Royalty Fees

France • Germany • Japan • South Korea • Spain

May 2005

LL File No. 2005-01943
LRA-D-PUB-000583

The Law Library of Congress, Global Legal Research Directorate
(202) 707-5080 (phone) • (866) 550-0442 (fax) • law@loc.gov • http://www.law.gov

2005-01943

LAW LIBRARY OF CONGRESS

FRANCE

ROYALTY FEES

Executive Summary

As a general rule, authors who assign the exploitation rights of their works must receive remuneration proportional to the sale or exploitation of such works, while royalty collection and distribution companies may negotiate proportional or flat fees or any other type of fees combination with the users of their repertoires.

As a general rule, the Intellectual Property Code provides that the author of a work who assigns the exploitation rights of his work shall receive remuneration that is proportional to the revenue from the sale or exploitation of such work.[1] This rule aims at protecting the authors' rights. A contract clause that violates this statutory principle is null and void.[2] Parties are free to negotiate the rate of such remuneration. The law does not impose nor specify a minimum or an indicative rate. It can be a fixed or progressive rate or any other combination negotiated by the parties.[3] However, the Code does specify that flat fees can be used only in limited enumerated cases.[4]

The growing number of means of exploitation and the increasing complexity of the techniques deployed has made it almost impossible for authors to manage their works on their own. Therefore, they often join a royalty collection and distribution company, transferring their exploitation rights to the company. These companies' primary mission is to negotiate various type of exploitation contracts with the users of their repertoires and, then, to collect and to distribute the royalties accruing from such exploitation.[5]

Royalty fees paid by users to royalty collection and distribution companies may be either proportional to the users' revenues, flat fees or a percentage of the users' profits. The companies may also negotiate general representation contracts authorizing users to have access to the full repertoires of the companies during a specified period of time. The royalty fees paid by the users in such cases may be flat fees rather than fees calculated on the number of works used or accessed.[6] The Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM), one of best known royalties collection and distribution companies for composers and music editors in France, (it comprises more than 105,000 composers and music editors) posts on its website some of the fees charged.[7] It states, for example, that in the case of a

---

[1] CODE DE LA PROPRIETE INTELLECTUELLE, art. L.131- 4 (Dalloz 2004).

[2] FREDERIC POLLAUD-DULIAN, LE DROIT D'AUTEUR, §§ 978 to 986 (Economica 2005).

[3] *Id*.

[4] CODE DE LA PROPRIETE INTELLECTUELLE, art. L.131-4 (Dalloz 2004).

[5] FREDERIC POLLAUD-DULIAN, *supra* note 2, §§ 1162 to 1174. A company's repertoire comprises the works of all the authors who are members of the company.

[6] *Id.* §§ 1188 - 1196.

[7] SACEM at http://www.sacem.fr/ (last visited May 25, 2005)

website offering the downloading of music, the royalty fees owed by the website will be calculated based upon a percentage applied to the website revenue with a guaranteed minimum. This percentage and minimum currently are being renegotiated.[8]

Prepared by Nicole Atwill
Senior Foreign Law Specialist
May 2005

[8] *Id*.

2005-01943

LAW LIBRARY OF CONGRESS

GERMANY

ROYALTY FEES

Executive Summary

German copyright law allows the parties to set royalty fees by agreement, and in the absence of an agreement, the fee is to be reasonable. The rates established by the collecting societies are deemed to be reasonable. The collecting societies collect royalties from the users of exploitation rights and distribute the proceeds to their author members, according to equitable schedules. The collection society for composers, authors of musical texts and music publishers is GEMA. Its rate schedule for on-demand-music provided by Internet services is fifteen percent of the fee charged by the service to the customer, plus a value-added tax of seven percent .

I. Legal Provisions on Royalty Fees

The German Copyright Act[1] grants authors of literary, musical, and artistic works exploitation rights that include the rights of reproduction, distribution, and exhibition. In addition, the Act grants authors the right to make their work known to the public. This right includes the right of recitation or performance, the right of broadcasting and the right of communication by video or audio recording.[2] In addition, the Act contains provisions on royalty fees. These are to be established by agreement between the user and the author or his successor, but in the absence of an agreement, the fee is to be adequate, and fees that are determined by the collecting societies are deemed to be adequate.[3]

II. The Collecting Societies

In practice, royalties are administered by the collecting societies. Since 1965 these collecting societies have been governed by statutory law. Collecting societies exist for various types of authors, and most societies have a *de facto* monopoly within their specialty. Collective societies are subject to governmental regulation; they must admit as members all the German authors within their range of activities, and they must publish fee schedules. [4]

Collecting societies are non-profit organizations run by boards constituted from their membership. The boards set royalty rates and make distribution plans for the achieved revenue. From the gross receipts of the society, the administrative costs are deducted, and then another ten percent are

---

[1] Urhebergesetz [UrhG], Sept. 9, 1965, BUNDESGESETZBLATT [BGBl, official law gazette of the Federal Republic of Germany] I at 1273, as amended.

