



The Principles of Development and Criteria for Tariffs for Visual Works

Contents

Exclusive Rights and Rights to Receive Royalties	2
Basic Principles of Tariff Development	3
Approaches to Assessment of Royalties	4
Techniques and Criteria for Assessment of Royalties	4
Expenditure for Management of Visual Art and Photographic Works.....	5
Summary	5



Exclusive Rights and Rights to Receive Royalties

“The Berne Convention for the Protection of Literary and Artistic works” stipulates:

- authors of visual works shall have exclusive rights of authorizing the reproduction of these works, in any manner or form (Section 9, Paragraph (1));
- It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of artistic works by way of illustration in publications, broadcasts or visual recordings for teaching, provided such utilization is compatible with fair practice. (Section 10, Paragraph (2));
- for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, artistic works seen in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public (Section 10.bis, Paragraph (2));
- Authors of artistic works shall enjoy the exclusive right of authorizing the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs or images (Section 11.bis (1) (i));
- Authors of artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works (Section 12);
- The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art, enjoy the inalienable right (droit de suite) to an interest in any sale of the work subsequent to the first transfer by the author of the work (Section 14.ter (1)).

The Copyright Law of the Republic of Latvia, Article 15 also stipulates that authors have exclusive rights regarding the use of their works, in particular:

- 1) communication of the works to the public;
- 2) publishing of the works;
- 3) public performance of the works;
- 4) distribution of the works;
- 5) broadcasting of the works;
- 6) rebroadcasting of the works;
- 7) making the works available to the public by wire or through other means so that they can be accessed at arbitrarily selected place and time;
- 8) right to lend, rent or let borrow the original works or their copies, except three-dimensional works of architecture and works of applied arts;
- 9) right to reproduce the works directly or indirectly, on a temporary or permanent basis;
- 10) right to translate the works;
- 11) right to arrange, adapt for the stage, make screen versions and make any other alterations to the works.

Article 15, section 4 of the Copyright Law stipulates that authors have the rights to use their own works in any manner, as well as to permit or deny their use, to receive royalties for permission to use, and the actual use of the works, except the cases stipulated by Law.

In compliance with the European judicial doctrine, the function of economic rights of authors is „protection of the economic interests of the rights-holders, achievable provided the law guarantees, to a certain extent, the rights-holders’ exclusive rights concerning the use of works and receiving economic benefits from granting permission to others to use the works in

certain manner. In their essence, the economic rights of authors are rights in things (jus in rem) or real rights, since, in a similar way to those of real-estate, servitude, and other rights in things, they grant the owners a certain monopoly regarding the use of actually existing objects (works) and their handling. The rights are of economic (patrimonial) nature, since they are part of a person's estate".¹

In practice, there is some confusion in Latvia over the extremely important division of the authors' rights into exclusive rights and rights for remuneration. In compliance with the scope of authors' exclusive economic rights stipulated by Article 15 of the Copyright Law, the authors hold absolute rights to decide on use of the works, „an absolute power regarding the manners of work use expressly stipulated by the law.”² In addition to the exclusivity of authors' rights stipulated by Article 15 regarding the use of works for listed purposes, Article 40, Paragraph 1 of the Copyright Act stipulates that use of works is prohibited before permission is granted by subjects of copyright.

Basic Principles of Tariff Development

A permission to use a work may be granted according to the **work-by-work** principle, where each work is given a specific permission, meaning the rights management is carried out in a way similar to management by authors themselves. Such an individual licensing is applied to artistic works.

The tariffs are set on the basis of recommendations and experience by the International Confederation of Societies of Authors and Composers (hereinafter CISAC), European organization of Visual Arts (EVA) and international organization of visual arts (CIAGP), where AKKA/LAA is a member, in view of the economic situation of Latvia, prices of commodities, as well as the tariffs regarding the use of visual works approved by authors' organization of the Nordic-Baltic area. AKKA/LAA has reciprocal agreements concerning exploitation of visual rights with 35 organizations protecting copyright for visual art, and the basic guidelines concerning the tariff development principles are equal.

