



Conference on the Collective Management of Copyright and Related Rights in South-East Asia

Best Practices on Licensing

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EU DIRECTIVE LICENSING (AND COLLECTION), ART. 16



NEGOTIATIONS IN
GOOD FAITH.



TARIFFS SHALL BE
REASONABLE.



TARIFFS BASED ON
OBJECTIVE CRITERIA.



CMOS SHALL INFORM
THE USERS ABOUT
THE CRITERIA USED.



TARIFFS FOR
EXCLUSIVE RIGHTS
AND RIGHTS TO
REMUNERATION
SHALL REFLECT THE
ECONOMIC VALUE
AND THE SERVICES
PROVIDED.



CMO'S OBLIGATIONS

Collective management organisations shall inform the user concerned of the criteria used for the setting of those tariffs(Art. 16 par. 2).

Collective management organisations shall reply without undue delay to requests from users, indicating, inter alia, the information needed in order for the collective management organisation to offer a licence. (Art. 16 par. 3)

Upon receipt of all relevant information, the collective management organisation shall, without undue delay, either offer a licence or provide the user with a reasoned statement explaining why it does not intend to license a particular service(Art. 16 par. 3).

A collective management organisation shall allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence (Art. 16 par. 4)



USER'S OBLIGATIONS



Users shall provide CMOs, within an agreed upon, or pre-established time, and in an agreed upon or pre-established format (using as far as possible, voluntary industry standards) with relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders”.



The information should be provided as best as possible in accordance with voluntary industry standards (e.g. ISRC and ISWC identifiers or CISAC standards presumably). The deadline to provide information must be reconcilable with the distribution deadline of CMOs (Art. 17).



TRANSPARENCY IN THE RELATIONSHIP OF THE USERS WITH CMOs

CMOs have a duty of non-discrimination as between users flowing from principles of law.

This is met through providing, where practicable, standard contracts and clear tariff structures.

Transparency shall be driven by efforts to make the licensing process easier to understand for users. Transparency here means knowing what they need to pay for and how much.

CMOs should therefore provide basic information on what copyright is, its rationale and its practical legal requirements for the users.



VARIOUS SITUATIONS ON TRANSPARENCY WITH THE USERS

- CMOs offer information on their licensing, which varies significantly in clarity.
 - Full information (SACEM, GEMA, PRS). All tariffs available and licensee can calculate its own licensing fee.
 - Limited information (STIM). Licensee to contact CMO to access further information for cost calculation of licensing fee.
 - Only minimum information on tariffs (ASCAP). Licensee to contact CMO early on the information process
- Practical Implications: Full information represents power for the licensee. He/she has a very clear idea of how much to pay. Planning security, possibility to scrutinise the CMO's charges. Other approaches tilt the balance of power away from the user, towards the CMO.
- Other issue: information overload. The licensee has to select the tariff actually needed from the huge pool that is available online.
- Need for a guidance system to help the licensee to find the way through the tariff jungle.



GENERAL PRINCIPLES FOR DEFINING WHETHER A TARIFF IS REASONABLE

- Two basic forms of tariffs:
- A percentage of the receipts from the use of the works or other subject matter. It mainly applies to uses related to the main activities of users, such as theatre performances, concerts, publications.
- A lump sum payment is typical for uses not belonging to the users' principal activities.
- For tariffs expressed in percentages, internationally accepted standards exist (usually 10% rule). Lump sums are fixed on the basis of specific factors which differ from country to country but there are generally accepted principles of calculation, except reprography and private copying levies.



