"Licensing Madness: Exploitations a Go-Go"

SXSW CLE

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By

Lynn Morrow -- Adams and Reese LLP, Nashville (Moderator)

Jeff Brabec -- VP of Business Affairs, BMG Chrysalis, Los Angeles

Todd Brabec -- Author "Music, Money and Success" / Former EVP of ASCAP, Los Angeles

Daryl Jones – Law Offices of Daryl D. Jones, Chicago

I. STATE OF MUSIC LICENSING INDUSTRY

A. Has there been a general increase in opportunities to license music?

B. Is this a good time to be in the business of music publishing?

C. What are the biggest challenges facing music publishers today in connection with music licensing?

II. STREAMS OF INCOME DERIVED FROM MUSIC LICENSING

A. What are the largest income streams for the major and large independent music publishing companies and are those lucrative streams different than they were 10 years ago?

B. What are other healthy streams of income for songwriters / music publishers?

C. Have music publishers and copyright administrators seen a substantial increase in monies derived from licensing digital rights in songs v. the more traditional rights in songs? What about public performance monies – are they on the increase?

III. LICENSING MUSIC FOR COMMERCIALS

A. Has there been an increase in demand for music in radio, television and Internet commercials over the past 5 years?

B. How involved are advertising agencies in selecting and clearing songs for client's ad campaigns?

C. Is the use of a hit song (versus the use of an unknown song from an emerging artist) necessary for an effective advertising campaign?

D. What are the typical terms and scope of these types of licenses?

E. How lucrative is this source of income for the music publishers / songwriters?

1. What are the factors a music publisher considers when setting a fee?

2. What does the payment schedule look like?

3. How quickly do these types of licenses get approved by publishing companies?

4. Does the public performance income add-up for a song in a commercial?

F. Have you seen an increase in copyright infringement claims in connection with the music and/or masters used in commercials?

1. Do advertising agencies indemnify their client's in connection with a song they select and/or license?

2. Are most of these disputes resolved short of litigation?

III. LICENSING MUSIC FOR A TELEVISION SERIES

A. How does the initial license negotiation begin to put a copyrighted song into a television episode?

B. What can the synchronization request look like?

1. Type of media / distribution platform

2. Duration of license

3. Producer's licensing strategy

C. Length of these television synchronization licenses and other provisions

D. Income opportunities after the series broadcast

1. Digital downloads

2. U.S. and Foreign Album Sales

3. Performance Income from U.S. and Foreign Countries

4. Ringtones

IV. QUESTION AND ANSWER

MUSIC MONEY AND SUCCESS (Seventh Edition)
Jeffrey Brabec & Todd Brabec

Negotiating with an Advertising Agency for a Hit Song

> "This will confirm our agreement pursuant to which (Publisher) grants to (Advertiser) the right, license, privilege, and authority to record, at its own expense, the copyrighted musical composition entitled (the Composition) and to use recordings of the Composition in commercials (the Commercials) advertising the products and/or services of Advertiser, subject to the applicable conditions contained herein."

When an agency commissions the writing of a new song for a commercial, it usually acquires all rights in the jingle for its client. The agreement for a hit song, however, is much less encompassing, as it is purely a license that permits the agency to do certain things during a specified period of time under certain conditions, with a termination of all rights after the agreement is over. (Table 9.1 shows some hit songs used in TV commercials.) The following sections explain the more important issues that occur during such negotiations.

TABLE 9.1 Hit Songs Used in TV Commercials

Song Title	*Product*	*Genre*
"Theme to a Summer Place"	Toyota	Movie Theme
"Take My Breath Away"	Gain Detergent	Pop Hit
"Old Time Rock n' Roll"	Guitar Hero	Classic Rock
"Peter Gunn Theme"	Chase	TV Theme
"The Odd Couple Theme"	Subway	TV Theme
"Work It"	iPod/iTunes	R&B/Hip Hop Hit
"Addams Family" Theme	M&Ms	TV Theme
"Purple Haze"	Pepsi	Classic Rock
"Let's Get Down"	Campbell's	Hip Hop Hit
"Rockin' Me Baby"	Wrangler	Classic Rock
"Blue Skies"	HP	Standard
"I Want to Be Free"	Coca Cola C2	Rock Hit
"Shaft"	Burger King	Movie Theme
"Taxman"	H&R Block	Classic Rock
"Tonight, Tonight"	Mountain Dew	Broadway Song
"Your Cheatin' Heart"	Pepsi Edge	Country Classic

"Hello Dolly"	Oscar Mayer	Broadway Song
"Pink Panther"	Heineken	Movie Theme
"Rhapsody in Blue"	United Airlines	Standard
"Soak up the Sun"	American Express	Pop Hit
"I'm a Soul Man"	Bic Razors	Soul Classic

Parties to the Agreement

In most cases, the advertising agency gets permission directly from the copyright owner of the hit song, which is usually the music publisher. Occasionally, the songwriter or music publisher has previously signed an administration, collection, or representation agreement, whereby a larger music publisher, law firm, manager, music industry agency, or other representative has been given the authority to negotiate licenses for the commercial exploitation of a particular hit song or catalogue of songs. In that case, the advertising agency will contract with the administrator, who is acting on behalf of the song's original copyright owner.

Copyright Ownership

Ownership of the existing song is never transferred to the agency, as the agreement is merely a license of certain specified rights. On the other hand, if the agency creates new lyrics for the song, the agency will usually copyright the new material for its client, and the owner of the hit song will usually have no rights to the newly created lyrics.

Duration of License

The term of the commercial license is usually one year for a national campaign plus a number of options (normally one to three additional one-year options at the election of the advertising agency). As marketing campaigns take on many variations, however, the term requested by an agency can be for a day, a number of days. a week, a number of weeks, a month, a few months, a year, multiple years, or any combination thereof. For example, a license can be for a one-day test in one or two cities with options for up to three one-year periods on a national basis if the test results in positive consumer reaction; it can be for one month, as in the case of Christmas campaigns, or for a few days or a few weeks, as with Mother's Day, Father's Day, Fourth of July, Easter, Labor Day, Memorial Day, or Thanksgiving Day promotions. On occasion, agencies may request an extended period of time for internet vs. other media duration (for example, one year for television with an additional 120 days for internet usage).

Exclusivity Versus Nonexclusivity

Unless total advertising exclusivity is requested, the music publisher will not be restricted from licensing the song to other advertisers during the duration of the commercial agreement. The agency contract will, however, contain language prohibiting the use of the song in connection with commercials that promote competing or related products. For example, if a song is licensed for a car commercial, the same song may not be given to another automobile maker but can be simultaneously licensed for use in a commercial promoting soda, television sets, hamburgers, or dish detergent under a nonexclusive, noncompetitive product license. Some of these noncompetitive clauses are very broad and restrictive (e.g., restricting a song used in a pie commercial from any type of food product or for a song in a beer commercial being used in connection with any type of beverage), and some are very limited (e.g., restricting a song used in a perfume commercial from use in a campaign for another perfume, but not from ads for cosmetics). If the fee paid for the song is very low, there may be no restrictions at all.

If the campaign is a major one or if the identification of the hit song with the product is considered vital to the promotion, the agency may request total advertising exclusivity. Such exclusivity, however, is rare, because the additional fees payable to the music publisher and songwriter for taking the song entirely off the market are usually prohibitive. Fee quotes from $250,000 to over $750,000 are not unusual for one year of total exclusivity. An agency may also lose interest in a song if it discovers that the song is currently being used in another product campaign or has recently been so used. The same considerations come into play when a master recording of a song is being chosen.

Number of Commercials

The agency contract will specify the number of commercials that will use the song (e.g., "one 30-second television and internet commercial, one 15-second television and internet commercial, and one 30-second radio commercial" including edits, versions and variations) or, if undetermined at the time the contract is signed, a maximum number (e.g., "one 60-second commercial with up to three 20-second edits, cutdowns, or lifts").

Payment of Fees

The initial fee is usually paid upon signing the agreement or within a short time, such as 10 days. Any option payments are paid upon the commencement of the option period or within a few days thereafter (e.g., "Within 10 days after the option is exercised or within five days after the option period commences").

Exercise of Options

The advertising contract will be structured so that the agency is the party that decides whether or not an option is picked up. This is accomplished by written notice prior to or by the last day of the current contract period (e.g., "in the event that the agency wants to extend the license agreement for an additional one-year period, it must notify the music publisher of its option exercise at least 10 days prior to the expiration of the current period of the term"). If the agency does not exercise such option rights, the license agreement expires and no further use of the commercial (other than the agency's right to submit the commercial for advertising industry award shows or other agreed-upon exceptions) may be made after the current period expires.

Territory

The territory requested for a major advertising campaign is usually the United States of America, its territories, possessions, and commonwealths, but depending on the potential consumer base for the product, Canada may also be included for an additional fee. If the Internet is included as part of the media use, the territory for this one area will be listed as worldwide. If the product has a regional base, or the planned campaign is designed as a test, or the product is new and the campaign is in a limited introductory stage, the licensed territory may be only one city, one state, a number of cities or states, or any variation thereof. For example, the territory may only be for the city of Baltimore, for the state of Illinois, or for one identified shopping mall in Los Angeles or Atlanta. If the initial territory is limited but the product has national potential, the agency will usually require options for expanded territories. For example, a campaign may be tested in a number of geographically related cities or states (e.g., Los Angeles, San Diego, and San Francisco, or New York, New Jersey, and Pennsylvania) and, if successful, expanded into other regions (Phoenix, Seattle, and Las Vegas, or California, Washington, and Oregon). Or the territory may be defined as geographic areas covering no more than a certain percentage of the U.S. population (e.g., 10%, 20%, etc.) with options extending the commercial into areas covering a larger percentage (e.g., 30%, 50%, 75%, 100%). When a commercial finds consumer acceptance, the agency wants to be able to broadcast the commercial in areas other than those specified in the original license and the variations requested are numerous. Therefore, options for additional media and territories are prevalent in contracts for limited-market or test commercials.

At times, the use of a song in specific foreign countries or throughout the world will also be requested, but this usually occurs only in the case of internationally accepted products (such as Microsoft, Pepsi-Cola, McDonald's, Budweiser, or

Coca-Cola). The addition of foreign countries is usually handled on an option basis unless the agency and sponsor want to make a guaranteed up-front commitment. For example, an agency may license the hit song in the United States for one year with three one-year options and also have the right to extend the use into the United Kingdom for a set fee, into all of Europe for another fee, into Japan for a separate fee, into other selected countries for an additional fee, and for the entire world for yet another fee. There are usually time limits as to when these various options can be exercised by the agency, the specifics of which are subject to negotiation between the music publisher, songwriter, and advertising agency.

Media

Television, Internet, and radio are the standard media requested, but depending on the thrust of the campaign, print uses (for example, lyrics of the composition used in magazine ads or on billboards) may also be included in the license. Additionally, with commercials being used on motion picture home videos, in motion picture theatres during previews, and on mobile phones, rights for home video, theater promos, mobile phones, may also be negotiated. Other areas that might be included are industrial (internal, sales conferences, showroom displays, in-store, jumbotrons and places of public assembly) as well as B-Roll usage and electronic press kits. Because some agencies also use the hit song as part of their in-store or internet promotions (reduced price CDs, downloads, or giveaways), extra monies may be paid to the music publisher and songwriter for such "point-of-sale non-record store outlet" promotions. For example, an agency may secure an option to distribute up to 50,000 downloads of the song used in the commercial for a one-month period at any time during the license term for either the U.S. statutory mechanical royalty rate or, if acceptable to the writer and music publisher, a reduced mechanical rate. Or there might be a promotion that offers free downloads to the consumer on a redemption basis, depending on whether or not a customer has a winning bottle cap or other instant winner code/number on the inside packaging of a product, among other ways, to win.

When an agency asks for a license for television use, a distinction is many times drawn among free over-the-air television, basic cable, and pay cable, with separate fees usually negotiated for each category. Additionally, certain advertising uses of music may be restricted to use in shopping malls, in-house training sessions, or at sales conventions, the fees for such uses being reduced accordingly. Print, cell phone, mobile device, Internet, and e-mail uses may also be requested. In addition, some agencies may request an option for "in-game" advertising whereby ads may be put into video games (similar to product placement licenses) or digitally inserted into online video games.

Because of the importance of music to certain advertising campaigns, a number of websites devoted to the product will feature the songs and recordings which have been or are being used in the actual commercials. One example is the Lincoln MKS official website which featured the songs "Under the Milky Way" performed by Sia, "Major Tom (Coming Home)" recorded by Shiny Toy Guns and Cat Power's version of David Bowie's "Space Oddity". All the commercials could be played on the site and there was information on each song and the artist. In addition, the site also featured a "making of" section which had performance clips as well as artist interviews.

Foreign Countries

Because many songs have international appeal, a substantial number of commercial requests come from advertisers in countries outside the United States. Most of these requests pertain to English-speaking territories, but Germany, France, Italy, and Japan can also generate substantial income from such uses. In such cases, the writer or publisher's representative in the foreign country (the subpublisher) will often handle the negotiations after either consulting with or getting approval from the U.S. copyright owner. In the case of a change of lyrics or a foreign-language version being used, the U.S. publisher will virtually always have approval rights. On occasion, the U.S. publisher (on behalf of itself and the songwriters) will negotiate directly by means of e-mail, fax, or telephone with the foreign ad agency and bypass its local subpublisher, but this approach depends on the terms and conditions of the foreign subpublication agreement that controls the song. Because the foreign subpublisher many times is more familiar with what fees the market can bear in its territory than the U.S. publisher, who may be thousands of miles away, the actual negotiations are many times handled by the subpublisher, with either input or approval from the U.S. publisher. Performance royalties can also be earned since many foreign country performing right organizations (e.g., APRA in Australia, PRS in the United Kingdom, etc.) do pay writers and publishers for commercial uses.

Restrictions on Songwriter/Recording Artists

When an agency pays a well-known writer/performer substantial monies for the use of a song, it may also request a prohibition on the licensing of any other song in the writer's catalogue in conjunction with a competing product during the term of the commercial license agreement. Such catalogue restriction clauses are not common and are totally negotiable, with any prohibition dependent on, among other things, the amount of compensation being paid, if the writer/artist's performance is being used in the commercial, and whether the writer/artist has control over the use of his or her songs and recordings, since in many cases a third-

party music publisher controls the songs and a record company controls the recordings of the writer/artist's performances of those songs.

Restrictions on First Broadcast Use by Another Product

Since agencies do pay substantial fees to use hit songs in commercials, some will request that the music publisher not license the song to another advertiser for use in a commercial for a product campaign that will be broadcast in advance of the initial airing of its television, Internet, or radio commercial. Such a request is understandable and may be acceptable, provided that the restriction does not encompass a substantial period of time, that the fee is large enough to compensate for possible loss of other advertising income, and that the publisher is not prohibited from entering into noncompeting product license agreements during the restricted period for commercials that will be broadcast after the expiration of the nonbroadcast period.

Lyric Changes or Instrumental Uses

If the lyrics of the hit song are to be revised by the agency to fit the theme of the commercial (e.g., "Fame" becoming "Shorts," and "Leave It to Beaver" becoming "Leave It to Cargo" for Old Navy, "Shaft" becoming "Shaq" for Burger King, and "I'm A Soul Man" becoming "I'm A Bic Man" for Bic razors), or if entirely new lyrics are to replace the original lyrics, the exact nature of the lyric revisions or new lyrics will always be specified in the license agreement so that no misunderstanding will arise between the agency and the music publisher or songwriter as to what was intended and agreed upon prior to the commercial's being on the air. If the composition will be used instrumentally and without the original lyrics, or both instrumentally and with new lyrics in separate commercials, that will also be indicated in the body of the contract. Specificity in this area cannot be overemphasized for the protection of all parties to the license agreement; the more concrete and exact a contract is, the less likely that there will be a lawsuit. It is also very common for a publisher to charge more for the commercial use of a song when a lyric is changed than when it is not.

Confidentiality Agreements

On occasion, the advertising agency will ask the music publisher to sign a confidentiality agreement before the agency sends the publisher copies of the storyboard or provides specifics as to the type of marketing campaign and the actual content of the commercial being planned. If such an arrangement is requested by the agency, it usually occurs immediately after a quote for the composition has been given by the publisher, but, in some cases, this arrangement may be requested when the agency contacts the music publisher to ask for the use

of a composition and explains the general nature of the use.
The confidentiality agreement can take many forms but, in most cases, it is a short document. In the agreement, the music publisher acknowledges that, in the course of the development, pre-production, production, or post-production of the commercial, the publisher may learn certain information relating to the products of the client, the advertising plans for the product, and the contents of the commercials relating to the advertised product. In this regard, the music publisher and its employees or affiliated companies agree not to disclose any portion of such information to any third parties without obtaining the prior written consent of either the advertising agency or the client.
Some of the guarantees that may be agreed to by the music publisher, if such a confidentiality agreement is requested or demanded by the advertising agency, are:

That it will not provide anyone with the storyboard, script, advertising copy or other elements used in the development or production of the commercial;
That it will not allow any third parties to view, exhibit, or inspect the commercial prior to the actual broadcast or commercial distribution of the commercial;
That it will not disclose the fee;
That it will not disclose the content of the advertising commercial prior to the initial broadcast or distribution date of the commercial; or
That it will not authorize the release of any promotional or publicity materials about the music publisher that mention the commercial or the services rendered by the music publisher in relation to the commercial.

Performance Rights
The agreement for a hit song is similar to a television synchronization license in that the advertiser/client (like the producer of a television series) is given the right to include the composition in the commercial, with the broadcast or performance of that composition being conditioned on a radio or television station's having a valid performing right license from ASCAP, BMI, or some other person, firm, corporation, or association (including the music publisher) duly empowered to grant such rights on behalf of the copyright owners.

Alternative Compensation Packages
A number of sponsors are also funding or contributing to the touring costs of major artists and, as a result, arrangements are many times made to include either concert footage or the artist's songs in advertising commercials for the sponsor's product. In these cases, the commercial licensing fees may be different from the standard advertising agreement since the fee for the use of a song or a performance is made in a different manner. This concept also appears in a number of other variations

where the writer-artist receives compensation (which may be non-monetary in the case of promotion benefits) that may not fit into the format of the traditional advertising commercial license agreement.

Radio and TV Royalties for Advertising Music

Most music used in commercials is written specifically for the product being promoted. When the agency or sponsor has not bought out the broadcast rights for a jingle, performance royalties can be earned but are usually insignificant unless the advertising campaign lasts many years. Nonetheless, most of the large advertising agencies have had in-house music publishing divisions for many years, and there is a growing trend for even small agencies to set up music publishing companies to collect this source of income.

In the case of hit songs used in commercials, however, substantial monies can be made. All that is needed is information on the advertising field, experience with ASCAP and BMI commercial payments, and reasonableness in one's negotiating position with the agency or sponsor. A single phone call, e-mail, or fax handled correctly, can result in hundreds of thousands of dollars in immediate income, as well as additional dollars in performance royalties.

Extreme care is important when drawing up contracts of this kind as a badly drafted licensing agreement can prevent ASCAP or BMI from licensing the commercial. The ASCAP and BMI payment rules and regulations are very precise as to the reservation of performance rights, qualifying duration for payment, change of original lyrics, product information, voice-overs or written voice-over script details, MP3 submissions, Ad-ID or Competitrack Ad Codes, lead sheets, and the necessity of broadcast schedules.

Conclusion

Whether one is writing original music and lyrics for an advertising agency, a production music house, or a music library, or has previously existing songs or scores used in a commercial, advertising can be a lucrative area for writers. For many, today's world of advertising music is not the "sell out" of years ago but rather another way of exploiting one's music.

BOOK REVIEW

Music Money and Success: The Insider's Guide to Making Money in the Music Business

REVIEWED BY ANDREW M. GOLDSMITH & HOWARD SIEGEL

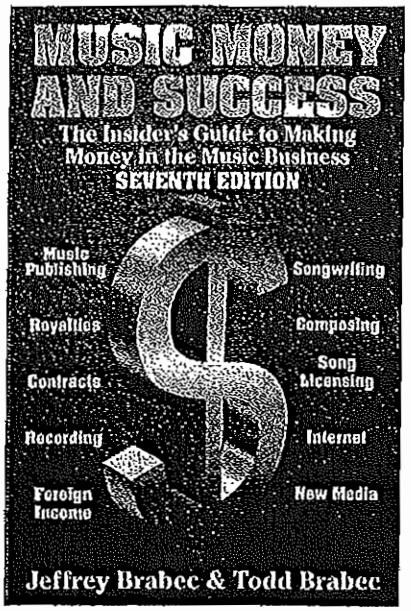
Music Money and Success: The Insider's Guide to Making Money in the Music Business is essential reading for anyone seeking a career in the music industry. The seventh edition of this iconic and well-regarded treatise solidifies its place as the definitive resource for musicians, record producers, music publishers, industry executives, managers, agents, and music attorneys. Well-written, easy to read, thoroughly researched, and extremely detailed, the seventh edition should satiate industry veterans and aspiring novices alike, as well as everyone in between. The book's success lies with the authors' adept explanation of how to create and maintain success in the industry. Also, the book effectively describes, with some measure of success as the predicate, just how revenue flows from the industry's myriad sources down to the writer/artist.

The seventh edition was updated and revised to reflect important changes in the music business since the sixth edition was published in 2008. The seventh edition also features completely new content regarding relevant topics, including Internet karaoke sites; remix agreements; lyrics on merchandise; 360, 270, and 180 record deals; indie record net profit deals; indie film step deals; new media provisions in film contracts; radio and television payment schedules/royalties/bonus provisions; Broadway and Off-Broadway secondary performance market licensing; rates and royalties for streaming music websites; rates and royalties for on-demand music; and licensing for music in apps.

This new edition of *Music Money and Success* begins with a comprehensive and lengthy discussion of music publishing. This chapter provides background information on who publishers are, what publishers do, and how publishers acquire rights to music. It includes a section devoted to listing and explaining the important provisions of songwriter contracts, detailing how publishers work with writers to generate income. In a very thorough discussion, this section of the book walks the reader through every conceivable way in which an artist and publisher can successfully exploit music.

The seventh edition continues in the tradition of its predecessor editions by covering a variety of important, broad, music-related topics. For example, the Brabecs provide a valuable primer on copyright law. The copyright section proves helpful not only for those aspiring to a career in music, but also for those already in the industry in need of a quick refresher course and update. This section explains the principles of copyright law, its application to the music industry, and its practical implications for artists and industry executives alike.

The book also discusses the relationship between artists and record labels. The Brabecs, once again cutting to the chase, explain the "Most Important Points in Every Recording Contract." That section discusses both major label deals and indie record contracts. The seventh edition then shifts to a discussion of how artists and industry executives can use television, film, commercials, video games, and Broadway to generate income. These chapters provide an indispensable "how-to" for artists, artists' representatives, publishers, and record executives seeking to exploit music in these contexts. Next, the seventh edition contains a comprehensive chapter on how to take full advantage of all the facets of new media to generate income. Many readers may find this chapter to be the most pertinent and useful chapter in the book because of the increasing ubiquity of new media and the consequent dwindling revenue streams from more traditional sources. The book's final invaluable chapter, "Putting It All Together," reviews and integrates all of the topics covered by the authors, and facilitates the creation of an informed business plan to further readers' goals.



Music Money and Success
The Insider's Guide to Making Money in the Music Business, 7th Edition
By Jeffrey Brabec and Todd Brabec
2011 • 512 pages • Paper

In sum, the Brabecs once again offer a remarkable and indispensable reference tool. The book is easy to understand and a pleasure to read. Above all, it is a uniquely compiled and comprehensively presented collection of invaluable topical material from which anyone involved, or aspiring to be involved, with the music business, and certainly those considering a career in music, will greatly benefit. The frequency with which one will find occasion to utilize this treatise suggests the wisdom of keeping *Music Money and Success* within arm's reach. ❖

Howard Siegel is senior partner in Pryor Cashman LLP's entertainment group in New York City. He has more than 35 years' experience representing clients in all aspects of the entertainment business, with a particular emphasis on the music industry, during which time he has served as counsel to many of the industry's most prominent recording artists, songwriters, producers, managers, and executives.

Andrew M. Goldsmith was a 2011 summer associate at Pryor Cashman LLP. Andrew will join Pryor Cashman full time upon graduating from Fordham University School of Law.

GLEE TO GOLD:
A MUSIC LICENSING GOLDMINE FOR SONGWRITERS AND MUSIC PUBLISHING

by: Jeff Brabec
Todd Brabec

Getting a song performed by the cast of Glee can mean a lot more than being heard by over 11 million viewers in the United States. One performance can lead to a virtually unlimited number of new money making licensing opportunities because of the multi-platform universe that is today's and tomorrow's entertainment industry.

This article begins with the initial license negotiation to put a copyrighted song into the television episode. Then the article describes the various licensing activities that can occur because of the initial or subsequent broadcasts, and the money that can be made both in the short term and long term not only from the Glee cast version but also for the song itself as recorded by the original recording artist.

1. The Initial Television Series License Request

Once a song is selected for use in an episode of Glee, the show's producer (many times via a music clearance company or in house staff) contacts the music publisher that controls the composition and requests permission to include the song in the series. As with virtually all uses of musical compositions in audio visual productions in the United States (e.g. television, motion pictures, video games, etc.), the producer must secure permission via a negotiated license (known as a "synchronization" license) since there are no statutory rates in this area. And yes, a music publisher can, with few exceptions, refuse to license a composition if it so chooses.

This initial request states the title of the song and the identity of both the songwriter and music publisher. As with all television license requests, there is a brief scene description so that the publisher is able to see the actual context (e.g., the Glee cast sings the song in the gym or sung during a dream sequence) in which the song is used as well as the projected timing and type of use (e.g, visual vocal/ full use or background instrumental/ not more than 2 minutes).

The synchronization request then sets forth in detail the duration of the license and the type of media on which the episode will be distributed. The initial season license request for a program like Glee usually has a number of different media distribution variations and contains additional options for further distribution channels exercisable by the producer anytime between 12 to 18 months after the initial episode broadcast. Media requests may change from season to season depending on the success of the series and creation and/or evolution of media distribution channels. [i]

Currently, the initial areas of media platform licensing focus with options are:

All Media (excluding theatrical) now known or hereafter devised, worldwide in perpetuity: $_____.

