 2017), www.cbo.gov/publication/52803.

assessment would be based on the entities' use of musical works and set at a rate intended to fund the operations of the MLC. For this estimate, CBO expects that the assessment would be set to recover all of the allowable costs of the MLC and would be collected in full in each year; therefore, CBO estimates that collections would average about \$30 million annually. Those amounts would be recorded in the budget as revenues. CBO estimates that enacting H.R. 5447 would increase gross revenues by \$227 million over the 2021-2028 period.

Because excise taxes and other indirect business taxes (like the bill's proposed assessment) reduce the base of income and payroll taxes, the amounts collected would lead to reductions in revenues from income and payroll taxes.² As a result, the gross assessments under the bill would be partially offset by a loss of receipts of 22 percent to 24 percent of that gross amount each year. Thus, CBO estimates that enacting H.R. 5447 would increase net revenues by \$175 million over the 2021-2028 period.

Spending Subject to Appropriation

H.R. 5447 would require the Copyright Office and Copyright Royalty Judges to make rules that create the MLC, establish a digital licensee coordinator, establish a blanket-licensing system, and set new rates for royalty payments. Using information from the Copyright Office, CBO estimates that those activities would cost the agency less than \$500,000 over the 2019-2023 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

2. See Congressional Budget Office, The Role of the 25 Percent Revenue Offset in Estimating the Budgetary Effects of Legislation (January 2009), www.cbo.gov/publication/20110.

CBO Estimate of Pay-As-You-Go Effects for H.R. 5447, the Music Modernization Act, as Ordered Reported by the House Committee on the Judiciary on April 11, 2018

	By Fiscal Year, in Millions of Dollars												2018-	2018-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028	
NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	0	0	1	5	6	6	6	7	7	8	13	47	
Memorandum:														
Changes in Outlays	0	0	0	17	27	28	29	29	30	31	31	72	222	
Changes in Revenues	0	0	0	16	22	22	22	23	23	23	24	59	175	

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting H.R. 5447 would not increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

MANDATES

H.R. 5447 would impose intergovernmental mandates as defined in UMRA by preempting state property laws. The bill would establish a new system, under the MLC, for collecting and distributing royalties that would preempt state laws governing unclaimed property. Under current state property laws, states may collect royalties that remain unclaimed for a certain period of time; H.R. 5447 would preempt those laws. Using information from music industry sources about current levels of unclaimed royalties and state efforts to claim them, CBO estimates that the amount of revenue that states might forego as a result of the preemptions would be small and below the threshold established in UMRA for intergovernmental mandates (\$80 million in 2018, adjusted annually for inflation).

Further, the bill would establish federal copyright protections for musical works recorded prior to 1972 (which do not exist under current law), and would preempt state property laws that govern infringement claims regarding those works. Although the preemption would limit the application of state laws in these cases, it would impose no duty on states that would result in additional spending or a loss of revenues.

The bill would impose private-sector mandates on companies that provide digital music services. Under current law, digital music services negotiate directly with copyright

owners for the right to use musical works, or pay fees to the U.S. Copyright Office for the right to use music when the copyright owner cannot be identified. H.R. 5447 would direct those companies to pay fees instead to the MLC to administer a new blanket licensing system. Using information from the U.S. Copyright Office and music industry sources, CBO estimates that the total fees companies would pay to the MLC would range from \$22 million to \$28 million per year over the 2019-2023 period and that companies would begin paying fees in 2021. (Those amounts include a small savings that would result from companies no longer paying fees to the U.S. Copyright Office for the covered services.)

In order to be issued a blanket license for the use of digital music, the bill would require companies that provide digital music services to submit usage reports to the MLC detailing the artists and works that have been streamed each month. Because such companies already maintain and provide similar information under current law, CBO estimates that the costs of complying with this requirement would not be significant.

Finally, the bill would establish new processes for settling legal disputes over the infringement of copyrights for musical works by ending outstanding—or prohibiting future—lawsuits by copyright owners in certain cases. In the case of lawsuits alleging copyright infringement filed after January 1, 2018, the bill would terminate those lawsuits. In lieu of settlement under the terminated lawsuits, copyright owners would be entitled to royalties under the rates set by the MLC for music streamed during the 3 years preceding the suit (the federal statute of limitations on claims of copyright infringement); in exchange, digital music companies would receive liability protection as long as they make good-faith efforts to aid the MLC in matching works with their copyright owners and make timely payments of royalties that would be due.

Similarly, in the case of lawsuits involving musical works recorded prior to 1972 and brought under state law, the bill would nullify those claims and substitute a federal process under which copyright holders would be entitled to 3 years' worth of back royalties; in exchange, music companies would receive protection from further claims.

In substituting these new processes for rights of legal action that exist under current law (at the federal or state level), the bill would impose mandates on copyright holders by terminating their existing rights to make infringement claims. The costs of the mandates would be the foregone value of awards and settlements for those claims to the extent that the legislation results in compensation levels that are lower than what could have been collected under current law. CBO is uncertain about how the value of royalties claimed by copyright owners in lawsuits would be affected under the bill and how much those amounts might differ relative to current law. Consequently, CBO cannot determine whether the aggregate cost of mandates in the bill on private entities would exceed the annual threshold established in UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

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