

ASCAP Cuts a Deal with the Radio Industry on New Royalties - No Details as Yet

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New ASCAP royalties are on their way to radio broadcasters. **ASCAP** and the **Radio Music Licensing Committee (RMLC)** have just announced that they have reached an agreement in principal to return to the **percentage of revenue royalties** that for so long were paid by radio stations to ASCAP and BMI – a system that was abandoned for a market-based flat-fee system designed to avoid having the licensing organizations as partners that shared in what stations believed would be forever rising radio revenues. Of course, soon after the deal was struck, the current economic troubles hit, radio revenues fell, and the flat fees left many stations paying multiples of what they had been paying under the prior system. A return to the percentage of revenue-based system would seem to be a very good thing. See our previous summary of this royalty controversy, here and here.

But, as of now, we know very little about the details of the deal – other than it returns to the percentage of revenue basis and that it seemingly will include all revenues of the broadcaster – including the ASCAP royalties due for **streaming**, other website music uses, and **mobile applications** (note that these royalties cover only the fees due for the public performance of the musical composition. In online digital applications, fees still need to be paid to SoundExchange or other rights holders for the public performance in the sound recordings - the actual recordings made by a band or singer of one of those musical compositions - see our articles here and here). The deal with ASCAP will run through 2016. We'll have to wait until the final deal is released before a full assessment of its impact can be judged.

For the RMLC and the broadcasters who financially support it, a deal should limit further litigation expenses with ASCAP (as a rate court proceeding had begun) while the final details of the settlement are hammered out. Watch for those details coming at some point in the future. And, remember, the RMLC also has BMI to deal with – which also had an agreement that expired at the end of 2009. The final royalties to be paid to both of these organizations should be retroactive to the beginning of 2010, so some analysis will need to be done as to whether stations have over or underpaid under the interim fees that are currently in place (see our article here) once the details of the ASCAP deal is announced, and a final resolution of the BMI royalty is reached through settlement or litigation.

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