March 3, 2021

\*Special Music Licensing Update\*

# GMR Offering Interim License Extensions for

# Shorter Period and at Increased Price;

# Commercial Radio Stations Must Take Action

 As the March 31, 2021, expiration deadline approaches for the current crop of interim licenses granted by Global Music Rights (“GMR”) to commercial radio stations, we have learned that GMR is again offering extensions to those interim licenses. However, the new GMR extensions are (1) shorter and (2) more expensive than before—the interim license that GMR is now offering will only run through January 1, 2022, and will increase in price by 20% as compared to the prior license. The last extension was granted in March 2020, for a period of one year.

 **Please note:** As with prior GMR extensions, this interim license extension offer **only applies to commercial radio stations**. This memorandum contains additional information at the end regarding commercial television stations, as well as noncommercial television and radio stations.

 As we have previously written, GMR’s interim licenses and corresponding extensions fall against the backdrop of the ongoing litigation between Radio Music License Committee (“RMLC”) and GMR. 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. (Notably, since 1941 both ASCAP and BMI have been bound by consent decrees with the U.S. Department of Justice (“DOJ”) addressing those antitrust issues, with various modifications to the decrees having been made throughout the years. In January 2021, DOJ concluded its most recent review of the ASCAP and BMI consent decrees—which review DOJ initiated in 2019—noting in a [statement](https://www.justice.gov/atr/page/file/1355391/download) that although DOJ would not take any current action to alter the decrees, continued “review of, and stakeholder input concerning, the decrees remains necessary to ensure the decrees continue to satisfy their purpose to protect competition and do not act as an impediment to innovation.”)

 Unfortunately, the current nine-month extension period being offered by GMR is unlikely to cover the remaining amount of time before a final decision is rendered in the RMLC and GMR litigation. The case is currently still in the midst of “discovery” (i.e., the period where GMR and RMLC are authorized to collect evidence from one another), and various court-ordered filing deadlines fall in late 2021 and early 2022 such that a formal trial (if the case ultimately proceeds to trial) is unlikely to commence until sometime in 2022.

 Accordingly, with no current end to the litigation in sight, commercial radio stations currently must obtain licenses to broadcast any of the more than 55,000 works falling within GMR’s catalog. Since late 2016—and in light of the pending litigation and its uncertainty—GMR has been offering such stations an interim license agreement (which license has been extended several times, as is the case now) to cover the works in its catalog. It’s also worth noting that in at least one case GMR has shown that it is willing to file suit against broadcasters who use GMR’s music without adequate licensing in place. In 2019, GMR filed suit against Entravision for such alleged violations; the case was settled for an undisclosed amount and dismissed in late 2020 pursuant to GMR and Entravision’s settlement agreement.

*The extension’s price increase.* GMR will be charging a 20% higher price for this new interim license. RMLC has indicated that “GMR unilaterally dictated this price increase and made clear that it was non-negotiable.” GMR has justified the price increase based on the following: (1) GMR has not increased the interim license price since it first began offering such licenses to RMLC members in January 2017; (2) GMR has added a “significant number of additional premium songwriters” to its repertory since January 2017; and (3) the increased fee represents only a 4% increase when annualized since the first interim license (i.e., spread out over all years since the first, January 2017 license was made available). Aside from the price increase (and shorter, nine-month term), the terms of the license appear to otherwise mirror the terms of the previous extensions.

*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, 2021, should contact GMR directly before the current licenses expire on March 31, 2021.

*I’m a commercial television station—what about me?*  PRO licenses and rates for commercial broadcasters are generally negotiated at the industry level by the RMLC for commercial radio stations and the Television Music License Committee (“TVMLC”) for commercial television stations.  The industry-negotiated licenses and license fees are available for broadcasters who timely authorize the RMLC or TVMLC, as applicable, to act on their behalf in negotiations with the PROs. However, at this point, there is no TVMLC-negotiated license agreement with GMR because GMR has declined to engage in such negotiations with TVMLC. Consequently, commercial television stations that need a license from GMR must reach out to GMR directly to negotiate the terms of such license. TVMLC has indicated that its members may reach out to it for additional guidance on how to approach such negotiations, if TVMLC members wish to do so.

*I’m a* ***noncommercial*** *televisi**on or radio station—what about me?* Unlike commercial broadcasters, the public performance of musical works by noncommercial educational television and radio stations is allowed under the terms of a “statutory” or “compulsory” license provided in Section 118(c)(1) of the Copyright Act.  In accordance with Section 118, the PROs and representatives of noncommercial broadcasters generally negotiate rates and terms that are submitted to and approved by the Copyright Royalty Judges, which is a board of judges appointed by the Librarian of Congress to oversee the Copyright Act statutory licenses.

The current noncommercial broadcaster public performance royalty rates adopted by the Copyright Royalty Judges cover licenses from ASCAP, BMI, and SESAC for the 2018–2022 period.  One set of rates applies to noncommercial radio stations licensed to colleges and universities (based on the number of students attending the school).  Another set of rates applies to all other noncommercial radio stations that are not affiliated with NPR, including religious broadcasters (based on the population served by the station).  And another set of rates applies to NPR-affiliated radio stations and PBS-affiliated television stations (which rates are subject to a confidentially agreement), and all other noncommercial television stations ($1 per year).

However, because GMR failed to participate in the 2018–2022 rate proceeding, the public performance royalty rate for noncommercial stations is currently $1 per year to cover GMR-controlled musical works (and any other works not controlled by ASCAP, BMI, or SESAC). This rate will almost certainly change in the coming years, given that GMR has filed to participate in the coming, 2023-2027 rate proceeding.

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*Tim Nelson, Editor*

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