It should be noted that the value of the above all media licensing scheme request is that it allows the producer, for a one-time fee, to distribute the series in virtually every distribution platform including all forms of television, home and personal video, etc. Virtually the only exclusion is the release of the episode as a theatrical motion picture.

Options:

A) Option for out-of-context trailers, advertisements and promotional programs (but expressly excluding any cross promotion) to advertise the series worldwide in any and all media (excluding theatrical) now known or hereafter devised for the period of eighteen months. $_____.

B) Option for out-of-context advertising and promotion in All Media – United States, its territories and possessions, up to 0:30 - $_____per week.

For informational purposes, license requests do change depending on the success of the series and the following represents alternative approaches to licensing when a show first starts off. As you will see, many times there are more options involved in a request during a series' first or second season before its future becomes more certain. This licensing strategy gives producers a less expensive way to secure the music that they want to use without having to immediately commit to the more expensive "all media excluding theatrical" type of license requested by successful series. The following represents an example of such a multi-option approach:

a) All Media (excluding theatrical) now known or hereafter devised, worldwide in perpetuity.

b) 5 Years All TV Media now known or hereafter devised, including internet streaming (linear only) worldwide.

c) Perpetuity All TV Media now known or hereafter devised, including internet streaming (linear only), worldwide.

d) Digital Downloads-Unless or until the All Media option is exercised, an option for digital downloads of the entire episode (linear only) for sale or promotion. (For clarity, commercial DVDs and other forms of physical home video devices are not included), worldwide, 1 year commencing from the initial download availability.

Then there may be additional options, exercisable by the producer, which cover the following:

1. All Media (excluding theatrical and All TV Media previously licensed in perpetuity) now known or hereafter devised, worldwide in perpetuity (exercisable within 24 months after initial broadcast of the episode).

2. Out-of-Context advertising and promotion-United States, its territories and possessions, All Media up to 0:30; $_____ for 30 days or $_____ per week; exercisable no later than 12 months after the airdate of the final episode of the production.

The quote confirmation containing the publisher's requested dollar amounts for each type of media and/or option request (this is an area of negotiation between the parties) is then returned to the producer via email or fax and is usually valid for ninety days.

If the song is actually used in the show, the producers send a confirmation to the publisher with a request for a formal license to be issued. The request is many times sent shortly after the episode has been broadcast. The license is then issued; it is signed by both parties; and the fees are paid to the music publisher who shares the monies with the songwriter per the terms of the music publishing agreement. Obviously if there are options in the agreement, the fees for the various options will be paid as the options are exercised.

2. The Actual Television Series Synchronization License

The actual television synchronization license is usually not more than a 5 page contract which covers such areas as the series name, episode number or episode name, the title, writer(s) and publisher(s) of the composition, as well as their performance right affiliation (e.g., ASCAP, BMI, SESAC, SOCAN, PRS for Music, APRA, etc.), the territory of distribution, the term/duration of the license agreement, the nature of the use in the episode, the approved licensed media, the license fee as well as option fees, if applicable, domestic and foreign performance licensing issues and procedures, assignment of rights, ownership warranties and representations, indemnifications issues, cure provisions, remedies and governing law.

In addition, the license agreement provides that the show's producer will send the music publisher a copy of the music cue sheet for the episode usually within sixty (60) days of the broadcast of the episode. This is vitally important since the music cue sheet describes how each piece of music (songs, score, and theme) was used in the episode. [ii]

The information on these music cue sheets forms the basis on which writers, composers, and music publishers are paid by the performance right societies around the world for broadcast and/or digital transmission of the series, so it is essential to review these cue sheets to make sure that they contain the correct information. Since timing and how music is used in an episode dictates for many entities how the royalties are calculated, review by the music publisher and/or songwriter (and, if applicable, correction of any error) is an essential element in making sure that royalties are calculated correctly.

3. Income Opportunities After The Series' Broadcast

Because of Glee's popularity, there are a number of income producing areas that come into existence as a direct consequence of the episode being broadcast. For example, there are digital track downloads, album sales, ASCAP, BMI, and SESAC songwriter and publisher performance royalties for airings of the program in the U.S., foreign performance royalties for broadcast of the show outside of the U.S., and ringtones, among others.

A. Popular U.S. Digital Track Downloads
"Teenage Dream" (Katy Perry)
"Don't Stop Believin" (Journey)
"Toxic" (Britney Spears)
"Empire State of Mind" (Jay-Z)
"Poker Face" (Lady Gaga)
"Hello, Goodbye" (The Beatles)
"Like A Virgin" (Madonna)

Since the Glee cast versions are available for download from iTunes, many of the songs sung during the episode generate immediate download sales during the first week after the broadcast of between 50,000 to over 200,000 per song ("Teenage Dream" which achieved #1 on the SoundScan digital song charts being in the latter category).[iii] In the United States, the music publisher will be paid a 9.1 cent statutory mechanical royalty for every download sale, resulting in from $4,550 to over $18,200 in music publisher/writer royalties per composition for the initial one week alone (these monies are known as mechanical royalty income). This statutory mechanical royalty rate is the result of a 2008 Copyright Royalty Board decision and is effective through 2012.[iv]

B. U.S. Album Sales
Glee: The Music
Glee: Journey To Regionals
Glee: The Music, The Power of Madonna

In addition to the individual track downloads, large numbers of Glee albums are sold both physically and digitally. These album sales, in many cases, generate 9.1 cents for each song contained on the album in the United States. With some of the Glee albums selling from 300,000 to over 1,000,000 units, the aggregate songwriter-publisher mechanical royalties for all compositions can result in payouts of over $1 million per album in the United States alone.[v]

C. Foreign Single Track And Album Sales
United Kingdom
Australia
Canada
France

Spain

Since Glee is a worldwide success story, there are substantial downloads and physical sales occurring outside the United States. Other than Canada, (where the rate is 8.3 cents for physical product and 12.2% for downloads), mechanical royalty rates are based either on a percentage of the wholesale or retail price of an album or track. For example, in the United Kingdom, the rate payable to music publishers is 8.5% of the published price to the dealer (PPD) for physical sales and 8% of gross revenue for digital sales.[vi]

D. Performance Income (U.S.)

In the U.S. the three U.S. performing rights organizations (ASCAP, BMI and SESAC...which are sometimes referred to as PROs) collect in the area of 2 billion dollars pursuant to the performance right of the Copyright Act. These organizations negotiate licenses with the users of music (radio, broadcast television, cable, websites, airlines, live performance venues, etc.) collect the negotiated or court set license fees and distribute the money back to the songwriters, composers and music publishers who have performances in each of the licensed media. The broadcast television and cable services pay in the area of 600 million dollars per year in license fees to the U.S. PROs for the use of music on broadcast television and cable.

It is important to note that each of the three organizations has very different payments for different types of music uses on a show. Visual vocals and visual instrumentals (as is the case with most music use on Glee) are normally the highest paid type of performance with theme songs and underscore many times paid at a lesser rate.

Further, each organization has their own payment add-ons due to the popularity or viewership of the show—add-ons which definitely increase the value of all Glee music performances. Based on recent payments, Glee songs earn in the area of $1,800-2,200 in total songwriter and music publisher royalties for one single performance on the Fox network.[vii]

E. Performance Income From Foreign Countries

Since Glee is syndicated in numerous foreign countries including Canada, the United Kingdom, Australia/New Zealand, Japan, India, France, and Russia to name a few, there are additional performance royalties earned by the writers and music publishers of the songs performed in each episode that is broadcast. Close to 600 million dollars is forwarded each year by foreign performance rights organizations to ASCAP, BMI and SESAC for foreign performances of U.S. writers' works with a large portion of that attributable to film and television works.

These royalties are collected by the local performance right society in each country (e.g. PRS for Music in the United Kingdom, SOCAN in Canada, APRA in Australia, SACEM in France, JASRAC in Japan, IMRO in Ireland, etc.) pursuant to

negotiated licenses with the broadcasters or due to decisions of Copyright Boards or Tribunals in each country. The songwriter share of such royalties is remitted by the foreign society to either ASCAP, BMI or SESAC in the U.S. (depending on the membership or affiliation of the writer) for distribution to the songwriter. The music publisher share of performance royalties is usually remitted to the U.S. publisher's representatives in each foreign country (these companies are known as subpublishers) who take a fee (usually a percentage of receipts) for their services and remit the remainder to the U.S. publisher.[viii]

It should also be mentioned that these societies also license and collect royalties for Internet performances and radio performances of the Glee cast versions as well as live concerts or touring events related to the series, among other performance right based uses.

F. Ringtones

If a Glee cast recording of a performance from the series is turned into a ringtone in the United States, the songwriter and music publisher, in the aggregate, will receive a statutory royalty of 24 cents per mastertone download. This rate was established via the aforementioned 2008 Copyright Royalty Board proceeding and decision.[ix] Outside the United States, ringtone royalties are usually based on a percentage of the retail price to the consumer. For example, in the United Kingdom, the rate is 12%.

G. Miscellaneous Income Sources

As with any song that becomes successful or receives substantial exposure, other income opportunities can open up for the songwriter and music publisher. For example, the song may be used as an app, ringtone or ringback; a clothing company may put the lyrics on a pair of jeans; an advertising company may use it in a commercial; a Glee motion picture might be produced using songs from the television show; a novelist might use the lyrics in a book; a Broadway show producer might select the song for inclusion in a theatrical musical; other recording artists may record the song; a film producer might license it for a film; a video game developer might use it as part of a video game, etc. Each of these additional forms of exploitation involve separately negotiated license agreements.

The list of possibilities is never ending and ever expanding.

H. Summing It All Up

Having a musical composition sung by the Glee cast or a non-cast member featured in the series (e.g., Gwyneth Paltrow) represents one of those ultimate licensing opportunities which have positive financial effects far beyond the initial broadcast of the series episode or signing of the television synchronization license...opportunities which benefit not only the Glee cast version but also the original recording and other recordings of the composition.

As we have seen, Glee is truly a goldmine (which can easily turn platinum) for songwriters and music publishers because of not only the money it generates but also the opportunities it creates. Additionally, since the series will continue to be distributed for years into the future via multiple platforms...long after the final first run episode has been completed...new licensing and commercial exploitation opportunities will continue to appear not only for the series itself but for the songs featured in each episode.

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[i] See Jeffrey Brabec and Todd Brabec "Music Money And Success: The Insider's Guide To Making Money In The Music Business" (7th Edition/2011) (Schirmer Trade Books/Music Sales) pages 197-223. See also www.musicandmoney.com for additional information on licensing issues.

[ii] See Jeffrey Brabec and Todd Brabec "Music Money And Success: The Insider's Guide To Making Money In The Music Business" (7th Edition/2011) (Schirmer Trade Books/Music Sales) pages 218-219 for cue sheet information and pages 252-254 for a sample television synchronization license.

[iii] According to Nielsen SoundScan.

[iv] U.S. Copyright Royalty Judges decision of October 2, 2008. "In the Matter of Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding". Rate determination under 17 USC Section 803(b) and 37 C.F.R. Section 351.

[v] According to Nielsen SoundScan.

[vi] UK Copyright Tribunal decision/July, 2007. "In the Matter of a Reference Under the Copyright, Designs and Patents Act of 1988 Between the British Phonographic Industry, Yahoo and AOL and MCPS, PRS and the British Academy of Songwriters.

[vii] See ASCAP Weighting Formula and BMI and SESAC Payment Schedules (ASCAP.com, BMI.com and SESAC.com for details). Also see Jeffrey and Todd Brabec " Music Money and Success: The Insider's Guide To Making Money In The Music Business" chapter 10 entitled" Music Money and Performances" for the history of ASCAP, BMI and SESAC payments, payment changes and considerations (Schirmer Trade Books/Music Sales)

[viii] See Jeffrey Brabec and Todd Brabec "Music Money And Success: The Insider's Guide To Making Money In The Music Business" (7th Edition/2011) (Schirmer Trade Books/Music Sales) pages 432-441, 443-444.

[ix] U.S. Copyright Royalty Judges decision of October 2, 2008. "In the Matter of Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding". Rate determination under 17 USC Section 803(b) and 37 C.F.R. Section 351.

Standard Master Use & Synchronization License Agreement

Name of Artist: _____

Licensor Contact Name: _____ Phone: _____ Email: _____

Producer Contact Name: _____ Phone: _____ Email: _____l@mtvstaff.com

Agreement entered into as of the ___ day of _____ 2012, between _____ (the "Licensor"), [ADDRESS] and _____ ("Producer"), [ADDRESS].

WHEREAS, Licensor owns, controls or administers the copyright in the musical composition written by _____ (ASCAP) entitled "_____" (the "Composition") and whereas Licensor also owns or controls one hundred percent (100%) of the copyright in the master recording embodying the Composition (the "Master"). The Master, together with the Composition embodied therein, is hereinafter referred to as the "Work(s)"; and

WHEREAS, Producer wishes to reproduce and record the Work, in whole or in part, in synchronization and/or timed relation as part of Producer programming tentatively entitled "_____" in whole or in part, and in any and all versions thereof and derivatives including but not limited to, in any program constituting a retrospective, "best of," or review programming, in whole or in part, (collectively, the "Programming");

NOW, THEREFORE it is agreed as follows:

1. In consideration of a fee [include the following defined term only if an actual fee is being paid to the Licensor for the use concerned "(the "Fee")" of $_____ (_____Dollars) based on 100% ownership of the Work(s), Licensor hereby grants to Producer the non-exclusive, irrevocable right and license to record and to perform the Work in synchronization and/or timed relation in the Programming. This License shall cover Producer's unlimited usage in the Programming of the Work(s), or any portions or excerpts thereof. "Notwithstanding anything to the contrary contained herein, the Fee shall only be payable to Licensor if the Work is embodied in the Programming concerned.

2. Producer shall have the right to use all or a portion of the Work(s) in the Programming, and to reproduce, distribute, transmit, retransmit and/or otherwise exploit the Programming via all media now known or hereafter devised.

3. Producer shall have the right to use the Work(s) (in whole or in part) in connection with the advertising, promotion and/or publicizing of the Programming and/or Producer's programming services, in and by any and all media, methods, manner and formats now known or hereafter devised, including, without limitation, television excerpts and trailers (collectively, "Promos").

4. The term ("Term") of this license is: In Perpetuity

5. The territory ("Territory") covered by this license is: The Universe

6. The type and timing of use of the Work is B/v up to full use

7. Licensor's administrative share of the Composition is: 100%

8. Licensor shall not have any right or interest in the Programming and/or Promos, and Producer shall have the right to advertise, promote and otherwise make use of the Programming and Promos as Producer determines in its sole discretion. Notwithstanding the foregoing, Licensor acknowledges that Producer is under no obligation to include the Work(s) within the Programming and/or Promos. The rights and remedies of Licensor and its successors, assigns, designees and licensees in the event of any breach of the provisions of this Agreement by Producer shall be limited to the right, if any, to recover damages in an action at law, and in no event shall any of the foregoing parties be entitled by reason of any such breach to terminate this

and/or portions or excerpts thereof, and Producer shall be entitled to assign this Agreement in its entirety to any person, firm or corporation acquiring ownership of or production rights to the Programming and/or Promos without further payment to Licensor. Notwithstanding the foregoing, Producer shall be entitled to assign all or a portion of the rights and licenses granted herein to an entity or person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified entity or person.

11. As between Licensor and Producer, Producer shall be solely responsible for securing any required non-dramatic public performance licenses from ASCAP, BMI and/or SESAC and/or any other appropriate performing rights organization with respect to the authorized exhibition of the Programming and/or Promos. Notwithstanding anything to the contrary contained in the previous sentence, in the event that Licensor is not, at the time of the delivery to Producer of any Composition that is subject to this Agreement, a member in good standing of a performing rights society, then Licensor hereby grants directly to Producer, a public performance license with respect to each such Composition.

12. Licensor represents and warrants that: (i) Licensor has the full power and authority to enter into and fully perform this Agreement and that it owns or controls the rights in the Work(s) granted to Producer herein; (ii) all elements of the Work(s) (including the Composition and the Master) are either original with the Licensor or are fully cleared by the Licensor; (iii) Licensor's administrative share of the Composition is 100% unless otherwise specified on Schedule A annexed hereto ; (iv) the Work(s) is free and clear of any liens or claims; (v) Producer's use of the Work(s) in the manner authorized herein will not give rise to any claims of infringement, invasion of privacy or publicity or claims for payment of re-use fees or residuals (any and all third party payments shall be Licensor's responsibility) (vi) Licensor will not act in a manner or enter into any oral or written agreements inconsistent with this Agreement; and (vii) the writer and publisher information set forth on Schedule A annexed hereto is complete and accurate.

13. Licensor shall indemnify and hold harmless Producer, its parents, successors, assigns and licensees from and against any and all losses, damages, liabilities, reasonable attorneys' fees and costs, actions, suits, other claims arising out of Producer's exercise of such rights, or Licensor's breach or alleged breach, in whole or in part, of the foregoing representations and warranties. Licensor shall reimburse Producer upon demand for any payment made by Producer at any time with respect to such losses, damages, liabilities, attorneys' fees and costs, actions, suits or other claims to which the foregoing indemnity applies.

14. This Agreement is binding upon, and shall inure to the benefit of, the respective licensees, successors, and assigns of the parties hereto. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and shall be governed by and construed in accordance with the laws of the State of New York.

Agreed To and Accepted By:

[LICENSOR]

_____

An Authorized Representative

Print Name:

_____

Social Security Number or Federal ID:

_____

[PRODUCER]

_____

An Authorized Representative

SCHEDULE A

To the Agreement between [PRODUCER] and [LICENSOR] dated __/__/12

Works Performed by: Aaron Espe

Title of Work*	Name of Each Writer of the Work / % Controlled By Such Writer / Performing Rights Society Affiliation(ASCAP/BMI, etc.)	Name of Writer's Publishing Company Designee / % Controlled By Such Publishing Company Designee	Album Name / Label Name

Music in the Cloud – A Business and Legal Primer

By: David M. Given

What is cloud computing?

A simple definition of cloud computing is a hosted service providing scalable access by a computer user to personal computer files remotely stored on one or more host servers. The benefit of cloud computing is said to be primarily two-fold: First, it allows a user to access files, together with computing resources and IT services, without "high demand" on the their computer's hardware and software; and second, if the service permits, it allows a user to have access to those files anywhere, anytime, from any platform device.

As recorded music can, of course, be reproduced and stored in a computer file (MP3 being the most common computer file format, with Apple's proprietary AAC format a close second), the current development of cloud services now promises a transformation in the way consumers access music. Portability, accessibility and interoperability are the touchstones of that expected transformation.

Currently, a majority of consumers download music files directly onto their computers or other playback devices, where the file is stored on the device's hard drive. To transfer the music to another device, the file must either be burned onto a CD, put onto a flash drive, emailed, or one device must be synced to the other via a cable or other direct connection using a synchronization program.

With cloud music services, entire music libraries are stored in and mobilized from the cloud (in a variety of fashions, depending on the service), and a user can listen to music in his library from any device without performing any syncs or transfers. The cloud therefore promises, among other things, to allow unlimited access to music in the form of on-demand streaming and offline listening, while saving time and computer space.

What types of cloud music services are available?

Music Service Provider	Platform	Allows User's Own Music	Mobile Offline Listening	Auto Sync	Storage Space	Price
iTunes Match	iOs; Web-based computer with iTunes	Yes	Yes	Yes	25,000 songs	Free for iTunes music; $24.95/yr for non-iTunes music
Amazon's Cloud Drive	iOS (vis Cloud Player Website); Android; Web-based computer	Yes	Yes (Android only)	Yes	Up to 1000GB	Free for 5GB then $1/GB/yr
Google Music	iOS (Google Music web application); Android; Web-based computer	Yes	Yes (Android only)	No	25,000 songs	Free (while in Beta)
SoundCloud	iOS; Android; Web-based computer	Yes (recording and uploading your originally-created music)	Yes (if creator allows their sound to be downloaded)	No	unlimited upload minutes	Free for 120 upload minutes up to $740 for unlimited
MP3Tunes	iOS; Android; Web-based computer; PlayStation 3; Xbox 360; Tivo	Yes	No	Yes	Up to 200GB (about 40,000 songs)	Free for 2GB (about 400 songs)
Murfie	Web-based computers	Yes (User mails CDs to Murfie to be transferred into the cloud to sell or trade)	Yes	No	1,000 CDs	$1/CD or $24/yr

What are the legal issues?

Music in the cloud will change how the public acquires, stores, and accesses music. Its expected benefits to the consumer pose potential threats to artists and record labels, however. In addition to the potential to further shift public perception away from the idea of music as a good (as opposed to service), cloud computing raises several distinct legal and public policy issues – among them, copyright infringement, music piracy, user privacy, and system security.

I. Copyright Infringement: Generally, copying a work without permission violates the exclusive reproduction right of the copyright owner. The transfer of a music file from one device to another may violate that right and also be a violation of the copyright owner's exclusive right to distribute his or her copyrighted work. The issue here is whether music service providers or users have the right to reproduce owned or licensed content when transferred from its original form to a digital file in the cloud.

   a. Direct Infringement: Music service providers and users may be directly liable for making copies of music files.

      i. Public Performance Rights: Streaming an unauthorized copy of a song using a "master copy" of the song through a device may violate a copyright owner's exclusive public performance rights. In *Capitol Records, Inc. v. MP3tunes, LLC,* 2011 WL 5104616 (S.D.N.Y. Oct. 25, 2011), EMI Music Group along with fourteen other record companies and music publishers sued MP3tunes, alleging vicarious, contributory and direct copyright infringement. With respect to direct infringement, EMI argued that MP3tunes violated its public performance rights by employing a "master copy" to rebroadcast songs to users who uploaded different

copies of the same recording. The court, however, found that MP3tunes employed no such master copy and therefore could not be found liable for direct infringement.

ii. Reproduction: A copy of the music file is made when it is uploaded into the cloud. Another copy of the music file is made when it is downloaded from the cloud. Users and providers who reproduce unauthorized files into the cloud to distribute or sell these files (a la Grooveshark) are potentially infringing on the exclusive rights of copyright owners.

b. Indirect Infringement: Providers may be indirectly liable for the direct infringement of a third party user.

i. Contributory Infringement: Record labels and music publishers may argue that cloud computing service providers are liable for contributory infringement. A service provider will generally be held liable for contributory infringement if 1) there was direct infringement by a third party and 2) they knew of and materially aided the infringement. Accordingly, once a cloud music service is put on notice that their service provides access to unauthorized works, they must disable access to the material in order to avoid liability of contributory infringement. The seminal case on the subject remains *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), which held that the sale of copying technology is not contributory infringement if the product sold is capable of substantial non-infringing uses. In that case, Sony was found not liable for copyright infringement because the making of individual copies of complete television shows for the purpose of time-shifting was deemed fair use.

In the *MP3tunes* case, the court granted EMI's motion for summary judgment as to its contributory infringement claim. The court found that MP3tunes knowingly and materially aided its users' copyright infringement by continuing to store such content even after receiving EMI's takedown notices. While MP3tunes did remove the links to infringing content (i.e., prevented others from accessing such content), to avoid contributory liability, MP3tunes also needed to delete the actual infringing files from individual users accounts. The court also rejected MP3tunes' argument that its cloud service was capable of substantial non-infringing uses on the grounds that MP3tunes continued to have an on-going business relationship with the infringing users even after being made aware of their infringement.

ii. Vicarious Infringement: A cloud service provider will be vicariously liable for the actions of an infringing user where 1) the provider has the right and ability to control the infringer's acts and 2) when the provider receives a direct financial benefit from the infringement. Unlike contributory liability, the provider need not have knowledge of the infringement. The revenue that the providers receive from users for cloud services will likely be considered a direct financial benefit since consumers may be attracted to the service by the existence and availability of the infringing activity.

iii. Inducement: In *MGM Studios, Inc. v. Grokster, Ltd*, 545 U.S. 913 (2005), a peer-to-peer direct file sharing case, the Supreme Court considered an inducement theory of infringement. The Court held that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other

affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." Cloud service providers that purposefully encourage copyright infringement by promoting the transfer of unauthorized copies of music files may therefore be liable for inducing infringement.

c. Defenses to Copyright Infringement:

i. Digital Millennium Copyright Act: The DMCA provides a safe harbor for service providers. Liability is limited if 1) a third party initiates or requests transmission of copyrighted material, 2) the service provider does not select the material, 3) the service provider does not select recipients of the material, 4) the service provider does not retain copies of the material, and 5) the service provider transmits material through its system without modification of its content. In *MP3tunes*, the court found that MP3tunes was protected under the DMCA. Although still open for appeal, this ruling fosters confidence and encouragement for the technological progression of the cloud era for music services as long as cloud music service providers adopt and reasonably implement compliant notice and take down procedures. If the providers are found to be eligible for immunity, indirect infringement claims will most likely be moot.

ii. Fair Use: In determining whether the use made of a work in any particular case is fair use, the factors to be considered include 1) the purpose of the use, 2) the nature of the work, 3) the amount and substantiality of the portion used, and 4) the impact of the use on the actual or potential market. Uploading for the purpose of distribution and sale is not defensible as fair use; however, uploading for personal use will likely be. Although the entirety of the music file is copied, the impact of copying for

personal use arguably has little to no impact on the market since the user has already purchased the work.

II. Piracy: The advent of cloud music services has the potential to encourage music piracy by allowing users to upload their entire music libraries, including pirated music, into the cloud. Realistically, many music files probably landed in a user's library through illegal downloading. Cloud music services therefore allows for the transfer of pirated files into the cloud. Apple and other cloud music services that have licensing agreements with record labels have found a way to essentially require users to retroactively pay for their pirated music. Users who are willing to pay for space in the cloud are basically paying back record labels for the songs they have already illegally downloaded. With a license agreement in place, record labels receive a percentage of the revenue made from users paying for the cloud service.

