



The Principles and Criteria for Development of Tariffs for Musical Works: Public Performance

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Exclusive Rights and Rights to Receive Royalties

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 compliance with the scope of authors' exclusive economic rights stipulated by Article 15 of the Copyright Act, the authors hold **absolute rights to decide on use of the works in public performance**, „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 public performance, Article 40, paragraph 1 of the Copyright Act contains an imperative judicial norm that stipulates that use of works is prohibited before permission is granted by subjects of copyright.

It is highlighted in the glossary of copyright and neighbouring rights terms by World Intellectual Property Organization (hereinafter WIPO) that the rights to ask for royalties **and stipulate** other conditions of work use are inseparable from copyright, and emanate directly from the essence of exclusive rights.”³

The Legal Basis of Author's Rights:

1. The Berne Convention for Protection of Literary and Artistic Works stipulates that authors of musical works shall enjoy the *exclusive* right of authorizing the public performance of their works, including such public performance by any means or process (Section 11, (1) (i)).⁴
2. Article 15, Section 1, Paragraph 3 of [the Copyright Law of the Republic of Latvia](#) stipulates that, regarding the use of works, authors have exclusive rights to perform their works in public. In addition, Section 4 of Article 15 states that that authors have the rights to use their own works in any manner,

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

² Ibid.

³ Guide to the Copyright and Related Rights Treaties administered by WIPO and Glossary of Copyright and Related Rights Terms., Geneva: WIPO, 2003., p.287.

⁴ Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979, WIPO, Geneva, 1989, approved by the Republic of Latvia's Cabinet of Ministers on April 18, 1995, order No.197, Latvijas Vēstnesis Nr.29 (2794), February 21, 2003

as well as to permit or to deny their use, to receive royalties for permission to use and the actual use of the works, except the cases stipulated by Law.

3. Article 3, Section 2, Paragraph 1 of the [Republic of Latvia's Law on Collective Management of Copyright](#) stipulates that protection of copyright for public performances taking place at venues for entertainment, cafes, stores, hotels and similar places shall be handled by means of collective management only.

Basic Principles of Tariff Development

Tariffs are established on the basis of recommendations by the International Confederation of Societies of Authors and Composers (hereinafter CISAC), where AKKA/LAA is a member, in compliance with the normative acts of the Republic of Latvia, as well as the tariffs for use of musical works in public performance approved by organizations for collective management of copyright in other member countries of the European Union, paying special attention to the Baltic nations.

One of the basic principles states that authors, in any case, hold the rights to receive equitable remuneration from the receipts concerning their works, 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”, therefore CISAC monitors the work of its members in development of tariffs. Most of the regulations adopted by the CISAC stay within the boundaries of definition of basic principles and offering tariff criteria:

- „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 every 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).

In tariff development, AKKA/LAA not only takes into account the general basic principles covered by CISAC recommendations, but also considers the national case law of Latvia as well as the case law of the European Union in the domain of public performance.

The 10% Base Rate

The guide „Copyright Collective Management in Music” written by Doctor of Law Ulrich Uchtenhagen and published by World Intellectual Property Organization WIPO highlights the historic benchmark of 10% for music exploitation established since the 18th century. The rule that authors are entitled to 10% is proposed by authors themselves. Through many generations authors have made it clear that exactly that is equitable remuneration and compensation as far as they are concerned. In application of the 10% quota, the authors’ societies merely follow old traditions established by authors themselves, and thus protect themselves against claims of selfish abuse of their monopoly”.⁵

The Federation of Performing Rights for Dramatic Works in its 14th Congress in 1947 expressly stipulated the minimum level for the first time: „Every society commits in its country to apply, regarding copyright for each performance, a minimum of 10% to the (user’s) gross receipts and to ensure that the royalties accumulated on behalf of the author of the original work are never under 5% of gross receipts” (the advice in favour of the 10% minimum tariff 10% was reiterated in 1952, 1956, and in 1958).

The Performing rights federation adopted a similar stance in Bergen, 1955: „Traditionally, the authors and the users have agreed in practice that author’s royalties due for copyright shall be based on average inclusive rate of 10% of the receipts from exploitation of intellectual works where the authors’ works have an overwhelming role in the relevant manner of usage. **Therefore the outset, adopted as a basis of charging for public performance of music, in the domain of radio transmissions, television broadcasts and cinematographic shows, shall be bound to standard tariff of 10% with sliding levels based on the character of work and significance of use.**”

Also, „**The Guide to the Collective Administration of Authors' Rights**” by Paula Schepens, published under the auspices of The United Nations Educational, Scientific and Cultural Organization (UNESCO) indicates that “adopting the calculation of 10% one can have a benchmark adaptable to all kinds of work use”.⁶

The Principles of Paying Royalties

In order to develop tariffs for public performance of music in Latvia, the conclusions of the European committee of CISAC for the study of tariff parameters in the field of music /CT-PPR/92/645, presented in Barcelona, May 1992 /.⁷

⁵ Copyright Collective Management in Music./WIPO publication No.789(E)

⁶ „**The Guide to the Collective Administration of Authors' Rights**” by Paula Schepens, The United Nations Educational, Scientific and Cultural Organization (UNESCO), 2000.