[2] UrhG, §§ 15-22.

[3] UrhG, § 32.

[4] Gesetz iber die Wahrnehmung von von Urheberrechten und verwandten Schutzrechten, Sept. 9, 1965, BGBl I at 1294, as amended.

deducted and used for old age benefits for the members. The remaining receipts are distributed among the members in accordance with the royalty fees that they have generated.[5]

The collecting society for music is GEMA. As its name indicates, it acts as a society for performance rights and mechanical reproduction rights relating to music.[6] The members of the society are composers, lyricists, and music publishers. GEMA publishes fee schedules for users in general, but also has entered into special licensing agreements with special users.[7]

III. The Royalty Fees for Internet Services

GEMA provides a fee schedule for on-demand Internet services that allow for the downloading of music[8] and a fee schedule for the radio broadcasting of performances on the Internet.[9] During the latter part of the year 2004, the fee for on-demand Internet services was 15 % of the compensation that the customer pays to the service, plus a value added tax of 7 % of the payable amount. If the customer pays the service by subscription rather than for each downloaded item, the fee is calculated differently. The fee for live broadcasts is calculated according to the number of listeners.

Prepared by Edith Palmer
Senior Foreign Law Specialist
April 2005

---

[5] U. Loewenheim, HANDBUCH DES URHEBERRECHTS 673 – 774 (München, 2003).

[6] Gesellschaft für Musikalische Aufführungs- und Mechanische Vervielfältigungsrecht [GEMA], http://www.gema.de. (last visited May 26, 2005)

[7] D. Sinacore Guinn, INTERNATIONAL GUIDE TO COLLECTIVE ADMINISTRATION ORGANIZATIONS 245 (Boston, 1993).

[8] GEMA, Vergütungssätze VR-OD 2, October 1, 2004, available at http://www.gema.de. The tariff states that it loses its effectiveness on December 31, 2004. A more recent schedule could not be located within the time limits for this request, which conflict with the time of a lengthy German holiday.

[9] GEMA, Vergütungssätze S-VR/IntR, availalbe at http://.www.gema.de. (last visited May 26, 2005)

2005-01943

LAW LIBRARY OF CONGRESS

JAPAN

ROYALTY FEES

Executive Summary

A copyright and neighboring rights management business operator can decide its royalty rate. There is a system under which a representative of users can negotiate the rates.

I. Management Business Operator

Under the Law on Management Business of Copyright and Neighboring Rights, a person who operates a business managing copyright and neighboring rights must be registered by the Commissioner of the Agency for Cultural Affairs.[1] Many entities have been registered as copyright and neighboring rights management business operators.[2]

A management business operator decides its royalty rate. A management business operator must specify royalty rules, including royalty rates, and report its rules to the Commissioner of the Agency for Cultural Affairs before it starts doing business.[3] A management business operator cannot enforce the reported royalty rules for a period of thirty days following the date that the Commissioner received the report.[4] The Commissioner may extend the non-enforcement period for up to three months, if he or she thinks that the reported royalty rules would possibly obstruct the smooth use of works.[5]

II. Designated Management Business Operator

In case of the designated management business operator, there is a system under which a users' representative may negotiate the royalty rate. The Commissioner can designate a management business operator as the designated business operator for any of the exploitation divisions, when the designated operator collects a considerable share of royalties compared with the total amount of royalties collected by all the operators in the exploitation division; provided that:

> (i) all the management business operators in an exploitation division concerned collect a considerable share of royalty compared with the total amount of royalty collected in that exploitation division;
>
> (ii) apart from the case in the preceding item, royalty rules of a management business operator concerned are widely used as a standard for

---

[1] Chosakuken tō kanri jigyō hō (Law on Management Business of Copyright and Neighboring Rights), Law No. 131 of 2000, art. 3. An English translation of the law is available at http://www.cric.or.jp/cric_e/clj/cloj5.html.

[2] The list of such registered operators is available at http://www.bunka.go.jp/ejigyou/script/ipzenframe.asp. (last visited May 25, 2005)

[3] Law on Management Business of Copyright and Neighboring Rights, Law No. 131 of 2000, art. 13, para. 1.

