

This Radio Music License Committee / Global Music Rights Fight Is No Joke

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Most radio stations have received emails in the past several weeks from both the **Radio Music License Committee (RMLC)** and **Global Music Rights (GMR)** regarding an interim license with, and new licensing fees owed to, GMR. While the subject of music licensing can get very complicated quickly, let's take an overview look at this GMR issue.

The first question naturally asked by radio stations is whether signing up with GMR is a must, or can a radio station simply avoid playing GMR-licensed music? The short answer is that, given several coinciding factors, it is almost impossible to confidently assure that no GMR music is played. Conversely, not having a license with GMR and playing a GMR-licensed song can create a liability for a radio station of up to \$150,000 per occurrence.

It is a high risk endeavor to try to avoid playing GMR-licensed music. While it might be procedurally feasible to pull all GMR-licensed music from a music library if a full list of GMR-licensed music was available, such a reliable up-to-date full listing is not currently available to the public. Also, GMR-licensed music can appear in syndicated programming elements, agency spots and live event background music. Therefore, even if a music library could be purged of all GMR music, there remains a lingering liability that GMR music might be broadcast. Thus, a prudent radio station owner likely has no choice but to sign up with GMR.

The second question that arises is whether fees paid to GMR can be deducted from payments owed to ASCAP, BMI and SESAC, the other three performing rights organizations. Even though GMR is not increasing the number of hours in a day or the quality of music offered – indeed, virtually all artists signed by GMR have come from one of the other three – the payment sought by GMR is in addition to whatever is currently owed to ASCAP, BMI and SESAC.

Compounding the unfairness of additional fees being sought for the identical music is the recent position of BMI and others that it is offering “fractional”, rather than “whole work” licensing. Up until recently, radio stations and the DOJ believed that if a song was offered in a performing rights organization's catalog, it was fully licensed to be played by a radio station.

But recently, BMI challenged this “whole work” licensing metric by claiming that it is only offering fractional licensing for the music in its catalog. A song, even though in the BMI catalog for one of its

songwriters, might also be licensed by another performing rights organization for another co-songwriter. GMR is now specifically offering fractional licensing having signed only one of several songwriters for many songs.

Fractional licensing results in an impossible burden on a radio station to determine whether it has a license for each songwriter, rather than for the song itself, for each song played. As an example, if Peter, Paul and Mary are co-songwriters for a particular song, BMI could represent Peter's portion of the song and be paid a fee, SESAC could represent Paul's portion of the song and be paid a fee, and a radio station could still be sued for the \$150K statutory damages for playing the song if Mary licensed her portion of the song without notice to a newly-formed performing rights organization. Suffice it to say that radio stations do not get added value or benefit from fractional licensing but rather have the increased danger of playing a partially-unlicensed song.

In January, GMR offered an interim license subject to further negotiations to protect a radio station back to January 1st, which is when many of its artists commenced their GMR representation. But, whatever "rate" a radio station is now offered or negotiates may be of no consequence since GMR's interim license agreement expressly reserves the right to adjust the current rates up or down once "permanent" rates are agreed upon. Thus, if negotiations go badly for radio broadcasters, the rate that is now being paid to GMR could be vastly increased and owed in arrears.

US copyright law vastly favors songwriters with the astounding \$150K/song statutory damages figure as a hammer. If the law is to favor songwriters in this way, the law should also protect radio stations from the scheme now being run by GMR (and for that matter SESAC, BMI and ASCAP) in which a radio station that plays any music whatsoever cannot as a practical matter avoid paying a fee to each entity.

It is possible that the only way that GMR and the other performing rights organizations will credibly enter into fair negotiations with radio stations is if all songwriter fees currently paid pre-GMR are put into a common fund and the performing rights organizations including GMR are tasked with arguing among themselves who gets what. Unfortunately, there is no antitrust or copyright law legal theory of which I am aware that could currently accomplish this.

In the future, GMR may be held to account by the Department of Justice under antitrust law in the same way as DOJ has done with ASCAP and BMI. But, such a DOJ action will take extraordinary time, effort, money and litigation from our industry.

It is Congress that writes our copyright laws. Representative Marsha Blackburn (R-TN) is the new Chair of the House Subcommittee on Communications and Technology. Representative Blackburn is highly in favor of adding to radio stations the obligation for recording artist performance fees which would be another significant sum to be paid for playing music (an additional 6% to 7% of gross revenues if what satellite radio pays is any metric).

Congress will likely ultimately determine the long-term future of music licensing. Now, more than ever, it is important for our radio broadcasting industry to maintain a healthy lobbying effort on Capitol Hill.

This article originally was published in Radio Ink.

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