III. Licensing: Without licensing agreements, the cloud opens up the possibility of illegal sharing and distribution of files. The reproduction, distribution, and public performance of unauthorized songs could be subject to violation of the copyright holder's exclusive rights. Amazon's Cloud Drive allows users to mobilize their music library by uploading their files into the cloud. Amazon first launched their service without obtaining license agreements with record labels. Amazon reasoned that their users already owned the music they stored in their library and there was no need to obtain a license agreement. However, since Amazon makes money from users uploading songs into Cloud Drive, record labels want royalties and will not receive anything without a license agreement. Public reports suggest that Amazon is now working on obtaining retroactive licenses with record labels.

IV. User Privacy: Cloud computing presents potential privacy issues since users must generally consent to the service provider accessing his or her files. For example, Amazon's Cloud

Drive Terms of Use, Section 5.2 Our Right to Access Your Files states "You give us the right to access, retain, use and disclose your account information and Your Files: to provide you with technical support and address technical issues; to investigate compliance with the terms of this Agreement, enforce the terms of this Agreement and protect the Service and its users from fraud or security threats; or as we determine is necessary to provide the Service or comply with applicable law." As a result, the users of Amazon's Cloud Drive may potentially be subject to the exploitation of their personal information by Amazon. A second, more serious, privacy issue presents itself if users are able to access the files of other users. Users' files are uploaded into the cloud where unknown users may potentially have the ability to access personal files. By uploading files into the cloud, users risk sacrificing their privacy interest in those files.

V. System Security: Security breaches, glitches, and bugs in electronic services happen. In June of 2011, a consumer class-action lawsuit was filed against Drop-box when a glitch in the service allowed login access to millions of drop-box accounts using any password. When uploading their personal files into the cloud, users should be willing to risk flaws in security, and should probably be warned accordingly.

VI. International Jurisdictions: By nature, copyright law is territory specific. The cloud reaches globally and rights in the same work may fall under different jurisdictional laws. For example, as a result of the restrictions of U.S. and international copyright law, Pandora Radio blocks access to non-U.S. listeners. In Canada, Canadian copyright law applies to transmissions that have a "real and substantial connection to Canada." In analyzing copyright issues, the European Union looks at where the transmissions were emitted and where they were received. Clearance in the EU must be obtained on a territory-by-territory basis by obtaining a license

from the collective rights management organization of each country it streams to. U.S. copyright law may apply as long as either the communication originates in the U.S. or the content is received in the U.S. As a result, without international copyright agreements (or treaties), jurisdictional distinctions of copyright law theoretically prevent music from streaming internationally. See David M. Given, *A Modern Pandora's Box: Music, the Internet, and the Dilemma of Clearing Public Performance Rights,* 26 Entertainment & Sports Lawyer 3:1 (2008).

Conclusion:

Overall, the development of this cloud-based movement will be driven by several factors beyond simply the legal issues discussed here. User preferences and business priorities will greatly influence the evolution of the cloud. The cloud era has and will continue to face challenges in balancing the economic interests of all parties involved and the legal implications of those interests. The law adapts to innovations such as cloud computing, but legal precedent can be hard to move sometimes. The cloud has introduced a new level of convenience, flexibility, and ease of use for the consumer. Delays in adapting the current law to the cloud era may impede the success of this technology. Lawyers should be prepared to address these issues.

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CLE 7: Run for Cover - The Future of Cloud Commerce

Notes on Cloud Music Services

Jonathan Blaufarb, Esq. and Vivek Sridharan, Esq.

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1. What is a cloud music service?

The term cloud music service is typically used to refer to both "locker" services and subscription streaming services. However, in practice these are two vastly different services.

Locker Service

The most common use of the term "cloud service" is the digital locker service, whereby a user can store their own music library in a remote external drive to be accessed anytime, anywhere (e.g. iCloud, Google Music, and Amazon). These lockers operate in different ways; Google Music and Amazon allow the end user to upload any music to the locker and stream them; iTunes scans a user's library and matches the songs to their central database, and allows the user to stream the songs that were scanned and matched (i.e. the user does not have to actually upload the music).

Google Music's service is free, for up to 20,000 songs. iCloud and Amazon are free for user's purchased songs, but charge to upload other content after a certain low storage threshold (5 GB for Amazon). iCloud and Amazon also allow a user to store any files, not just music, so long as they pay an annual fee depending on the amount of storage.

Dropbox is another major locker service, however at this time its primary focus is generally on file storage, not specifically on music.

Subscription Streaming Service

The term "cloud service" is also used to refer to all-you-can-eat streaming services, whereby a user does not need to own the content to be able to access and stream it (e.g. Spotify, Rhapsody, and Rdio). These are more straightforward, either ad-supported or subscription streaming services that charge a monthly fee of around $5-$10.

2. A Brief History of Cloud Services

MP3.com and the creation of locker services

Michael Robertson started MP3.com, the first locker service all the way back in 1997, long before the term "cloud" was in use. MP3.com was promptly sued by the record labels for copyright infringement and Universal eventually won a $53 Million judgment.

Robertson continued to make cloud history by later starting MP3Tunes.com, which was the first scan-and-match service. The scan-and-match technology greatly reduced the amount of storage necessary for the cloud. Again, his company was promptly sued by EMI in 2007; that lawsuit finally concluded six months ago, but this time he won.

The scan-and-match was ruled as legal so long as every copy of a song on the server was uploaded by a user at some point (i.e. so long as MP3Tunes didn't add their own repository of songs to their cloud). The reasoning was that it was unnecessary to upload multiple copies of a digital file that are all identical.

Another key ruling was that it is legal for users to sideload songs to their locker. Sideloading allows a user to click a link to a file and save that file directly to the cloud, as opposed to downloading onto their computer then uploading into the cloud. If such songs were later found to have been illegally downloaded from file sharing sites, the locker service would be protected by DMCA safe harbor provisions.

MP3Tunes fought the case for four years, but the real beneficiaries are Apple, Amazon, and Google. All three will save vast amounts of money and storage space by not having to maintain millions of copies of the same file on their servers, and will not have to proactively police the content downloaded (or sideloaded) into their users' lockers.

Rhapsody and Streaming Services

Rhapsody was the first major US-based "all-you-can-eat" subscription streaming service, starting back in 2001. Their original model was charging $10/month to subscribers to play unlimited songs. More recently, Spotify burst onto the scene, offering a robust free ad-supported service from computers, with subscribers having the additional benefits of access from mobile devices streaming uninterrupted by advertisements. In between, other services started and merged with existing services or simply shut their doors. A number of subscription services are available on the market today (e.g. Rdio, Mog, etc.), and most follow the same model of paying a monthly fee for unlimited access. Competition between the services has driven monthly fees down to as low as $5, and often the services can be bundled with mobile phone services.

Rhapsody, Spotify and other subscription services never experienced the legal issues that plagued locker-based services, as all their content is acquired through license agreements with the owners of the masters (rather than uploaded by users), and the publishing is licensed through societies.

These services pay labels either a per-song flat fee "penny" rate or pay a percentage of revenues divided among all labels on a pro rata basis with respect to the number of plays.

3. Rights issues facing locker services

Master licenses for the Cloud

The cloud service typically needs some combination of the right to reproduce the masters, to transmit/distribute the masters, and the right to publicly perform the masters.

- When a user uploads an MP3 to the cloud, there is a copy being made and transmitted to a central location.
- When that MP3 is re-downloaded by the end user (to another computer, say) then there is another copy and transmission.

- When the user accesses the cloud and plays the music, but doesn't download it, there is a streaming and digital public performance (which creates temporary buffer copies as well). The performance cannot be licensed through SoundExchange as it is an interactive transmission, so they cannot rely on the DMCA for that.
- When iCloud scans and matches the songs, iCloud essentially becomes an interactive streaming service but just for a limited library.

Composition Licenses for the Cloud

Depending on the functions allowed by the cloud service, both mechanical licenses and performance licenses may be necessary for the compositions.

- mechanical licenses for the reproduction and distribution may be necessary, as well as for the temporary buffer copies (sometimes referred to as a "streaming mechanical" or "broadcast mechanical")

- There is also a public performance license, for which ASCAP/BMI/SESAC licenses will be necessary unless they engage in direct licensing with publishers (which could be done on a large scale through a company like Music Reports, for example).

Do these services create derivative works?

An open question is whether a derivative work is made; for example, if a user uploads content and then metadata and artwork is matched by the cloud service to help clean up and organize the user's library, and copied onto the file. Is that a derivative work? Likely not, as it is simply matching it with the original work, but there may be an issue. From a cloud service standpoint, it's best to license the right to make certain types of derivative works and avoid having to litigate the issue later.

Cloud services need to operate territory-by-territory

As copyright laws vary in different jurisdictions, it's possible that something that requires a license in the U.S. does not require one in other territories, or vice versa. Typically, cloud servers need to be in the same territory as the user, to be able to function in compliance with the laws of the territory. As use that may require a mechanical license in some European countries, may not in the United States.

4. Record deals should encompass these rights

A label will want to acquire the rights from their artists to exploit the masters via a cloud music service. If the label owns the masters then this won't be an issue, as they can do whatever they want.

With independent labels, it is increasingly the norm to simply have an exclusive license to the masters for a term of years. In that case, so long as the label has the rights to "exploit the masters in any manner or medium now known or hereafter devised" that language should cover cloud music.

If there is a specific grant of rights, it is important to note that the cloud services typically engage in some kind of copying, alteration, and transmission. So the rights should allow the label to make copies/digital deliveries of the masters, exploit the masters in any form/format, and to publicly perform the masters and transmit the masters from data banks to end users, by any means whatsoever.

The simplest way is to make sure there is an overarching broad grant of rights that give rights to all manners, media, formats, etc.

Conclusion

The advent of the mobile phone as the primary listening device for consumers has created a need for safe, secure storage and access of music on the go. However, cloud services are still evolving, and the quality, array of services, and prices differ across major service offerings.

The important thing to remember is that this market is still in its infancy. It is possible that consumers will continue to place less and less emphasis on ownership of music versus access to music. If that trend continues, subscription streaming services that offer access to almost any song, anytime, anywhere, will look like a better value than uploading a limited library and paying for storage and access. It is also possible that consumers that upload other files and materials to a locker service will find it simple and easy to have their music in the cloud as well, and this could become the norm for most music listeners.

The best thing about the cloud service from a music industry standpoint is that it is another revenue stream for owners of masters and publishers of compositions. With declining record sales, new and creative ways of monetizing music through cloud services are a welcome source of income.

EVERYTHING YOU NEED TO KNOW ABOUT COPYRIGHT REVERSIONS

BOB DONNELLY[†]

During my first thirty-five years as a music attorney the most frequently asked question by artist clients has been "Where are my royalties?" With the American record industry's annual revenue in economic free-fall from fourteen to six billion dollars during the past decade,[1] artists are learning to be less dependent on royalty payments from their record companies. Artists (and their heirs) are now exploring ancillary revenue sources as well as adopting an independent attitude toward exploitation of their work. Given this climatic change, it appears that the most frequently asked question of the next thirty-five years might be "How can I get the rights to my sound recordings and songs back from the labels and publishers who currently own them?" Some lawyers refer to this subsection of copyright law as "copyright termination" practice or "recapturing copyrights" but I will simply call it "Copyright Reversions."

This article is not a primer on the basics of Copyright Reversions because this type of information is already available on the Internet. Instead this is intended to be a comprehensive survey of the who, what, when, how, and why of this complex subject. In homage to the title of my colleague Don Passman's landmark publication, this article will hopefully provide "Everything You Need To Know About Copyright Reversions."

I. BACKGROUND

This article is intended for musicians, songwriters, record label owners, and music publishers (including their lawyers and accountants) who really want to drill down on the specifics of how Copyright Reversion really works and what the future may hold for this complex and important area of law. While the history of copyright terms can be traced to England's Statute of Anne in 1710,[2] we will begin our analysis with much more recent history.

The primary piece of legislation used to decipher Copyright Reversions for the purpose of this article is the Copyright Act of 1976, which went into effect as of January 1, 1978.[3] Section 203 of the Copyright Act allows authors to terminate any transfer of a their copyright(s) made on or after January 1, 1978 and to recapture control of such copyright interests.[4] Any grant, license, or agreement by an author (e.g., composer or recording artist) to a third party (e.g., administrator, co-publisher or record company) made on or after January 1, 1978 may be terminated—notwithstanding the terms of the transfer contract—allowing the rights with respect to the underlying copyright to be reclaimed by the "author."[5] This article shall also discuss

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[†] Partner, Lommen, Abdo; B.A. Providence College; J.D., St. John's University School of Law; M.A Columbia University. The author would like to thank the following people who contributed to this work: Keith Hauprich, John Luneau, Brian Caplan, John Martin, Joseph Salvo, Dan Coleman and Tim Matson.

[1] *See* David Goldman, *Music's Lost Decade: Sales Cut in Half*, CNNMONEY (Feb. 3, 2010, 9:52 AM), http://money.cnn.com/2010/02/02/news/companies/napster_music_industry/#; Tim Arango, *Digital Sales Surpass CDs at Atlantic*, N.Y. TIMES, Nov. 25, 2008, at B1, available at http://www.nytimes.com/2008/11/26/business/media/26music.html.

[2] Statute of Anne, 8 Ann., c. 19 (1710) (Eng.).

[3] 17 U.S.C. §§ 101–805 (1976).

[4] 17 U.S.C. § 203 (2011).

[5] *See id.*

certain termination rights which exist in relation to works that were created before 1978 but the focus of this piece shall be on post 1978 songs and sound recordings.

The earliest copyright laws gave authors an exclusive copyright (i.e the right to own and control their creative work) for fourteen years from the date of publication.[6] From there, if the applicable author was still living, copyright protection could be renewed for an additional fourteen years.[7] This so-called "renewal term" and the question of whether it could be assignable by authors to third parties or their heirs has a history of being the fodder for litigation in the United States. Under the Copyright Act of 1976, the termination right seeks to circumvent the pitfalls of multiple copyright terms and clearly delineates a termination right for the benefit of authors and their heirs.

Specifically, under the Copyright Act of 1976, any grant, license or assignment made on or after January 1, 1978 may be terminated by the author thirty-five years from the date of such transfer if the work was not originally created as a work-made-for-hire for an employer.[8] The paternalistic intent of Congress is quite clear in the legislative history as well as in the mechanics of the applicable statutory provision.[9] Congress declared the necessity of the so-called "thirty-five year rule" to safeguard authors against unremunerative transfers given the likely unequal bargaining power of authors and the impossibility of determining a work's value until after it has been exploited.[10] As the Supreme Court has written on the subject of copyrights, "encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors."[11]

Clearly, Congress recognized that musicians and songwriters frequently find themselves in a disadvantageous position when negotiating the rights to their works. As a result, there is a statutory right to renegotiate these rights either by: (1) entering into a new contract with the original record company, music publisher, or other third party (sometimes called the "grantees") following the timely exercise of a proper Termination Notice; or (2) recapturing these rights so that the author will be free to deal directly with new grantees at a point in time when the author is more business savvy and likely to have greater bargaining power than when the initial grant was made. But this termination right does not extend to so-called "works for hire" which are works in which someone other than the original creator is entitled to claim copyright "authorship" status.[12]

Unless you use the Mayan Calendar, the most significant date over the next twelve months will be January 1, 2013. It might surprise some people even in the music community to learn that sound recordings were not historically subject to federal copyright protection until enactment of the 1971 Sound Recording Act, which established Federal copyright protection for sound recordings created on or after February 15,1972.[13] Accordingly, the new kid on the block, in terms of Copyright Reversions, will be the opportunity that recording artists might have to regain ownership and control over their sound recordings starting in 2013 under the thirty-five year rule.[14] But that part will depend on whether the artist recording contract or songwriter

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[6] *See* Copyright Act of 1790, ch 15, § 1, 1 Stat. 124, 124 (1970).
[7] *Id.*
[8] *See* 17 U.S.C. § 203.
[9] *Id.*
[10] H.R. Rep. No. 94-1476 (1976).
[11] Mazer v. Stein, 347 U.S. 201, 219 (1954), *superseded by statute*, 37 C.F.R. 202.10(c) (1959).
[12] *See infra* Part II.A.3.
[13] Sound Recordings Act of 1971, Pub. L. No. 92-140, 85 Stat. 391 (1971) (codified as amended at 17 U.S.C. §§ 101, 102(a)(7), 106(1), 106(3)–(4), 116, 401–402, 412, 501–504 (2011)).
[14] *See* 17 U.S.C. § 203.

publishing agreement is deemed a "grant" subject to a termination right or a "work for hire" conferred on the record label or music publishing company and therefore, not subject to a termination right. As the case law relating to Copyright Reversions and the work for hire status of sound recordings has not yet been definitively established and because so much is at stake here, a myriad of issues surrounding Copyright Reversions, especially as they relate to music, are certain to be the subject of court battles for many years to come. If these decisions are in the artists' favor, this will not simply be a game-changer it will be an industry-changer.

II. AN OPPOSING VIEWPOINT

Allow me to begin by disclosing my personal bias on this issue. For nearly four decades I have represented hundreds of musicians who have sold many millions of albums. I consider myself to be an artist's rights lawyer and feel strongly that their position will prevail in the contest for which the starter's pistol sounds on January 1, 2013. That said, I want you to know what the other side thinks about this issue. Let me start with the opposition's point-of-view. Since there is relatively little organized opposition to the concept of recapturing copyrights in songs, I will begin by focusing on the most contentious issue – the recapture of copyrights in sound recordings.

According to Billboard Magazine, last year's record sales by so-called "legacy artists" (e.g., Rolling Stones, Willie Nelson, The Police, etc.) represented roughly half of all albums sold and sixty percent of all singles sold.[15] So what's at stake? Any albums released in 1978 by these legacy artists, and hundreds of others, may soon be subject to Copyright Reversion. *Remember*: Any grant, license or assignment *made on or after January 1, 1978* may be terminated by the author thirty-five-years from the date of such transfer (provided that the author has properly followed the termination procedures outlined in this article).[16] I think it's safe to say that the record companies who currently own these copyrights are not planning to FedEx the sound recording masters back to these artists promptly upon the statutory termination date.

The Recording Industry Association of America (RIAA) is the trade group for America's record companies. It describes itself as "the trade organization representing the major music companies that create and manufacture 85% of all legitimately recorded music produced and sold in the United States."[17] In the course of my research for this article, I've located a surprisingly small number of position statements on this subject by the RIAA since the so-called "Millennial Flip-Flop."[18] Therefore, the following is simply my surmise as to what their position is likely to be.

A. Employer-Employee Considerations

As their opening salvo, record companies will likely take the position that sound recordings are not available for Copyright Reversion because they are "works made for hire" which are expressly excluded from the termination provisions of the Copyright Act.[19] Pursuant to

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[15] Glenn Peoples, *Now He Tells Us: Sean Parker Believes in The Record Industry*, BILLBOARD.BIZ (May 25, 2011), http://www.billboard.biz/bbbiz/industry/record-labels/business-matters-napster-co-founder-sean-1005203622.story.

[16] *See* 17 U.S.C. § 203

[17] *About Us*, RIAA, http://www.riaa.com/aboutus.php (last visited Mar. 22, 2012).

[18] *See infra* Part II.B.4.

[19] *See* 17 U.S.C. § 203(a).

the provisions of § 101 of the Copyright Act of 1976 there are only two means by which a sound recording can qualify as a work for hire.[20] The first is where an employee creates a work (e.g., song, sound recording, etc.) during the course and scope of his or her employment.[21] Most record companies will have a difficult time supporting this position. *Cmty. for Creative Non-Violence* ("CCNV") established that most artists do not qualify as "employees" under either the generally accepted definition of the word or the case law, as they do not work forty-hour weeks, receive W-2 forms, or satisfy many of the other criteria the Supreme Court holds necessary in order for someone to qualify as an "employee" under that prong of the test.[22] Moreover, in many instances the express language of the recording agreements, which are usually drafted by the record company, states that the relationship between the relevant parties is not that of an employer and employee. For example, many recording agreements have disclaimer clauses that are similar to the following: "Company (i.e., record company) and Artist (i.e., recording artist) are independent contracting parties. Under no circumstances shall Artist be deemed an employee of the Company nor is Company the employer of Artist."[23]

Unfortunately the Copyright Act of 1976 does not provide a definition as to who qualifies as an "employee." Rather, over the years the common law of agency and the Supreme Court decisions have evolved into a series of factors to be used in deciding if a person is an "employee."[24] None of these factors are solely determinative and they are measured differently depending on the facts in each case.[25] The thirteen factors listed in CCNV considered when determining if a hired party qualified as an employee include: (1) the hiring party's right to control the manner and means of production; (2) the skill required of the hiring party; (3) the source of the hiring parties instrumentalities and tools; (4) the work's location; (5) the duration of the parties' relationship; (6) whether the hiring party has the right to assign additional work; (7) the degree of the hired party's discretion of when to work and for how long; (8) the hiring party's regular business;(9) the hiring party's role in hiring and paying assistants; (10) whether the work is part of the hiring party's regular business; (11) whether the hiring party is in business; (12) whether the hiring party provides employee benefits and (13) the tax treatment of the hired party.[26]

Interpreting these factors in a light which is most favorable to their position, I suspect that record companies will argue that recording artists qualify as employees under the above-cited test as labels may control: the actual payment of the recording budget; the selection of tracks to be released as "singles"; the mastering of the album; the approval of producers and studios; and the right to require the delivery of additional albums.

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[20] *See* 17 U.S.C. § 101 (2011); *See also* Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730 (1989) (using § 101 to determine whether a sculpture was a work for hire, when a non-profit organization hired an artist to create the it).

[21] 17 U.S.C. § 101.

[22] *Cmty. for Creative Non-Violence*, 430 at 747 n.13 (quoting Second Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1975 Revision Bill, Chapter XI, 12–13(1975)).

[23] Many sample license agreements can be found online as examples. *See Master Licensing Agreement*, MUSICDEALERS.COM, http://www.musicdealers.com/sites/default/files/MD-Master-License-Agreement-for-USv1.pdf (last visited Mar. 23, 2012); *Exclusive Recording Artist Agreement*, COSMIK.COM, www.cosmik.com/aa-june02/artistowned.doc (last visited Mar. 22, 2012).

[24] *See* RESTATEMENT (SECOND) OF AGENCY § 220 (1958). See, e.g., Kelley v Southern Pacific Co., 419 U.S. 318, 323–24, and n.5 (1974); Ward v. Atlantic Coast Line R. Co., 362 U.S. 396, 400 (1960); Baker v. Texas & Pacific R. Co., 359 U.S. 227, 228 (1959).

[25] *Cmty. for Creative Non-Violence*, 430 at 752 (citing *Ward*, 362 U.S. at 400).

[26] *Id.* at 751–52.

Now, let's look at the aspects of this process that the record companies do not exert control over:

(1) An artist frequently writes the songs that are recorded which gives him or her a very important role in the creative process. Even in those instances where the artist does not write his or her own songs, they are usually the principal decision maker as to which songs will be chosen.

(2) A recording agreement between the artist and a record company requires the artist to be responsible for the recording costs. In the event the record company in fact pays the recording costs, they are almost always considered "advances" which the artist is required to repay out of his or her artist royalties.

(3) The artist frequently chooses the producer, contracts for the services of the producer and is responsible for all payments to the producer (including, but not limited to, the producer's royalty) which are paid out of the artist's so-called "all-in" artist royalty.

(4) The artist selects the studio musicians/engineers/mixers and any other third parties contributing to their album. These individuals are also contracted with and paid by the artist rather than the record company.

(5) The artist also (usually) chooses which particular songs will appear on his or her album and the sequence in which those songs appear.

I believe that when the record companies' likely arguments are weighed against the actual role of the typical artist in the creation of sound recordings, on a factor by factor basis, it becomes apparent that most artists do not qualify as "employees" under the relevant case law as the recording artists clearly exert greater independence and significant artistic integrity. Moreover, if the record companies were able to successfully argue that artists really were employees all along, they might attract some unwanted attention from an entity called the IRS (and I'm not talking about The Police's old record company) because this could result in some serious liabilities in relation to unpaid back taxes.

B. Independent Contractor

Since the labels will not be able to successfully assert that recording artists are employees, the only other alternative for them to repel an artist's claim to Copyright Reversion is to succeed in establishing the position that sound recordings nonetheless qualify as a work for hire because: (1) the sound recording was specifically ordered or commissioned by the company; (2) the work falls within one of the nine categories of works by independent contractors that qualify as works for hire as enumerated in § 101 of the Copyright Act; and (3) that the parties entered into a written agreement by which the artist granted these rights to the record company.[27]

[27] 17 U.S.C. § 101 (2011).

1. Specifically Commissioned By Company

Record companies will not be able to establish that most sound recordings were specifically ordered or commissioned by the hiring party. Let's be clear, we are not talking about those gimmick acts or novelty acts created by the record companies or production companies wherein said record company or production company assembled the recording artists, furnished them with songs, musicians and producers, taught them how to sing, dance and handle the media, and injected them into pop culture. That's a discussion for another day. Over the past few decades, a typical album is not prepared at the record company's expense since their contracts with the artist usually provides that the artist "shall be responsible for, and shall pay, all recording costs."[28] In fairness it could be said that many albums never earn enough in royalties for the artist to reimburse the monies advanced by the label; thus, lawyers for that record company might argue that in relation to those particular sound recordings, the label did pay the recording costs. But this is a slippery slope since record company accounting practices enable most record companies to recoup these recording costs much earlier in time than the date on which they are officially repaid the advances from the artist's royalty account. Nevertheless, it should be noted that there is no statutory requirement that the commissioning party pay the commissioned party any consideration. This enables not-for-profit groups to accept donated services from artists and still own that artist's work if it was properly contracted for pursuant to a valid work for hire agreement.