[4] *Id*. art. 14, para. 1.

[5] *Id*. art. 14, para. 2.

> royalty rates in an exploitation division concerned and are deemed especially necessary for a smooth exploitation of works, etc. in that exploitation division.[6]

When the Commissioner receives a notice from a qualified representative of users,[7] which asks for a consultation with respect to the reported royalty rules of a designated management business operator, the Commissioner may extend the non-enforcement period of the royalty rule up to six months.[8] In case the representative and the designated management business operator reach an agreement, a designated management business operator must change the royalty rules. In case they do not reach an agreement, either party can request arbitration to the Commissioner.[9]

III Royalty Rate of Designated Management Business Operator for Interactive Music Distribution Service

The royalty rate of Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) for interactive music distribution service without a comprehensive service package is: the rate for one request of one song is decided within the amount, whichever is the higher, between twenty percent of the service fee and twenty *yen* (approximately eighteen cents).[10] JASRAC is the designated management business operator in the interactive music distribution service division.[11]

Prepared by Sayuri Umeda
Foreign Law Specialist
May 2005

---

[6] *Id*. art. 23, para. 1.

[7] The qualifications of the representative of users is stipulated in article 23, para. 2 of the law: representative means a group or an individual deemed to represent the interests of users in one exploitation division, considering the number of users constituting the direct or indirect members compared with the total number of users in that exploitation division, in the amount of royalty paid by the direct or indirect members compared with the total amount of royalty paid by users in that exploitation division, as well as for other reasons.

[8] Law on Management Business of Copyright and Neighboring Rights, Law No. 131 of 2000, art. 14, para. 3.

[9] *Id*. art. 24, para. 1.

[10] JASRAC, Shiyōryō kitei (Fee schedule), as reported on October 2, 2001, 76, http://www.jasrac.or.jp/profile/covenant/pdf/royalty/royalty.pdf (last visited on May 26, 2005).

[11] Agency for Cultural Affairs, Chosakuken tō kanri jigyō hō ni tsuite (Regarding the Law on Management Business of Copyright and Neighboring Rights), at http://www.bunka.go.jp/8/6/VIII-6-H.html (last visited on May 26, 2005).

2005-01943

LAW LIBRARY OF CONGRESS

SOUTH KOREA

ROYALTY FEES

Executive Summary

This brief article provides an overview of the royalty fee system for usage of music works in South Korea, focusing on on-line transmission, including Internet downloading practices. The Korean Music Copyright Association (KOMCA) is the only entity that manages calculation, collection and distribution of royalty fees, delegated this responsibility by the Ministry of Culture and Tourism pursuant to the Copyright Act. KOMCA applies different methods of calculation and rates to different types of usage.

I. Korean Copyright Act and KOMCA

The Korean Music Copyright Association (KOMCA) is the only authorized entity that calculates, collects and distributes the royalty fee on the usage of musical works in Korea, pursuant to Article 78 of the Korean Copyright Act[1] and Article 29 of the Enforcement Decree to the Act.[2] KOMCA obtained the permission for copyright trust management from the Ministry of Culture and Information in 1988 (the present Ministry of Culture and Tourism) and established the copyright management system by promulgating the Provisions for Tariffs on Licensing and Distribution Rules, which was approved by the Ministry.

KOMCA applies different methods to calculate the fee for different types of usage (e.g., performance, broadcasting, interactive transmission, reproduction and distribution) and, therefore, charges different rates. Internet downloading services fall in the category of interactive transmission and are governed by Articles 23 and 24 of the KOMCA Provisions for Tariffs on Licensing.[3]

II. Setting Royalty Rates for Online Transmission of Musical Works

Currently, the royalties for online transmission of musical works are set by combining a percentage and a flat fee:

- Article 23 governs the royalties on streaming services on demand and downloading services. The royalty on streaming service on demand is obtained by calculating the larger amount between ⓐ and ⓑ: ⓐ monthly payment ₩125[4] x number of subscribers x administrative rate, ⓑ gross revenue x 5% x administrative rate.[5]

---

[1] Chŏjak'kwŏn Pop (Copyright Act), Law No. 6134, art. 78.

[2] Enforcement Decree to the Copyright Act, Decree No. 16917, art. 29.

[3] An English translation of the KOMCA Provisions for Tariffs on Licensing is available at http://komca.or.kr/eng2/tariffs.htm. (last visited May 26, 2005)

[4] Approximately twelve cents in United States currency.

