

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, DC

**IN RE DETERMINATION OF ROYALTY RATES
AND TERMS FOR PERFORMANCE OR
DISPLAY OF NONDRAMATIC MUSICAL
WORKS AND PICTORIAL, GRAPHIC, AND
SCULPTURAL WORKS BY PUBLIC
BROADCASTING ENTITIES (PB III)**

**Docket No. 16-CRB-0002-PBR
(2018-2022)**

**MOTION OF THE NATIONAL RELIGIOUS BROADCASTERS
NONCOMMERCIAL MUSIC LICENSE COMMITTEE TO SUBMIT A
RESPONSE TO THE COMMENTS SUBMITTED BY GLOBAL MUSIC RIGHTS, LLC**

The National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) respectfully seeks leave to submit a brief response (Ex. A hereto) to the November 27, 2017 comments filed by Global Music Rights, LLC (“GMR Comments”) in the above-captioned proceeding regarding the proposed regulations under 17 U.S.C. § 118 (“section 118 statutory license”) that the Copyright Royalty Judges (“Judges”) recently published in the Federal Register for comment. *See Determination of Rates and Terms for Public Broadcasting (PB III): Proposed Rule*, 82 Fed. Reg. 51589 (Nov. 7, 2017). GMR – at the eleventh hour and without ever having attempted to participate in this proceeding – has asked the Judges to up-end the agreements carefully negotiated by companies representing virtually all parties in interest and who did participate in this proceeding by arbitrarily and materially increasing the rates that noncommercial radio stations would need to pay to broadcast musical compositions under the section 118 statutory license. For reasons set forth in more detail in the NRBNMLC’s proposed response, GMR’s request is legally prohibited and factually unsupported. Moreover, it would, if

entertained, nullify the agreements reached by the NRBNMLC with ASCAP, BMI, and SESAC and force them to be restructured, as these agreements were negotiated with the overall royalty obligation in mind, and the royalty payment due to copyright owners not affiliated with ASCAP, BMI, and SESAC was a material provision in each of those agreements.

* * *

For the foregoing reasons and for the reasons set forth in more detail in the proposed response attached as Exhibit A hereto, the NRBNMLC respectfully requests that the Judges consider the NRBNMLC's proposed response to GMR's comments if they are inclined to take any action other than denying GMR's request.

Respectfully submitted,

/s/ Karyn K. Ablin

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*Counsel for the National Religious
Broadcasters Noncommercial Music License
Committee*

Dated: December 11, 2017

EXHIBIT A

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
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**IN RE DETERMINATION OF ROYALTY RATES
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**Docket No. 16-CRB-0002-PBR
(2018-2022)**

**RESPONSE OF THE NATIONAL RELIGIOUS BROADCASTERS
NONCOMMERCIAL MUSIC LICENSE COMMITTEE TO THE
COMMENTS SUBMITTED BY GLOBAL MUSIC RIGHTS, LLC**

The National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) respectfully submits this response to the November 27, 2017 comments filed by Global Music Rights, LLC (“GMR Comments”) in the above-captioned proceeding regarding the proposed regulations under 17 U.S.C. § 118 (“section 118 statutory license”) that the Copyright Royalty Judges (“Judges”) recently published in the Federal Register for comment. *See Determination of Rates and Terms for Public Broadcasting (PB III): Proposed Rule*, 82 Fed. Reg. 51589 (Nov. 7, 2017). In those comments, GMR – at the eleventh hour and without ever having attempted to participate in this proceeding – asks the Judges to up-end the agreements carefully negotiated by companies representing virtually all parties in interest and who did participate in this proceeding by arbitrarily and materially increasing the rates that noncommercial radio stations would need to pay to broadcast musical compositions under the section 118 statutory license.

With respect to the rates negotiated by the NRBNMLC (found in 37 C.F.R. § 381.6), GMR asks the Judges, without any record evidence establishing that it should be entitled to receive any payments under the section 118 statutory license, to replace the longstanding aggregate fee of \$1 for the public performance of all compositions not in the repertory of ASCAP, BMI, or SESAC with rates that mirror the rates negotiated with SESAC – a much larger performing rights organization (“PRO”) and a participant. GMR’s proposed changes would represent a fee increase of as much as several thousand dollars for some radio stations over the course of the license term. For several reasons, GMR’s request should be denied.

First, the governing statute does not permit the rejection or modification of rates and terms agreed to by participants based on comments submitted by a non-participant unless those rates are contrary to the statutory license, which the proposed rates and terms are not. Rather, as long as the rates are not “contrary to statutory law,” “the CRJs are able to review the reasonableness of permissible terms and rates contained in an agreement only if a participant to the proceeding objects to the agreement.” *Review of Copyright Royalty Judges Determination: Notice; Correction*, 74 Fed. Reg. 4,537, 4,540 (Jan. 26, 2009) (emphasis added); *see also Digital Performance Right in Sound Recordings and Ephemeral Recordings: Final Rule*, 80 Fed. Reg. 59,588, 59,589 (Oct. 2, 2015) (“Unless a participant in a proceeding objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory rates or terms, the Judges adopt the negotiated rates and terms.” (citing 17 U.S.C. § 801(b)(7)(A)(ii))).

