

Beyond SoundExchange – Other Copyright Issues for Broadcasters

David Oxenford

doxenford@wbklaw.com

www.broadcastlawblog.com

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Issues to Discuss

- ASCAP/BMI Consent Decrees – and the future of the performance right for the musical composition
- The status of SESAC
- Pre-1972 sound recordings
- The broadcast performance royalty
- Beyond the performance right – other music uses by broadcasters
- Other copyright issues including the use of photos

Music Royalty Basics

- Two copyrights in all recorded music
 - One in the words and music (the “musical composition” or “musical work”)
 - One in the recording itself (the “sound recording” or “master recording”)
- Lots of different rights in each work – broadcasters are most interested in the “public performance right”
 - But also rights to make reproductions and “derivative works”
- For the musical composition public performance, that’s what you pay to ASCAP, BMI and SESAC (the “PROs”) – at least right now
- For sound recording public performance, it’s only digital payments so far –paid to SoundExchange
- For other rights – payments go elsewhere, many requiring direct licenses from copyright holders

Where is the Controversy?

- In the past, most of the big issues have been over sound recording issues
 - The “performance tax” on over-the-air radio
 - The cost of streaming fees
 - More recently, pre-1972 sound recordings
- Now, more and more issues over the musical composition
 - Song writers feel that they are not getting enough money compared to the sound recording copyright holders
 - Big publishers looking to withdraw their catalog from ASCAP and BMI
 - Pursuing relief in lots of forums
- Plus, Congress is doing an overall look at Copyright reform, and music is a big part

Consideration of Songwriter Concerns

- DOJ just finished looking at amending the antitrust consent decrees that govern ASCAP and BMI – what PROs wanted:
 - Don't want rate review by Court (arbitrator instead)
 - Want different rate standards
 - Want to be able to do more with music rights than just public performance
 - Want to allow publishers to partially withdraw their catalog
- Issues for broadcasters
 - Less experienced forum reviewing rates (and more expensive)
 - No more three-stop shopping to get rights to all songs
 - Don't know who owns what songs, so difficult to manage too many collection groups

What DOJ Did

- No changes to basics of the consent decrees
- Instead, DOJ required “100 per cent licensing” of “split works”
- Esoteric concept dealing with songs that have multiple composers – important where those composers are not part of the same PRO
- DOJ said that if a broadcaster or other user licenses part of the work – they get full rights to use it, and songwriters need to take care of paying their co-owners – really what broadcasters thought that they had now
- ASCAP and BMI threatening court action or Congressional lobbying to change decision

What's Up With SESAC?

- Not subject to consent decrees
- Both Radio and TV music licensing committees settled antitrust actions with SESAC
- Settlements require SESAC to arbitrate rates and set licenses for all broadcaster uses of music – not just over the air
- Negotiations are going on now over new rates

Other Composition Issues

- GMR – Global Music Rights – new PRO seeking to license music rights – have withdrawn these rights from ASCAP and BMI for composers including the Eagles, John Lennon, Pete Townsend, Pharrell Williams
 - Already seeking licenses from businesses – broadcasters next?
- Other big publishers considering withdrawals too
- Could result in a fracturing of music rights

Sound Recording Issues

- Broadcast Performance Royalty still kicking around in Congress
- Pre-1972 sound recording royalty suits
 - Pre-1972 US sound recordings not covered by Federal law
 - Courts in NY and California have found performance right in pre-1972 sound recordings, Florida went the other way
 - Appeals being considered now – if a right is found, oldies stations might have to pay sound recording performance royalties for over-the-air broadcasts
 - But there are questions about whether digital versions of songs are really pre-1972 recordings

Other Music Uses

- Using music in video productions or any on-demand service (including podcasts) usually requires direct licenses from copyright holders
 - Most stations can't podcast their morning show because of difficulty in getting rights
 - No one-stop clearing house for such rights
- User-generated content – do you let audience post music videos on your website?
 - Register with Copyright Office name of person to get take-down notices
 - If registered, and you don't encourage infringement, have good terms of use, don't have actual knowledge of infringement, and take-down infringing content when asked – safe harbor from liability

Other Copyright Issues

- Today's biggest issue for broadcasters is unauthorized use of content found on the Internet
- Lots of lawsuits and demands by photographers when broadcaster takes a picture found on the Internet and posts it on their own website without permission
 - Use clearinghouses for photos to get rights to use lots of stock photos to illustrate content on your site
- Same kind of problem in TV – demands made for TV stations using online videos in their news and entertainment programs without permission – video creators don't give up copyright just by posting video on YouTube
- Generally – users don't give up copyrights just because they post material on the Internet
- If material is registered with the Copyright Office, damages can be as high as \$150,000 – usually lower unless infringement is willful or repeated, but can reach that high

For More Information

David D. Oxenford

Wilkinson Barker Knauer LLP

doxenford@wbklaw.com

www.broadcastlawblog.com

202.383.3337 direct

**1800 M Street NW
Suite 800N
Washington, D.C. 20036**



WILKINSON) BARKER) KNAUER) LLP