There are a few court decisions in relation to pre-1978 recordings that favor the record companies' position including: *Fifty-Six Hope Rd. Music Ltd. v. UMG Recordings*.[29] In that decision the Federal District Court for the Second Circuit found that the particular Bob Marley recordings at issue were recorded for the benefit of the record company since the record company was found to have paid the recording costs, selected the producers, and had the right to accept or reject the master recordings.[30]

Most record contracts continue to use commissioning language such as "Company hereby engages the Artist to record and deliver . . . ." Nevertheless, these contracts also provide that "artists will engage all artists, producers, musicians and other personnel for the recording sessions hereunder." For much of the decades formed by the 1950's and 1960s, many record companies did control a significant portion of the recording process.[31] They chose the studios, which they frequently owned. They chose the producer, who was frequently under contract to that label. They chose songs to be recorded and they paid all costs associated with each project. However, this process had changed well before sound recordings received official copyright protection in 1972. Certainly by the time that the majority of the post-1978 sound recordings now likely subject to the thirty-five-year rule were created, most record companies decided to make the recording process the contractual and financial responsibility of the artist. I believe they will come to regret that decision when the courts render the first Copyright Reversion decisions.

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[28] *See supra* Part II.A.2.

[29] Fifty-Six Hope Rd. Music Ltd v. UMG Recordings, No. 08 Civ. 6143, 2010 U.S. Dist. LEXIS 94500 (S.D.N.Y. Sept. 10, 2010). Often referred to as the "Bob Marley" case.

[30] *Id.* at *24-27.

[31] *See generally* CONTINUUM ENCYCLOPEDIA OF POPULAR MUSIC OF THE WORLD: MEDIA INDUSTRY AND SOCIETY 641 (John Shepherd et al., eds., 2003); Eric Herbert, *How the Record Label Business Model Died and Why it's Changing Music Today*, EVOLVER.COM (Aug. 4, 2009), http://evolvor.com/2009/08/04/label-2-0-turns-the-classic-record-label-business-model-upside-down/.

2. Written Agreements Granting Rights

In order for a record company to successfully sustain its position that a sound recording is a work for hire, there must be a written agreement signed by the parties granting these rights.[32] A conventional recording agreement contains a clause, which is usually referred to as a "Grant of Rights" provision. It usually looks something like this:

> You (i.e., the artist) warrant, represent and agree that throughout the Territory, Company (i.e., the record company) is the sole, exclusive and perpetual owner of all sound recordings delivered hereunder or otherwise recorded by You during the Term of this Agreement. Each sound recording made under this Agreement or during its Term, from the inception of its recording, will be considered a "work made for hire" for Company: if any such sound recording is determined not to be such a "work made for hire", it will be deemed transferred to Company by this Agreement, together with all rights and title in and to it.[33]

Since this "belt and suspenders (and elastic waist band)" clause is virtually non-negotiable and contained in almost every record deal, it would appear that the record company has a valuable trump card here.[34] However, fortunately for the artist, even a written and signed contract is not necessarily a bar to the artist's right to Copyright Reversion Under the Copyright Act of 1976, as the termination right seeks to circumvent the pitfalls of multiple copyright terms and clearly delineate a termination right for the benefit of authors and their heirs. Accordingly, unless a court determines that there is no Copyright Reversion because sound recordings are "works made for hire," the Copyright Reversions rights possessed by the authors of the sound recordings pursuant to § 203 are "inalienable," which means that they are incapable of being transferred or surrendered and cannot be assigned away or sold, with a few possible exceptions which will be discussed later in this article.[35]

3. The Work For Hire Definitions of Section 101

Section 101 of the Copyright Act of 1976 delineates what types of works by their nature are incontestably works for hire.[36] It is really a two part test: (1) was the work created by an employee within the scope of his or her employment, and; (2) if not, is it (a) one of the nine enumerated work-for-hire classes of works and (b) is there a signed writing between the parties acknowledging the work for hire relationship?[37] Included on this list of nine enumerated categories of works are motion pictures and many other categories of media.[38] Not included on this list are songs and sound recordings. Since the term "sound recordings" is not explicitly contained in the enumerated categories list, record company lawyers will need to find other language in that section to justify their claim that sound recordings are indeed works for hire. The two classes of works qualifying for "work for hire" treatment which they are most likely to

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[32] *See* 17 U.S.C. § 101 (2011).
[33] *See supra* text accompanying note 23.
[34] Of note, these clauses rarely, if ever, appear in music publishing agreements.
[35] *See* 17 U.S.C. § 203 (2011).
[36] 17 U.S.C. § 101.
[37] *Id.*
[38] *Id.*

choose are: (1) a contribution to a "collective work" which is defined as a work, "such as a periodical issue, anthology, or encyclopedia in which a number of contributors, constituting separate and independent works in themselves are assembled into a collective whole"; or (2) as a "compilation" which is defined as a work "formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works."[39]

There are a number of distinctions between the typical definitions for compilations and collective works and sound recordings. First, most sound recordings are the creative product of one individual artist (e.g. James Taylor) or a group of artists working together as a cohesive group (e.g. Aerosmith…well maybe not always so "cohesive"). Whereas the examples of collective works and compilations described in the Copyright Act generally suggest a group of many authors working individually, like contributors to an encyclopedia.[40] Another factor that weighs against the position of record companies is their standard business practice of releasing and selling individual tracks as so-called "singles." Therefore, it will be difficult for record companies to argue that these works were specifically commissioned to be part of a collective work or compilation.

Record companies might attempt to claim that the sound recordings should qualify as works for hire since they were specially commissioned for use in an audiovisual work.[41] I believe this argument will fail for several reasons: (1) the audiovisual recordings contemplated by record contracts, with a few exceptions, were not specifically commissioned as audiovisual works, they were commissioned as sound recordings; (2) most audiovisual recordings in standard record deals are envisioned as promotional vehicles to stimulate sales of sound recordings and (3) because sound recordings are by their definition something other than a audiovisual work,[42] the two are per se mutually exclusive which means that an audiovisual work cannot encompass a purely audio recording.

Record companies may also try to take the position that the failure to include "sound recordings" in the definition of what constitutes a work for hire was a legislative oversight, but this is simply not the case. Congress worked on this legislation for fifteen years and heard testimony from numerous individuals and trade groups. Most telling is the fact that right in the middle of these deliberations, Congress passed the 1971 Sound Recordings Act, which granted federal copyright protection to sound recordings.[43] Consequently, the failure to include the term "sound recordings" in the works for hire definitions of the Copyright Act under 17 U.S.C. Section 101 was, in my estimation, clearly a deliberate decision.

Lawyers for the record companies are likely to take the position that the creation of an album involves "collecting" and "assembling" tracks, which they "selected, coordinated or arranged." Some record companies believe that the collection process (i.e. the selection and sequencing of an album) is itself an act of authorship and therefore can be commissioned to an independent contractor such as an artist or producer. Therefore they argue that all contributions to the album, including both the individual sound recordings and the selection and sequencing of them into the album, are "works made for hire" even if the label itself had nothing to do with the

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[39] *Id.*
[40] *See id.*
[41] *See id.*
[42] *See id.*
[43] *See* Sound Recordings Act of 1971, Pub. L. No. 92-140, 85 Stat. 391 (1971).

selection and sequencing process. I don't agree. However, in limited situations, for certain albums by certain artists, they could be correct. For example, the recent *Now That's What I Call Music 79* album might fit this description. This recording contained multiple tracks and each by a different artist (e.g., Adele, Lady Gaga and LMFAO). Since these tracks were already bona-fide hits they were "pre-existing" and were separately subject to copyright protection. The tracks were then presumably selected, collected and assembled by an employee of Universal (…and I'll give them the benefit of the doubt and assume that a modicum of creativity was involved in this process). Additionally, there is a Second Circuit decision that seems to support the record companies' position on this issue. In *Bryant v. Media Right Prods., Inc.*, the court held that the songs, which were included on those albums that were the subject of the dispute, were "preexisting materials" that resulted in a compilation due to the original way in which the materials were selected and arranged.[44] The *Bryant* case addressed how statutory damages may be computed for compilations but did not consider the sweeping effect this ruling might have on the separate and distinct issue of Copyright Reversions.[45]

Despite some indicia which might be favorably construed in the record companies' favor, I'm still not certain that they will win this argument. I believe the courts will need to examine what was the intention of the parties at the moment when each of these recordings was created. If each separate track was not created as a work for hire at its' inception, I think it's unlikely they would later become works for hire simply because they were bundled into a compilation album.

Nevertheless, the types of compilation albums that I just described are not typical. The vast majority of the post-1978 albums that might be subject to Copyright Reversion were recorded entirely by one group or a solo artist. As previously stated, the artist selected the tracks on these albums, as well as the sequencing of those tracks. The artist also was responsible for the payment of all recording costs, hired and paid the producers, and selected and paid the studio musicians, background vocalists and mixers. Only one party was responsible for the actual creation, direction, assembling and control over the making of most post-1978 sound recording, and in my estimation that party was clearly not the record company.

4. The Satellite Home Viewer Improvement Act of 1999[46] Debacle

Apparently some RIAA members were not feeling quite so bullish in relation to their position that sound recordings would be determined to be compilations or collective works because in 1999 their lobbyists inserted the term "sound recordings" into the definition of what could be considered as a work for hire.[47] Unfortunately, the organizations in Washington who should have been protecting the rights of music artists were asleep at the switch and this "technical amendment," to use the RIAA's understated description of this cataclysmic change, which had nothing whatsoever to do with satellite transmissions and everything to do with depriving musicians of their Copyright Reversion rights was passed and signed into law by a generally artist-friendly President Clinton.[48]

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[44] Bryant v. Media Right Prods., Inc., 603 F.3d 135, 141 (2d Cir. 2010).

[45] *Id.* at 144.

[46] Intellectual Property and Communications Omnibus Reform Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501A-521, tit. I (1999) (repealed 2000).

[47] Steve Gordon, *The Comprehensive Guide to Reclaiming Old Masters*, ENT. ART SPORTS L. BLOG (Sept. 5, 2011, 12:22 PM), http://nysbar.com/blogs/EASL/2011/09/the_comprehensive_guide_to_rec.html.

[48] *Id.*; Mary LaFrance, *Authorship and Termination Rights in Sound Recordings*, 75 S.C. L. REV. 375, 375–76 (2002). The "amendment" was inserted, or hidden depending on your point-of-view, into the Satellite Home

I'm proud to say that I was part of the group that worked vigorously to repeal this amendment. I can't tell you how shocked I was to hear Congressperson after Congressperson and Senator after Senator tell me "I thought that the RIAA was the artists' spokesperson on the hill." And while it's true that the interests of labels and musicians can sometimes align, this was one of the many examples where they did not.

There were several tireless champions for repeal of this amendment including Congressman Howard Berman (D-CA) and recording artists Don Henley and Sheryl Crow.[49] But a real game-changing moment came when Congresswoman Mary Bono (R-CA) decided to support the repeal efforts[50] because she came to recognize the deleterious effect, which her initial vote supporting this legislation would have on the value and control of the sound recordings in the estate of her late husband Sonny Bono.

In 2000, both sides in this issue agreed to legislation, removing the word "sound recording" from the previously enumerated list of work for hire categories under Section 101 (earning it the moniker of "The Millennial Flip-Flop").[51] The parties also reset the odometer back to zero by agreeing that neither the amendment nor the repeal thereof could be construed in the future as evidence for or against either party's position in relation to whether a sound recording constituted a work for hire.[52]

III. WHO IS AN AUTHOR?

According to U.S. law, the copyright "vests initially in the author or authors of the work."[53] Since the authors are the only ones entitled to copyright protection, it begs a very important question, "Who is the author?" Curiously, the Copyright Act of 1976 does not provide a specific definition as to who qualifies to be considered an author for copyright protection purposes.

As we know, record companies are expected to claim that they are the authors of certain sound recordings that were made at their expense. One possible tactic that they might use is the statute of limitations. I believe some labels might argue that purported copyright claimants (i.e. the artists who recorded the work) had a three-year window from the date of the label's initial copyright claim, occurring upon registration with the Copyright Office, to contest the label's copyright claim. Failure to do so would cause the artists to be precluded from exercising their Copyright Reversion rights later as a result of the statute of limitations.[54] For the past several decades, record companies have usually filed the "SR" form with the Copyright Office declaring themselves as the authors of the sound recording. In my nearly four decades as a music lawyer, I can't remember one instance where this form was ever shown to the artist for their approval or even where a copy was given to them after it was filed. It is long standing case law and Copyright Office policy that the information contained on these forms helps to establish the

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Viewer Improvement section of the Intellectual Property and Communications Omnibus Reform Act, which was then attached to the 1,174-page federal appropriations bill. *See* Bill Holland, "*Work-for-Hire" Law Rattles Proponents of Artists' Rights*, BILLBOARD, Jan. 15, 2000, at 1.

[49] *See* Bill Holland, *Steps Taken Towards Reversal of New Law*, BILLBOARD, July 29, 2000, at 1.

[50] *See* Bill Holland, *Congress Congratulates Artists*, BILLBOARD, Sept. 30, 2000, at 1.

[51] *See* Work Made for Hire and Copyright Corrections Act of 2000, Pub. L. No. 106-379, 114 Stat. 1444 (2000); 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 5.03[B][2][a] (2011).

[52] *See* Nimmer, *supra* note 51 at § 5.03[B][2][a].

[53] 17 U.S.C. § 201(a) (2011).

[54] *See* 17 U.S.C. § 507(b) (2011).

validity of the copyright and is not per se proof of authorship.[55] While these SR copyright forms would be used in support of the record companies' position on the work for hire issue, they would only be one factor and would clearly not be determinative factor. I believe the courts will see this tactic for what it really is—a strategy attempting to deprive artists of rights granted to them under the provisions of the Copyright Act—and they will refuse to find in record labels' favor on this issue.

Over the years courts have had to address authorship issues in many cases. These decisions as well as other scholarship on this subject, suggest the following factors would be considered in trying to answer this question.

(1) The creator of the work, which was independently created.[56]

(2) The party who registered the work with the U.S. copyright office (this confers to a rebuttable assumption that the information contained in the filing is valid) or shows other manifestations to be considered as an author.[57]

(3) The party who infused the work with degree of creativity.[58] However, there is no "bright line" test as to what constitutes an acceptable amount of creativity.

(4) The party who exercises some amount of personal autonomy over the creation of the work.[59]

(5) The party who manipulated tools (like a mixing board or computer program) which figured prominently in the creation of the work.[60]

(6) The party who originates the work (rather than the party who fixes it in a "tangible expression").[61] Originality = authorship.

It is abundantly clear that a songwriter who writes the music and a second songwriter who writes the lyrics are the authors of that song. In most instances, it is also abundantly clear that the featured vocalist and the featured musicians who create a sound recording are the authors of that sound recording. What about other contributors such as producers and studio musicians?

According to a statement contained on the RIAA website one of the reasons why artists should not exert their Copyright Reversion rights is as follows:

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[55] *See* 17 U.S.C. § 410(c) (2011); Nimmer, *supra* note 51 at § 12.11[B]. *See e.g.*, Durham Industries, Inc. v. Tomy Corp., 630 F.2d 905, 908 (2d Cir. 1980) (stating that "[i]t is clear . . . that a certificate of registration creates no irrebuttable presumption of copyright validity.").

[56] *See* Cmty. For Creative Non-Violence v. Reid, 490 U.S. at 737 (explaining that the author is generally the party who actually creates the work).

[57] *See supra* text accompanying note 55.

[58] *See* Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 61 (1884) (concluding that for art, the author is the man who creates or gives effect to the idea, fancy, or imagination).

[59] *See* Thomson v. Larson, 147 F.3d 195, 202–203 (2d Cir 1998); *See, e.g.*, Erickson v. Trinity Theatre, 13 F.3d 1061, 1071–72 (7th Cir 1994).

[60] *See* Diamond v. Gills, 357 F. Supp. 2d 1003 (E.D. Mich. 2005).

[61] *See* Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 348 (1991).

> As Paul Goldstein, professor of law at Stanford University explained in his statement, as a collaborative work, if sound recordings were not considered a work made for hire, they would be tied up in endless disputes and negotiations over copyright ownership among any and all of the individuals who had any colorable claim of authorship.[62]

We can always count on the RIAA mother-ship to be looking out for the interests of their close friends in the artist community. Seriously speaking (…I say that in case you missed my attempt at irony in the last sentence), the RIAA raises a legitimate point here. In order to exert their Copyright Reversion rights, artists need to understand who the authors of these sound recordings are.

First of all, it's important to understand that it is entirely possible to have joint authorship of a work (and thus co-ownership of a work). According to statute this might occur where a sound recording was "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."[63] It's also important to recognize that parties can be joint authors even where there is no contract or writing that memorializes this relationship and to be clear, this is very often the case.[64]

The following represents my point-of-view on how the usual contributors of the recording process might expect to be treated in relation to their claims of co-authorship.

A. Producers

As a practical rule, I believe record producers who actively participate in the creation of a sound recording are authors under the provisions of the 1976 Copyright Act. Unfortunately, there isn't a standard formula to determine who is a producer.[65] The following are a few of the most typical permutations.

> (1) Some producers are responsible for virtually every phase of the recording process including renting the studio/hiring the musicians/renting the outboard gear/hiring arrangers, copyists, engineers and mixers and most importantly, actually producing the tracks.
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> (2) Some producers perform more like engineers and limit their contributions to the recording console.

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[62] News Release, *RIAA President Praises Congress for Hearing on 'Work for Hire'*, RIAA (May 25, 2000), *available at* http://www.riaa.com/index.php (search "President Praises Congress"; then follow the "RIAA President Praises Congress for Hearing on 'Work for Hire'" hyperlink).

[63] 17 U.S.C. § 101 (2011).

[64] *See* Childress v. Taylor, 945 F.2d 500 (2d Cir. 1991) (holding that "joint authorship can exist without any explicit discussion of this topic by the parties . . . .").

[65] *See generally* Dan Connor, *The Role of a Music Producer Explained*, TheStereoBus.com (Dec. 7, 2007), http://thestereobus.com/2007/12/07/the-role-of-a-music-producer-explained/; Lady Tha ProducHer, *The Misunderstanding of the Role of a Music Producer*, StudioNoise.com (Apr. 14, 2011), http://www.studionoize.com/2011/04/the-misunderstanding-of-the-role-of-a-music-producer/.

(3) Some producers are more important than the lead vocalists and act as the principal creative engine, engaging the vocalists and musicians to record a song, which the producer often wrote.[66]

Since a producer's contribution cannot be reduced to a rigid formula, there is no standardized test for gauging when his or her contribution rises to the level of being accorded an authorship credit. Precedent on this subject seems to suggest that "originality" which is the trigger point test for authorship is an extremely low bar that is easy to overcome.[67] However, I think it's safe to say that most producers involved in a typical post-1978 recording session will be determined to be authors of those sound recordings.

I believe one reliable factor that the courts could look to in determining whether a producer qualifies as an author is royalty payments. As a general rule, I think it's safe to say that the artist would not have given a producer a substantial portion of the artist's royalties unless that artist believed that their producer contributed in a substantive way to the recording process. Most producers are paid a royalty out of the so-called "all-in royalty," paid to artists by record companies.[68] Typically a producer would receive a 3% royalty out of the artist's 15% royalty, though numbers will vary for both the producer and the artist, the producer generally will receive approximately 20% to 25% of the royalty amounts payable to the artist. Since this percentage was typically negotiated and committed to a contract between the artist and producer, I believe this would be a reliable standard to use in determining what each party's percentage of authorship might be in the recaptured sound recording copyright.

B. Engineers/Mixers

As a general rule, I do not believe that the contributions of most engineers and mixers rise to the level of authorship in a sound recording. In a typical recording process the engineers and mixers are executing the creative vision of the artist and producer. But that's not always the case. There are so-called "superstar mixers and engineers" who are hired precisely because of their ability to enhance the final record with their unique creative input. For example, engineer Alan Parsons is credited with some of the sonic highlights of Pink Floyd's masterpiece "Dark Side of the Moon."[69] Often these superstar mixers and engineers will receive one or two royalty points in consideration for their services. I believe that as a general rule, if an engineer or mixer was valuable enough to have been granted a royalty, he or she should also be considered a co-author of the sound recording. Just as in the case of the producer, the ratio that the royalty an engineer or mixer receives bears to the artist's all-in royalty could be used to determine the percentage of co-authorship/co-ownership in the recaptured sound recording copyright. Nevertheless, this is just my opinion. The Copyright Act as currently written has no such

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[66] Steven Greenberg who created the ubiquitous pop song "Funkytown" is a perfect example of this latter category. I'm proud to say that my law firm, Lommen Abdo, filed the very first Termination Notice (*see infra* Part VI) with the U.S. Copyright Office on behalf of Steven Greenberg as the author of this sound recording.

[67] *See* Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 362 (1991); The Trade-Mark Cases, 100 U.S. 82, 94 (1879).

[68] The "all-in royalty" is the artist's royalty rate and the producer's rate combined, the amount the artist keeps is called a "net royalty rate." *See* BOBBY BORG, THE MUSICIAN'S HANDBOOK 182 (2003).

[69] *See* Nick Mason, The Inside Out: A Personal History of Pink Floyd, 186 (2005).

financial contribution test. The sole test of authorship is still whether the individual created an original work fixed in a tangible medium.[70]

C. Studio Musicians/Back-up Vocalists

It's also my opinion that studio musicians and back-up vocalists are generally not entitled to be credited as co-authors of a sound recording. Typically these "hired guns" are being asked to execute, sing or play parts, which were written and arranged by others. Of course, there are aberrational examples where a studio musician's solo was an extraordinary addition to a work (e.g., perhaps Jimmy Page's long rumored early studio work with The Kinks on "You Really Got Me") or where a back-up vocalist had substantial creative impact on the final creative product (e.g. Martha Wash's memorable refrain "Everybody Dance Now" in the C+C Music Factory's song "Gonna Make You Sweat").

Studio musicians and back-up vocalists often sign a written declaration in which they have assigned all right, title and interest in their performance to the artist or producer as a work for hire. This article takes the position that the Copyright Reversion rights of artists supersede the provisions any work for hire contracts, which artists may have signed with their record companies. Therefore, it might appear to be inconsistent to assume that the work for hire documents which studio musicians signed with featured artists are not similarly terminable. However, in this latter case, I think a much stronger argument can be made in support of the proposition that an employer-employee relationship exists as "studio musicians" and "back up vocalists," by the nature of the profession, have a clear and precise understanding of their role and the purpose of their engagement. If so, the featured artist would be deemed to own the work product of a studio musician or background vocalist on a work for hire basis. However, it is still possible that even if an employer-employee relationship is found not to exist between the featured artist and side artists, a court might find that the side artists are independent contractors commissioned by the featured artist to help create contributions to a collective work, therefore rendering their contributions to be work made for hire.[71]

Another factor that would seem to support the fact that side musicians are truly employees is the fact that they are often hired pursuant to a union agreement. Establishing employer-employee relationships is a predicate under the rules of the National Labor Relations Board in order to qualify for antitrust exemptions conferred by collective bargaining agreements.[72] Under the provisions of the current American Federation of Musicians (AFM) and the American Federation of Television and Radio Artists (AFTRA) union agreements, back up players and vocalists render services as workers for hire to the record labels.[73]

Even the unions themselves seem disinclined to make the argument that their members deserve authorship status. In its' *Position on "Work Made For Hire" and Section 101 of the Copyright Act* issued in 2000, AFTRA stated:

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[70] *See* 17 U.S.C. § 101 (2011).

[71] *See* discussion on the elements of a work for hire *supra* Part II.

[72] *See* Brown v. Pro Football, 50 F.3d 1041, 1054–55 (D.C. Cir. 1995).

[73] Samples of these agreements can be found online. AFTRA Agency Forms and Contracts, http://www.aftra.org/agencyformsandcontracts.htm; AFM Contracts, http://www.afmpittsburgh.com/c04b-contracts.html#contracts.

> Hilary Rosen, President of the Recording Industry Association of America, has argued that sound recordings should be works made for hire because otherwise 'every creative participant on the album would be a co-author under the copyright law.' That simply is not the practice in the industry and it is not accurate under the copyright law. Side musicians and background singers, the non-featured performers, traditionally have been considered employees when performing on sound recordings and fall within the first prong of the work made for hire definition under the criteria set forth by the Supreme Court in Community for Creative Non-Violence. v. Reid, 430 U.S. 730.[74]

In her testimony on the work for hire legislation in 2000, (now former) Register of Copyrights Mary Beth Peters made note of this situation where the same recording could have contributions from featured musicians and side musicians, each of whom have a different set of rights under the Copyright Act.[75] Ms. Peters stated that the result "would be that the sound recording would be a joint work that is in part a work made for hire and in part a work of individual authors."[76]

To deal with a similar issue related to digital music royalty streams collected and paid by SoundExchange, the unions (AFM and AFTRA) worked out an agreement whereby studio musicians and background vocalists would be paid a share of the total pool. As a result, studio musicians and background vocalists now receive 5% of the 100% of income collected by SoundExchange.[77] I believe a similar compromise with the unions can and should be reached to avoid needless internecine artist-against-artist litigation here.

D. Executive Producers/Investors

Individuals and entities that solely provide the capital used to finance the making of sound recordings should not qualify as authors for Copyright Reversion purposes.

E. Loan-Out Companies

Most artists enter into a recording agreement with record companies directly as individuals. Less frequently the artist will enter into these agreements through a so-called "loan-out company" or "furnishing companies," which is typically an entity wholly owned by the artist and empowered to "loan-out" the recording services of that artist in order to fulfill the obligations of the agreement.[78] The rationale behind the creation of these entities was to create a

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[74] American Federation of Television and Radio Artists, *Position on "Work Made for Hire" and Section 101 of the Copyright Act*. *See also* Bill Holland, *Work-For-Hire Provision Sparks Artist Furor, Demand for Change*, BILLBOARD, June 22, 2000, at 5.

[75] *See Sound Recordings as Work Made for Hire: Hearing Before the S. Comm. on Courts and Intellectual Property*, 106th Cong. 2 (2000) (statement of Marybeth Peters, Register of Copyright) *available at* http://commdocs.house.gov/committees/judiciary/hju65223.000/hju65223_0f.htm.

[76] *Id.*

[77] *See Policies and Procedures*, SOUNDEXCHANGE, http://soundexchange.com/policies-and-procedures/ (last visited Mar. 20, 2012) (outlining the royalty distribution overview in Section 5).