GENERAL PRINCIPLES FOR DEFINING WHETHER A TARIFF IS REASONABLE

- The criteria for establishing the tariffs are the economic and social conditions of the country; international practices; changes in the technological field; the classification; annual inflation rates; products and services prices in the relevant sectors and the shares of these sectors in the gross domestic product; the use of the works or related right subjects; the number of the users; the unit price or the lump sum payment; the payment plan, and similar bases.
- The tariffs shall not cause damages to the structures of sectors where works or related right subjects are created and used; they shall not hinder individuals from accessing the works or related right subjects; they shall not harm the generally accepted practices, and they shall not cause anti-competitive conditions



WAYS OF SUPERVISION OF TARIFFS AND OTHER LICENSING CONDITIONS

- Settlement of possible disputes by ordinary courts. This way suits best to the exclusive nature of rights managed.
- (art. 56 par. 2 of the HCL: If an aspiring user is of the opinion that the remuneration demanded by a collecting society is clearly in excess of that usually payable in similar circumstances, the aspiring user shall pay to the collecting society, in advance of any use, either the remuneration demanded or an amount determined, upon request, by a court of first instance as being equal to the remuneration usually payable in similar circumstances, pursuant to the safeguarding measures. The final judgment concerning the remuneration shall be rendered by the competent court.)
- Procedures at special tribunals or other arbitration bodies established for this purpose. Countering the long court proceedings, this way of settlement is considered quicker and more cost effective. Basic principles: the conditions for an impartial and unbiased decision shall be guaranteed. The interference with tariffs and other licensing conditions shall be restricted to those cases where an actual abuse of monopoly position is involved and only to the extent necessary to prevent or eliminate the abuse. (art. 56 par. 3 of the HCL)
- Approval of tariffs and other licensing conditions by administrative authorities.



LICENSING STRATEGIES (I)



CMOs shall establish user-friendly licensing systems – easy access to world wide repertoire, convenience – at a fair price



On-line services



CMOs shall inform of the value of the use of the works to customers



CMOs shall provide services to the customers in relation to usage of works



NO collecting as such, NO policing



Develop a marketing and communication plan



LICENSING STRATEGIES (2)

Overview of income streams and priorities as a new CMO has limited resources, timetable.

Eventual approach; go for the big money first and at the same time the cheapest license to fix the "bottom".

Prepare economic analysis and evidence for the negotiations/court cases (value of music to business etc. and international comparison).

A communication strategy and campaign is vital for the success of the CMO.



TARIFF PARAMETERS IN GENERAL



TARIFFS SHALL REFLECT THE
ECONOMIC VALUE AND
SERVICES PROVIDED
ACCORDING TO EU DIRECTIVE.



TARIFFS SHALL REFLECT THE
INTENSITY OF THE USE (FOR
INSTANCE FOR MUSICAL
WORKS: MUSICALDRAMA,
DISCO, RADIO, BACKGROUND
MUSIC), THE ACTUAL USAGE
(QUANTITY), THE POTENTIAL
AND ACTUAL LISTENING OR
VIEWING, THE ECONOMIC
BENEFIT TO THE CUSTOMER.



TARIFFS FOR EACH SECTOR (I)

Opera, musicals

Ballet

Theater

Discoteque

DJs

Festival

Concerts and
entertainment

Audiovisual
productions, film
and videoclips

Public and
commercial radio
and TV, national ,
regional or local

On-line services

Simul- and
webcasting

Homepages,
websites

Podcasting



TARIFFS FOR EACH SECTOR (2)



BASIS FOR TARIFFS



EU DIRECTIVE OR
NATIONAL
LEGISLATION.



DECISIONS BY
COURTS (NATIONAL
OR EU), TRIBUNALS
OR GOVERNMENTAL
BODIES.



NEGOTIATIONS.



COMPARISON WITH
TARIFFS IN FOREIGN
COUNTRIES,
HOWEVER, ADJUSTED
BY PRICE OF LIVING,
GNP ETC. (BUT STILL
DANGEROUS).



OR WITH OTHER
COPYRIGHT FIELDS.



