

POSITION PAPER: MUSIC RIGHTS

The Value of Music and its Price

Movie exhibitors around the world acknowledge that music is an integral part of the movie-going experience and that composers and lyricists, like all other contributors to the creative processes of movie making, deserve appropriate rewards for their contributions.

However, exhibitors do not generally take responsibility for the payments made to actors, directors, set designers or other contributors to movie-making and therefore find it alien to be required to make direct payments to Performing Rights Organisations (PROs) i.e. music collecting societies (and societies representing other groups of rightsholders, in those few countries where there are similar arrangements in place).

Across Europe (which is the region for which GCF currently has the most data), royalty rates for PROs tend to have been set a long time ago, in many cases beyond memory of those currently involved in the industry. In some instances, those rates are simply dictated by the PRO under government oversight, or by a government authority; in other instances there is more of a negotiation, although the ability to negotiate against a monopoly PRO is limited when, at best, the exhibitors' only remedy is some form of arbitration or rate review.

For core content, the typical payments to composer PROs (at least for members of the local exhibition industry federation, which often receives a discount from headline rates) range from 1% to 1.25% of (in most instances) Gross Box Office; although there are outliers as low as 0.53% (for smaller cinemas in Luxembourg) and as high as 2% (in Spain and Italy) There also appear to be very high rates in Poland and Russia.

For other rights owners beyond music, the most common collecting society involved is on behalf of record producers and performers (aka "neighbouring rights societies"). We have to date gathered very limited data on these payments, but the figures tend to be at the lower end of the range (below 1% and often a very small fraction of that) with a mechanic other than percentage of Box Office often used. Again, there are outliers (in Spain, actors are entitled to 1.5% of net BO).

As organisations not typically involved in the creative aspects of movies, it is not easy for exhibitors to have a clear view of the fairness of the current rates as a value proposition. Exhibitors cannot compare what is paid to composers v payments which producers make to actors, writers, directors etc and come to a view about whether the composers receive a fair share of the overall revenue generated at Box Office.

However, when looking at what cinemas pay compared to other sectors using live music, one might easily conclude that the current system has led to excessive charging. Based on

the latest figures extracted from the UK PRS annual results, the cinema industry was responsible for over 5% of the total PRS revenue from all non-broadcast sources, paying about ½ of the sum paid by the entire retail sector and 1/3 of the sum paid by the entire live music sector. This is in the context that the UK is a relatively low-tariff country, with a rate of 1% of Box Office and an alternative per-admission rate also available to exhibitors.

Similar challenges arise in terms of other use of music in cinemas. For use in foyers and other incidental uses, including adverts, trailers and play-in/play-out music in auditoria, it does not seem appropriate to pay a percentage of revenue at all; most other users of music of a similar nature (retail and leisure premises other than music venues) would typically pay an annual fixed licence fee based on some measure which can act as a proxy for enterprise size (e.g. square footage for shops, number of seats for a sports venue).

Alternative content seems to have provided PROs with an opportunity to seek higher rates from exhibitors in many countries. While there is currently limited data, higher rates reported have included 8% in Belgium and 3% in UK.

Position of the Global Cinema Federation

The Global Cinema Federation will be guided by the following principles in addressing music rights:

1. The long-term goal is to remove entirely the need for cinemas to enter into licence arrangements with, and make royalty payments in respect of music rights to, PROs; this is however hampered by legal and structural challenges;
2. In the interim, the Global Cinema Federation will support efforts to secure material reductions in existing tariffs, by sharing information and deploying both (i) factual data about rates in other territories; and (ii) tactics and legal and economic arguments which have succeeded in other territories;
3. In all events, the Global Cinema Federation will strenuously resist attempts by PROs to seek higher tariffs and will do so using the means described above;
4. While it may be legally problematic to have a collective discussion with studios about the allocation of music rights fees as between distribution and exhibition, it is certainly permissible to discuss with studios the extent to which the relevant rights are already “fully cleared” so that no PRO fees should be payable for that content. Securing detailed information about how much music within movies is actually vulnerable to a valid PRO claim will be a useful tool in reducing overall payments.

These main principles should be applied with vigour primarily in connection with the core use of music, namely that featuring in the soundtrack of conventional cinema movie content. However, the same principles should also be applied to

- other categories of rights which have PROs making claims against cinema operators (for example neighbouring rights, actors, writers);
- alternative content; and
- foyer and other incidental uses of music, including adverts, trailers, play-in/play-out music in auditoria.

To inform all of the above, the GCF should engage with both PROs and the governments and regulators that oversee them in order to fully understand the legal and regulatory framework which has given rise to the current payments and to understand what is happening to the money once passed over to the PROs. In the EU, PROs have new transparency obligations which can be used to support these lines of engagement.

Information and Advocacy Opportunities

All of the above objectives will best be achieved by undertaking a detailed comparison of all relevant parts of each Tariff in each territory where GCF members can source data. This requires going beyond top-line numbers and examining the detail of:

- the relevant “royalty base” on which fees are charged – is it gross BO, net BO or some other measure, how do the other measures (e.g. flat fee, fee per seat, fee per admission) work;
- are there any discounts or other special arrangements which can reduce the royalty base (most countries only mention the deduction of VAT and cinema ticket taxes/levies);
- what is the applicable percentage or, where applicable, flat fee.

GCF would also benefit from a detailed understanding of how the issue is approached in the USA, where it is believed that no payments are made by cinemas.

As noted above, further information from producers/distributors about where PRS rights are and are not pre-cleared will also be valuable.

Ultimately, the goal should be for the GCF to have a living record of when all of the relevant tariffs and licences are due for, or susceptible to, renewal. This will allow for mutual support (for example, GCF supporting the reduction of rates in a high-tariff country by reference to recent decisions in adjacent countries) as well as to allow GCF to consider strategic interventions (for example inviting a regulatory review, where the same becomes available in a particular territory. Some territories appear to have tariff reviews very occasionally and it may be that this is an area where (in suitable instances) GCF should encourage a review.

As part of the same exercise, it is important to gather information about the scope and availability of review in each country. The nature and effectiveness of review of PRO tariffs varies considerably. Some countries (e.g. UK, Germany) have a form of rate arbitration mandated by law, while others have no effective review mechanism, or one controlled by a Culture Ministry which might have close ties to the PRO. In extreme cases, competition law remedies may also be available.