

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

CIV. No.41-1395 (WCC)

-against- :

**FINAL ORDER**

AMERICAN SOCIETY OF COMPOSERS, :  
PUBLISHERS AND AUTHORS :

Defendants. :

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In the Matter of the Application of HICKS :  
BROADCASTING OF INDIANA, LLC, et al., :

Applicants, :

For the Determination of Reasonable License Fees. :

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Pursuant to Section IX of the Second Amended Final Judgment herein, and Applicants Hicks Broadcasting of Indiana, LLC, et al. (“Applicants”), and defendant American Society of Composers, Authors and Publishers. (“ASCAP”), having entered into a settlement agreement in this proceeding resulting in negotiated and agreed upon forms of ASCAP music performing rights license agreements; and Applicants and ASCAP having agreed that such forms of license agreements may be entered into lawfully by each party to this proceeding; and Applicants and ASCAP having consented to the entry of this Order to carry out the agreements they have reached; and notice of the settlement of this Order having been given to the United States of America,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The form of the ASCAP 2004 Radio Station License Agreement (and its annexed exhibits), attached hereto as Exhibit A (herein the “ASCAP 2004 Radio Station License

Agreement” or the “License”), covering the period January 1, 2001 through December 31, 2009 (the “License Period”), and the final license fees and terms of ASCAP licenses for the period from January 1, 2001 through December 31, 2009 are as agreed to by the parties. The license fees set forth in the ASCAP 2004 Radio Station License Agreement are reasonable and non-discriminatory for the License Period, and comply with the terms of the Second Amended Final Judgment herein.

2. ASCAP shall mail the ASCAP 2004 Radio Station License Agreement to each Applicant or other radio station owner that has agreed to be bound by the outcome of this proceeding or negotiations on behalf of Applicants by the Radio Music License Committee (the “RMLC”) (collectively “Bound Stations”), together with a copy of this Order, so that the License shall be received by the Bound Stations no later than November 15, 2004. Each Bound Station shall be deemed licensed under the ASCAP 2004 Radio Station License Agreement and bound by the terms of this Order. Each Bound Station shall sign and return its License to ASCAP at its offices at One Lincoln Square, New York, NY, within 90 days of receipt of the License by such Bound Station. Attached hereto as Exhibit B is a list of the Bound Stations. ASCAP and Applicants may, by agreement, amend or supplement the list attached as Exhibit B. In the event of a conflict between the description of Bound Stations set forth in this Order and the attached list, this Order shall govern.

3. Each Bound Station’s license fee shall be determined in accordance with the provisions of the license fee allocation formula, developed by the RMLC, attached as Exhibit B to the ASCAP 2004 Radio Station License Agreement. The license fee allocation formula allocates industry-wide license fees to be paid to ASCAP pursuant to the ASCAP 2004 Radio

Station License Agreement in a reasonably equitable manner among the Bound Stations, and each Bound Station is directed to pay such fees pursuant to the allocation formula.

4. Entry of this Order is without prejudice to any arguments or positions the Applicants, or any other local commercial radio station, or ASCAP, may assert in any future proceeding to determine what constitutes reasonable blanket license, per program license or internet streaming license fees for local commercial radio stations; terms for such licenses for local commercial radio stations; the methodology for calculating such license fees for local commercial radio stations; or the reasonableness of the structure of such licenses or license fees for commercial radio stations.

5. This Court makes no determination that the license fees for a given year are reasonable license fees for a particular year. The annual license fees provided for by the License instead reflect arbitrary allocations. Each party hereto is free to make whatever internal allocations it deems reasonable and appropriate for its own internal business purposes. The allocation of fees to any particular calendar year shall not be considered in connection with the determination of final fees for any subsequent period, for local commercial radio stations or any other user of ASCAP music, and shall not be offered as evidence by any party for any purpose in any proceeding concerning the determination of reasonable ASCAP final license fees.

6. In connection with the administration of the Licenses, the RMLC directly represents approximately 5,300 radio stations, and an additional approximately 5,000 stations have agreed to be bound by the licenses negotiated by the RMLC. Under the terms of the Licenses, the RMLC is responsible for the allocation of industry-wide fees among individual stations pursuant to a methodology developed, and which will be administered, by the RMLC. The RMLC has incurred and will incur costs in connection with the administration of the

Licenses and the RMLC's ongoing representation of radio stations in regard to music performance licenses. To fairly and equitably distribute among all radio stations operating under and benefiting from the Licenses the costs of administration of the licenses and the RMLC's ongoing representation of the radio industry in regard to music performance licenses, each station licensed pursuant to the Licenses shall pay to the RMLC, beginning with calendar year 2004, on presentation of a statement from the RMLC in conformity with this Order:

(i) \$12 per year if the station's annual broadcast licenses fees due to ASCAP are less than \$6,500;

(ii) \$120 per year if the station's annual broadcast license fees due to ASCAP are at least \$6,500 and less than \$20,000; and

(iii) \$510 per year if the station's annual broadcast license fees due to ASCAP are \$20,000 or more.

Such payments as provided herein shall be made to the RMLC by September 30 of each calendar year, except that payments for calendar year 2004 shall be made within 60 days of receipt by the station of a statement of amounts owing to be provided by the RMLC. RMLC may impose a late payment charge of 1% per month from the date the payment was due on any payment that is received by RMLC after the date payment was due and RMLC may further assess stations for the full amount of costs incurred by the RMLC in connection with collecting such amounts.

7. The Court retains continuing jurisdiction over this proceeding for the purpose of enforcing this Order and the terms, conditions and obligations of the ASCAP 2004 Radio Station License Agreement.

SO ORDERED.

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United States District Judge

Dated: \_\_\_\_\_