TARIFF STRUCTURE



Long term perspective –
difficult to change



If any introduction
discount then increase
for 3 years (65 – 80 – 90
and 100%)



Yearly increase linked to
cost of living/consumer
price index



One tariff for each
sector, see above











Different parameters for
different sectors



Tariffs for different
sectors are inter-related



TARIFF PARAMETERS FOR PUBLIC PERFORMANCES

-  Tariff shall reflect the usage of music and the intensity.
-  Always charge a minimum amount to cover administration costs.
-  Square meters combined with intensity (empty m2 in a hypermarket – small shop – crowded discoteque).
-  Capacity of venue.
-  Number of tickets sold.
-  % of turnover (bars in a few countries).
-  Number of employees, music at work.
-  Number of participants (dance, fitness).



TARIFF PARAMETERS FOR RADIO AND TV (I)



COMPOSERS, PERFORMERS AND PRODUCERS SHALL BE PAID A FAIR SALARY FOR PROVIDING THEIR SERVICES TO RADIO AND TV STATIONS – LIKE ALL OTHER SERVICE PROVIDERS



THE TARIFF SHALL REFLECT THE USAGE OF MUSIC (MUSIC CHANNEL, SPORTS CHANNEL, NEWS CHANNEL) AND THE POTENTIAL VIEWING/LISTENING (LOCAL, REGIONAL OR NATIONAL)



A MINIMUM PAYMENT SHALL ALWAYS BE CHARGED



MUSIC SELLS RADIO NOT OTHERWISE



NO SUCH THING AS A PROMOTIONAL VALUE FOR (TOTAL) MUSIC SALES



TARIFF PARAMETERS FOR RADIO AND TV (2)



PAYOLA SHOULD NOT
TAKE PLACE



ECONOMIC ANALYSIS
OF VALUE TO
RADIO/TV



% OF GROSS REVENUE
FOR COMMERCIAL
RADIO/TV, DON'T
FORGET A MINIMUM
PAYMENT



% OF EXPENDITURE
FOR PUBCASTERS OR
PR. MINUT RATE



PER LISTENER/VIEWER



PER SUBSCRIBER



LUMP SUM



LICENSING PUBLIC PERFORMANCES



Communication strategy



Legal strategy
(negotiations, negotiations
but don't be afraid to go
to courts)



Thorough analysis of the
market and each sector
involved



Establish a database for
customers



Step by step, segment by
segment approach



Prefer centralized
agreements



LICENSING RADIO/TV

- Communication strategy
- Legal strategy
- Overview from licensing body (public authority)
- Most important is agreeing on format for reporting connecting with CMO database (music works, recordings) for individual distribution
- Economic analysis
- Step by step, segment by segment approach



TARIFFS FOR CABLE RETRANSMISSION/1

- In Europe, a prerequisite is management through CMO for all right holders, except for the original broadcaster for its program service.
- In Nordic countries all right holders have chosen to act together and issue joint licenses to cable operators. COPYSWEDEN represents 14 Swedish associations and CMOs.
- In Romania, for the cable retransmission is regulated only one Methodology for all the rightholders both copyright and related rights.

- Examples of tariffs set for the producers rights for cable retransmission:

- Romania (www.upfarangoa.ro)

0,5% from the total incomes of the cable operator (! incomes from the cable business operations)

- Portugal (www.gedipe.org)

per subscriber	per subscriber ranks	Monthly value
	0 – 300.000	€0.152
	300.001 – 1.000.000	€0.127
	greater than 1.000.000	€0.064

- Austria (www.vam.cc) **The quarterly fee is currently EUR 0.78268648 per user.**
- Belgium (<http://www.bavp.be>) – the tariffs are set up according to the number of the retransmitted TV channels, number of the subscriptions, region, repertoire and following up principles like: non-discriminatory treatment between the cable operators and between the rightholders referring to the use of the repertoire and equitable treatment.



