

Details of the ASCAP Settlement with the Radio Industry - What Will Your Station Pay?

January 30, 2012 by [David Oxenford](#)

ASCAP and the Radio Music Licensing Committee have reached a settlement on the amount that **radio stations will pay to ASCAP** for the use of music for the period through the end of 2016. The agreement was approved last week by the US District Court in the Southern District of New York acting as a “rate court” to consider those fees. We [reported](#) that a settlement had been reached in early December, and now we’ve seen the actual documents and can provide some details of this agreement between the commercial radio broadcast industry and ASCAP. It should result in significant savings for broadcasters from rates that they had been paying prior to January 1, 2010.

[As we wrote in 2010 when RMLC and ASCAP were first trying to reach a deal on new rates](#), the biggest problem with the old rates was the payment structure. Rather than making ASCAP a partner of the broadcaster by cutting them in for a percentage of the broadcaster’s revenue, under the deal that ended in 2009, ASCAP was to receive a set fee each year from the broadcast industry. That set fee was divided among all commercial radio stations not based on station revenues, but instead based on the market size and technical coverage of each station. So all similarly powered stations in a market paid the same ASCAP fee, whether they were big revenue producers or not. And the agreement was entered into during a period where radio broadcasters thought that revenues would be ever-increasing, so that set fee to be paid to ASCAP increased each year. As the economy and broadcast revenues fell during the later years of the deal, while the set fee kept increasing, broadcasters were paying an ever-increasing percentage of their revenues to ASCAP – far more than would have been paid had the industry stuck to a percentage of revenue formula.

Well, the experiment is over, as the new deal returns to a traditional percentage of revenue deal. Music radio pays ASCAP 1.7% of “revenues subject to fee from radio broadcasting.” Essentially, that is all the revenue that a station receives from advertising and promotions, less a 12% deduction (presumably to cover commissions and costs of collection). Barter revenues, and payments made to networks (as opposed to the stations themselves), are excluded from the gross revenue calculation. All revenues from HD programming (including any amounts received for brokered programming) is also included (at least for the time being – subject to reevaluation should HD revenues account for 25% of radio revenues by 2015). New Media revenues, if the arise

exclusively from streaming your station on the Internet, are also included in this gross revenue calculation.

Unlike the old deal, this deal also covers other New Media revenues that arise from other Internet music uses. Under the old deal, if you launched a “side channel” on your website (i.e. a web-only internet radio channel) or made other use of music on your website, you had to get licensed separately for this activity under an ASCAP web license. Only simulcast streaming was covered by the old broadcaster's deal with ASCAP. Under this new deal, New Media revenues that are more than just simulcasting your over-the-air signal are also covered, and are also subject to the same 1.7% of revenue fee, but there is a 25% deduction from that fee (presumably due to the higher commissions customarily paid for online revenues, but subject to adjustment back to 12% if the total of the higher new media deductions would cost ASCAP more than \$5,000,000 than if the deductions had been at the 12% level).

Other good news includes that the broadcast industry has been paying too much from January 1, 2010, when this rate period began, until now, and the radio industry is owed a \$75 million refund by ASCAP. As [we wrote in 2010](#), radio has been paying under an interim fee arrangement since the old deal expired. The interim fee represented a discount off of the old fees, but it was a discount that was not as steep as that which the new deal represents. The overpayment will be paid back to radio broadcasters in \$15 million yearly installments, allocated to the stations that paid those royalties by being applied to their obligations in 2012-2016 using a formula set out in the agreements.

The deal also provides for fees to be paid on a per program basis for station that use little music in their broadcasts (or on their websites). Formulas for calculating these fees are provided in the agreements.

Recordkeeping is also addressed in the agreement, providing for reporting only one week per year for music stations. More frequent reporting is required for stations paying on a per program basis. Records of what music was played on the station will be reported electronically on forms to be developed by ASCAP and approved by the RMLC.

Minimum annual fees for any station are \$588.

Finally, the Judge's order approving the agreement provide for payment to RMLC to support its enforcement of the agreement and its efforts going forward to work with broadcasters on licensing issues. Fees range from \$12 per station for those with less

than a \$6500 annual obligation to \$510 per year to stations that pay over \$20,000 per year to ASCAP.

Obviously, this summary just hits the highlights of the deal. Radio stations should be receiving a copy of the agreement, and should review it carefully to determine how it applies to their operations. And remember, this is but one part of the adjustment of the radio music licensing rates, as the RMLC still has to reach an agreement with BMI on the rates that they will charge. This agreement may set a benchmark for RMLC's proceeding with BMI to set rates covering the same period. Watch for developments in that case in the coming months.

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