



November 2009

Opt-in Opportunity for Radio Broadcasters

*Negotiations to adjust
royalty arrangements underway*

Kevin M. Goldberg
goldberg@fhhlaw.com
703-812-0462

Some of you radio broadcasters out there might have received letters recently from one or more of the following:

The American Society of Composers, Authors, and Publishers (ASCAP)
Broadcast Music, Inc. (BMI)
The Radio Music License Committee (RMLC)

It's our understanding that these letters are being sent to broadcasters who have not already authorized RMLC to negotiate licensing arrangements on their behalf with ASCAP and BMI. RMLC is already engaged in such negotiations for a lot of broadcasters, and when those negotiations are completed, the agreed-to arrangements will set the terms on which participating broadcasters will be able to transmit – over-the-air and by Internet webcast – musical works owned by songwriters represented by ASCAP and BMI. The letters which have been arriving recently provide to anybody who hasn't signed up yet an opportunity to take advantage of those arrangements.

First, a little background.

As we've discussed in the past, primarily in relation to webcasting, there exist two copyrights in any publicly-performed song. One is the copyright in the underlying "musical work", *i.e.*, the song itself (consisting of the music and lyrics). That copyright is generally owned by the songwriter (although it may be transferred to, *e.g.*, a publishing company). The other – *which is not at issue here* – is the copyright in the "sound recording", *i.e.*, the particular version, or performance, being transmitted at any particular time. That copyright, which is sometimes referred to as the "performance right", is generally owned by the recording artist performing that particular version (although, again, ownership of the copyright may be transferred to, *e.g.*, the record company).

Songwriters – the folks who own the rights in the underlying "musical work" – are for the most part represented by agencies which collect and distribute royalties for the broadcast

(or webcast) of their works. These agencies include ASCAP, BMI and SESAC (the Society of European Stage Authors & Composers).

Because of prior antitrust actions taken against them, ASCAP and BMI are covered by a “consent decree” administered by a United States District Court. Every few years, RMLC – a voluntary organization of individuals representing a broad range of the radio industry – renegotiates a new rate structure for payment of royalties by radio broadcasters to ASCAP and BMI. (SESAC was not a part of the earlier antitrust action and, therefore, has separate negotiations with RMLC.) The current rate structure applicable to the ASCAP- and BMI-administered copyrights expires on December 31, 2009. It is not certain that a new rate agreement will be reached and approved by the federal court prior to that expiration date.

Stations that have already given authorization to RMLC to negotiate on their behalf are automatically covered by any rate agreement that is reached for January 1, 2010 and beyond, as well as the rate agreed upon to “bridge” the period between December 31, 2009 and the commencement of that new term.

Any radio broadcaster that has not yet given such authorization to the RMLC can still do so, in which case any agreements will automatically apply to that broadcaster as well. Broadcasters who, for whatever reason, would prefer not to authorize RMLC to negotiate on their behalf may also sign a direct agreement with ASCAP and/or BMI in which the broadcasters agree to be bound by any new, post-January 1, 2010 terms and the terms of the “bridge period”.

The letters which many broadcasters have been receiving in recent weeks are intended to make it easy for anyone still interested in signing up (whether with RMLC or ASCAP or BMI) to do so.

We don’t provide advice in our *Memo to Clients*, but radio broadcasters who receive such a letter from RMLC, ASCAP or BMI should feel free to contact us if you have any questions.