**TARIFFS FOR
CABLE
RETRANSMISION/2**

• **Spain (www.egeda.es)** - rates per year

0 - 100.000	12.500€
100.001 - 500.000	75.000 €
500.001 - 1.000.000	187.500 €
1.000.001 - 1.500.000	312.500 €
1.500.001 a 2.000.000	437.500 €
2.000.001 a 2.500.000	562.500 €
2.500.001 a 3.000.000	687.500 €
3.000.001 a 3.500.000	812.500 €
3.500.001 a 4.000.000	937.500 €
4.000.001 a 4.500.000	1.062.500 €
4.500.001 a 5.000.000	1.187.500 €
more than 5 millions	1.250.000 €

- The price for the use of the rights is equivalent to 92% of the monthly fee per subscriber or home connected to the network and the price for the service provided is equivalent to 8% of the monthly fee per subscriber or home connected to the network.



EXAMPLES OF TARIFFS FOR CABLE RETRANSMISSION/BROADCASTING FOR AUDIOVISUAL AUTHORS

COUNTRY	TARIFF	TARIFF BASIS
ROMANIA	1.50 % - cable retransmission	the total monthly gross income obtained from the cable retransmission activity of the broadcasting services, excluding VAT, if any, and in the absence thereof, of the total costs of use.
ROMANIA	2.50 % - broadcasting	total quarterly gross income the broadcasting activity or all the expenses incurred in using it, less the value added tax, if is the case, the local advertising fee and the advertising tax for alcoholic beverages, if any, and the contribution to the Fund cinematographic, budget allocations and subsidies, if any, and any other existing or subsequent charges. Income from third-party companies, in particular those of production and acquisition companies, may be included in the calculation basis only to the extent that they are cashed for the appropriate broadcaster (television) spot / advertising spots / publicity broadcasts Broadcast and to the extent that there is an unequal transfer, contrary to the users honest in trade-related, domain-specific relationships.
CZECH REP. (DILIA)		The rate is calculated per plug (i.e. per connection); for 2013 it is CZK 1.75 per month per plug.
SPAIN (SGAE)	Tariff/minutes	Users can choose the way of payment between 2 options: Rates based on the effective use of the repertoire To be able to take these rates, the users have to request it before the beginning of the activity within, at least, fifteen days of anticipation. The tariff consists in a percentage of the total revenues arising from the broadcasting. The criterion for the calculation of the tariff attends to the degree of utilization of the works in relation with the total time of broadcasting. This tariff includes the payment for the rights of reproduction and communication to the public and could vary each year. Divided equally rates in application of this system, the user shall pay to SGAE the resultant amount of the application of a percentage established for every year. This tariff includes the payment for the rights of reproduction and communication to the public.
POLAND (ZAPA)	Cable retransmission / Broadcasting	Remuneration for using content is calculated after the broadcaster has used the content licensed by ZAPA. The latter contacts the broadcaster and requests remuneration, the amount of which is only then negotiated between the broadcaster and ZAPA. There are no tariffs publicly available for broadcasting content and the rule is that remuneration is agreed individually with a broadcaster and confirmed contractually.
SWITZERLAND (SUISIMAGE)	Cable retransmission / Broadcasting	Monthly fee per cable customer household, depending on whether only television programs, only radio or a combination of radio and television programs are distributed Monthly fee per TV household in the respective broadcast area
HUNGARY (ARTISJUS)		Amount is based on the number of households connected to the cable service.



Broadcasting tariffs analysis (RADIO) for performers

- **Czech Republic:** 4% of broadcasting income (after deduction 20% of it)
- **Slovakia:** 6% of the income (after deducting 12% of expenses)
- **Greece (GEA):** 1%-5% of income (scale base on percentage of music used)
- **Slovenia:** 4,5% of income (for a 100% usage – reduced proportionally)
- **Estonia:** 4,5% of advertising revenue (common with producers CMO)
- **Latvia:** 2,67% of revenue for 100% music use
- **Serbia:** 2,75% - 4% of total income/expense (split tariffs with producers).