⁷ ”Conclusions of the European committee for the study of tariff parameters in the field of music. /CT-PPR/92/645, Barcelona, May,1992/.Not published.

The committee, having researched tariff parameters from 11 societies of music, summarized the practices and recommended a tariff system that is simple, credible and efficient, and can be adjusted in view of national circumstances. The tariffs stipulate the principles of royalties' payment for public performance of music rather than estimating the price of each piece of music. **The tariff system is modelled on the basis of the link between work usage and receipts. And the royalties are defined as:**

A percentage of receipts. This category of tariffs as a direct link between usage and receipts is practised in cases where the audience of venues (incentives) is charged with admission fee, or where tickets are sold. When defining royalties as percentages of receipts, minimum payment is also set. Paula Schepens indicates that „If all the works used belong to the copyright repertoire, the user generally pays about 10% of his receipts. A minimum tariff must always be set. Indeed, there is a level below which authors should refuse to grant a licence.”⁸

A lump sum. This tariff approach is used where there is no direct link between work usage and the user's receipts. Paula Schepens indicates that: „If the works are not the main source of interest for the public, it is not always necessary to apply the percentage rule. In this case, the society must convert the percentage into a **flat charge** or lump sum using criteria and parameters which enable an indirect connection to be established with the receipts that it is estimated were obtained partly thanks to authors' works. The flat charge must follow the cost of living by being linked to the price index.”⁹

The size of the fixed royalties is tied to actual measurable parameters associated with the work use: The size of the venue, the number of seats, the time span etc. Through application of such parameters the size of the lump sum is put into perspective showing how the use of music shapes the economic situation of the company.

The Methods of Tariff Formation

The tariffs are shaped:

- I. According to the prominence of music in the given manner of use /service;**
- II. Considering the size of the offered repertoire;**
- III. Taking into account the duration of music;**
- IV. In view of the area where music is available, or the eventual number of visitors;**
- V. On the basis of royalties assessment for usage of one work in public performance in a specified manner of work use;**
- VI. Making comparison with tariffs endorsed by authors' organizations of the European area;**

⁸ „The Guide to the Collective Administration of Authors' Rights” by Paula Schepens, The United Nations Educational, Scientific and Cultural Organization (UNESCO), 2000, p.25

⁹ Ibid.

VII. Taking into account the economic situation of Latvia, and the prices of commodities;

VIII. Considering the management costs.

I. Significance of use of Music in User's Business

On the basis of the vertical hierarchy proposed by the International Confederation of Authors and Composers (CT-PPR/93/808, New York, July 1993)¹⁰, **the economic value added by relevant musical works** to the service received by end user shall be estimated. According to the **significance of music in the service**, or the contribution of music, the manners of usage are split into three categories:

1. Usage where music is an essential or indispensable part,
2. Usage where music is a significant component and creates atmosphere,
3. Usage where music forms a background which is not absolutely necessary but is pleasant.

The vertical hierarchy proposed by the CISAC (CT-PPR/93/808, New York, July 1993)¹¹

Category I. Music as the main (essential) component

- Concerts
- Events (initiatives) with active participation of public dancing or singing (dance halls, discos, music bars, karaoke)
- Shows, cabarets
- Ballet
- Radio transmissions – music channels
- Television broadcasts – music channels
- Music delivery services
- Radio transmissions – the main channels of entertainment programmes
- Television broadcasts – the main channels of entertainment programmes
- Cinemas (demonstration of audiovisual works) and film channels on television

Category II. Music as a significant part

- Bars where live music is played by performers
- Classes of dance
- „Sons et lumières” (shows of sound and light), performances on ice, carnivals, brass band parades
- Circus
- Sports workouts accompanied by music (skating, rhythmic gymnastics, aerobics)
- Entertainment parks
- Music at drama performances in theatres

¹⁰ ”Vertical hierarchy of tariffs /CT-PPR/93/808, New York, July,1993/.Not published.