[5] Administrative rate means the rate of musical works managed by KOMCA out of total musical works.

- Royalties on music file downloading services are decided as a larger amount between ⓐ and ⓑ: ⓐ unit cost of downloading[6] x number of downloading x administrative rate, ⓑ gross revenue x 9% x administrative rate.

- Article 24 governs the transmission royalties on additional services via wireless Internet through WAP/ SMS/ ME. They are calculated as follows: gross revenue x 9% x administrative rate.

In the year 2004, KOMCA collected ₩ 9,144,441,859 as the total amount of royalty fee for the transmission usage of music domestically and internationally.[7]

Prepared by Jung Hwa Lee
Contract Foreign Law Specialist
May 2005

[6] The unit cost of downloading is \54 (about 5 cents) if within 3 months after release. After 3 months of release, it is \27 (about 2.5 cents).

[7] When the exchange rate of \1100/$ is applied, the figure is $ 8,313,129, approximately. Information is available at http://www.komca.or.kr/introduce/frame.asp?top=introduce-top.htm&main=introduce-04.htm. (last visited May 26, 2005)

2005- 01943

LAW LIBRARY OF CONGRESS

SPAIN

ROYALTY FEES

Executive Summary

Royalty fees in Spain are set by negotiation between the parties and are collected by entities that represent the authors collectively for that purpose. This service is generally provided for a fee determined as a percentage of the gain.

I. Intellectual Property Rights: Fees

The Spanish Law on Intellectual Property[1] (LIP) provides that the transfer granted by the author for a consideration entitles him or her to a proportionate share in the proceeds of exploitation. This fee will be determined upon an agreement between the author and the transferee.[2]

However, a payment of a lump sum to the author may be provided for in the following cases:

a) When, on account of the manner of exploitation, there is great difficulty in the calculation of the proceeds, or where the verification either is impossible or would incur costs out of proportion to the eventual reward;

b) Where the use of the work is of secondary character in relation to the activity or the material object for which it is intended;

c) Where the work, being used with others, does not constitute an essential element of the intellectual creation in which it is embodied;

d) In the case of the first or sole edition of the following, previously undisclosed works: dictionaries and encyclopedias; prologues, annotations, introductions and presentations; scientific works; material for the illustration of a work; translations and reduced-price popular editions.[3]

In case the lump sum remuneration is manifestly out of proportion to the profits obtained by the licensee, the former may apply for a review of the contracts, and, in the absence of agreement, may apply to the court for the award of equitable remuneration in the light of the circumstances of the case. That recourse must be filed within 10 years following the transfer.[4]

---

[1] ROYAL LEGISLATIVE DECREE 1/1996 of April 12, 1996 in *Boletin Oficial del Estado* (B.O.E) Apr. 22, 1996.

[2] *Id*. art. 46 (1).

[3] *Id*. art. 46 (2).

[4] *Id*. art. 47.

Regarding musical works, the LIP expressly states that the licensee is obliged to remit punctually to the author the agreed remuneration as determined according to the procedure above-described.[5]

The LIP also authorizes the creation of legally constituted entities for the management of intellectual property rights on behalf and in the interest of two or more authors or other owners of intellectual property. These entities should secure appropriate authorization from the Ministry of Culture.[6] In Spain, there are several copyright collective societies, such as the SGAE (*Sociedad General de Autores y Editores),*[7] *that* is an entity that collectively charges, on behalf of its members, royalties to its clients. TV chains, radio and Internet portals pay the SGAE a percentage of their gain for the exploitation of the protected work.[8] Concert halls, theatres and movie theaters pay a percentage of the tickets sold. Record, tape and cd recording companies pay also a percentage of the items sold or manufactured.[9]

Companies and municipalities, hotels, restaurants, and productions such as festivals also may have to pay royalties for the use of protected work, proportionate to the number of the public attending or the budget of the programmed activities.

Prepared by Graciela Rodriguez-Ferrand
Senior Foreign Law Specialist
May 2005

---

[5] *Id*. art. 78 (4).

[6] ROYAL LEGISLATIVE DECREE 1/1996 of April 12, 1996 in *Boletin Oficial del Estado* (B.O.E) Apr. 22, 1996, arts. 147-159.

[7] The SGAE's official website contains its rules regarding charging royalties on behalf of its members, at http://www.sgae.es (last visited May 26, 2005) .

[8] *Id.* LA PERCEPCION DE LOS DERECHOS DE AUTOR.

[9] *Id*.