

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 IV)**

**Docket No. 21-CRB-0002-PBR
(2023-2027)**

**JOINT PROPOSAL OF GLOBAL MUSIC RIGHTS, LLC AND THE NATIONAL
RELIGIOUS BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE**

Global Music Rights, LLC (“GMR”) and the National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) join in a proposal to establish statutory license rates pursuant to 17 U.S.C. § 118 for the payment of statutory blanket license royalties to GMR by certain noncommercial radio broadcasting entities that are not licensed to colleges, universities, or other nonprofit educational institutions and are not affiliated with National Public Radio or qualified to receive funds from the Corporation for Public Broadcasting (the “Non-NPR/Non-College Noncommercial Radio Stations”) for the performance of copyrighted musical compositions in the GMR repertory (“Joint Proposal”). This proposal covers the years 2023 through 2027.

GMR AND THE NRBNMLC

GMR is a performing rights organization that represents many of today’s most popular music creators in licensing public performance rights in their musical compositions. Founded in 2013 as the first performing rights organization in the United States in nearly 75 years, GMR’s

catalog has quickly expanded to include over 50,000 musical works. This is the first time that GMR has participated in a proceeding to set statutory license rates pursuant to 17 U.S.C. § 118.

The NRBNMLC is a subcommittee of the National Religious Broadcasters Music License Committee, which is a standing committee of the National Religious Broadcasters. The NRBNMLC represents hundreds of noncommercial educational religious radio broadcasters in music licensing matters and has negotiated on their behalf in this proceeding and prior proceedings under 17 U.S.C. § 118.

THE PROPOSAL

GMR and the NRBNMLC have reached agreement regarding GMR license fees and hereby submit this Joint Proposal regarding rates under 37 C.F.R. § 381.6 and other provisions in 37 C.F.R. §§ 381.1, 381.2, 381.9, and 381.11. A Joint Proposal is submitted in lieu of a voluntary settlement agreement because the NRBNMLC does not represent all Non-NPR/Non-College Noncommercial Radio Stations.

GMR and the NRBNMLC hereby propose royalty rates for all musical compositions in the GMR repertory for the five-year period 2023 through 2027 and further propose that those rates be codified as 37 C.F.R. § 381.6(d)(4). GMR and the NRBNMLC also propose corresponding revisions to the text of section 381.6, as follows:

1. The renumbering of current section 381.6(d)(4) to section 381.6(d)(5);
2. The revision of current section 381.6(d)(4) (proposed to be renumbered as section 381.6(d)(5)) to amend the dates to “2023 through 2027” and to make clear that the \$1 fee covers all public performances in the aggregate of all musical compositions not in the repertories of ASCAP, BMI, SESAC, or GMR;
3. The addition of a separate subsection (e)(2) to section 381.6 to address payment terms for fees due to GMR; and
4. The revision of section 381.6(f) to include use reports to GMR.

No other revisions to section 381.6 are proposed regarding the musical compositions in the GMR repertory.¹ The proposed new rates and changes to proposed sections 381.6(d)(4) and (e) are set forth in Appendix A hereto, and proposed regulatory language for sections 381.1, 381.2, 381.9, and 381.11 and pertinent parts of section 381.6 is set forth in Appendix B hereto.

The proposed GMR blanket license rates consist of a single flat fee covering the entire five-year license term (or the entire remaining license term for stations that begin broadcasting during the term). The parties have determined that a flat-fee structure incorporating a single five-year payment in lieu of annual payments is the most suitable rate structure for noncommercial stations playing musical compositions in GMR's repertory, as it is simple and efficient to administer. It also provides predictability to both copyright licensees and copyright licensors and is particularly suitable for the Non-NPR Non-College Noncommercial Radio Stations that are largely dependent on listener donations to fund their operations.

The Joint Proposal also proposes to carry forward the current reporting provision in section 381.6(f), with one revision to include GMR. That provision is reasonable for noncommercial stations and has worked well over the years that it has been in place with other performing rights organizations.

The parties understand that other sections of the regulations are relevant to this proposal, specifically 37 C.F.R. §§ 381.1, 381.2, 381.9, and 381.11, which the parties propose be carried forward unchanged (except that in section 381.1, "January 1, 2018" should be changed to "January 1, 2023," and "December 31, 2022" should be changed to "December 31, 2027").

¹ The rates in 37 C.F.R. § 381.6(d)(2) and (3) for public performances of musical compositions in the repertoires of American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. will be addressed in separate joint proposals submitted by the NRBNMLC and each of those entities.

Under the Joint Proposal, a Non-NPR/Non-College Noncommercial Radio Station shall not pay a separate fee for an in-band, on-channel, digital radio (“HD Radio”) signal that is a “simulcast” of the station’s analog, over-the-air signal within the same market. But, to the extent that a Non-NPR/Non-College Noncommercial Radio Station broadcasts different programming by means of its HD Radio signals (“Multicast Signals”), the station must report and pay for each Multicast Signal as a separate station.

