USA/NL : Tariff structures for the use of music on the Internet

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Nobody knows what the value of content on the Internet should be. Until now no customs in the pricing of the content have been developed. Mostly the rights on each copyrighted work have to be negotiated separately. Not surprisingly the collecting societies, who already have a pricing structure for the `old fashioned' analogue uses of music, are the first to come up with a tariff structure for the on-line use of music.

In the Netherlands the collecting societies for performing and mechanical rights on music (Buma and STEMRA) jointly issued an experimental license for the on-line use of music. Web site operators (`content providers' as Buma/STEMRA call them), as opposed to service and access providers, can apply. The term of the license is three months and it can subsequently be prolonged or terminated after every period of three months. Companies, and private persons who use more then 5 minutes of music, are charged a flat fee of 100 guilders a month, private persons who use less then 5 minutes, 10 guilders. One of the conditions is that the web site owner acquires no fee for neither the access or listening to the music files nor the downloading or copying of those. If it does, the collecting societies will probably claim a percentage of the revenues, but up to now this situation has never occurred. Notably the neighbouring rights are not covered by the license and because the Dutch collecting society for neighbouring rights (SENA) did not yet develop a tariff structure for the licensing of on-line use, these rights will still have to be negotiated separately.

A more elaborate, but still experimental, royalty scheme for the on-line use of copyrighted works has been developed by ASCAP, one of the performing rights collecting societies in the United States. After reviewing the different business models and the ways music is used on the Internet, ASCAP came up with four different rate schedules which it feels reflect the value of the music to the web site operator.

Rate schedule A. is based on the total revenue the web site operator generates with the web site. Three types of revenues are distinguished: (i) Revenues made of users of the service, like subscriber fees and connect time charges, (ii) revenues coming from advertisers and sponsors and (iii) as ASCAP calls it: `promotional revenue'. The latter concerns the total of the costs the web site

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operator has in developing and operating the site. Inclusion of promotional revenue is designed to take into account a situation in which a web site does not derive revenue directly but still receives a value for the use of its site to promote goods and services that it offers other than the computer on-line service itself. The royalties consists of 1,615 % of the total revenue.

Rate schedule B. can be used by web site operators who use technology to track how often the different pages of its site are visited. The revenue of which 2,42 % is taken exists of (i) all payments which are made by users for accessing the areas of the site which contain music, (ii) all the income derived of sponsors or advertisers in those areas, (iii) the `promotional revenue' of those areas and (iv) a part of the same revenues generated of the home page. ASCAP feels it has a right to these because the music will attract visitors to the home page and therefore it deserves a part of the revenues generated there as well.

Those operators who not only track the use of music in general, but also ASCAP music uses, can apply to rate schedule C. Prior to charging a 4,46 % royalty the revenue as calculated in rate schedule B. is multiplied by the proportion of the use of ASCAP music as compared to the total music use.

Rate schedule D. has been developed for non-profit organisations. These organisations have a choice between a 1,615 % royalty over the total operating budget or, if they use tracking technology, a 2,42 % royalty over the operating budget multiplied by the amount of visitors of the music containing areas divided by the total amount of visitors. The operating budget is the total budget for the computer service.

ASCAP can only grant performance rights in the songs, therefore the reproduction rights, probably necessary for copying the song on a server, are not included. Furthermore, ASCAP cannot license the recently statutorily assigned `digital transmission rights' on sound recording performances.

ASCAP Tariff structures for the use of music on the Internet.

http://www.ascap.com:80/new/nmts/licensing/licensing.html

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BUMA/STEMRA Tariff structures for the use of music on the Internet.

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