[78] *See* NIGEL PARKER, MUSIC BUSINESS: INFRASTRUCTURE, PRACTICE AND LAW 157 (2004).

certain layer of insulation from liability for the artists and to give them some possible tax advantages.[79]

In order to take advantage of Copyright Reversion, the original grant must be "signed by the author."[80] This could present a dilemma for those artists who entered into recording agreements utilizing a loan-out company, but I don't believe that it will. Loan-out companies by their very nature control the creative work product of the artist who owns them. Additionally, record companies almost always require the artist to sign a so-called "inducement letter" or guarantee which personally binds the artist to adhere to the provisions of the recording agreement and includes language such as: "I agree to be bound by the Agreement to the extent it relates to me; thereby join in the warranties, representations, agreements and grant of rights made therein; and I agree not to take any action which is or may in any way be inconsistent with company's rights and privileges thereunder. I agree to perform all the terms and provisions of the Agreement and any extensions or renewals thereof."

Factors to be considered in determining if artists were in fact "employees" of their own furnishing companies might include: (1) does the loan-out company pay a salary to the artist; (2) does it issue W-4 forms for tax purposes and (3) does it engage the services of the producer and side artists.[81]

As of this time there is no established precedent on whether courts will allow artists who control their work through loan-out companies to exert their Copyright Reversion rights. One possibility is that artists may have to terminate their own loan-out agreements, causing the artist to be in breach of the loan-out company's obligations and artist's guarantees. Because these companies are merely a legal entity owned and controlled by the artist and are otherwise the artist's alter ego, it is my hope and belief that the courts will determine that an artist and his or her loan-out company are one and the same for the purpose of Copyright Reversion.

IV. WHO MAY TERMINATE?

A. Authors and Their Successors

The person who controls the right to terminate under the Copyright Act of 1976 depends on whether the authors exercised their termination rights before they died. If the author survives to the vesting date, the first date on which a Termination Notice can be legally served, then the author's Copyright Reversion rights will vest upon the author's service of a Termination Notice on the original grantee to the work (e.g., the record company which has controlled the sound recording or the music publisher which has controlled the song).[82] If the author serves the Termination Notice in a timely fashion but dies before the effective date of termination occurs, then the author's estate and not his or her "statutory successors" receives the reversion benefit, in other words, the author's will controls.[83]

However, if the author fails to serve a Termination Notice during the author's lifetime, the surviving spouse and/or descendants will control the Copyright Reversion rights regardless of

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[79] *See id.*

[80] *See* 17 U.S.C. § 203(a) (2011).

[81] *See* discussion *supra* Part II.A.

[82] *See* 17 U.S.C. §§ 203(a)(3)–(4), 304(c)(3)–(4) (2011). Vesting dates and Termination Notices are covered more in depth below. *See infra* Parts V, VI.

[83] *See* 17 U.S.C. §§ 203(b)(3), 304(c)(6)(C). Statutory successors include the author's surviving spouse, children or grandchildren, if any. *See* 17 U.S.C. §§ 203(a)(2), 304(c)(2).

whether or not the author had disinherited certain statutory successors under the provisions of the author's will.[84] This is exactly what happened to some of the songs of legendary jazz superstar Miles Davis upon his death in 1991. Because he died before serving a Termination Notice in relation to some of his most iconic post-1978 songs, the Copyright Reversion rights vested with his children, two of whom had not been included in his will, and by-passed the wishes Davis had expressed in his will to share his estate with his brother and sister.[85]

If the author died without serving a Termination Notice, the Copyright Reversion rights pass entirely to the surviving spouse if the author has left no surviving children or grandchildren.[86] If the author has left surviving children or grandchildren, the surviving spouse owns one half of the Copyright Reversion interest and the remaining one-half interest would then be equally divided among the children, or in the case of a deceased child, the children of that deceased child.[87] If there is no surviving spouse, the children own the entire Copyright Reversion interest.[88] And in the event that there is no surviving spouse or children or grandchildren then the author's executor, administrator, personal representative or trustee shall own the author's Copyright Reversion interests.[89]

It's important to note that although the Copyright Reversion rights are not recaptured until the termination date specified in the Termination Notice, the class of those who may claim as recipients of the Copyright Reversion rights is determined as of the date when the Termination Notice is served.[90]

B. Works by Joint Authors

Pursuant to § 304 of the Copyright Act, for pre-January 1, 1978 works that were created by joint authors, either author, or their respective successors, can terminate the share of the work created by that particular author.[91]

Pursuant to Section 203 of the Copyright Act, for post-January 1, 1978 works that were created by joint authors, a majority of the joint authors, or their respective successors, are required to terminate.[92] This means that in the unlikely event that there are only two songwriters and one wants to exert their Copyright Reversion rights and the other does not—the author seeking termination may not proceed. There is tremendous potential here for a logistics nightmare once the right to terminate passes to an author's successors. If one of these joint authors died, the rights pass to the heirs as described in above. Let's consider a hypothetical involving joint authors in which one joint author is living and one joint author is deceased. In this situation, where the spouse and children hold the deceased joint author's interest, there would

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[84] *See* 17 U.S.C. §§ 203(a)(2), 304(c)(2).

[85] *See* Lloyd J. Jassin, *Copyright Termination is an Author Right: Use it or Lose it*, COPYLAW.ORG (Mar. 28, 2010), http://www.copylaw.org/2010/03/copyright-alert-notice-of-termination.html.

[86] 17 U.S.C. §§ 203(a)(2)(A), 304(c)(2)(A).

[87] 17 U.S.C. §§ 203(a)(2)(B)–(C), 304(a)(2)(B)–(C).

[88] 17 U.S.C. §§ 203(a)(2)(B), 304(c)(2)(B).

[89] 17 U.S.C. §§ 203(a)(2)(D), 304(c)(2)(D).

[90] 17 U.S.C. §§ 203(b)(2), 304(c)(6)(B).

[91] 17 U.S.C. § 304(c)(1).

[92] 17 U.S.C. § 203(a)(1).

need to be a majority of that particular co-author's legal successors' interests in favor of termination,[93] as well as the other joint owner in order to exert Copyright Reversion rights.

Recently, former Village People singer Victor Willis sought to terminate the rights to his share of thirty-three songs that he had written, including the perennial best-seller "Y.M.C.A.."[94] The music publisher who controlled this iconic composition claimed that Willis should be prevented from doing terminating because Willis was a co-author and needed the approval of his remaining co-authors.[95] The Southern District of California disagreed, holding that a joint author who separately transfers his copyright interest could unilaterally terminate that grant and that anything to the contrary would conflict with the purpose of the Copyright Act.[96] This case also addressed the percentage of ownership that an author might successfully reclaim. The publisher here sought to have the court limit Willis' ownership share of "Y.M.C.A." to the percentage the parties agreed would compensate for the transfer, which the agreements set at a range from 12% to 20%.[97] The court rejected this argument and stated that Willis would get back the share that he transferred regardless of the compensation.[98] If this decision stands on appeal, it might prevent record companies, in certain instances, from arguing that a particular recording artist cannot seek Copyright Reversion without being joined in such action by the producers of that recording or others whom are contended to be joint authors.

V. WHEN CAN THE TERMINATION OCCUR?

If your eyes have not glazed over by now, I'm flattered. But this next section is likely to put you to sleep faster than a fistful of Ambient.

A. Pre-1978 Sound Recordings

As previously stated, sound recordings did not gain federal copyright protection until the enactment of the 1971 Sound Recording Act.[99] Therefore for pre-February 15, 1972 it should be noted that: (1) these sound recordings are currently protected by state copyright and unfair competition laws that contain no right to terminate grants of copyright and (2) there is legislation being considered in the Congress that would retroactively grant federal copyright protection to pre-February 15, 1972 sound recordings but this legislation has not yet been passed into law.[100]

Under the provisions of § 304 of the Copyright Act the period for exerting Copyright Reversion rights for sound recordings made between January 2, 1972 and December 31, 1977 will be effective at any time during the time period which begins fifty-six years after the copyright was originally secured (e.g., 1972 plus 56 years = 2028), until the 61st year the

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[93] A majority of the deceased co-author's interest would require both a spouse holding a 50% interest and at least one child who holds a legal interest.

[94] Scorpio Music S.A. v. Willis, No. 11cv1557 BTM(RBB), 2012 U.S. Dist. LEXIS 63858 (S.D. Cal. May 7, 2012).

[95] *Id.* at *3–4.

[96] *Id.* at *6, *11.

[97] *Id.* at *13.

[98] *Id.* at *13–14. Furthermore, the court stated that absent an agreement to the contrary, joint authors share equally in the work, so assuming there were three joint authors, Willis would have a 1/3 undivided interested in the copyright. *Id.* at 14–15.

[99] *See supra* text accompanying note 13.

[100] *See* Sound Recording Simplification Act, H.R. 2933, 112th Cong. (2011).

copyright was originally secured (i.e., 1972 plus 61 years = 2033).[101] This is called "the five-year window."[102] It is important to note that this five-year window is triggered from the date which the copyright was originally secured, regardless of the date which any rights related to the work might have been granted.[103]

A Termination Notice must be served no sooner than ten years and no later than two years from the effective date of termination.[104] Let's use the David Bowie album *Aladdin Sane* as an example. This album was released on April 13, 1973 and the copyright was recorded on April 20, 1973. Thus its five-year window period would run from April 20, 2029 until April 20, 2034. Consequently, the authors, whom I will presume are artist David Bowie and producer Ken Scott, could serve a Termination Notice between April 20, 2019 (i.e., 10 years from the start of the five year window which begins in 2009 and April 20, 2027 (i.e., 2 years before the end of that period). Assuming that the authors properly served their termination notice on BMG Music, or their successor-in-interest, on April 20, 2019 and properly filed it with the Copyright Office within the five-year window, David Bowie and Ken Scott would recapture the sound recording copyright to *Aladdin Sane* on April 20, 2029. However, the previous example provides for the optimum (the earliest) period during which the authors can exert their rights, and authors are free to terminate anytime within the five-year period. Thus the same authors could still serve their Termination Notice anytime between April 20, 2024 (i.e. 10 years from the end of the five year window which ends April 20, 2034) and April 20, 2032 (i.e. 2 years from the end of that period). In this scenario Bowie and Scott would recapture the copyright to the *Aladdin Sane* sound recording as late as April 20, 2034.

B. Pre-1978 Songs

The original renewal term of copyright for pre-1978 songs was twenty-eight years.[105] This was extended by nineteen years in 1978,[106] and another twenty years in 1998.[107] Added together, these songs have 95 years of copyright protection, the twenty-eight year initial term, the twenty-eight year first renewal term, the nineteen-year 1978 extension, and the twenty-year 1998 extension.

The author or author's rightful successors have a few opportunities to exert their Copyright Reversion rights in the following two options.

(1) Similar to the computation of the time period for pre-1978 sound recordings,[108] the effective date for a termination of compositional copyrights is from the fifty-sixth year to the sixty-first year from the date the copyright was originally secured.[109] This time let's use the song "California Dreamin" written by John and Michelle Phillips and copyrighted

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[101] 17 U.S.C. § 304(c)(3).

[102] To make this whole process more confounding there are two other "five-year windows" which have a slightly different method of calculation. *See infra* Part V.B.

[103] 17 U.S.C. § 304(c)(3).

[104] 17 U.S.C. § 304(c)(4)(A).

[105] Copyright Act of 1909, ch. 320, 23 Stat. 1075, 17 U.S.C. § 24 (repealed 1978).

[106] 17 U.S.C. § 302(c) (1976) (amended 1998).

[107] Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (1998) (amending 17 U.S.C. § 302 (1976)).

[108] *See supra* Part V.A.

[109] 17 U.S.C. § 304(c)(3).

on November 29, 1965. In this case the termination could be filed in the five-year window from November 29, 2021 until November 29, 2026. Once again the termination notice would need to be filed no sooner than 10 years and no later than 2 years from the effective date of termination. Thus, either Michelle Phillips or the legal heirs of John Phillips, as John died in 2001, could serve the current copyright holder on November 29, 2011 and recapture any rights that he or she does not already possess as early as November 29, 2021.

(2) If the author, or the author's legal successors, failed to file as provided in the first five-year window,[110] there is a second bite at the apple that takes place during a second five-year window beginning on the seventy-fifth anniversary from when the copyright was originally secured.[111] But this second five-year window pertains solely to copyrights obtained between January 1, 1923 and October 26, 1939.[112] Since this group of songs is unlikely to figure in the song catalogs of most parties interested in this article I will not devote any more time to this particular category.

C. Post-1978 Sound Recordings and Songs

I'd love to tell you that the rules that govern pre-1978 Copyright Reversion rights are identical to those that govern post-1978 Copyright Reversion rules. I'd love to tell you that but unfortunately there are a few significant differences. Pursuant to § 203 of the Copyright Act for both sound recordings and songs created after January 1, 1978, the five-year window opens thirty-five years from the date on which the grant occurred and closes forty years after said date, or if the grant covers the right of publication of the work, the period begins either thirty-five years after the date of publication or forty years after the date of execution, whichever term ends earlier.[113]

Let's say (hypothetically speaking) that the recording agreement for Michael Jackson's iconic *Thriller* album was signed in 1979 but was not commercially released until 1982. In this case the five-year window begins in 2017 (thirty-five years after the November 30, 1982 release date) because this is earlier than forty years after the deal was signed, which would have warranted a 2019 commencement date. Therefore, the Termination Notice can be served no earlier than 2007 and no later than 2015 if the author, or in this case Michael Jackson's statutory heirs, wishes to obtain his Copyright Reversion rights at the earliest possible opportunity. But do not lose sight of the fact that the Jackson heirs still have additional time here. Since the five-year window does not close until 2022, the Jackson heirs can provide termination notices between 2011 and 2020 if they choose to wait until the last possible moment.

D. Sound Recordings With Pre-1978 Grants But Released Post-1978

One area of confusion involves sound recordings where the grants were signed prior to 1978 but the commercial release date did not occur until after January 1, 1978. For example, CBS Records released the classic *London Calling* album by The Clash in the United States in

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[110] As outlined *supra* Part V.B.1.
[111] 17 U.S.C. § 304(d)(2).
[112] *See* 17 U.S.C. § 304(d).
[113] 17 U.S.C. § 203(a)(3) (2011).

January of 1980. Since it was the band's third studio album released post-1978, it was probably contracted for when they signed their recording agreement (probably pre-1978). The Copyright Office recently considered these so-called "gap grant" cases.[114] The issue is whether these grants can be terminated under the provisions of § 203, the scope of which currently applies only to grants made after January 1, 1978. The Copyright Office has agreed to accept the filing of Termination Notices for gap grant cases pursuant to § 203, pending a ruling by the court.[115] Therefore, I would strongly urge any authors who find themselves with this pre-1978/post-1978 timeline to file the appropriate Termination Notices (in fact I would file both § 203 and § 304 Termination Notices just to err on the side of safety) and let the courts decide how to deal with this issue in the future.

E. Use it or Lose it

The filing periods are fixed by statute and cannot be altered. If a Termination Notice has not been properly filed before the five-year filing window closes, the Copyright Reversion rights will be lost, with the only exception of those compositional copyrights obtained between January 1, 1923 and October 26, 1939, as mentioned above. This means that the current holder of these rights will retain them until the copyright term expires. In other words authors must understand that this is a "use it or lose it" proposition.

VI. TERMINATION NOTICES

Section V addressed when Termination Notices must be sent. This section covers the information that must be contained in these notices and to whom they should be sent.

A. Content of Pre-1978 Termination Notices Pursuant to Section 304

> (1) The names of every grantee (person and/or entity) or their successors-in-interest whose rights are being terminated.[116]
>
> (2) The address to which the Termination Notice is being served after making a reasonable investigation.[117] For the purposes of Copyright Reversion, a "reasonable investigation" for songs would include checking the websites of the performing rights organizations (i.e. ASCAP, BMI, and SESAC), the Harry Fox Agency and the U.S. Copyright Office in Washington, DC.[118] It might prove to be more difficult to locate the individuals and companies who are the current owners of sound recordings. Therefore, a "reasonable investigation" in this category would probably include a thorough Internet search including sites like Wikipedia and Allmusic.com.

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[114] *See* U.S. Copyright Office, Analysis of Gap Grants under the Termination Provisions of Title 17, at 1 (2010).

[115] *See* Copyright, General Provisions, 37 C.F.R. § 201.10 (2011); *see generally* Gap in Termination Provisions, 76 Fed. Reg. 32316 (June 6, 2011) (containing general information on the problem of gap grants and the reasoning behind the final rule as codified in 37 C.F.R. pt. 201).

[116] 37 C.F.R. § 201.10(b)(1)(ii). Section 304 states that the Termination Notice will comply with the requirements the Register of Copyrights prescribes by regulation. 17 U.S.C. § 304(c)(4)(B).

[117] 37 C.F.R. § 201.10(b)(1)(ii), (d)(1).

[118] 37 C.F.R. § 201.10(d)(3).

(3) The name of the songs or sound recording to which the notice applies,[119] if the work is an album, name the titles of each track.

(4) Indicate whether you are under § 304(c), allowing terminations between the fifty-sixth and the sixty-first year from the date the copyright was initially secured, or under § 304(d), which applies to compositions for which the copyrights were obtained between January 1, 1923 and October 26, 1939 and where the author failed to serve a Termination Notice during the first five-year window.[120] As previously stated, this latter group can be terminated between the seventy-fifth and eightieth year from the date the copyright was initially secured.[121]

(5) The names and addresses of one of the authors,[122] if joint authors—either may terminate their share of the work. In cases where persons other than the author signed the original grant of rights, a list of surviving individuals who signed the grant must be included.[123] Where the author is deceased, a list of survivors should be added and include: the author's surviving spouse, all surviving children, and the surviving children of any deceased child of the author.[124]

(6) The date of copyright.[125]

(7) The filing registration number from the U.S. Copyright Office.[126]

(8) The termination date.[127]

(9) The date and title of the agreement that memorializes the original grant of rights,[128] such as a co-publishing agreement.

(10) If the rights being terminated are subject to § 304(d), include a statement that the Copyright Reversion rights under § 304(c) had not been previously asserted.[129]

(11) Termination Notices must include an actual handwritten signature of the author(s) or legal successors, with a statement describing their relationship to the author.[130] The author's name and address should be printed on the Termination Notice.[131]

B. Content of Post-1978 Termination Notice Pursuant to Section 203

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[119] 37 C.F.R. § 201.10(b)(1)(iii).
[120] 37 C.F.R. § 201.10(b)(1)(i).
[121] *see supra* Part V.B.
[122] 37 C.F.R. § 201.10(b)(iii).
[123] 37 C.F.R. § 201.10(b)(vii).
[124] *Id.*
[125] 37 C.F.R. § 201.10(b)(iii).
[126] *Id.*
[127] 37 C.F.R. § 201.10(b)(v). *See supra* Part V.
[128] 37 C.F.R. § 201.10(b)(iv).
[129] 37 C.F.R. § 201.10(b)(vi).
[130] 37 C.F.R. § 201.10(c)(1)–(2).
[131] 37 C.F.R. § 201.10(c)(5).

(1) The names of every grantee (person and/or entity) or their successors-in-interest whose rights are being terminated.[132]

(2) The address to which the Termination Notice is being served after making a reasonable investigation.[133] For the purposes of Copyright Reversion, a "reasonable investigation" for songs would include checking the websites of the performing rights organizations (i.e. ASCAP, BMI, and SESAC), the Harry Fox Agency and the U.S. Copyright Office in Washington, DC.[134] It might prove to be more difficult to locate the individuals and companies who are the current owners of sound recordings. Therefore, a "reasonable investigation" in this category would probably include a thorough Internet search including sites like Wikipedia and Allmusic.com.

(3) The name of the songs or sound recording to which the notice applies,[135] if the work is an album, name the titles of each track.

(4) Indicate that you are filing under § 203,[136] which allows termination between the thirty-fifth and fortieth year from the date the grant occurred, unless the grant includes a right of publication where the termination date must occur as previously stated or between the fortieth and forty-fifth year from the date of the grant's execution—whichever is first in time.

(5) The names and addresses of one of the authors, if joint authors—a majority of the authors must agree to file the Termination Notice.[137] In cases where persons other than the author signed the original grant of rights there must be a list of surviving individuals who signed it.[138] Where the author is deceased, a list of survivors including: the author's surviving spouse, all surviving children, and the surviving children of any deceased child of the author, should be attached.[139]

(6) The date of the execution of the grant of rights.[140] If the grant includes a right of publication the date of publication must also be included.[141]

(7) The filing registration number from the U.S. Copyright Office.[142]
(8) The termination date.[143]

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[132] 37 C.F.R. § 201.10(b)(2)(ii).
[133] 37 C.F.R. § 201.10(b)(2)(ii), (d)(2).
[134] 37 C.F.R. § 201.10(d)(3).
[135] 37 C.F.R. § 201.10(b)(2)(iv).
[136] 37 C.F.R. § 201.10(b)(2)(i).
[137] 37 C.F.R. § 201.10(b)(2)(iv).
[138] 37 C.F.R. § 201.10(b)(2)(vii).
[139] *Id.*
[140] 37 C.F.R. § 201.10(b)(2)(iii).
[141] *Id.*
[142] 37 C.F.R. § 201.10(b)(2)(iv).
[143] 37 C.F.R. § 201.10(b)(2)(vi).

(9) The date and title of the agreement that memorializes the original grant of rights,[144] such as a co-publishing agreement.

(10) Termination Notices must include an actual hand written signature of the author(s) or legal successors, with a statement describing their relationship to the author.[145] The author's name and address should also be printed on the Termination Notice.[146]

C. Incomplete or Unavailable: Information in relation to Termination Notices

The information contained in the Termination Notice must be "a complete and unambiguous statement of facts."[147] It is important to remember that the information required to appear in the Termination Notice must actually be contained in the body of the notice itself, without reference to any document other than that which contains the grant being terminated. Harmless or inadvertent errors will not cause a termination notice to be considered invalid provided that the filers have been truthful and has made a good faith effort to ascertain the facts.[148]

Some of the information required by the Termination Notice will be difficult, even impossible to attain. This lack of information should not result in a failure to file a Termination Notice. Even if the author doesn't know how to reach the entity that currently controls the rights to the author's work, I would recommend pressing forward and filing a Termination Notice with the Copyright Office. In those sections for which the author was unable to obtain the required information, I would indicate specifically what due diligence activities were undertaken. I would also suggest that the filer state: "the information supplied was accurate to the best of the filer's knowledge and belief." This may not lead to a flawless Copyright Reversion but I believe that a court will consider it a reasonable placeholder pending the formal notification of the current rights holder.

D. To Whom Should the Termination Notice be Sent?

The termination notice must be sent in a timely fashion to:

(1) The grantee, or their legal successor-in-interest when the original grantee no longer controls the rights, of the sound recording and/or the compositional copyrights which the author seeks to recapture.[149]

(2) A complete and exact duplicate of the Termination Notice served above, with either the actual signatures or reproductions of the actual signatures, shall be filed with the Copyright Office as follows:

U.S. Copyright Office

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[144] 37 C.F.R. § 201.10(b)(2)(v).
[145] 37 C.F.R. § 201.10(c)(3).
[146] 37 C.F.R. § 201.10(c)(5).
[147] 37 C.F.R. § 201.10(b)(3).
[148] 37 C.F.R. § 201.10(e).
[149] 37 C.F.R. § 201.10(d)(1).

101 Independence Avenue
Washington DC 20559-6000.

It is only necessary to file one copy in the Copyright Office in those instances where separate copies of the Termination Notice was served upon several individuals or entities.[150]

(3) The Copyright Office filing should be accompanied by the following:

(a) A basic filing fee of $105 in addition to a fee of $30 for each group of 10 or fewer titles.[151] At the present time, payment can only be made by check or money order and cannot be done on-line.

(b) Although not required, I would strongly suggest that all Termination Notices be sent by certified, registered, or other express mail service. A statement indicating the date and manner in which the Termination Notice was served should be included in the Termination Notice.

It should be noted the Copyright Office accepts recordation without prejudice to the rights of any parties who might claim that the Termination Notice was improperly served.[152] In other words the author cannot assume that their filing is insulated from attack by the current copyright holder simply because the Copyright Office accepted the filing of the Termination Notice. Nevertheless, the filing and recording of a Termination Notice with the Copyright Office is an absolute condition precedent for Copyright Reversion to take effect.[153]

VII. NEGOTIATION RIGHTS

The grantee on whom the Termination Notice has been properly served has a unique right to negotiate with the author during the period of time from the service of Termination Notice until the date on which the Copyright Reversion takes effect. In fact the author is prohibited from entering into an agreement with a third party until the actual date on which Copyright Reversion occurs.[154] This gives the current rights holder a distinct advantage over all other music publishers and record companies.[155] However, this exception may work to both parties' benefit. Remember, Congress sought to protect against unremunerative transfers given the likely unequal bargaining power of authors and the impossibility of determining a work's value until after it has been exploited.[156] Once the author and the music publisher or record label have the benefit of time and experience under their belts, the market value of the asset at issue becomes clear. At that point, the parties can review an extensive earnings history and future potential based on past success. It

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[150] 37 C.F.R. § 201.10(f)(1)(i).
[151] 37 C.F.R. § 201.3(c)(15) (2011).
[152] 37 C.F.R. § 201.10(f)(6).
[153] *See* 17 U.S.C. §§ 203(a)(4), 304(c)(4) (2011).
[154] *See* 17 U.S.C. §§ 203(b)(4), 304(c)(6)(D).
[155] *See id.* (allowing agreements between the grantee and the persons seeking termination once the notice of termination is served).
[156] H.R. Rep. No. 94-1476 (1976).

will also be apparent whether the music publisher or record label was asleep-at-the-till during the prior years or diligent in adding value to the work and maximizing the revenue for all concerned.

Either way, it is difficult to hide behind the passage of time. If the parties have enjoyed success together, there might be little reason to remove the asset from the music publisher's or record company's watch. Thus, the specter of Copyright Reversions may simply stimulate a renegotiation of the prior grant of rights including an advance and more favorable financial terms, greater approval rights regarding the work's exploitation, or consideration of other areas of concern for the author or heirs. Alternatively, Copyright Reversion may be the long overdue remedy needed to move the work to a new publisher or record label willing to breathe life into an otherwise stagnant asset. It appears that there is nothing contained in the statute that would prevent the author from entering into an agreement with third parties during this time, provided that such agreement would not become operative until the effective termination date and further provided that the author refrains from accepting any consideration before said effective date.[157]

VIII. RIGHTS NOT AFFECTED BY TERMINATION

There are several important categories of rights, which are not effected by a successful Copyright Reversion.