GMR and the NRBNMLC propose that 37 C.F.R. §§ 381.1 and 381.6 be revised and the rates adopted as proposed herein.² Such adoption in the regulations would make further proceedings, including filing of Written Direct or Rebuttal Statements, discovery, or a hearing, unnecessary for Non-NPR/Non-College Noncommercial Radio Stations insofar as their performance of GMR musical compositions is concerned.

CONCLUSION

GMR and the NRBNMLC request that the Copyright Royalty Judges adopt this Joint Proposal for the statutory license fees to be paid to GMR by the Non-NPR/Non-College Noncommercial Radio Stations pursuant to section 118 of the Copyright Act. GMR and the NRBNMLC also request that 37 C.F.R. § 381.6 be amended with the new rates and further amended as provided herein. They further propose that 37 C.F.R. §§ 381.1, 381.2, 381.9, and 381.11 be carried forward unchanged except for the date change to section 381.1 noted above.

² In addition to the NRBNMLC, the only other broadcasting entity that filed a petition to participate in the current section 118 rate proceeding and is listed on the Participant List that represents radio stations in this category is the Educational Media Foundation (“EMF”), which is represented by the NRBNMLC. EMF joins in this proposal submitted by the NRBNMLC and GMR.

Respectfully submitted,

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Dated: September 9, 2021

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APPENDIX A

Proposed GMR Blanket License Fees for Radio Stations Not Licensed to Colleges, Universities or Other Nonprofit Educational Institutions and Not Affiliated with National Public Radio and Proposed Amendments to 37 C.F.R. § 381.6(d)(4), (e)

(d)(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) for a public broadcasting entity within the scope of this section that is broadcasting one or more radio stations as of January 1, 2023, a single \$50 fee for each such station for the entire five-year license term from 2023 through 2027; and

(ii) for a public broadcasting entity within the scope of this section that begins broadcasting a radio station after January 1, 2023 but before December 31, 2027, a pro-rated amount equal to \$10 multiplied by the number of full or partial years remaining in the 2023-2027 license term as of the date on which the radio station begins broadcasting (*e.g.*, a public broadcasting entity that begins broadcasting a radio station in 2025 shall pay \$30 for that station for the remainder of the term);

(e) *Payment of royalty rate.*

(1) *ASCAP, BMI, and SESAC. ...*

(2) *GMR.* For fees due pursuant to subsection (d)(4)(i), the public broadcasting entity shall pay the required royalty rate to GMR not later than January 31, 2023. For fees due pursuant to subsection (d)(4)(ii), the public broadcasting entity shall pay the required royalty rate to GMR not later than 60 days after the public broadcasting entity begins to broadcast the radio station for which such fee is due. If a fee is paid pursuant to subsection (d)(4)(i) or (d)(4)(ii) for a radio station and that station changes ownership during the course of the license term but continues to fall within the scope of this section, no additional fee shall be due for that station during the 2023-2027 license term.

APPENDIX B

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2023, and ending on December 31, 2027. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term public broadcasting entity means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station's analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Definitions.* ...

(c) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

- (1) For all such compositions in the repertory of ASCAP . . .
- (2) For all such compositions in the repertory of BMI . . .
- (3) For all such compositions in the repertory of SESAC . . .

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) for a public broadcasting entity within the scope of this section that is broadcasting one or more radio stations as of January 1, 2023, a single \$50 fee for each such station for the entire five-year license term from 2023 through 2027; and

(ii) for a public broadcasting entity within the scope of this section that begins broadcasting a radio station after January 1, 2023 but before December 31, 2027, a pro-rated amount equal to \$10 multiplied by the number of full or partial years remaining in the 2023-2027 license term as of the date on which the radio station begins broadcasting (*e.g.*, a public broadcasting entity that begins broadcasting a radio station in 2025 shall pay \$30 for that station for the remainder of the term);

(5) For the performance of all other such compositions in the aggregate, from 2023 through 2027, \$1.

(e) *Payment of royalty rate.*

(1) *ASCAP, BMI, and SESAC. ...*

(2) *GMR.* For fees due pursuant to subsection (d)(4)(i), the public broadcasting entity shall pay the required royalty rate to GMR not later than January 31, 2023. For fees due pursuant to subsection (d)(4)(ii), the public broadcasting entity shall pay the required royalty rate to GMR not later than 60 days after the public broadcasting entity begins to broadcast the radio station for which such fee is due. If a fee is paid pursuant to subsection (d)(4)(i) or (d)(4)(ii) for a radio station and that station changes ownership during the course of the license term but continues to fall within the scope of this section, no additional fee shall be due for that station during the 2023-2027 license term.

(f) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR, upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR each shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

Proof of Delivery

I hereby certify that on Thursday, September 09, 2021, I provided a true and correct copy of the Joint Proposal of Global Music Rights, LLC and the National Religious Broadcasters Noncommercial Music License Committee to the following:

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@faegredrinker.com

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at doxenford@wbklaw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at cheshirerigler@shrumhicks.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Signed: /s/ Karyn K Ablin