[AT] Music on Private Cable TV - Fees Agreed

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On 29 September 1997, the Austrian performing rights societies, Staatliche Genossenschaft der Autoren, Komponisten und Musikverleger, registrierte Genossenschaft mbH (AKM) and Wahrnehmung von Leistungsschutzrechten Gesellschaft mbh (LSG) concluded general agreements on fees for the use of recorded music in private cable TV programmes with the professional bodies representing cable broadcasters and network (in the USA: "system") operators. The agreement came into force on 15 October 1997 for an unlimited period. A general agreement on the retransmission of foreign programmes has already been in force since 1984.

The agreement concluded with AKM covers permission to broadcast musical and associated verbal works in (active) cable television programmes on the cable systems specified by the programme organisers. It does not cover the broadcasting of "musical/dramatic works", within the meaning of Section 1, Sub-section 2 (2) of the Performing Rights Societies Act - the so-called major rights - and particularly the recording or re-recording of musical works; these "mechanical" music rights are managed by Austro-Mechana and must be acquired from them.

The parallel agreement with LSG is solely concerned with protecting performance rights in the case of material recorded for commercial purposes. It accordingly covers the rights of performers (Sections 66ff. Of the Copyright Act) and of record and cassette producers (Section 76 of the Copyright Act) - but not of composers and authors of texts. On behalf of the performers and producers it represents, LSG gives cable programme organisers the right to reproduce recordings (CDs, music tapes, records) for use in their own programmes and also to broadcast the repertoire it manages.

Both agreements use the programme organiser's gross revenues from commercials, sponsorship, placements and other advertising revenue to calculate the gross fees due. A 20% lump sum is deducted from these gross earnings to cover commissions, rebates, discounts, etc., and the fees, which are graded in accordance with music's share of the programme, are worked out on this basis (for example, if music constitutes less than 15% of the programme, then 1,5% of the base sum is due under the AKM agreement, and 1,0% under the LSG agreement). Both agreements provide for a minimum fee - ATS 0,24 per

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month/cable subscriber for the AKM repertoire, and ATS 0.16 for the LSG repertoire. In both cases, there are graded introductory rebates for the first three years.

Cable network (USA: "system") operators are jointly liable under both agreements. Programme organisers may not broadcast until they have secured a declaration of acceptance and liability from the network operators who carry their programmes, and have sent it to the AKM or LSG.

Permission to use works in private cable programmes is acquired by separate contract, concluded - on the basis of a model contract - between the programme organiser and the AKM or LSG. Permission must be separately obtained for every cable channel. The cable broadcaster also undertakes to supply both performing rights societies with a detailed schedule of all the works used, within one month of their being broadcast.

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