¹¹ ”Vertical hierarchy of tariffs /CT-PPR/93/808, New York, July,1993/.Not published.

- Programmes of broadcasting organizations – dedicated channels for sports and news

Category III. **Background music**

- The food service industry (hotels, restaurants and cafes (HoReCa)) /public businesses housing the following equipment: 1/ juke boxes charging a fee, 2/ devices with or without PA systems or screens (free of charge)/
 - A. Bars
 - B. Cafes
 - C. Restaurants
 - D. Hotels, camping lots
- Fairs with entertainment programmes
- Exhibitions, fairs, vehicles carrying commercials
- Stores, supermarkets
- Hairdressers' salons
- Public transport (airplanes, buses, trains)
- Sports competitions
- Churches, museums, offices
- Coach terminals, waiting rooms, hospitals, lifts,
- Music in telephone call waiting signals

Application of Vertical Hierarchy Recommended by CISAC and WIPO at AKKA/LAA Tariffs for Public Performance of Music

CATEGORY ONE: Music as the main component.

This category refers to public events that could not take place or exist without using musical works, i.e. where no musical works can be used the event cannot exist or a business cannot run. In such undertakings music is an important or indispensable part. This category can be split in two sub-categories.

The first sub-category concerns venues and companies where the delivered service is based on music fully and without exception: concerts, dances, discos, variety shows. Royalties for this category are defined as percentages of the operator's receipts.

The calculation basis for royalties, i.e. the receipts is understood as the operator's income from sold tickets or collected admission fee without VAT (in cases when VAT is included in the ticket price).

Percentages of receipts are scaled depending on the **genre** of the music used, (popular music or serious music) and the manner of use (concert, entertainment programme – a show, a variety show, a dance, a disco).

The tariff base rate for work use in concerts of **popular** music is scaled depending on the total receipts.

The tariff base rate for work use in concerts of **serious music** is defined as 10% of the gross receipts from admission fee, but the tariff is scaled depending on the share of copyright-protected works in the concert programme: where unprotected works cover more than 50% of the concert repertoire, **the royalties are defined as 5%** of the receipts. This is the only category concerning tariffs for public performance of musical works that differentiates royalties according to the share of protected/unprotected works in the programme.

Where no admission fee is applied, the calculation of royalties is based on a measurable parameter: the capacity of the venue. The royalties are defined as a flat amount taking into account the number of visitors at the venue. For this category one stipulates the guaranteed minimum of royalties per venue.

The second sub-category concerns businesses and venues where music is significant and necessary, however it is not the sole element since other intellectual or artistic works, for instance, choreography, are also decisive in the course of performances. The royalty rates for this sub-category are lower than those for the first sub-category.

CATEGORY TWO: music as a significant component.

This category concerns businesses and venues where music creates an atmosphere and therefore it is a significant component. Music is not the factor that attracts public, however it is an emotionally efficient marketing tool, consequently the royalty rates for this category are lower than those for the first category of activities.

Royalties for public performance of musical works at circus performances are defined according to the share of copyright-protected music in the total duration of the performance.

CATEGORY THREE: background music.

This category concerns businesses and venues where music serves as a pleasant background that is, however, not absolutely necessary. Without playing music the activity or functioning of the business will not stop. Cafes, stores, diverse businesses rendering services, e.g. hairdressers' shops, beauty salons, various premises serving clients fall into this category.

The royalties for this category are set as a flat amount, since the manner and circumstances of music playing does not permit to stipulate a proportional compensation.

The royalties for this category are defined as a scale of flat fees where the tariff criteria are as follows:

- For premises open to public (stores, salons, client rooms, HORECA sector) – the area, the number of business days per month that see performance of music.
- For premises that are not open, or are partly open to public, (e.g. factories or offices) the number of employees.

II. Size of the Repertoire

In compliance with the provisions of Article 42 of the [Copyright Law](#) AKKA/LAA furnishes blanket licenses for use of musical, literary and choreographic works, and such licenses provide rights to use the works of all authors represented by the organization.

In her “Guide to the Collective Administration of Authors’ Rights”, chapter “Tariffing Principles”, Paula Schepens highlights the role of the blanket license issued by organizations for collective management of authors’ economic rights: „The method most frequently adopted by the administration societies is that of the **blanket licence**.

The society offers users the entire repertoire that it represents, subject to payment of the tariffs it sets. In this way, the society guarantees peaceful access to all of the works in its repertoire. Users help themselves from the repertoire. They 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.”¹²

III. Duration of Music

Tariffs for users of music of the same kind may differ depending on how long the music is being used, or how many pieces of music are performed in a row, e.g. during the working hours of a store or a cafe.