In this case, GMR had every opportunity to, but did not, participate in this proceeding. By GMR’s own admission, it was founded in 2013. GMR Comments at 1. The Judges did not announce the commencement of this proceeding until years later, in 2016, so GMR had plenty of time to decide whether to participate. *See Determination of Rates and Terms for Public Broadcasting (PB III): Notice Announcing Commencement of Proceeding with Request for*

Petitions To Participate, 81 Fed. Reg. 256 (Jan. 5, 2016). Yet not only did GMR fail to file a timely petition to participate by the February 4, 2016 deadline, but at no time thereafter did it seek to join the proceeding belatedly, as other participants have done in the past. *See, e.g.*, Order Granting Church Music Publishers' Motion To Accept Late Petition To Participate, Docket No. 16-CRB-0002 PBR (2018-2022) (May 6, 2016). Thus, GMR has no standing to object to the negotiated rates now, and the governing statute precludes any changes to the proposed rates based on GMR's comments as a non-participant. *See* 17 U.S.C. § 801(b)(7)(A).

Second, there is no factual basis in the record for awarding GMR the same rates as those that the NRBNMLC negotiated with SESAC. While GMR seeks to be paid the same rates as SESAC, there is no record evidence that GMR is in any way comparable to SESAC for purposes of the section 118 statutory license. There is no evidence that GMR has a measurable presence, let alone a market share comparable to SESAC's, in religious music formats, which is the focus of stations represented by the NRBNMLC – the entity that has historically negotiated the rates found in 37 C.F.R. § 381.6. Indeed, GMR did not name a single significant religious songwriter or composer that it represents in its comments. *See* GMR Comments at 2.

Third, altering the \$1 aggregate rate for non-ASCAP/BMI/SESAC performances would nullify the NRBNMLC's negotiated rates with those PROs. That rate is a material provision in the NRBNMLC's agreements with each of those PROs, and it was expressly included in the joint proposals that the NRBNMLC submitted with each of those PROs. The NRBNMLC never would have agreed to the ASCAP, BMI, and SESAC rates that it did without that provision, as it negotiated rates with those PROs with the overall royalty obligations in mind. It reached agreements with the participating PROs that reflect the same rate trends (designed to approximate cost-of-living adjustments) as have been in place during the current license term. Had GMR participated in this proceeding and sought a share of those overall payments, the

NRBNMLC certainly would have insisted upon commensurate fee decreases from the other PROs to keep its overall royalty obligations in line with the current license term. This is a matter of basic common sense – NRBNMLC-represented stations play the same volume of musical compositions whether there are three, four, or more PROs representing that music, and those stations should not have to pay more in royalties merely based on the number of entities representing that music. Put another way, the number of hours in a day in which to play music does not grow with the number of PROs representing that music, and the associated royalties for playing that music should not, either. The unsupported eleventh-hour money grab by non-participant GMR simply should not form the basis for triggering untimely “do-over” litigation to reallocate the overall royalty pools that were carefully negotiated by the participants.

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Given the lack of any legal or factual basis for modifying the rates to reflect GMR’s proposed changes and the patent unfairness to licensees that would result from such changes, GMR’s proposed changes to the negotiated rates and terms should be denied.

Respectfully submitted,

/s/ Karyn K. Ablin

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*Counsel for the National Religious
Broadcasters Noncommercial Music License
Committee*

Dated: December 11, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2017, a copy of the foregoing Motion of the National Religious Broadcasters Noncommercial Music License Committee to Submit a Response to the Comments Submitted by Global Music Rights, LLC was served through the eCRB system and by first-class mail on the parties listed below.

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/s/ Karyn K. Ablin
Karyn K. Ablin

Certificate of Service

I hereby certify that on Monday, December 11, 2017 I provided a true and correct copy of the Comment - Reply on Comments of Global Music Rights, LLC to the following:

Educational Media Foundation (EMF), represented by David Oxenford served via U.S. Mail

Harry Fox Agency (HFA), represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

National Religious Broadcasters Noncommercial Music License Comm. (NRBNMLC), represented by Karyn K Ablin served via Electronic Service at ablin@fhhlaw.com

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

National Music Publishers Association (NMPA), represented by David Israelite served via U.S. Mail

Church Music Publishers' Association (CMPA), represented by Jack R Hicks served via Electronic Service at rushhicks@comcast.net

Public Broadcasting Service, represented by Kenneth L Steinthal served via Electronic Service at ksteinthal@kslaw.com

National Association of College and University Business Officers (NACUBO), represented by Dustin Cho served via Electronic Service at dcho@cov.com

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Signed: /s/ Karyn K Ablin