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RMLC and ASCAP/BMI Agree To Continue To Disagree

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In our November, 2009, *Memo to Clients*, we suggested that broadcasters who had not already signed up with the Radio Music License Committee (RMLC) might look into doing so pronto. The RMLC, you will recall, represents broadcasters in negotiating with ASCAP and BMI relative to copyright royalty rates. You can be part of the RMLC team, but you have to expressly sign up with them.

There's even more reason to check into doing so now that we have turned the corner into the New Year.

In the waning days of 2009, the RMLC agreed to terms with both ASCAP and BMI covering the "bridge" period between expiration of the last agreement (which technically went away on December 31) and the approval of new terms by the U.S. District Court which oversees the RMLC/ASCAP/BMI ménage à trois. The interim deal may have some appeal.

According to *Radio Ink*, royalties due to ASCAP and BMI from radio stations will be discounted seven percent per month starting on January 1, 2010. The discount (which should be reflected in the latest round of bills being sent out by ASCAP and BMI) will be in effect until RMLC and ASCAP and/or BMI come to terms for the period beginning 2010 – or until the supervising Court steps in because the parties can't manage to reach an agreement. (Call us crazy, but we suspect that the latter is the more likely scenario, what with the RMLC Chair being quoted in the trades as saying that "the gap in [the parties'] respective positions was so vast that it made it virtually impossible to reach a voluntary agreement." That could just be a negotiating ploy, though.)

Once the rate for the next term is set, it will be retroactively applied to January 1, 2010, so depending on how things shake out, stations could end up having to pay back all of the cash saved through the interim seven percent discount. But that might not happen for a year or more – meaning that the cash will stay in the stations' pockets, rather than the ASCAP/BMI coffers, at least for the time being.

Again, stations which have already authorized RMLC to negotiate on their behalf – and

thus agreed to be bound by any eventual deal that gets approved (along with the seven percent discount for the bridge period) – don't have to do anything. But stations that (a) have not authorized the RMLC to rep them (or stations that aren't certain if they have done so) but (b) still but want to be subject to these terms, can still opt in by completing an appropriate form (check out www.CommLawBlog for links to the various forms) and sending it to the RMLC. (Note: the third major performing rights organization, SESAC, engages in separate negotiations with the RMLC not subject to court oversight).