A. Work For Hire

If a work was truly created on a work for hire basis, then no Copyright Reversion can occur.[158]

B. Trademarks

Sections 203 and 304 of the Copyright Act do not provide for the recapture of any trademarks that might be associated with the Copyright Reversion rights. The same would apply to so-called "publicity rights" (e.g., name and likeness rights). Fortunately, most music publishing agreements and recording agreements allow the artist to retain their trademarks and rights of publicity. However, there are bound to be situations in the future where an author will recapture their Copyright Reversion rights but not the use of certain trademarks associated with those sound recordings. In those instances it is assumed that the parties will be forced to negotiate in their mutual best interests.

C. Foreign Rights

The statutes that are the subject of this article do not allow for the recapture of any foreign rights.[159] However, if a record deal was made with a record company based outside of the United States but included America as one of the contractual territories, it might be possible for the author to do a Copyright Reversion strictly in relation to the U.S. rights. This is not based on statutory language or legislative history. It might also be possible for an artist who is not an

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[157] *See also* Bourne Co. v. MPL Communications, Inc., 675 F. Supp. 859, 865 (S.D.N.Y 1987) (suggesting it is permissible to negotiation a grant with a third party if it is not effective prior to termination).

[158] *See supra* Part II.B.3.

[159] *See* 17 U.S.C. §§ 203(b)(5), 304(c)(6)(E).

American citizen to complete a Copyright Reversion in relation to a master recording that was released in the country. This is an area of the law which is likely to be tested often as the information about Copyright Reversion possibilities reaches artists in the United Kingdom and other foreign territories who have previously entered into so-called "worldwide" record deals.

D. Derivative Works

A derivative work is a new copyrightable work, which contains "one or more preexisting copyrightable works such as a translation, musical arrangement . . . or any other form in which a work may be recast, transformed or adapted."[160] For example, when someone uses the music to an existing copyrighted composition and creates a new set of parody lyrics, the end result is a derivative work. This is exactly what occurred when "Weird Al" Yankovic created a parody of The Knack's monster hit *My Sharona* entitled *My Bologna*. Another example would occur when a newly created copyrighted song and master (e.g. Eminem's *Stan*) contains a previously copyrighted song and master (e.g. Dido's *Thank You*). This practice, commonly called "sampling," requires the approval of copyright holders of the song and sound recording, assuming that the new sound recording includes a portion of the original sound recording, which the new author seeks to interpolate.

Typically, the owner of the pre-existing work would receive an ownership interest in the new copyright (i.e. the derivative work) as Dido, her co-writer Paul Herman, and her record label Arista Records received in the creation of *Stan*. As you might imagine, this creates some complications when the author of the pre-existing copyright seeks Copyright Reversion for a song and/or sound recording now contained in a derivative work. Sections 203(b)(1) and 304(c)(6) provided that notwithstanding the termination of rights, an authorized derivative work may continue to be utilized under the terms of the grant even after termination; however, this privilege does not extend to the preparation of other derivative works based on the copyrighted work covered by the termination granted.[161] Since *Thank You* was created before the date on which the authors of *Stan* might decide to exert their Copyright Reversion rights, the derivative work may still be exploited by the terminated grantee under the terms of the original grant.[162] However, any income received by the owners of the sampled song (i.e. Dido and Herman) and master recording (i.e. Arista) as a result of its use in the derivative work, shall be paid directly to the authors of those works, Dido and presumably her producer in relation to the master recording and Dido and Herman in relation to the composition, once the termination is effective and the recapture period begins.

E. Licenses

Any licenses granted by the entity which owned the work prior to its recapture by an author, shall continue to remain in full force and effect. Just as importantly, any monies payable in relation to these licenses – even after the author's Copyright Reversion rights have been perfected – shall be payable to the original grantee.[163] For example, the publishers of the song

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[160] 17 U.S.C. § 101 (2011).

[161] *See* 17 U.S.C. §§ 203(b)(1), 304(c)(6)(A).

[162] *See Id.*

[163] *See, e.g.*, Mills Music, Inc. v. Snyder, 469 U.S. 153 (1985); Woods v. Bourne, 60 F. 3d 978 (2d Cir. 1995).

Footloose granted a synch license to Paramount Pictures, the producers of the eponymously named movie, to use this song. If the authors of *Footloose*, Kenny Loggins and Dean Pitchford, eventually recapture the Copyright Reversion rights to this song, Paramount's right to use the song *Footloose* in relation to the movie shall remain unaffected. For the sake of clarity, Paramount will still be obligated to pay Loggins and Pitchford their appropriate share of income which was subject to the original licenses (e.g. the appropriate share of mechanical royalties on all soundtrack album sales) even after the authors have exerted Copyright Reversion rights.

Since all sound recordings are considered derivative works of the songs which they embody,[164] a record label will continue to have the right to distribute copies of an album that contains compositions which are the subject of Copyright Reversions provided that those compositions were subject to a mechanical license which was granted to the label prior to the termination date of the compositions.[165]

If faced with the loss of certain rights to Copyright Reversion, it's possible that certain grantees might seek to take advantage of the situation described above. For example, Universal's publishing's division might grant in 2012 to the Universal record label division (both of which are owned by Vivendi SA) a 30-year mechanical license for a song that was headed for Copyright Reversion in 2018. Such a tactic might enable the publishing division to continue to receive mechanical royalty payments for an additional 12 years after the songwriter had recaptured the copyright to that song.

F. Exceptions

1. Revoke and Re-grant

As previously stated, the Copyright Reversion rights are inalienable which means they cannot be assigned away by the author.[166] However, there is an exception to this otherwise unvoidable rule.[167] Let's say that a song entitled *I Miss You* was written by my father (Andrew Donnelly) in 1970 which means that it would be subject to pre-1978 rules. For the sake of this hypothetical, Andrew dies after January 1, 1978 but before the start of the recapture term, which would begin in 2026 if the termination notice was served on the earliest eligible date in 2016. Furthermore, let's say that the music publisher which was the copyright holder for this song convinced my mother, brother, and I (the only legal heirs of Andrew) to execute a new agreement in relation to the income we would be entitled to receive from *I Miss You* prior to the date on which we would recapture the Copyright Reversion rights. If we, as the lawful heirs, followed this scenario then we would have obliterated our Copyright Reversion rights to this song. This practice that is sometimes called a "revoke and re-grant" can be an unsavory technique that some unscrupulous companies use in order to retain their rights for the full length of the copyright.

"Revoke and re-grant" can also be used in a very legitimate fashion to provide a songwriter or recording artist with the opportunity to renegotiate the terms of his or her deal with the music publisher or record company early without having to wait for the termination window

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[164] The definition of a derivative work in § 101 includes a sound recording, thus a sound recording is a work based on a preexisting work (the musical composition itself). *See* 17 U.S.C. § 101 (2011).

[165] *See* 17 U.S.C. §§ 203(b)(1), 304(c)(6)(A).

[166] *See* 17 U.S.C. §§ 203(a)(5), 304(c)(5).

[167] *See* Milne v. Stephen Slesinger, Inc., 430 F.3d 1036 (9th Cir. 2005), *cert. denied*, 548 U.S. 904 (2006).

to open. Authors who decide to pursue such negotiations should only do so if they are extremely knowledgeable in the area of Copyright Reversions or are represented by an attorney who is.

2. Wills

If the author serves the Termination Notice in a timely fashion but dies before the effective date of the Termination Notice, then the author's estate and not his statutory successors get the benefit of Copyright Reversion rights.[168] Copyright Reversion rights cannot be exercised if the document that made that transfer was the author's last will and testament.[169]

IX. THE FINAL PHASE OF COPYRIGHT REVERSION

A. Negotiating a New Deal

Once the Termination Notices have been properly served the final countdown begins. As discussed above, the existing rights holder has the unique opportunity to negotiate with the author for a new deal.[170] I suspect that for many authors, and particularly heirs who are likely to be unfamiliar with music publishing or the record business, this will be an appealing choice, especially if the existing terms can be made considerably more favorable to the authors or their heirs. Also, if the existing relationship is running smoothly, mutually beneficial, and highly profitable, it makes little sense to break stride and interrupt business-as-usual or the flow of revenue.

The author can also negotiate a new deal with a third party publisher or record company provided that said new deal does not become effective until after the termination date.[171] With the advent of full service rights management companies, including companies that offer more favorable splits to authors and their heirs (given the changing business models and the lower cost incurred by record companies to manufacture and disseminate finished goods), there are many viable alternatives. However, it might be possible for the authors to accept some money from third parties prior to the termination date if it was in the form of a loan. But these are untested waters and authors should proceed only with great caution (and lots of great legal advice).

If a new deal is not constructed and the existing rights holder chooses not to mount a legal challenge to the Copyright Reversion, the rights will revert on the termination date indicated in the Termination Notice.[172] Interestingly, these rights will revert to all of the original authors—not just the authors who filed the Termination Notice.[173] This could lead to the unintended result that the current featured artist might actually wind up with a smaller share of the royalty income stream than he or she was receiving before Copyright Reversion. This could potentially occur if the courts decide to include individuals who do not receive royalties under the terms of the original recording deal (e.g. side artists or sound engineers) in the group of authors. Even given this risk, I believe most artists will still want to proceed with Copyright Reversion because it will ultimately take control of their sound recording masters out of the

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[168] *See* 17 U.S.C. §§ 203(b)(3), 304(c)(6)(C).

[169] *See* 17 U.S.C. §§ 203(a), 304(c) (stating that only works that have been transferred by the author, otherwise than by will, are subject to termination).

[170] *See* 17 U.S.C. §§ 203(b)(4), 304(c)(6)(D).

[171] *See supra* note 157 and accompanying text.

[172] *See* 17 U.S.C. §§ 203(b), 304(c)(6).

[173] *See id.*

hands of record labels and allow them to make all future decisions regarding the marketing, promotion, publicity, sale or licensing of these works.

B. Rights Administration

When a song is licensed for use in a movie or advertisement it generally requires a master recording license for the sound recording and a synchronization license for the underlying song. Typically this means dealing with two separate entities, the record company that controls the sound recording and the music publisher that controls the song. The opportunity to recapture both sets of right means that singer/songwriters like Billy Joel will be in the very advantageous position of being able to offer "one-stop shopping" to those interested in licensing his work. But artists need to remember that their record companies and publishing companies have been providing valuable services including:

(1) Exploiting the work by soliciting potential users.

(2) Negotiating and drafting licensing and other agreements.

(3) Collecting royalties from every territory around the world.

(4) Accounting and paying these royalties to the many co-writers, producers and other parties.

(5) Protecting the works against illegal users and copyright infringements.

All of these activities will now become the responsibility of the artists and their representatives.

X. CONCLUSION

In my estimation Copyright Reversion is not just a ticking time bomb, it is a mega-ton nuclear weapon that could destroy the major record labels, as we know them today. Consider all of the truly memorable albums that you have in your record collection or iTunes library that were recorded after January 1, 1978. If there is a final non-appealable judgment in the artists' favor, those albums will gradually revert to the ownership of the authors who recorded them. Each year a significant number of big selling albums like Michael Jackson's *Thriller* or Nirvana's *Nevermind* will disappear from the vaults of record companies who have distributed and sold them for decades. Since so-called "catalog sales" represent half of the profits for most record labels, a decision in the artists' favor could be a death knell for companies like Sony, Warner and Universal.

I personally would hate to see that occur. I am genuinely proud of my nearly forty-year association with the music business and while it needs to change in order to survive, it doesn't need to cannibalize its most important elements. Record labels have been an indispensible partner in the building of artists' careers since the inception of the modern music industry. Many artists who still earn a good living today should give a meaningful portion of the credit for their success to the labels, which developed, marketed and promoted his or her music.

A. Solutions

Some of my colleagues favor a mutually acceptable legislative solution to this problem. I think this is unlikely given the fact that the Republicans and Democrats in Congress today are so politically polarized and mired in legislative gridlock. I believe the only viable solution is a new business paradigm which is much more favorable to artists whose albums are available for Copyright Reversion. For example, I think a settlement could be fashioned which would allow both sides to walk away from the court room craps table where there can be only one winner and one loser. Instead artists who so choose can opt-in to an amended recording agreement which might include: (1) co-ownership of master recordings; (2) elimination of all un-recouped artist balances; (2) a 50/50 split of all record revenues, with very few deductions; (3) the ability of the artist to purchase CD's for sale at his or her live gigs for the actual cost of those hard goods; (4) a 75/25 split in the artist favor on all synch uses in return for extending the re-recording prohibition and (5) granting the artist sole creative control over any future exploitation of his or her recordings and album artwork. I believe that there are many artists who would agree to such terms after these terms had been properly negotiated and vetted by their union representatives and others whom they trust. Artists who would prefer to take their chances in litigation would be free to do so, but the labels would have no obligation to allow them to opt in at a later point in time if the initial decisions on Copyright Reversions are not favorable to the artists' position.

That's what I hope will happen. What I think will happen is something else. I think that record labels will continue to subscribe to the theory that they can wear artists down through relentless pursuit of expensive litigation. I think that the labels will make artist friendly deals with their superstar artists, like The Eagles and Bon Jovi, and roll the dice with all of the rest. Then, once the final Supreme Court decision is rendered—several years from now—and it favors the artists' position (as I believe it will), record labels as we know them today will morph into companies which do little more than distribute music to the handful of retailers still selling hard goods. And business school students will be left to ponder the question "what caused the record companies to fail?"

I sincerely hope that day never comes.[174]

[174]

TARIFFS
FOR USE OF MUSICAL WORKS

(Effective as from April 1, 2009)

JAPANESE SOCIETY FOR RIGHTS OF
AUTHORS, COMPOSERS AND PUBLISHERS
(JASRAC)

CONTENTS

CHAPTER I. GENERAL PROVISIONS

1. The fee or royalty rates for use of works under the administration of the Society shall be the amounts provided for in Chapter II, Articles 1 through 15, in accordance with the following categories:

    (1) General Performances, etc.
    (2) Broadcasting, etc.
    (3) Films
    (4) Publications, etc.
    (5) Audio Recordings
    (6) Music Boxes
    (7) Videograms
    (8) Cable Broadcasting, etc.
    (9) Lending
    (10) On-line Karaoke for Commercial Use
    (11) Interactive Transmission
    (12) BGM
    (13) CD Graphics, etc.
    (14) IC Memory Cards for Karaoke Use
    (15) Others

2. "Dramatico-musical work" as herein used means a work for stage representation which consists of a combination of a musical work with dramatic elements, such as an opera, a musical, or a ballet.

(Notes for General Provisions)
The fee or royalty rates provided for in this Tariffs are allowed to be reduced in accordance with the criteria provided for separately, only when it is particularly regarded necessary in line with the usage form of musical works with the aim to promote agreements and to facilitate administration.

CHAPTER II. TARIFFS FOR MUSICAL WORKS

Article 1. GENERAL PERFORMANCES, etc.

1. Dramatic Performances of Dramatico-musical Works

The fee for dramatic performances of dramatico-musical works shall be a sum calculated in accordance with the following, plus an amount equivalent to the consumption tax:

(1) The fee for each event shall be a sum as follows:

① When an admission charge is required, the fee shall be a sum equal to 10% of a sum calculated based on the total box receipt.

However, in case where the fee is lower than the sum obtained by multiplying the seating capacity by ¥10, or ¥5,000, the fee shall be the higher amount.

② When no admission charge is required and an event takes place for no more than two hours, the fee shall be a sum obtained by multiplying the seating capacity by ¥8, or ¥4,000, whichever is higher.

When an event takes place for more than two hours, the fee shall be a sum equal to the fee applicable to an event whose playing time is no more than two hours, plus 25% of the relevant fee for each additional 30 minutes or part thereof.

(2) For cases other than (1) above, the fee is fixed per use of per work consisting a dramatico-musical work as follows:

① The fee for use of a work whose playing time is less than 5 minutes is fixed as follows:

(a) When an admission charge is required, the fee shall be a sum equal to 1% of a sum calculated based on the total box receipt, or a sum fixed in (b) below, whichever is higher.

(b) When no admission charge is required, the fee is calculated under the following scale:

Capacity	Fee	Capacity	Fee
Not exceeding 100	¥500	Not exceeding 5,500	¥4,400
Not exceeding 500	¥600	Not exceeding 6,000	¥4,800
Not exceeding 1,000	¥800	Not exceeding 6,500	¥5,200
Not exceeding 1,500	¥1,200	Not exceeding 7,000	¥5,600
Not exceeding 2,000	¥1,600	Not exceeding 7,500	¥6,000
Not exceeding 2,500	¥2,000	Not exceeding 8,000	¥6,400
Not exceeding 3,000	¥2,400	Not exceeding 8,500	¥6,800
Not exceeding 3,500	¥2,800	Not exceeding 9,000	¥7,200
Not exceeding 4,000	¥3,200	Not exceeding 9,500	¥7,600
Not exceeding 4,500	¥3,600	Not exceeding 10,000	¥8,000
Not exceeding 5,000	¥4,000		

In case where the seating capacity exceeds 10,000 persons, the fee shall be obtained by adding ¥400 for each additional 500 persons or part thereof to the fee applicable to the seating capacity of not exceeding 10,000 persons.

② For use of a work whose playing time exceeds 5 minutes, the fee shall be obtained by adding to the fee for a use of a work whose playing time is less than 5 minutes the same fee for each additional 5 minutes or part thereof.

2. Performances of Musical Works at Concerts

The fee for performances of musical works at concerts (events whose main purpose is to provide music, such as concerts and events organized for amateurs to show achievement of their performance training) shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

(1) The fee for one performance shall be fixed as follows:

① When admission charge is required, the fee for each performance shall be 5% of the sum calculated based on the total box receipt.

However, in case where the fee is lower than the sum obtained by multiplying the seating capacity by ¥5, or ¥2,500, the fee shall be whichever is higher.

② When no admission charge is required and the performance takes place for no more than two hours, the fee shall be a sum obtained by multiplying the seating capacity by ¥4, or ¥2,000, whichever is higher.

When a performance takes place for more than two hours, the fee shall be a sum equal to the fee applicable to an event whose playing time is no more than two hours, plus 25% of the relevant fee for each additional 30 minutes or part thereof.

(2) In cases other than (1) above, the fee shall be fixed per work and per use as follows:

① The fee for use of a work whose playing time is less than 5 minutes is fixed as follows:

(a) In cases where an admission charge is required, the fee shall be a sum equal to 0.5% of a sum calculated based on the total box receipt or a sum fixed in (b) below, whichever is higher.

(b) In cases where no admission charge is required, the fee is calculated in accordance with the following scale:

Capacity	Fee	Capacity	Fee
Not exceeding 100	¥250	Not exceeding 5,500	¥2,200
Not exceeding 500	¥300	Not exceeding 6,000	¥2,400
Not exceeding 1,000	¥400	Not exceeding 6,500	¥2,600
Not exceeding 1,500	¥600	Not exceeding 7,000	¥2,800
Not exceeding 2,000	¥800	Not exceeding 7,500	¥3,000
Not exceeding 2,500	¥1,000	Not exceeding 8,000	¥3,200
Not exceeding 3,000	¥1,200	Not exceeding 8,500	¥3,400
Not exceeding 3,500	¥1,400	Not exceeding 9,000	¥3,600
Not exceeding 4,000	¥1,600	Not exceeding 9,500	¥3,800
Not exceeding 4,500	¥1,800	Not exceeding 10,000	¥4,000
Not exceeding 5,000	¥2,000		

In case where the seating capacity exceeds 10,000 persons, the fee shall be obtained by adding ¥200 for each additional 500 persons or part thereof to the fee applicable to the seating capacity of not exceeding 10,000 persons.

② For use of a work whose playing time exceeds 5 minutes, the fee shall be obtained by adding to the fee for a use of a work whose playing time is less than 5 minutes the same fee for each additional 5 minutes or part thereof.

3. Performances of Musical Works in Entertainments other than Concerts

The fee for performances of musical works in entertainments other than concerts shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

(1) Performances in entertainments where dancing, acting, or costumes constitute an important role, such as revues, fashion shows, circuses, dance parties, ice-skating shows, figure skating, synchronized swimming, and gymnastic competitions

① The fee for one entertainment performance shall be fixed as follows:

(a) When the duration exceeds one hour but not two hours, the fee shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 500	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Not exceeding 2,500	Not exceeding 3,000	Not exceeding 4,000	Not exceeding 5,000	Not exceeding 10,000
No Charge	¥5,000	¥7,000	¥9,000	¥11,000	¥13,000	¥15,000	¥17,000	¥19,000	¥21,000
Not exceeding ¥500	¥12,000	¥16,000	¥20,000	¥24,000	¥28,000	¥32,000	¥36,000	¥40,000	¥44,000
Not exceeding ¥1,000	¥16,000	¥20,000	¥24,000	¥28,000	¥32,000	¥36,000	¥40,000	¥44,000	¥48,000
Not exceeding ¥1,500	¥20,000	¥24,000	¥28,000	¥32,000	¥36,000	¥40,000	¥44,000	¥48,000	¥52,000
Not exceeding ¥2,000	¥24,000	¥28,000	¥32,000	¥36,000	¥40,000	¥44,000	¥48,000	¥52,000	¥56,000
Not exceeding ¥2,500	¥28,000	¥32,000	¥36,000	¥40,000	¥44,000	¥48,000	¥52,000	¥56,000	¥60,000
Not exceeding ¥3,000	¥32,000	¥36,000	¥40,000	¥44,000	¥48,000	¥52,000	¥56,000	¥60,000	¥64,000
Not exceeding ¥3,500	¥36,000	¥40,000	¥44,000	¥48,000	¥52,000	¥56,000	¥60,000	¥64,000	¥68,000
Not exceeding ¥4,000	¥40,000	¥44,000	¥48,000	¥52,000	¥56,000	¥60,000	¥64,000	¥68,000	¥72,000
Not exceeding ¥4,500	¥44,000	¥48,000	¥52,000	¥56,000	¥60,000	¥64,000	¥68,000	¥72,000	¥76,000
Not exceeding ¥5,000	¥48,000	¥52,000	¥56,000	¥60,000	¥64,000	¥68,000	¥72,000	¥76,000	¥80,000

(i) When the admission charge exceeds 5,000 yen, a sum of 4,000 yen for each additional 500 yen or part thereof shall be added to the respective fee given for the admission charge not exceeding 5,000 yen.

(ii) When the seating capacity exceeds 10,000 yen, an additional sum for each additional capacity of 5,000 or part thereof shall be added to the respective fee given for the seating capacity not exceeding 10,000: 2,000 yen when no admission charge is required, or 4,000 yen when admission charge is required.

(b) When the duration of the concert exceeds two hours, the fee shall be calculated by adding to the respective fee given for a concert exceeding one hour but not two hours, a sum equal to 25 percent of the relevant fee, for each additional 30 minutes or part thereof.

(c) When the duration of the concert does not exceed one hour, the fee shall be a sum equal to 50 percent of the respective fee given for a concert exceeding one hour but not two hours.

② If ① above does not apply, the fee shall be determined per work and per performance as follows:

(a) When the playing time does not exceed 5 minutes, the fee shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 500	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Not exceeding 2,500	Not exceeding 3,000	Not exceeding 4,000	Not exceeding 5,000	Not exceeding 10,000
No Charge	¥250	¥350	¥450	¥550	¥650	¥750	¥850	¥950	¥1,050
Not exceeding ¥500	¥600	¥800	¥1,000	¥1,200	¥1,400	¥1,600	¥1,800	¥2,000	¥2,200
Not exceeding ¥1,000	¥800	¥1,000	¥1,200	¥1,400	¥1,600	¥1,800	¥2,000	¥2,200	¥2,400
Not exceeding ¥1,500	¥1,000	¥1,200	¥1,400	¥1,600	¥1,800	¥2,000	¥2,200	¥2,400	¥2,600
Not exceeding ¥2,000	¥1,200	¥1,400	¥1,600	¥1,800	¥2,000	¥2,200	¥2,400	¥2,600	¥2,800
Not exceeding ¥2,500	¥1,400	¥1,600	¥1,800	¥2,000	¥2,200	¥2,400	¥2,600	¥2,800	¥3,000
Not exceeding ¥3,000	¥1,600	¥1,800	¥2,000	¥2,200	¥2,400	¥2,600	¥2,800	¥3,000	¥3,200
Not exceeding ¥3,500	¥1,800	¥2,000	¥2,200	¥2,400	¥2,600	¥2,800	¥3,000	¥3,200	¥3,400
Not exceeding ¥4,000	¥2,000	¥2,200	¥2,400	¥2,600	¥2,800	¥3,000	¥3,200	¥3,400	¥3,600
Not exceeding ¥4,500	¥2,200	¥2,400	¥2,600	¥2,800	¥3,000	¥3,200	¥3,400	¥3,600	¥3,800
Not exceeding ¥5,000	¥2,400	¥2,600	¥2,800	¥3,000	¥3,200	¥3,400	¥3,600	¥3,800	¥4,000

(i) When the admission charge exceeds 5,000 yen, a sum of 4,000 yen for each additional 500 yen or part thereof shall be added to the respective fee given for the admission charge not exceeding 5,000 yen.

(ii) When the seating capacity exceeds 10,000 yen, an additional sum for each additional capacity of 5,000 or part thereof shall be added to the respective fee given for the seating capacity not exceeding 10,000: 100 yen when no admission charge is required, or 200 yen when admission charge is required.

(b) When the playing time exceeds 5 minutes but not 10 minutes, the fee shall be a sum equal to twice the respective fee given for a playing time not exceeding 5 minutes.

When the playing time exceeds 10 minutes, the fee shall be calculated by adding to the respective fee given for a playing time exceeding 5 minutes but not 10 minutes, a sum equal to the relevant amount, for each additional 10 minutes of part thereof.

