

“BROADCAST MUSIC INCORPORATED”

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BMI

Broadcast Music Incorporated (BMI) brought competition to the business of music performance rights licensing in the United States. Established in reaction to what was perceived by radio broadcasters as predatory pricing by the American Society of Composers, Authors and Publishers (ASCAP), BMI gradually rose to parity with its antagonist and its tunes now dominate the playlists of most contemporary music formats.

In the years following the 1923 negotiation of its first broadcast performance rights license, ASCAP demanded higher and higher copyright fees from stations for airing the music the public expected to hear. As ASCAP controlled the performance rights to virtually all songs being played by American radio stations, it was believed that broadcasters had no choice but to pay the rates ASCAP demanded. But in 1939, faced with the onset of yet another price increase, the broadcasting industry rebelled. Sidney M. Kaye, a young CBS copyright attorney, designed the blueprint for a new licensing agency to be called Broadcast Music Incorporated. Under Kaye's plan, presented to key radio executives in Chicago in the autumn of 1939, broadcasters would pledge sums equal to 50% of their 1937 ASCAP payments as seed money to launch the new organization. In exchange for these payments, participating broadcasters received non-dividend-paying BMI stock (most of which they or their successor companies still hold). On October 14, 1939, BMI's charter as a non-profit venture was filed and the agency's offices opened in New York on February 15, 1940.

ASCAP did not take the new effort seriously and soon announced a 100% rate increase for 1941 (from 5% to 10% of a station's advertising revenues). In response, 650 broadcasters signed BMI licenses by the end of the year, with only 200 primarily small stations re-signing with ASCAP. Broadcasters who were anxious about what the loss of ASCAP material would do to their programming were encouraged to buy BMI stock by a BMI pamphlet that observed: "The public selects its favorites from the music which it hears and does not miss what it does not hear." On January 1, 1941, the broadcasters' boycott of ASCAP officially began.

Setting up a new rights agency was one thing --- but acquiring music for it to license was quite another. BMI began life with only eight songs; all of which had been commissioned specifically for its catalogue from non-ASCAP composers. While BMI sought to find and sign non-affiliated writers, radio stations that had turned back their ASCAP licenses had no music to program except these eight tunes and songs with expired copyrights. American radio thus entered the "Jeanie with the Light Brown Hair Era" named for an incessantly aired public domain tune by nineteenth century composer Stephen Foster.

As Foster and folksongs filled the ether, BMI looked to new sources of material to license. The popular "Tin Pan Alley" works of Gershwin, Porter, Berlin and scores of others were all ASCAP-licensed. Music from Britain and the rest of Europe could not be used because foreign composers were members of rights organizations that had signed reciprocal agreements with ASCAP.

However, ASCAP had not entered the South American market in any significant way so the music of Latin America soon came to dominate radio program schedules. The sudden and widespread popularity of sambas, tangos and rhumbas during the early 1940s was thus the product of legal necessity rather than intrinsic musical merit.

By the end of 1941, ASCAP agreed to roll back its rates; but it was too late to repair the damage. BMI was now firmly established as a licensing rival. Over the next fifteen years, BMI rose to parity with ASCAP principally by signing other songwriters ASCAP had ignored: (1) young mainstream composers disaffected by ASCAP's royalty payout system, which favored more established writers; (2) country and western composers from the hinterlands; and later (3) rock-and-roll songsters who combined black blues and white country stylings into a new, rhythmically pulsating phenomenon. Soon, a number of major publishers such as E.B. Marks and M.M. Cole affiliated with BMI and the organization also advanced seed money to new publishers who agreed to be represented by it. BMI prospered under Sydney Kaye who rose from vice president/general counsel to chairman of the board. He was assisted by Carl Haverlin, a former vice president of the Mutual Broadcasting System who began his BMI career as director of station relations and became president in 1947.

ASCAP and its select members counterattacked with charges that BMI and the broadcasters were conspiring to promote musical trash. Broadway legend Oscar Hammerstein charged that "BMI songs have been rammed down the public's ears," and other detractors

asserted that BMI stood for "Bad Music, Inc." Nevertheless, buoyed by broadcasters' resentment of past ASCAP arrogance and the widespread appeal of the rock-and-roll songwriters who BMI discovered and nurtured, the new organization came to dominate the radio pop charts.

In 1959, when the payola scandal became full-blown, ASCAP sought to make it a BMI issue by maintaining that BMI-dominated rock-and-roll music would never have become popular without under-the-table bribes. With a few high-profile disk jockey firings and the passage of Federal anti-payola legislation, the radio industry weathered the storm --- and therefore, so did BMI. The organization further insulated itself against future attacks on the quality of its catalogue by broadening its musical base. Within a few years, it had signed affiliation agreements with jazz composers like Thelonius Monk, folk writers such as Pete Seeger, classical icons such as William Schuman and Broadway mainstays Sheldon Harnick and Jerry Bock.

Nevertheless, as a broadcaster-owned and directed enterprise, BMI remains vulnerable to the undocumented charge that it is more sympathetic to their interests than to those of its affiliated composers and publishers. BMI's 1999 rates, however, were very close to those assessed by ASCAP: 1.605% of gross revenue for stations billing over \$150,000 and 1.445% for stations billing less than this figure. Also like ASCAP, BMI offers stations both blanket and per-program license options and negotiates with the radio industry through the Radio Music License Committee (RMLC), whose members are appointed by the

National Association of Broadcasters.

Under their BMI license agreements, radio stations periodically fill out a BMI log listing the music they have played over a given week. Outlets logging at any particular time are selected on a sampling basis to reflect all sizes, formats and geographic locales. This sample is then used to project national usage of individual BMI-licensed tunes with license fee payments accordingly divided among member composers and publishers.

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FURTHER READING

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