


TELEVISION MUSIC  LICENSE COMMITTEE

December 8, 2003

To: Television Broadcasters

From: Television Music License Committee (TMLC)

TMLC has recently received calls from stations concerning the extent to which music in their digital television (DTV) signals is covered by existing licenses with ASCAP, BMI and SESAC. Many of the questions were prompted by SESAC's recent mailing of a license to stations. In addition, there have been some questions about the use of music in video streamed over station websites. This memo is designed to provide quick answers to these questions. For complete answers, you should check your station's music performing rights license agreements.

TMLC has addressed these issues in negotiations with the performing rights organizations and will continue to do so in the future, as technology changes and the rollout of DTV — still in its infancy — progresses. We welcome your questions and comments. Please contact Alixandra Steier (202-232-1603) (alix@televisionmusic.com) or Will Hoyt (212-308-9040) (will@televisionmusic.com) at the TMLC offices. Also, be sure to check TMLC's website, www.televisionmusic.com, for the latest updates in this area. Be aware, however, that the Committee cannot provide you with legal advice.

MUSIC IN DTV SIGNALS

SESAC

The existing blanket license agreement, negotiated by SESAC and TMLC, runs through the end of 2004. It covers music in DTV signals on an experimental basis. SESAC music in a station's DTV signal is covered as long as the signal consists "predominantly" of the same programming as the station's analog signal. Thus, stations that simulcast their analog signal on their DTV frequency are protected by the existing agreement. Stations that broadcast other programming containing SESAC music (other than occasional variations from a simulcast), or that rebroadcast programming on a delayed basis, are not covered. These additional performances are unlicensed.

The terms of the DTV license agreement form recently mailed out by SESAC were not negotiated between SESAC and TMLC. Stations should examine SESAC's proposed license agreement carefully. Stations are free to negotiate with SESAC concerning use of music outside the scope of the existing TMLC blanket license. Also see the TMLC website under SESAC news for a memo concerning SESAC's proposed DTV license agreement.

BMI

The existing blanket and per program license agreements negotiated by BMI and TMLC also run through the end of 2004. Their coverage of DTV is experimental. BMI license agreements cover the station's entire free DTV broadcast signal, including multiple program streams and delayed rebroadcasts.

ASCAP

Stations represented by TMLC are licensed on an interim basis under ASCAP blanket and per program license agreements that were negotiated before DTV broadcasts began. Thus, the existing ASCAP license agreements do not expressly cover DTV signals. However, TMLC has applied to the Rate Court overseeing the current legal dispute over ASCAP rates for a license that will cover stations' past and future broadcasts of ASCAP music in

their DTV signals. Accordingly, stations will not be sued for use of music in their DTV signals as long as they remain licensed by ASCAP. It is possible there will be additional costs imposed as part of the Rate Court ruling.

The Committee believes that as long as DTV remains a service in the early stages of development, in parallel with fully-licensed analog signals, and as long as stations do not receive additional revenue from DTV broadcasts, there should be no additional license fees for the use of music on DTV.

STATION WEBSITES

ASCAP

As with DTV, the existing ASCAP licenses predate almost all station websites, and the licenses do not expressly cover websites. TMLC has applied to the Rate Court for license terms that will cover stations' broadcast-related use of the Internet. The scope of this coverage has not been determined. Because stations are licensed by ASCAP on an interim basis, it is possible fees will be imposed for past and future transmission of ASCAP music over station websites.

BMI

The BMI blanket and per program license agreements permit stations to include BMI music in local programming streamed on a station website. A station's locally-produced programming can be streamed live. Local newscasts and public affairs programming can be streamed on a live or archived basis. The agreements also permit selections of music of up to 30 seconds in duration to be streamed from station websites for promotional purposes. See your license agreement for details concerning these promotional uses and BMI's right to request reports on use of music on station websites.

SESAC

The SESAC blanket license agreement permits stations to stream, on a live or archived basis, music in their locally-produced programming, including newscasts, public affairs programs, promotional and public service announcements. The agreement does not cover use of music where a fee is charged to access music on the website. The SESAC license also permits promotional use of music in the same manner as the BMI agreements. (See above.)

REMEMBER! TMLC requested a separate contribution to help defray costs in the rate court trial with ASCAP that will establish final fees from 1998. Millions of dollars are at stake! Although that assessment is not due until the end of 2004, you may want to pay a portion or all of this assessment in 2003 if you have not already done so. We would be happy to send you a separate notice of the balance due. Just call Abby Doran at 212-308-9040.