Considering that, basically, the authors are eligible to receive for their work an equitable remuneration from the generated income in any case, while Article 4.b) of the valid CISAC Statutes stipulates that the organization's mission is „to oversee and to guarantee compliance with economic and judicial interests regarding (literary) works (and works of art) on international basis as well as concerning local legislation”, most of the regulations adopted by the CISAC stay within the boundaries of definition of basic principles and offering tariff criteria:

¹ M.Grudulis. Ievads Autortiesībās., Rīga: Latvijas Vēstnesis, 2006, P. 111

² M. Grudulis. Ievads autortiesībās. Rīga: Latvijas Vēstnesis, 2006, P. 111

- „The tariffs shall be determined by the authors themselves” (9th Congress, Warsaw, 1934.)
- „The authors shall always have a share in the distribution of income generated by their work, and this principle includes any single payment” (12th Congress, Paris, 1937; CIAD – Monte Carlo, 1971.)
- „In all countries the compensation due to authors and publishers shall be based on percentage system, which is the routine practice in exploitation of products of intellectual creativity.” (12th Congress, Paris, 1937).
- „Performance of foreign works cannot be an excuse for application of tariffs of lower percentage than those applied to national works” (13th Congress, Stockholm, 1938).
- „Remuneration may be determined on a case-by-case basis only, thus preventing any tariff from being imposed by simple administrative means or application of rates ruled by court in cases where no agreement between the author and the user of works is achieved.” (17th Congress, Amsterdam, 1952).

Approaches to Assessment of Royalties

In line with the practices adopted by other countries, royalties can be defined as:

- A lump sum;
- A percentage of the income received by the user of works.

A minimum tariff is stipulated and applied to reproduction, which is the principal means of exploitation of visual works permitting further use of the work when publishing printed matter, displaying the work on diverse materials and items, replicated in audiovisual works, shown on TV or on screens and communicated via the Internet. Depending on the manner of use, a lump sum is charged or royalties are computed as a percentage of the work user's receipts.

Techniques and Criteria for Assessment of Royalties

In view of the above, computation of royalties sticks to the following techniques and takes into account the following criteria:

- 1) In the case of reproduction of art in newspapers, magazines, books, calendars, brochures, booklets, exhibitions catalogues, event schedules, posters, large size reproductions, post cards data carrier covers, one considers the circulation of the item and the number of works used, the share of the used work in the total area of the page, as well as the prominence of the work in the item (cover page or other pages). In special cases, e.g. when a book features works of one author of visual works and where the share of art is larger than the share of text, the royalties are defined as percentages, taking into account the wholesale price and the circulation of the book.

- 2) In the case of reproduction of art on postmarks, textiles, leather, ceramics and similar goods, on payment cards, puzzles, playing cards, packaging, slides, in data carriers as a part of audiovisual work, one considers the wholesale price and the circulation of the goods.
- 3) In broadcasting, one considers the length (duration of exposure) and the number of works concerned, as well as the presence (absence) of breaks for commercial advertising.
- 4) In demonstration to the public, one considers the number of works, the number of visitors (the audience), and whether the venue takes admission fee or not.
- 5) In communication, making the works available to the public (via the Internet), one considers the number of communicated works and the time of exposure. Where the content provider charges the end users with a fee, the royalties are computed as a percentage of the relevant receipts.

Expenditure for Management of Visual Art and Photographic Works

Management expenditure consists, on the one hand, of direct management expenditure, such as the salary of the licensor's staff and compensation to other involved employees, mail costs, stationery, telephone costs, costs associated with running time of computers, electricity, communal costs attributable to the workstation, development of the database of author's works, as well as provision for access to international databases, etc.

A second large part of management costs refers to indirect costs, e.g. the share of total costs of administration, supporting functions provided by other relevant departments including the input from the legal department, department of documentation and distribution, accounting and clerical work; also, the costs of the services of the yard-keeper, security personnel, transportation and house maintenance belong here.

The AKKA/LAA contract for management of authors' economic rights stipulates that the costs of management of rights shall not exceed 25 (twenty five) per cent of the collected amounts.

All costs are documented in the accounting files of AKKA/LAA and audited on annual basis. They are reflected in annual financial reports of the society, and their authenticity is confirmed by reports of a sworn auditor.

Admittedly, the management costs are the lowest possible and answer the principles of efficient business and good governance.

Summary

The tariffs developed by AKKA/LAA comply with the recommendations of CISAC and the WIPO guidelines for tariff development. They are commensurable with the tariffs of authors' organizations of other countries.

All tariffs are endorsed at sessions of the council of authors.

The activities of AKKA/LAA are supervised by the Ministry of Culture, which is the national institution responsible for the industry of copyright and neighbouring rights. The Ministry of Culture delegates a representative to participate in sessions of AKKA/LAA council and the general assembly of authors.

The tariffs are available at the AKKA/LAA website.

A large, stylized handwritten signature in red ink, reading "AKKA/LAA". The signature is written in a cursive, flowing style with a diagonal slash separating the two parts of the name.