BROADCASTING TARIFFS ANALYSIS (TV - PHONOGRAMS) FOR PERFORMERS

In Romania, for phonograms: income/ expenses from broadcasting * 1% * weight of phonograms used in TV programme;

Others:

Estonia: 0.7 euro per second of phonogram use

Germany: 0.25 % of income (phonograms) + 1400 euro for each video clip (reduced in ratio to reach)

Croatia: 4% of revenue.



LICENSING SCIENTIFIC AND LITTERARY WORKS

- **By the author** – in the case of written works the author by himself can exercise the rights, especially for the reproduction right with the publisher
- **By the agent:**
 - The agent is concluding with the author a representation contract and receive a fee which varies from 10% to 15%.
 - Usually the sub-agent is representing the author in other countries/territories.
 - Is dealing with the publishers, on exclusive or non-exclusive basis, and is concluding the publishing contracts, usually, for the reproduction, translation and commercialisation of hardcover or paperback editions of the book, which have to be published in a specified term (e.g. 12, 18 or 24 months) and number of copies (minimum or maximum). Also, the contract will stipulated the selling price of the book and the limited period (3, 5 or 7 years).
 - In Europe, usually, the contract is negotiated with the publisher which have the right for the translation and the publishers have also sub-agents, and in USA and UK the agents have the right to negotiate.
- **By collective management organisations (CMOs)**



ECONOMICAL RIGHT	EXERCISE BY AUTHOR	EXERCISE BY AGENT	EXERCISE BY CMOs
Reproduction	YES	YES	YES
Translation	YES	YES	YES
Making derivative works	YES	YES	YES
Public distribution, rental and lending	YES	YES	YES
Direct or indirect public communication, by any means, including by making the work available to the public, so that it can be accessed anywhere at any chosen time, individually by the public	YES	YES	YES
Full or partial, direct or indirect, temporary or permanent Reprographic reproduction by any means and in any form			YES
Private copy remuneration			YES
Public lending right (PLR)			YES
Broadcasting	YES	YES	YES
Cable retransmission			YES



Licensing on a work by work basis

- Authorization can be granted on a **work by work** basis.
- In this case, the administration is similar to that carried out by the author in person.
- The licence granted to users by the CMOs should not affect the author's reputation (moral rights); CMO should deal only with **special assignments** for the rights of reproduction, translation, derivative works and distribution.
- In this case, the special assignment will specify the written work and the conditions (clauses) for the negotiation with the publishers (term of the licence, price, number of copies etc.).
- In the case of the written works, individual licensing (i.e. on a work by work basis) is quite common.



LICENSING – BLANKET LICENCE/LICENCE

- The method most frequently adopted by the CMOs is that of the blanket licence. **The CMO offers users the entire repertoire that it represents, subject to payment of the tariffs it sets.**
- In this way, the CMO guarantees the access to all of the works in its repertoire, and the users have the opportunity to use all, many or some of the works on an unrestricted basis, as long as they respect the conditions of the licence.
- The tariff will be the same for every user, without discrimination.
- In the case of the blanket licence, we distinguish between:
 - **Compulsory CM** (right to compensatory remuneration for private copy, right to equitable remuneration for public lending, right to retransmission by cable, right for the reprographic reproduction) – the CMO is representing all the copyright owners and the remunerations can be collected and distributed only through the CMO.
 - **Voluntary CM** – (communication to the public, broadcasting) – CMOs represent only the owners of rights who have assigned them and draw up methodologies within the limit of the managed repertoire or negotiate license agreements directly with the users.