(2) Performances in theatrical performances, slapsticks and wisecracks, magic shows, and other entertainments

① The fee for one entertainment performance shall be fixed as follows:

(a) When the duration exceeds one hour but not two hours, the fee shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 200	Not exceeding 500	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Not exceeding 2,500	Not exceeding 3,000	Not exceeding 4,000	Not exceeding 5,000	Exceeding 5,000
No Charge	¥1,200	¥1,800	¥2,400	¥3,000	¥3,600	¥4,200	¥4,800	¥5,400	¥6,000	¥6,600
Not exceeding ¥500	¥4,200	¥5,400	¥6,600	¥7,800	¥9,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000
Not exceeding ¥1,000	¥5,400	¥6,600	¥7,800	¥9,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200
Not exceeding ¥1,500	¥6,600	¥7,800	¥9,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400
Not exceeding ¥2,000	¥7,800	¥9,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600
Not exceeding ¥2,500	¥9,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800
Not exceeding ¥3,000	¥10,200	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800	¥21,000
Not exceeding ¥3,500	¥11,400	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800	¥21,000	¥22,200
Not exceeding ¥4,000	¥12,600	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800	¥21,000	¥22,200	¥23,400
Not exceeding ¥4,500	¥13,800	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800	¥21,000	¥22,200	¥23,400	¥24,600
Not exceeding ¥5,000	¥15,000	¥16,200	¥17,400	¥18,600	¥19,800	¥21,000	¥22,200	¥23,400	¥24,600	¥25,800

When the admission charge exceeds 5,000 yen, a sum of 1,200 yen for each additional 500 yen or part thereof shall be added to the respective fee given for the admission charge not exceeding 5,000 yen.

(b) When the duration of a concert exceeds two hours, the fee shall be calculated by adding to the respective fee given for the duration of a concert exceeding one hour but not two hours, a sum equal to 25 percent thereof for each additional 30 minutes or part thereof.

(c) When the duration of a concert does not exceed one hour, the fee shall be a sum equal to 50 percent of the respective rates given for the duration of a concert exceeding one hour but not two hours.

② If ① above does not apply, the fee shall be determined per work and per performance as follows:

(a) When the playing time does not exceed 5 minutes, the fee shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 200	Not exceeding 500	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Not exceeding 2,500	Not exceeding 3,000	Not exceeding 4,000	Not exceeding 5,000	Exceeding 5,000
No Charge	¥100	¥150	¥200	¥250	¥300	¥350	¥400	¥450	¥500	¥550
Not exceeding ¥500	¥350	¥450	¥550	¥650	¥750	¥850	¥950	¥1,050	¥1,150	¥1,250
Not exceeding ¥1,000	¥450	¥550	¥650	¥750	¥850	¥950	¥1,050	¥1,150	¥1,250	¥1,350
Not exceeding ¥1,500	¥550	¥650	¥750	¥850	¥950	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450
Not exceeding ¥2,000	¥650	¥750	¥850	¥950	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550
Not exceeding ¥2,500	¥750	¥850	¥950	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650
Not exceeding ¥3,000	¥850	¥950	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650	¥1,750
Not exceeding ¥3,500	¥950	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650	¥1,750	¥1,850
Not exceeding ¥4,000	¥1,050	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650	¥1,750	¥1,850	¥1,950
Not exceeding ¥4,500	¥1,150	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650	¥1,750	¥1,850	¥1,950	¥2,050
Not exceeding ¥5,000	¥1,250	¥1,350	¥1,450	¥1,550	¥1,650	¥1,750	¥1,850	¥1,950	¥2,050	¥2,150

When the admission charge exceeds 5,000 yen, a sum of 100 yen for each additional 500 yen or part thereof shall be added to the respective fee given for the admission charges not exceeding 5,000 yen.

(b) When the playing time exceeds 5 minutes but not 10 minutes, the fee shall be a sum equal to twice the respective fee given for a playing time not exceeding 5 minutes. When the playing time exceeds 10 minutes, the fee shall be calculated by adding to the respective fee given for a playing time exceeding 5 minutes but not 10 minutes, a sum equal to the relevant fee for each additional 10 minutes or part thereof.

(3) Performances of musical works in entertainments for advertising purposes at musical instrument retail stores, record stores, department stores, supermarkets, and other similar stores

① The fee for one place of performance shall be fixed as follows:

(a) When admission charge is not required

(i) The fee per month shall be calculated in accordance with the following scale:

Monthly total performing hours	Not exceeding 30 hours	Not exceeding 45 hours	Not exceeding 60 hours	Not exceeding 75 hours	Not exceeding 90 hours
Amount	¥27,000	¥41,000	¥54,000	¥68,000	¥81,000

Monthly total performing hours	Not exceeding 105 hours	Not exceeding 120 hours	Not exceeding 135 hours	Not exceeding 150 hours	Exceeding 150 hours
Amount	¥95,000	¥108,000	¥122,000	¥135,000	¥162,000

(ii) The fee per day shall be calculated in accordance with the following scale:

Daily total performing hours	Not exceeding 1 hour	Not exceeding 1.5 hours	Not exceeding 2 hours	Not exceeding 2.5 hours	Not exceeding 3 hours
Amount	¥1,100	¥1,700	¥2,200	¥2,800	¥3,300

Daily total performing hours	Not exceeding 3.5 hours	Not exceeding 4 hours	Not exceeding 4.5 hours	Not exceeding 5 hours	Exceeding 5 hours
Amount	¥3,900	¥4,400	¥5,000	¥5,500	¥6,600

(b) When admission charge is required

The fee shall be determined by applying the other provisions of Article 2 or 3 above depending on the contents of the performance.

② If ① above does not apply, the fee shall be determined per work and per performance as follows:

(a) When admission charge is not required

(i) When the playing time does not exceed 5 minutes, the fee shall be 150 yen

(ii) When the playing time exceeds 5 minutes but not 10 minutes, the fee shall be 300 yen.

When the playing time exceeds 10 minutes, 300 yen for each additional 10 minutes or part thereof shall be added to the respective fee given for a playing time exceeding 5 minutes but not 10 minutes.

(b) When admission charge is required

The fee shall be determined by applying the other provisions of Article 2 or 3 above depending on the contents of the performance.

(4) Performances of musical works in entertainments at expositions, exhibitions, zoological gardens, amusement parks and other similar facilities

① The fee for one place of performances or for one parade of performances is as shown below.

(a) Where no admission charge is made

The fee per month shall be calculated in accordance with the following scale:

Admission charge to the facilities	Amount per month	Amount per day
No charge	¥12,000	¥900
Not exceeding ¥1,000	¥40,000	¥3,000
Not exceeding ¥2,000	¥60,000	¥4,500
Not exceeding ¥3,000	¥80,000	¥6,000
Exceeding ¥3,000	¥100,000	¥7,500

(b) Where a charge is made for admission to the place of performances

The fee shall be determined by reference to the particulars of the performances, subject to the other provisions of Article 2 or 3 above.

② If ① above does not apply, the fee shall be determined on a per-work per-performance basis as shown below.

(a) Where no charge is made for admission to the place of performances

ⓐ The fee for the use of a work whose playing time does not exceed 5 minutes shall be calculated in accordance with the following scale:

Admission charge to the facilities	Amount
No admission charge	¥120
Not exceeding ¥1,000	¥400
Not exceeding ¥2,000	¥600
Not exceeding ¥3,000	¥800
Exceeding ¥3,000	¥1,000

ⓑ In the event of a playing time exceeding 5 minutes but not 10 minutes, the fee shall be a sum equal to 2 times the respective rates given for a playing time not exceeding 5 minutes.

In the event of a playing time exceeding 10 minutes, the fee shall be calculated by adding to the respective rates given for a playing time exceeding 5 minutes but not 10 minutes, a sum equal thereof for each additional 10 minutes or part thereof.

(b) Where a charge is made for admission to the place of performances
The fee shall be determined by reference to the particulars of the performances, subject to the other provisions of Article 2 or 3 above.

(5) Performances of musical works in baseball, horse race, American football, basket ball, soccer, tennis and other athletic games
①The fee for a daily event shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 1,000	Not exceeding 3,000	Not exceeding 5,000	Not exceeding 10,000	Not exceeding 30,000	Not exceeding 50,000	Exceeding 50,000
No Charge	¥900	¥1,350	¥1,800	¥2,250	¥2,700	¥3,150	¥3,600
Not exceeding ¥1,000	¥3,000	¥4,500	¥6,000	¥7,500	¥9,000	¥10,500	¥13,500
Not exceeding ¥3,000	¥4,500	¥6,000	¥7,500	¥9,000	¥10,500	¥12,000	¥15,000
Exceeding ¥3,000	¥6,000	¥7,500	¥9,000	¥10,500	¥12,000	¥13,500	¥16,500

② If ① above does not apply, the fee shall be determined on a per-work per-performance basis as shown below.
(a) The fee for a work whose duration does not exceed 5 minutes shall be calculated in accordance with the following scale:

Seating Capacity / Admission Charge	Not exceeding 1,000	Not exceeding 3,000	Not exceeding 5,000	Not exceeding 10,000	Not exceeding 30,000	Not exceeding 50,000	Exceeding 50,000
No Charge	¥120	¥180	¥240	¥300	¥360	¥420	¥480
Not exceeding ¥1,000	¥400	¥600	¥800	¥1,000	¥1,200	¥1,400	¥1,800
Not exceeding ¥3,000	¥600	¥800	¥1,000	¥1,200	¥1,400	¥1,600	¥2,000
Exceeding ¥3,000	¥800	¥1,000	¥1,200	¥1,400	¥1,600	¥1,800	¥2,200

(b) In the event of a playing time exceeding 5 minutes but not 10 minutes, the fee shall be a sum equal to 2 times the respective rates given for a playing time not exceeding 5 minutes.
In the event of a playing time exceeding 10 minutes, the fee shall be calculated by adding to the respective rates given for a playing time exceeding 5 minutes but not 10 minutes, a sum equal thereof for each additional 10 minutes or part thereof.

(6) Performances of musical works in aircrafts, railway trains, automobiles, ships and all other means or transport
The fee shall be determined with reference to particulars of the performances subject to the limits provided for in (1).

(7) Performances of musical works for dinner shows, etc. in facilities of hotels, principally intended to make customers look at or listen to theatrical performances, slapsticks and wisecracks, dances, songs shows, and other entertainments

① The fee for each entertainment per day per performance shall be calculated with the following scale:

Seating Capacity / Standard Unit charge	Not exceeding 100	Not exceeding 200	Not exceeding 300	Not exceeding 400	Not exceeding 500	Not exceeding 750	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Exceeding 2,000
Not exceeding ¥5,000	¥9,000	¥14,000	¥18,000	¥23,000	¥27,000	¥36,000	¥45,000	¥63,000	¥81,000	¥99,000
Not exceeding ¥10,000	¥11,000	¥17,000	¥22,000	¥28,000	¥33,000	¥44,000	¥54,000	¥76,000	¥98,000	¥119,000
Not exceeding ¥15,000	¥13,000	¥20,000	¥26,000	¥33,000	¥38,000	¥51,000	¥63,000	¥89,000	¥114,000	¥139,000
Not exceeding ¥20,000	¥15,000	¥23,000	¥29,000	¥37,000	¥44,000	¥58,000	¥72,000	¥101,000	¥130,000	¥159,000

① In the event of a standard unit charge exceeding ¥20,000, the fee shall be a sum equal to the amount obtained by adding 20% of the applicable rates for charge "not exceeding ¥20,000" for each additional ¥5,000 or part thereof.

② In the event that the fees are not calculated under ① above, they are determined on a per work and per performance basis as shown below:

(a) The fee for performance whose playing time does not exceed 5 minutes shall be calculated with the following scale.

Seating Capacity / Standard Unit charge	Not exceeding 100	Not exceeding 200	Not exceeding 300	Not exceeding 400	Not exceeding 500	Not exceeding 750	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Exceeding 2,000
Not exceeding ¥5,000	¥630	¥950	¥1,260	¥1,580	¥1,890	¥2,520	¥3,150	¥4,410	¥5,670	¥6,930
Not exceeding ¥10,000	¥760	¥1,140	¥1,520	¥1,900	¥2,270	¥3,030	¥3,780	¥5,300	¥6,810	¥8,320
Not exceeding ¥15,000	¥890	¥1,330	¥1,770	¥2,220	¥2,650	¥3,530	¥4,410	¥6,180	¥7,940	¥9,710
Not exceeding ¥20,000	¥1,010	¥1,520	¥2,020	¥2,530	¥3,030	¥4,040	¥5,040	¥7,060	¥9,080	¥11,090
For each additional ¥5,000 exceeding ¥20,000	¥130	¥190	¥260	¥320	¥380	¥510	¥630	¥890	¥1,140	¥1,390

(b) Notwithstanding (1) above, the fee for performance by means of phonograms whose playing time does not exceed 5 minutes shall be calculated with the following scale:

Seating Capacity / Standard Unit charge	Not exceeding 100	Not exceeding 200	Not exceeding 300	Not exceeding 400	Not exceeding 500	Not exceeding 750	Not exceeding 1,000	Not exceeding 1,500	Not exceeding 2,000	Exceeding 2,000
Not exceeding ¥5,000	¥260	¥390	¥520	¥650	¥780	¥1,040	¥1,300	¥1,820	¥2,340	¥2,860
Not exceeding ¥10,000	¥320	¥470	¥630	¥780	¥940	¥1,250	¥1,560	¥2,190	¥2,810	¥3,440
Not exceeding ¥15,000	¥370	¥550	¥730	¥910	¥1,100	¥1,460	¥1,820	¥2,550	¥3,280	¥4,010
Not exceeding ¥20,000	¥420	¥630	¥840	¥1,040	¥1,250	¥1,670	¥2,080	¥2,920	¥3,750	¥4,580
For each additional ¥5,000 exceeding ¥20,000	¥60	¥80	¥110	¥130	¥160	¥210	¥260	¥370	¥470	¥580

(c)In the event of use of a work whose playing time exceeds 5 minutes but not 10 minutes, the fee shall be a sum equal to the amount two times as high as those applicable to the fee "Not exceeding 5 minutes."

In the event of use of a work whose playing time exceeds 10 minutes, the fee shall be a sum equal to the amount by adding the rates for the fee "Exceeding 5 minutes but not 10 minutes" for each additional 10 minutes or part thereof.

(8) Performances in entertainment principally intended to make customers dance in parties, etc.

① The fee for entertainment per day per performance shall be calculated with the following scale:

Floor space / Standard Unit charge	Not exceeding 60 sq.m.	Not exceeding 120 sq.m.	Not exceeding 180 sq.m.	Not exceeding 240 sq.m	Not exceeding 300 sq.m.	Not exceeding 450 sq.m.	Not exceeding 600 sq.m.	Not exceeding 750 sq.m	Not exceeding 900 sq.m.	Exceeding 900 sq.m.
Not exceeding ¥1,000	¥5,400	¥8,100	¥10,800	¥13,500	¥16,200	¥21,600	¥27,000	¥32,400	¥37,800	¥54,000
Not exceeding ¥2,000	¥6,500	¥9,800	¥13,000	¥16,200	¥19,500	¥26,000	¥32,400	¥38,900	¥45,400	¥64,800
Not exceeding ¥3,000	¥7,600	¥11,400	¥15,200	¥18,900	¥22,700	¥30,300	¥37,800	¥45,400	¥53,000	¥75,600

In the event of a standard unit charge exceeding ¥3,000, the fee shall be a sum equal to the amount obtained by adding 20% of the applicable rates for charge "not

exceeding ¥3,000" for each additional ¥1,000 or part thereof.

② In the event that the fees are not calculated under ① above, they are determined on a per work and per performance basis as shown below:

(a)The fee for performance not exceeding 5 minutes shall be calculated with the following scale.

Floor space / Standard Unit charge	Not exceeding 60 sq.m.	Not exceeding 120 sq.m.	Not exceeding 180 Sq.m.	Not exceedIng 240 sq.m	Not exceeding 300 sq.m.	Not exceeding 450 sq.m.	Not exceeding 600 sq.m.	Not exceeding 750 sq.m	Not exceeding 900 sq.m.	Exceed-ing 900 sq.m.
Not exceeding ¥1,000	¥360	¥540	¥720	¥900	¥1,080	¥1,440	¥1,800	¥2,160	¥2,520	¥3,600
Not exceeding ¥2,000	¥440	¥650	¥870	¥1,080	¥1,300	¥1,730	¥2,160	¥2,600	¥3,030	¥4,320
Not exceeding ¥3,000	¥510	¥760	¥1,010	¥1,260	¥1,520	¥2,020	¥2,520	¥3,030	¥3,530	¥5,040
For each additional ¥1,000 exceeding ¥3,000	¥80	¥110	¥150	¥180	¥220	¥290	¥360	¥440	¥510	¥720

(b)Notwithstanding (a) above, in the event of performances by means of phonograms, the fee shall be calculated with the following scale:

Floor space / Standard Unit charge	Not exceeding 60 sq.m.	Not exceeding 120 sq.m.	Not exceeding 180 Sq.m.	Not exceedIng 240 sq.m	Not exceeding 300 sq.m.	Not exceeding 450 sq.m.	Not exceeding 600 sq.m.	Not exceeding 750 sq.m	Not exceeding 900 sq.m.	Exceed-ing 900 sq.m.
Not exceeding ¥1,000	¥150	¥230	¥300	¥380	¥450	¥600	¥750	¥900	¥1,050	¥1,500
Not exceeding ¥2,000	¥180	¥280	¥360	¥460	¥540	¥720	¥900	¥1,080	¥1,260	¥1,800
Not exceeding ¥3,000	¥210	¥330	¥420	¥540	¥630	¥840	¥1,050	¥1,260	¥1,470	¥2,100
For each additional ¥1,000 exceeding ¥3,000	¥30	¥50	¥60	¥80	¥90	¥120	¥150	¥180	¥210	¥300

(c) In the event of use of a work whose playing time exceeds 5 minutes but not 10 minutes, the fee shall be a sum equal to the amount two times as high as those applicable to charge "Not exceeding 5 minutes."

In the event of use of a work whose playing time is exceeding 10 minutes, the fee shall be a sum equal to the amount by adding the rates for charge "Exceeding 5 minutes but not exceeding 10 minutes" for each additional 10 minutes or part

thereof.

(9)Other performances of musical works

For performances of musical works other than those in (1) through (8) above, the fee shall be determined by reference to the particulars of the performances subject to the limits provided for (1) above.

(Notes for 1.Dramatic Performances of Dramatico-musical Works, 2. performances of Musical Works at Concerts and 3. Perforнces of Musical Works at Entertainments other than Concerts)

(Seating capacity)

① "Seating capacity" means the maximum number of seats that can be accommodated at halls or premises where concerts etc. take place, and the total number calculated based on the following:

(a) In the case of single chairs, the number thereof shall be substituted for the seating capacity.

(b) In the case of bench-type chairs (each with 2 or more places), the number produced by dividing the front width (in meters) of such chairs by 0.5m shall be substituted for the seating capacity

(c) In the case of other types of seats, the number produced by dividing the whole area (in sq.meters) of the space concerned by 1.5 sq. meters shall be substituted for the seating capacity.

(Floor space)

② In the event that (8) of 3. Performances of Musical Works in Entertainments other than Concerts shall apply, Floor space means the space of the floor principally intended to make customers dance

Admission charge

③"Admission charge" means any price (not inclusive of the consumption tax) paid or payable by spectators or an audience to a promoter of a concert, etc. for making available musical works. In the event of different grades of admission charge being made, the arithmetic mean thereof shall be considered to be the admission charge.

In the event of a concert, etc., which takes place with specific admission charge but with membership fee, etc., an admission charge shall be a sum calculated by dividing the annual membership fee by the number of concerts, etc.

(Sum calculated based on the total box receipt)

④ A sum calculated based on the total box receipt shall be obtained as follows:

(a) It shall be a sum equal to 80% of a sum obtained by multiplying an admission charge by the number of seating capacity.

However, until March 31, 2012, in the case where a sum obtained by multiplying an admission charge by the number of seating capacity exceeds ¥8,000,000, the fee shall be a sum equal to 40% of a sum exceeding ¥8,000,000 plus ¥6,400,000. Until the same date, in the case where a sum obtained in the same way exceeds ¥30,000,000, the fee shall be a sum equal to 15% of a sum exceeding ¥30,000,000 plus ¥15,200,000.

(b) Notwithstanding (a) above, in the case where the users, etc. organizing concerts etc. continuously, have comprehensive licensing agreements, the fee shall be a sum equal to 50% of a sum obtained by multiplying an admission charge by the number of seating capacity.

However, until March 31, 2012, in the case where a sum obtained by multiplying an admission charge by the number of seating capacity exceeds ¥8,000,000, the fee shall be a sum equal to 25% of a sum exceeding ¥8,000,000 plus ¥4,000,000. Until the same date, in the case where a sum obtained in the same way exceeds ¥30,000,000, the fee shall be a sum equal to 10% of a sum

exceeding ¥30,000,000 plus ¥9,500,000.

(Standard unit charge)

⑤ In the event that (7) or (8) of 3. Performances of Musical Works in Entertainments other than Concerts shall apply, "Standard unit charge" means an after-tax charge ("Charge includes any kind of charge) which is normally made per customer. The base thereof sha11 be in accordance with the scale below, and each charge is added.

(7) shall apply	drink charge + food charge + service charge + table charge or seat charge + show charge or fixed fee(*)
(8) shall apply	average admission charge (including cases where drink charge or food charge is included in admission charge)

(*) In case there is no distinction between the drink and food charge and only one kind of fixed fee exists, the relevant fixed fee shall apply.

(Performances by means of phonograms)

⑥ In the case where the tariffs applicable to "Performances of Musical Works in Entertainments other than Concerts" as stipulated in 3 above, the fee for performances of works by means of phonograms on which the fixation of sounds was lawfully made (hereinafter referred to "performances of works by means of phonograms") shall be a sum equal to 50% of the performing fee provided for in the provisions applicable to entertainments corresponding thereto for the time being.

(Transitional measures)

⑦ "5%" mentioned in 2 (1) ① above concerning "Performances of Musical Works at Concerts" shall read "2%" from October 1, 2003 to March 31, 2006, "3%" from April 1, 2006 to March 31, 2009, and "4%" from April 1, 2009 to March 31, 2012.

⑧ "0.5%" mentioned in 2 (2) ① above concerning "Performances of Musical Works at Concerts" shall read "0.2%" from October 1, 2003 to March 31, 2006, "0.3%" from April 1, 2006 to March 31, 2009, and "0.4%" from April 1, 2009 to March 31, 2012.

(Others)

⑨ In the event that in a concert, etc., different performances other than those provided for in 2. Performances of Musical Works at concert and those provided for in 3. "Performances of Musical Works at Entertainments Other Than Concerts, "take place at the same place, the fees shall be determined subject to the limit of the fees of the different entertainments calculated in accordance with the provisions applicable to each entertainment corresponding thereto, with reference to the particulars of the use of musical works in the performances.

⑩ In the event that a concert, etc., at a place of performances consists of both live performances and those by means of phonograms, etc., and that (1) through (6) and (9) (excluding (7) and (8)) of 3. Performances of Musical Works in Entertainments other than Concerts shall apply, the fees shall be determined subject to the limit of the fees calculated in accordance with the provisions applicable to entertainment corresponding thereto, with reference to the particulars of the use of musical works in the performances.

4. Performances at Karaoke facilities

In the event that at places where businesses are conducted for the purposes of making customers sing songs with facilities of Karaoke boxes, Karaoke rooms and Karaoke classes, etc. (hereinafter referred to "Karaoke facilities") works are performed, exhibited (this excludes exhibitions using films), or are communicated (this excludes communication which the provisions of Article 12 BGM is applied; hereinafter referred to "performances etc." in this Article), the fee shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax per room where performances etc. take place.

(1) Monthly fees shall be calculated in accordance with the following scale:

Class	1	2	3	4
Capacity / Standard Unit charge	Not exceeding 10	Over 10 and up to 30	Over 30 and up to 50	Over 50 and up to 100
Not exceeding 500yen	9,000 yen	18,000 yen	27,000 yen	36,000 yen
Not exceeding 1,000 yen	12,000 yen	24,000 yen	36,000 yen	48,000 yen
Not exceeding 1,500 yen	15,000 yen	30,000 yen	45,000 yen	60,000 yen
Not exceeding 2,000 yen	18,000 yen	36,000 yen	54,000 yen	72,000 yen

① When the standard unit charge exceeds ¥2,000, the fee shall be a sum equal to the amount obtained by adding 1/3 of the applicable fee for charge "not exceeding ¥500" for each additional ¥500 or part thereof.

② When the capacity exceeds 100, the fee shall be a sum equal to the amount obtained by adding to the rates for charge "Class 4," the fee for charge "Class 1," for each additional 50 persons or part thereof.

(2) When fees are not calculated under (1) above, they shall be determined on a per work and per performance basis as shown below:

① When the playing time of a work does not exceed 5 minutes, the fee shall be calculated in accordance with the following scale:

Class	1	2	3	4
Capacity / Standard Unit charge	Not exceeding 10	Over 10 and up to 30	Over 30 and up to 50	Over 50 and up to 100
Not exceeding 500yen	90 yen	180 yen	270 yen	360 yen
Not exceeding 1,000 yen	120 yen	240 yen	360 yen	480 yen
Not exceeding 1,500 yen	150 yen	300 yen	450 yen	600 yen
Not exceeding 2,000 yen	180 yen	360 yen	540 yen	720 yen

(a) In the event of a standard unit charge exceeding ¥2,000, the fee shall be a sum equal to the fee obtained by adding 1/3 of the rates for charge "not exceeding ¥500" for each additional ¥500 or part thereof to the rates applicable to charge "Not exceeding ¥2,000."

(b) In the event of a capacity exceeding 100, the fee shall be a sum equal to the fee obtained by adding the rates for charge "Class 1" for each additional 50 or part thereof to the rates for charge "Class 4."

② In the event of use of a work whose playing time is exceeding 5 minutes but not exceeding 10 minutes, the fee shall be a sum equal to the amount two times as high as those applicable to charge "Not exceeding 5 minutes."

In the event of use of a work whose playing time is exceeding 10 minutes, the fee shall be a sum equal to the amount by adding the rates for charge "Exceeding 5 minutes but not exceeding 10 minutes" for each additional 10 minutes or part thereof.

