



Virginia Association of Broadcasters Legal Review



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Legal Memorandum: Music-Centric Edition

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GMR Offering Interim License Extensions Through March 31, 2021; Stations Must Take Action

In a welcome update substantially similar to ones you’ve received from us in the past, we have learned that performance rights organization Global Music Rights (“GMR”) has agreed to offer extensions for all interim licenses currently set to expire at the end of this month, on March 31, 2020.

The new GMR extension will run through **March 31, 2021**, with terms purportedly mirroring the multiple prior extensions granted by GMR over the past several years. You may recall that GMR granted the last such extension in September 2019, for a period of six months.

As we have previously written, GMR’s interim licenses and corresponding extensions fall against the backdrop of the ongoing litigation between GMR and Radio Music License Committee (“RMLC”). At issue in that litigation, among other things, is whether the antitrust principles

applied to the rates set by other performing rights organizations, such as ASCAP and BMI, should also apply to the rates set by GMR.

With no current end to the litigation in sight, commercial stations currently must obtain licenses to broadcast any of the more than 45,000 works falling within GMR’s catalog. Since late 2016—and in light of the pending litigation and its uncertainty—GMR has been offering stations an interim license agreement (which license has been extended several times, as is the case again now) covering the musical works in its catalog.

Will the new extension change the other terms (including price) of stations’ current interim licenses? Based on the information we have as of this writing, it appears that the terms of the current interim licenses will remain the same. A recent communication from RMLC to various broadcasters indicates that GMR has agreed to offer its interim license extensions on the same terms (including price) as each station’s existing interim license. This means that only the license expiration date would change (from March 31, 2020 to March 31, 2021).

Do stations need to take action to receive the new license extension? Yes. At a minimum, stations will need to sign the new license agreement. Additionally, although GMR has indicated that it intends to contact stations to offer the extensions, RMLC suggests that stations who have not heard from GMR by March 15, 2020 should contact GMR directly before the current licenses expire on March 31, 2020.

Commissioner O’Rielly Remains Focused on Payola; Requests Responses from Major Labels Regarding Compliance

Since we’re talking music, we wanted to flag for you Commissioner O’Rielly’s continued concerns regarding modern-day payola practices. In a continuation of an inquiry the Commissioner began last year, O’Rielly earlier this year [wrote](#) to Sony Music Entertainment, Warner Music Group, and Universal Music Group (together, the “Labels”) to ask those Labels a number of questions regarding payola.

As you may recall, in September of last year the Commissioner reached out to the Recording Industry Association of America (“RIAA”) for insight into recent press exposés suggesting that the age-old practice of paying radio stations for airtime (“payola”) still exists, albeit in a slightly reconfigured manner than was the case decades ago. When RIAA responded that it was not in a position to speak for all of its members’ anti-payola practices, O’Rielly indicated that he would have to reach out directly to record labels for answers.

And so he did. In the Commissioner’s January letter, he noted that even “cursory review of consumer complaints and assertions provides cause for concern regarding the persistence of payola,” including “accusations that financial enticement is in some cases driving chart rankings, album and song sales, and commercial success.” At the same time, O’Rielly noted that the increasing digital delivery of media content (which, as a legal matter, generally is *not* subject to the same payola restrictions that apply to the on-air playing of music) simultaneously impacts the radio industry’s financial well-being and raises a host of compliance questions for media entities that deliver content via multiple distribution methods (e.g., via both radio broadcast and online

streaming). For all those reasons, O’Rielly ultimately asked the Labels to respond to various questions, including:

- What types of arrangements exist between each label and radio broadcast station for song placement and frequency of airtime?
- What compliance protocols has each Label developed to guard against payola?
- Whether each Label is aware of any of its associated individuals or companies having engaged in or solicited payola practices over the last five years.
- What is the recording industry’s greatest risk for potential violations in light of recent developments in audio-distribution technology?
- Whether existing laws and the Labels’ internal compliance protocols have worked to restrict payola.

Commissioner O’Rielly requested responses from the Labels by the end of February. As of this writing, it is unclear whether the Labels have, in fact, responded to O’Rielly’s letter within the requested time frame. Ultimately, what effect the inquiry will have on modern-day payola practices is unclear—although the Commissioner’s letter alluded to proposals “to update [payola] laws and regulations to keep pace with the current marketplace,” the timeline for such proposals is currently uncertain. We’ll continue to monitor the Commissioner’s inquiry, including any responses from the Labels, and let you know of any important developments.

PIRATE Act Now the Law; Unlicensed Radio Broadcasters Beware!

Sticking with actions aimed at cracking down on unlawful use of the nation’s radio airwaves, we wanted to provide an update (albeit a bit belated!) regarding the passage and signing of the Preventing Illegal Radio Abuse Through Enforcement Act (or “PIRATE Act” or “Act,” for short). In adopting the PIRATE Act several weeks ago, Congress granted the FCC much broader—and quicker-to-execute—enforcement authority to curtail unlicensed radio broadcasting. Here’s a quick summary of what the Act does:

Increased fine limits. Previously, the Communications Act limited the Commission’s authority to fine unlicensed station operators to up to \$20,489 for each day of a continuing violation, and up to a statutory maximum of \$153,669 for a single act or failure to act. The PIRATE Act not only increases the maximum daily fine to \$100,000, but additionally sets a \$2 million fine limit.

Enforcement sweeps must occur at least once annually. The Act requires the Commission’s Enforcement Bureau to conduct sweeps “not less than once each year” intended to eliminate pirate radio broadcasting within the top-five radio markets in which such unlicensed broadcasting occurs. In the words of the Act, the required Enforcement Bureau sweeps must focus on “identifying, locating, and taking enforcement actions designed to terminate” pirate radio operations. Additionally, the Commission must (1) conduct subsequent monitoring sweeps within six months after any enforcement sweep, with the goal of determining whether the identified (or any additional) pirate radio broadcasting is occurring in the targeted market; and (2) not decrease or diminish (i.e., the Commission must at least maintain) its regular, ongoing pirate-radio enforcement efforts performed during non-sweep portions of the year.

Enforcement actions generally will proceed directly to Notices of Apparent Liability. The Act streamlines enforcement by requiring the Commission in most cases (unless “good cause” is shown) to skip the preliminary enforcement step of sending a “Notice of Unlicensed Operation” to a pirate operator. Instead the Act directs the Commission to proceed “directly to issu[ing] a notice of apparent liability” to an alleged pirating operator.

Annual reporting requirement. The Act requires the Commission on a going-forward basis to annually submit to House and Senate Committees a report summarizing both the implementation of the Act and the enforcement activities taken during the previous year. The Commission may also include as part of the report a summary of its efforts to enlist attorneys from the United States Department of Justice—as well as federal, state, and local law enforcement personnel—for “service of process, collection of fines or forfeitures, seizures of equipment, and enforcement of orders” relating to pirate radio.

New radio broadcasting database. Per the terms of the Act, the Commission has until late April to publish a database of (1) all licensed AM and FM radio stations; and (2) all “entities that have received a notice of unlicensed operation, notice of apparent liability, or forfeiture order issued by the Commission.” The Commission must update the database semi-annually.

In short: those without authorization to sail the high seas of the AM and FM bands should beware; the Commission now has both a statutory mandate to regularly enforce the pirate radio laws and a sharpened sword with which to do so.

Tim Nelson, Editor

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