It is assumed that the duration of one musical work, a song, is about three minutes. Consequently, if a store is open for 12 hours, and music is played during this period of time, 240 pieces of music are played.

IV. The Area where Authors' Works are Used, or Eventual Number of Visitors

Tariffs for the same category of users can be diversified depending on the size of the potential audience. Normally, the number of visitors is closely tied to the size of the room where the relevant services is rendered, meaning how many clients the room can accommodate. It is known that a business operator's turnover depends on the number of clients. So, larger rooms mean more clients and bigger revenue, and consequently, higher the tariff for use of music.

V. Calculation of Royalties per Work in Public Performance for a Specified Manner of Use

In business areas like stores, cafes etc. music is normally played all along the working hours. There is a large part of stores that set up their own records to be used at the premises where they serve the clients, while others prefer playing radio. Cafes and restaurants play music from various platforms and processes – radio, TV, CD, internet, etc. But in any case a huge number of authors' musical works is actually used. The royalties for one work per day are assessed as follows:

Example:

Music is played at a store for 12 hours, i.e. 720 minutes

Average duration of one musical work is 3 minutes

The tariff is represented by T

¹² „The Guide to the Collective Administration of Authors' Rights” by Paula Schepens, The United Nations Educational, Scientific and Cultural Organization (UNESCO), 2000, P.25

The royalties are represented by A

$A = T/240$ ($720/3=240$, which is the total number of used works)

VI. Comparison of Tariffs with those of European Authors' Organizations

Authors' organizations always follow the tariffs of copyright organizations of the respective region. However, comparison is not always objective since often, due to some national circumstances, or by coincidence, tariffs of separate countries do not always reflect the real value of the use of music. For example, when concluding an agreement with a user, the tariff is planned for long term, during which the tariff may be increased or diminished. However, in reality, one party or the other party decides to stick to the initial value, which remains unchanged, and the actual value of music is distorted. For example, tariffs are planned for long term, however, in reality, one party or the other party prefers to stick to the initial tariff without changing it, and the actual value of music is distorted.

Latvia is a member of the European Union, therefore the tariffs are compared to those set by authors' organizations of the European economic area.

VII. Economic Situation of Latvia, the Prices of Commodities

The research „Copyright Collective Management in Music” published by WIPO under No.789 (E)” very clearly admits that „Differences of prices are in place among member countries, and those differences are likely to remain in the near future.”

The prices in Latvia are researched in the European context. It is understandable that the price of music must correspond to the price level for commodities. The situation when the prices of goods have reached a high level while the price for intellectual property is very low is insupportable.

The data of EUROSTAT contain information about prices of commodities at all countries of the European Union. The prices of commodities in Latvia, in comparison to the neighbouring countries, are relatively high.

VIII. Management Costs for Public Performance

The users of authors' works pay to the authors, and the tariff is a formula for royalties for use of authors' works. The authors, in turn, pay a share for the work of the staff of authors' organization from their royalties. The WIPO guide “Copyright Collective Management in Music” stipulates that “the level of tariffs cannot depend directly on the actual expenditure of the authors' organization, since that is a matter of good governance. Of course, authors can decide upon allotment of a very considerable share of collections for provision of the authors organizations' work, for investment

of resources, for instance, to buy property for the organization, to obtain computer programmes or technology, however, it is accepted internationally that expenditure of an authors' organization adhering to principles of good governance shall not exceed 30 to 35% of the collected royalties."¹³

The same publication indicates that concerning the administration costs, tariff minima shall be established. The tariff minima shall ensure that, as stipulated by Law, all the users have received licenses for work use and have paid for work use, while causing no damages to the authors in cases when administration costs exceed the tariff. Therefore it is advised to calculate minimum administration costs and to include them into the assessment of minimum tariffs.

Management costs consist, on the one hand, of direct management expenditure, such as the salaries of the licensor's staff and compensation to other involved employees, mail costs, stationery costs, telephone costs, costs associated with running time of computers, electricity, communal costs attributable to the workstations, 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.

¹³ Copyright Collective Management in Music./WIPO publication No.789(E)

The Ministry of Culture delegates a representative to participate in AKKA/LAA Council sessions and the General Assembly.

The tariffs are available at the AKKA/LAA website.

The logo for AKKA/LAA is rendered in a light purple, cursive script. The letters 'A', 'K', 'K', 'A' are connected and flow into the 'L', 'A', 'A'. A diagonal slash separates the 'AKKA' part from the 'LAA' part. The overall style is elegant and handwritten.