

How do we ensure that a fair royalty collection fee is applied to new forms of broadcast?

Background

With the advent of streaming media* technology and prevalence of broadband a new form of non-linear and interactive media has emerged that offers an alternative to conventional methods of distribution as well as providing a wider range of content. Streaming media technology has created new opportunities and has raised difficult issues relating to licensing and music royalty collection. Streaming media do not leave permanent copy of content on user systems.

For several years there was no structure for administering the various copyrights associated with music content streamed online. Individual services had to license directly with rights holders where possible. This was not a practical solution on either side.

In 2005 PPL launched a trial license representing owners of recordings and offering limited rights to broadcast online for a fee per track per stream. This license was based on a DCMA agreement pioneered in the US. The license specifically excluded any practical form of non-linear streaming, using a traditional terrestrial broadcast model as its definition of streaming. As a result the license could not be applied to many business models.

PPL have announced a new license that will allow limited interactivity, however early indications suggest this will still exclude many forms of established interactivity. The license has not been revealed publicly at the time of writing.

MCPS/PRS offer a trial license tailored to individual services. Recent discussions indicate a desire to change the basis of charges at the expense of online broadcasters. Currently online broadcasters pay a fixed fee or 8% to 12% of turnover. The new approach is based upon total listening.

There are three issues:

1. Collection societies such as MCPS/PRS and PPL are unable to gain a full mandate from their members to license services and opportunities afforded by new technologies. This has at its root a reluctance to engage with the issues on the part of rights holders.
2. The fee structures proposed by both PPL and MCPS/PRS on a per track per stream, % of turnover, or total listening hours are disproportionately high. They are significantly higher than those paid by terrestrial broadcasters licensed by Ofcom who operate under established business models. The proposed high costs and restrictive clauses at best restrict development and at worst make any business model untenable. (See cost comparison below).
3. Any agreements made with existing collection societies are limited to the UK . Most online services cater to a global audience.

There is a real danger that streaming media companies operating in the UK will fail to establish themselves through the obstinacy, inactivity and failure of rights holders to effectively engage with these issues. The failure to act collaboratively could seriously undermine the viability of the UK digital content sector, which has been identified as a key area for growth for the UK. Digital content benefits from global reach. Properly nurtured, the sector has the potential to outperform domestic media services many times over. This emerging sector needs support in this early stage of its development, in order to engage effectively with rights holders and their representatives to the long-term benefit of all.

Cost comparison

Terrestrial broadcasters currently pay up to a combined 10 percent of turnover (after a 15% discount has been applied) to PPL, PRS and MCPS. This is an established sector, which turns over £614million, generating around £53 million for rights holders annually.

PPL proposes to charge £0.00053 per track per listener a model that appears to be overpriced and does not reflect the current revenue potential of online services. Charging terrestrial broadcasters on this basis would generate revenues of around £180 million for PPL's members alone.

MCPS/PRS proposes to charge 12% (currently 8%) of turnover – more than the combined cost to terrestrial services. MCPS/PRS have also proposed a model based on a fee per 1000 hours of listening (£0.03 per 1000 hours). If this were applied to terrestrial services annual revenues for MCPS/PRS alone would be in the region of £700 million annually.

The fee basis proposed by both PPL and MCPS/PRS are disproportionately high compared to other media sectors and in the short term will stifle the development of this sector.

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Streaming media is the technology enabling the distribution of content most commonly via the internet and computer networks. This content is not downloadable.

Streaming media companies could include but not limited to, online radio stations, online video broadcasters, music portals, music download shops, Internet Service Providers (ISPs) and TV/Radio production companies.

FM Royalty Payments

Based on figures for Q4 2005 for entire commercial radio sector

Q4 05 total hrs listening = 5,444,304,000 (Figures supplied by RAJAR)

Q4 05 total commercial income = £155,700,000 (Based on figures supplied by RAB)

total commercial listening hrs a month	Total income a month	Royalties due based on 85% of income and then at a 10% rate
1,814,768,000	£51,900,000	£4,411,500

If applied online payment structure total royalties due would =

PPL	£13,692,425
PRS/MCPS	£57,165,192
Total	£70,857,617

As you can see this is more than they earn!!!!