ECONOMICAL RIGHT	Work by work	Blanket licence/licence	Voluntary CM	Compulsory CM	Special assignment
Reproduction	YES				YES
Translation	YES				YES
Making derivate works	YES				YES
Public distribution, rental and lending	YES				YES
Direct or indirect public communication, by any means, including by making the work available to the public, so that it can be accessed anywhere at any chosen time, individually by the public	YES	YES	YES		
Full or partial, direct or indirect, temporary or permanent Reprographic reproduction by any means and in any form		YES		YES	
Private copy remuneration		YES		YES	
Public lending right (PLR)		YES		YES	
Broadcasting	YES	YES	YES		
Cable retransmission		YES		YES	



EXAMPLE OF TARIFFS FOR BROADCASTING AND CABLE RETRANSMISSION

COUNTRY	TARIFF	TARIFF BASIS
ROMANIA (PERGAM)	3%	<ul style="list-style-type: none"> - the incomes obtained by users from broadcasting activity related to the CMO repertoire use on; - the expenses occasioned by the use. <p>Excluded:</p> <ul style="list-style-type: none"> - local advertising fee; - advertising fee for alcoholic beverages; - contribution to the Cinematographic Fund; - budgetary allocations or subsidies.
ROMANIA (PERGAM)	0,12% - cable retransmission	the total monthly gross income obtained from the cable retransmission activity of the broadcasting services, excluding VAT, if any, and in the absence thereof, of the total costs of use.
GERMANY (VG WORT)	Tariff/minutes	<ul style="list-style-type: none"> • Speech works of not more than 15 minutes – national - € 45,42 / minute • Broadcasts by a broadcaster: <ul style="list-style-type: none"> - local or regional - € 9,60 / minute - Germany land - € 22,92 / minute - National - € 46,80 / minute • Readings from published texts by not more than 15 minutes: <ul style="list-style-type: none"> - local or regional - € 6,18 / Minute - Germany land - € 14,88 / Minute - National - € 30,30 / Minute • Conferences: Capacity of the room / Entrance fee or other expenses (less than € 6, between € 6-12, more than € 12): <ul style="list-style-type: none"> - up to 100 people - € 21,60 - € 32,40 - € 43,20 - up to 200 people - € 43,20 - € 64,80 - € 86,40
POLAND (ZAIKS)	Tariff/minutes/ lump sum	depend on the broadcasting coverage and are calculated on per minute basis (e.g. broadcasting to over 30 million inhabitants within the range or program's dissemination is 30 PLN/min (approx. 7,3 EUR) and broadcasting to below 15 million inhabitants is 10 PLN/per minute (approx. 2,4 EUR)). Alternatively, tariffs may be calculated on monthly basis as lump sum payment which is 0,6% of all income gained in relation to broadcasting (e.g. adverts, communication, sponsored programs, etc.). In case of re-dissemination the tariffs are calculated as follows: television programs 0,15 PLN per user or lump sum payment of 0,3% of all income; television and radio programs 0,20 PLN per user or lump sum payment of 0,4% of all income.
ITALY (SIAE)	Fix tariff/minute	Fees amount calculated applying a fixed fee per minute of use of the relevant content. The rate varies depending on the licensee/TV broadcaster's revenue of the relevant year. The result is then multiplied by another fixed rate, which varies based on the type of work used (e.g. maximum rate for original works, lowest for derivative and criticism works). Additional fees apply for repeated broadcasting.
HUNGARY (ARTISZUS)		Amount is based on the number of households connected to the cable service.



EXAMPLE OF TARIFFS FOR OTHER USES

COUNTRY	RIGHT	TARIFF	TARIFF BASIS
GERMANY (VG WORT)	LENDING	8%	of the revenue generated by lending of the printed media.
GERMANY (VG WORT)	RENTING	8%	of the revenue generated by renting of the printed media.
ITALY (SIAE)	Reproduction of the licensed works by press (magazines, newspapers, books, etc.) or by reproducing them through and on any media (including CDs, DVDs, VHS, TV shows, etc.).		Amount calculated based on several factors, including: the purpose of use of the licensed works (e.g. advertising or non-advertising purpose), type of publication (books, magazines, TV show, DVD, website or other) number of copies of the relevant product circulated, etc.





THANK YOU



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