(Notes for performances, etc. at Karaoke facilities)

Capacity

①"Capacity" means the total number of seats that are provided at facilities. In the case of one-place chairs or seats the number thereof shall be substituted for the capacity. In the case of bench-type chairs (each with 2 or more places), the number produced by dividing the front width (in meters) of such chairs by 0.5m shall be substituted for the capacity. In the case of accommodations other than chairs or seats, the number produced by dividing the size of the space concerned by 1.5 sq. meters shall be substituted for the capacity.

Standard unit charge

②"Standard unit charge" means a charge (excluding the consumption tax and including any kind of charge) which is normally made per customer and per hour. How to be calculated is shown below:

(a) In the event that a room charge (regardless of whether or not it includes an eating and drinking charge. In the event that a sum corresponding to a charge per customer per hour is not indicated, a sum of charge is obtained by dividing a sum corresponding to a charge per room and per hour by the number of capacity) includes a singing charge, a room charge per customer and per hour shall be "Standard unit charge."

(b) In the event that there are a room charge and a singing charge per song and per performance, a sum equivalent to a room charge per customer and per hour plus a charge obtained by dividing a singing charge for 10 songs by capacity of a room shall be "Standard unit charge."

(c) In the event that there exists only a singing charge per song and per performance, but not a room charge, a sum equivalent to a charge obtained by dividing a singing charge for ten songs by capacity of a room shall be "Standard unit charge".

(d) In the event that none of the above (a), (b) and (c) can be applied, "Standard unit charge" shall be substituted for ¥500.

(e) In the event of use of songs at Karaoke classes, "Standard unit charge" shall be substituted for ¥500 for the time being.

(f) In the event that a room charge and a singing charge, etc. is classified in accordance with business hour of a shop, the arithmetic mean thereof shall be considered as "Standard unit charge."

Vocal works

③For a vocal work whose music is not protected by copyright or is not under the administration of the Society , the fee shall be reduced to a sum equal to 6/12ths of a work.

④For a vocal work whose lyric is not under the administration of the Society, the fee shall be reduced to a sum equal to 6/12ths of a work.

Singing to the accompaniment of Karaoke

⑤Notwithstanding the provisions (1) and (2) above, the fee for use of works for singing to the accompaniment of Karaoke (excluding singing by professional singers, etc. with remuneration; the same shall apply hereinafter) based on a comprehensive licensing agreement for the term of a year, shall be, for the time being, as shown below:

Video Karaoke Singing

Class	Capacity	Monthly fee
1	Not exceeding 10	¥4,000
2	Over 10 up to 30	¥8,000
3	Over 30 up to 50	¥12,000
4	Over 50 up to 100	¥16,000

(b) Audio Karaoke Singing

Class	Capacity	Monthly fee
1	Not exceeding 10	¥3,000
2	Over 10 up to 30	¥6,000
3	Over 30 up to 50	¥9,000
4	Over 50 up to 100	¥12,000

(c) In the event that the Capacity exceeds 100, the fee is shall be a sum as provided for (1) above.

(d)The fee applicable to capacity of not exceeding 3, shall be a sum equivalent to 80 percent of the fee provided for in class 1 above, except the case of a room having a floor space exceeding 6 sq.m.

Note

ⓐA Video Karaoke shall be defined as equipment especially used for the accompaniment to singing with sounds and the sequence of images reproduced. Audio Karaoke shall be defined as equipment other than Video Karaoke (hereafter, the same shall apply in this Chapter).

ⓑWhen works are used in the same room by the way (a) (b) above, the fees shall be in accordance with the provision in (a)

.

5. Performances, etc. at Dance Instruction Institutes

The fee for performance of works within their business, at dance instruction institut etc. which have equipement for the purpose of business offering floor space for

customers to dance with the principal purpose of teaching dance to customers, shall be a sum calculated hereafter principally per performance place, or per place for showing films, plus an amount equivalent to the consumption tax.

(1) Monthly fee is as follows：

① Dance instruction institutes

No. of instructors	Instruction charge for 30 minutes (not inclusive of the consumption tax)	Monthly fee
1-3	Not exceeding ¥1,000	¥3,000
	Not exceeding ¥2,000	4,500
	Not exceeding ¥3,000	6,000
4-6	Not exceeding ¥1,000	5,000
	Not exceeding ¥2,000	7,500
	Not exceeding ¥3,000	10,000
7-9	Not exceeding ¥1,000	7,000
	Not exceeding ¥2,000	10,500
	Not exceeding ¥3,000	14,000
10-12	Not exceeding ¥1,000	10,000
	Not exceeding ¥2,000	15,000
	Not exceeding ¥3,000	20,000

(a)The fee for an institute having more than 12 instructors, shall be a sum equal to the amount obtained by adding, for each additional 3 instructors or part thereof, a rate for "1to 3"(instructors) above, to the applicable rate for "10 to 12" above.

(b)In the event of the charge for a 30-minute instruction exceeding ¥3,000, the fee shall be a sum equal to the amount obtained by adding, for each additional ¥1,000 or part thereof, 50 percent of the applicable rate for charges "not exceeding ¥1,000" to the applicable rate for charges "not exceeding ¥3,000"

②Dance instruction institutes other than those for social dance

Floor space	Instruction charge for 30 minutes (not inclusive of the consumption tax)	Monthly fee
60 sq. m.	Not exceeding ¥1,000	¥6,000
	Not exceeding ¥2,000	8,000
	Not exceeding ¥3,000	9,000
120 sq. m	Not exceeding ¥1,000	9,000
	Not exceeding ¥2,000	11,000
	Not exceeding ¥3,000	13,000
180 sq. m	Not exceeding ¥1,000	12,000
	Not exceeding ¥2,000	15,000
	Not exceeding ¥3,000	17,000
240 sq. m	Not exceeding ¥1,000	15,000
	Not exceeding ¥2,000	18,000
	Not exceeding ¥3,000	21,000
300 sq. m	Not exceeding ¥1,000	18,000
	Not exceeding ¥2,000	22,000
	Not exceeding ¥3,000	26,000

(a) In the event of a floor space exceeding 300 sq.m. but not 900 sq.m.,the fee shall be a sum equal to the amount obtained by adding, for each additional 150 sq.m., the applicable rate for floor space "not exceeding 60 sq.m." to the applicable rate for floor space "not exceeding 300 sq.m."

(b) In the event of a floor space exceeding 900 sq.m., the fee shall be a sum equal to the amount obtained by adding the applicable rate for floor space "not exceeding 300 sq.m." to the applicable rate for floor space "not exceeding 900 sq.m."

(c)In the event of a 30-minute instruction charge exceeding ¥3,000, the fee shall be a sum equal to the amount obtained by adding, for each additional ¥1,000 or part thereof, 20 percent of the applicant rate for charges "not exceeding ¥1,000" to the applicable rate for charges "not exceeding ¥3,000."

(2) In the case that (1) above shall not apply, the fee shall be determined per work per performance, and shall be as follows:

① The fee for performance, not exceeding 5 minutes, shall be calculated in accordance with the following scale:

Lesson fee per 30 minutes / Floor space	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 40 (60 sq.m.)	¥90	¥110	¥130	¥150	¥20
Not exceeding 80 (120 sq.m.)	¥140	¥170	¥200	¥230	¥30
Not exceeding 120 (180 sq.m.)	¥180	¥220	¥260	¥290	¥40
Not exceeding 160 (240 sq.m.)	¥230	¥280	¥330	¥370	¥50
Not exceeding 200 (300 sq.m.)	¥270	¥330	¥380	¥440	¥60
Not exceeding 300 (450 sq.m.)	¥360	¥440	¥510	¥580	¥80
Not exceeding 400 (600 sq.m.)	¥450	¥540	¥630	¥720	¥90
Not exceeding 500 (750 sq.m.)	¥540	¥650	¥760	¥870	¥110
Not exceeding 600 (900 sq.m.)	¥630	¥760	¥890	¥1,010	¥130
Not exceeding 750 (1,125 sq.m.)	¥720	¥870	¥1,010	¥1,160	¥150
Not exceeding 1,000 (1,500 sq.m.)	¥900	¥1,080	¥1,260	¥1,440	¥180
Not exceeding 1,500 (2,250 sq.m.)	¥1,260	¥1,520	¥1,770	¥2,020	¥260
Not exceeding 2,000 (3,000 sq.m.)	¥1,620	¥1,950	¥2,270	¥2,600	¥330
Exceeding 2,000 (3,000 sq.m.)	¥1,980	¥2,380	¥2,780	¥3,170	¥400

② Notwithstanding ① above, the fee for performance by means of phonogram lawfully recorded, whose playing time does not exceed 5 minutes shall be calculated in accordance with the following scale:

Lesson fee per 30 minutes / Floor space	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 40 (60 sq.m.)	¥40	¥50	¥60	¥70	¥10
Not exceeding 80 (120 sq.m.)	¥60	¥80	¥90	¥100	¥20
Not exceeding 120 (180 sq.m.)	¥80	¥100	¥120	¥130	¥20
Not exceeding 160 (240 sq.m.)	¥90	¥120	¥140	¥150	¥20
Not exceeding 200 (300 sq.m.)	¥110	¥140	¥160	¥180	¥30
Not exceeding 300 (450 sq.m.)	¥150	¥180	¥210	¥240	¥30
Not exceeding 400 (600 sq.m.)	¥180	¥220	¥260	¥290	¥40
Not exceeding 500 (750 sq.m.)	¥220	¥270	¥310	¥360	¥50
Not exceeding 600 (900 sq.m.)	¥260	¥320	¥370	¥420	¥60
Not exceeding 750 (1,125 sq.m.)	¥290	¥350	¥410	¥470	¥60
Not exceeding 1,000 (1,500 sq.m.)	¥360	¥440	¥510	¥580	¥80
Not exceeding 1,500 (2,250 sq.m.)	¥510	¥620	¥720	¥820	¥110
Not exceeding 2,000 (3,000 sq.m.)	¥650	¥780	¥910	¥1,040	¥130
Exceeding 2,000 (3,000 sq.m.)	¥800	¥960	¥1,120	¥1,280	¥160

③ Notwithstanding ①above, the fee for showing of videogram, whose playing time does not exceed 5 minutes shall be a sum equal to 60% of ①above.

④ The fee per work per performance for use whose playing time exceeds 5 minutes shall be calculated by adding to the fee for the playing time not exceeding 5 minutes, a sum equal thereof for each additional 5 minutes.

(Notes for Performances, etc.at dance instruction institutes)

(Number of dance instructors)

① The number of dance instructor shall be the total instructors who work for teaching dance, and receive remuneration for teaching dance (whatever its nomination is).

② The number of instructors who fall under ①above, and work for more than 4 days a week, no matter how long he/she works, shall be one. The number of instructors who work for less than 3 days a week shall be 0.5. The number of instructor shall be obtained by totaling the number of instructors calculated as such. The fraction

less than 1 calculated as a result shall be rounded up.

(Floor space)

③ Floor space shall mean a space of a place principally intended for dancing.

(Lesson fee per 30 minutes)

Lesson fee per 30 minutes shall be a fee (not including the consumption tax) paid by customers for dance lessons(whatever its nomination is), and shall be a sum equal to the fee for 30 minute lesson calculated in the ratio of remuneration paid by customers for one lesson course. In the case that the fee is classified in accordance with the class category, it shall be the average sum calculated arithmetically.

6. Performances, etc. at Places of Entertainment

Notwithstanding the provisions in 1., 2., 3. and 7 above (excluding performances applicable to 3(7) and (8)), the fee for cabarets, bars, snack bars, live houses, discotheques, hotels and other business establishments which have equipment for, and engage in, the business of catering to customers and offering floor space for dancing customers (hereinafter referred to as "places of entertainment"), shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

(1) Kinds of fees

The kinds of fees for performances, etc. at place of entertainment are shown below:

①If a comprehensive licensing agreement is concluded

(a) Monthly fee in case that music is used every month throughout a year (Monthly fee for performance throughout a year)

(b)Monthly fee in case that music is used in a certain period less than a year (Monthly fee for performance in a period).

(c)Fee per performance per day

②If ①above does not apply

Fee per work per use

(2) Categories of fees

The fees for performances, etc. at place of entertainment are under the "per place of performance or showing films" principle, as shown below:

Category 1, Business principally intended for unspecific customers

① Use of music in "live houses" etc. principally intended to play music for make customers to listen to music

……..See Table 1,7 or 8

② Use of music in cabarets, "show pubs ", " restaurant theaters " etc. principally intended to make customers enjoy shows, or entertainments, or to play music for making customers dance by fixing performance time,

……..See Table 2,7 or 8

③ Use of music in discotheques, dance halls, etc. principally intended to offer floor space for dancing to customers throughout its business hour,

……See Table 3 or 8

④ Use of music in bars, snack bars, Japanese style pub (*izakaya*), restaurant etc. applicable to other than category 1 ① to ③ in,

……See Table 4, 7 or 8

Category 2, Business principally intended for specific customers, such as groups of customers and invited guests

⑤ Facilities in wedding halls, restaurants, hotels, inns, etc. principally intended for banquets

……See Table 5, 7 or 8

Category 3, Business principally intended to offer accommodation

……..See Table 6 or 8

⑥ Lodging facilities, such as inns and hotels, principally intended to offer accommodation

……..See Table 6 or 8

(Notes for Performances, etc. at places of Entertainment)

(Performances)

① "Performances" mean Live performances or performances by means of phonograms

(Live Performances, etc.)

② "Live performances" means instrumental performances by means of pianos, guitars, etc. or singing by singers. However, the singing does not include such singing to the accompaniment of the "Karaoke" sing-alone machine.

(Performance by means of phonograms)

③ "Performances by means of phonograms" mean those of works by means of phonograms on which the fixation of sounds was lawfully made. However, they do not include performances applicable to the provisions of Article 12, BGM.

④ The fee for performances by means of phonograms by using equipments, or its similar ones intended to play music, such as by piano equipped with automatic performances mechanism and juke boxes (equipment allowing automatic performances by inserting a coin in a machine) shall be a sum equal to monthly fee fixed in accordance with the playing time applicable to Table 4, or 40% of the fee per work per use applicable to Table 8-4.

(Singing to accompaniment to karaoke)

⑤ Singing to accompaniment of karaoke means singing of customers to accompaniment of karaoke facilities.

(Communication)

⑥ "Communication" means the act to communicate in public the works which were transmitted in public through cable broadcasts, etc., by using receiving apparatus. However, communications applicable to the provisions of Article 12, BGM, is not included.

⑦ When the provisions of Category 1②,③ and Category 3⑥(communications made in facilities other than reception rooms) shall apply, the fee for transmission is a sum mentioned in each Table.

(Showing of videograms)

⑧ "videogram" means the recording on which a work is reproduced under the provisions of Article 7. Showing of videograms does not include showing of videogram made as accompaniment of singing.

⑨ When Category 1 ①,②,③ and Category 3⑥(facilities other than reception rooms) shall apply, the fee for the showing of videograms shall be a sum equal to 60% of monthly fee mentioned in the relevant Tables (In case that the fee is classified in accordance with the playing time, the relevant classification shall apply, or 2,000 yen, that is a fee for an apparatus showing image (monitor), whichever is lower.

⑩ When Category 1 ① through Category 3 ⑥ shall apply, the fee per work per use for the showing of videograms shall be a sum equal to 60% of the fee for live performances mentioned on Table 8.

(Seating capacity, floor space)

⑪ "Seating capacity" means the total number of seats that are provided at a place of entertainment.

⑫ "Floor space" means:

(a) Total floor spaces (including corridors passed by customers etc.) that are provided for dancing and singing to customers, for Category 1③

(b) The size of floor space principally provided for holding reception (space enclosed by a fixed partition such as a wall) for Category 2⑤

⑬ The number of seats shall be calculated as shown below:

(a) Chairs, etc.

In the case of one-space chairs or seats, the number thereof shall be substituted for the seating capacity. In the case of bench-type chair (each with 2 or more places), the number produced by dividing the front width (in meters) of such chairs by 0.5 m shall be substituted for the seating capacity.

(b) Others

In the case of accommodations other than chairs or seats, the number produced by dividing the size of the space concerned by 1.5 sq. meters shall be substituted for the seating capacity.

(c) Deduction of the number of hostesses

When Category 1② shall apply, and at entertainment places where businesses falling under the category mentioned Article 2 (1) through (2) of the Law for regulating and aiming at adequacy of appropriate business of offering food and entertainment(revised according to the Law of December 1, 2004, #147) are conducted with full-time hostesses and the equivalent employed, the seating capacity shall be the number obtained by subtracting from a seat capacity calculated under (a) or (b) above, the number of full-time hostesses and the equivalent with the maximum of 20 percent of the seating capacity for 81 seats over and 10 percent for 41 to 80 seats in Category 1④.

(Standard unit charge)

⑭ "Standard unit charge" means an after-tax charge ("Charge" includes any kind of charge) which is normally made per customer when a place of entertainment is utilized in conformity with its business purpose, and its criteria are provided for in the regulation on implementation of the Tariffs.

(Monthly fee)

⑮ When the provisions of Table ⑤ through 7 shall apply, the monthly fee for use every month throughout a year shall be the same as for use for a period less than a year.

(Fee per work per use)

⑯ The fee per work per use means the fee required to pay for entire or partial use of a work per performance.

⑰ In the event of a playing time exceeding 5 minutes, the fee shall be a sum by adding the same sum to the fee for a playing time not exceeding 5 minutes for each 5 minutes exceeding 5 minutes.

(Special rules for fee calculation)

⑱ In Category 1①, ②, and ④, the fee for monthly playing time not exceeding 10 hours shall be a sum equal to 50% of the fee for monthly playing time not exceeding 30 hours.

⑲ In Category 1①, ②, and ④, and in case annual comprehensive licensing agreement is concluded, and a sum may not be fixed as a monthly fee in accordance with the relevant Table, a monthly fee or an annual fee may be fixed by a method of calculating a fee per work per use taking into account the frequency of use.

In case the annual fee calculated in accordance with the above is lower than 12,000 yen, it shall be 12,000 yen a year.

⑳ In Category 1,③, in case that monthly performance days does not exceed 10

days, the fee per day shall be a sum equal to 30% of the fee for monthly performance days not exceeding 10 days mentioned in the Table.

In this case, a day means a day from opening hour until closing hour in the facilities where the relevant performances take place.

㉑ In view of performances, showing of videograms and singing to the accompaniment of Karaoke, the fee for a place using works in more than one manner of these, shall be calculated as shown below:

(a) In Category 1,①,②and ④, when performances and performances by means of phonograms take place at the same time, playing time shall be a sum totaling the fee for each playing time, and monthly fee shall be the one as mentioned in Table or the fee totaling a sum for each type of use, whichever is lower.

(b) In Category 1,①,②and ④, when among performances, showing of videograms and singing to the accompaniment of Karaoke, more than two types of performances take place at the same time, the fee shall be a sum totaling the fee applicable to each type of performances.

(c) In Category 1④, when among performances by means of phonograms falling under ④ of the present note, showing of videograms and singing to the accompaniment of Karaoke, more than two types of performances take place at the same time, the fee shall be a sum totaling the fee applicable to each type of performances.

(d) In Category 3 ⑥ (limited to facilities other than banquet room), when among performances by means of phonograms, showing of videograms and singing to the accompaniment of Karaoke, more than two types of performances take place at the same time, the fee shall be a sum totaling the fee applicable to each type of performances.

(e) At facilities other than banquet room provided in Category 3 ⑥ when among performances by means of phonograms, showing of videograms and singing to the accompaniment of Karaoke, more than two types of performances take place at the same time, the fee shall be monthly fee applicable to performances at facilities other than banquet room shown on Table 6

(f) Notwithstanding the provisions of (a), (c) and (d) above in Category 7 (2), the fee for the use of works for singing to the accompaniment of Karaoke to which the provisions of Notes 7 ② above are applicable shall be calculated as shown below:

ⓐ When live performances and singing to the accompaniment of Karaoke are made, a total of the playing time and singing time shall be considered to be the applicable playing time, and the fee shall be a sum equal to the applicable fee for live performances calculated on this playing time as mentioned on the Table 3 applicable.

ⓑ When performances by means of phonograms or showing of videograms and singing to the accompaniment of Karaoke are made, the fee shall be the amount provided for on Table 7①.

(Others)

㉒ With respect to performances, etc. at places of entertainment, in the event of the purpose in the use, the type of use or some specific circumstances preventing the fees under this Article from being applicable, other appropriate fees may be determined within the rates fixed in accordance with this Article by mutual agreement between the Society and the user.

TABLES

① Where a comprehensive licensing agreement is concluded:

Table 1(Category 1①)

Seating capacity	Manner of performance / Standard unit charge	Performances whose total playing time does not exceed 30 hours a month		Performances whose total playing time exceeds 30 hours but does not exceed 60 hours a month		Performances whose total playing time exceeds 60 hours a month	
		Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis
Not exceeding 20	Not exceeding ¥1,000	¥8,000	¥10,000	¥12,000	¥15,000	¥20,000	¥25,000
	Not exceeding ¥2,000	¥10,000	¥12,500	¥15,000	¥18,750	¥24,000	¥30,000
	Not exceeding ¥3,000	¥12,000	¥15,000	¥17,000	¥21,250	¥28,000	¥35,000
Not exceeding 30	Not exceeding ¥1,000	¥12,000	¥15,000	¥17,000	¥21,250	¥27,000	¥33,750
	Not exceeding ¥2,000	¥14,000	¥17,500	¥21,000	¥26,250	¥33,000	¥41,250
	Not exceeding ¥3,000	¥16,000	¥20,000	¥24,000	¥30,000	¥38,000	¥47,500
Not exceeding 40	Not exceeding ¥1,000	¥15,000	¥18,750	¥22,000	¥27,500	¥36,000	¥45,000
	Not exceeding ¥2,000	¥18,000	¥22,500	¥27,000	¥33,750	¥44,000	¥55,000
	Not exceeding ¥3,000	¥21,000	¥26,250	¥31,000	¥38,750	¥51,000	¥63,750
Not exceeding 60	Not exceeding ¥1,000	¥18,000	¥22,500	¥27,000	¥33,750	¥45,000	¥56,250
	Not exceeding ¥2,000	¥22,000	¥27,500	¥33,000	¥41,250	¥54,000	¥67,500
	Not exceeding ¥3,000	¥26,000	¥32,500	¥38,000	¥47,500	¥63,000	¥78,750
Not exceeding 80	Not exceeding ¥1,000	¥22,000	¥27,500	¥33,000	¥41,250	¥54,000	¥67,500
	Not exceeding ¥2,000	¥27,000	¥33,750	¥40,000	¥50,000	¥65,000	¥81,250
	Not exceeding ¥3,000	¥32,000	¥40,000	¥47,000	¥58,750	¥76,000	¥95,000
Not exceeding 120	Not exceeding ¥1,000	¥30,000	¥37,500	¥44,000	¥55,000	¥72,000	¥90,000
	Not exceeding ¥2,000	¥36,000	¥45,000	¥53,000	¥66,250	¥87,000	¥108,750
	Not exceeding ¥3,000	¥42,000	¥52,500	¥62,000	¥77,500	¥101,000	¥126,250
Not exceeding 160	Not exceeding ¥1,000	¥36,000	¥45,000	¥54,000	¥67,500	¥90,000	¥112,500
	Not exceeding ¥2,000	¥44,000	¥55,000	¥65,000	¥81,250	¥108,000	¥135,000
	Not exceeding ¥3,000	¥51,000	¥63,750	¥76,000	¥95,000	¥126,000	¥157,500
Not exceeding 200	Not exceeding ¥1,000	¥44,000	¥55,000	¥65,000	¥81,250	¥108,000	¥135,000
	Not exceeding ¥2,000	¥52,000	¥65,000	¥78,000	¥97,500	¥130,000	¥162,500
	Not exceeding ¥3,000	¥61,000	¥76,250	¥91,000	¥113,750	¥152,000	¥190,000
Not exceeding 300	Not exceeding ¥1,000	¥58,000	¥72,500	¥87,000	¥108,750	¥144,000	¥180,000
	Not exceeding ¥2,000	¥70,000	¥87,500	¥105,000	¥131,250	¥173,000	¥216,250
	Not exceeding ¥3,000	¥82,000	¥102,500	¥122,000	¥152,500	¥202,000	¥252,500
Not exceeding 400	Not exceeding ¥1,000	¥72,000	¥90,000	¥108,000	¥135,000	¥180,000	¥225,000
	Not exceeding ¥2,000	¥87,000	¥108,750	¥130,000	¥162,500	¥216,000	¥270,000
	Not exceeding ¥3,000	¥102,000	¥127,500	¥152,000	¥190,000	¥252,000	¥315,000
Not exceeding 500	Not exceeding ¥1,000	¥87,000	¥108,750	¥130,000	¥162,500	¥216,000	¥270,000
	Not exceeding ¥2,000	¥104,000	¥130,000	¥156,000	¥195,000	¥260,000	¥325,000
	Not exceeding ¥3,000	¥122,000	¥152,500	¥182,000	¥227,500	¥303,000	¥378,750
Exceeding 500	Not exceeding ¥1,000	¥116,000	¥145,000	¥173,000	¥216,250	¥288,000	¥360,000
	Not exceeding ¥2,000	¥139,000	¥173,750	¥208,000	¥260,000	¥346,000	¥432,500
	Not exceeding ¥3,000	¥162,000	¥202,500	¥243,000	¥303,750	¥404,000	¥505,000

In the event of a standard unit charge exceeding ¥3,000, the fee shall be a sum equal to the amount obtained by adding 20 percent of the applicable rates for charge "not exceeding ¥1,000" for each additional ¥1,000 or part thereof.

Table 2(Category 1②)

Seating capacity	Manner of performance / Standard unit charge	Performances whose total playing time does not exceed 30 hours a month		Performances whose total playing time exceeds 30 hours but does not exceed 60 hours a month		Performances whose total playing time exceeds 60 hours a month	
		Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis
Not exceeding 40	Not exceeding ¥1,000	¥12,000	¥15,000	¥17,000	¥21,250	¥27,000	¥33,750
	Not exceeding ¥3,000	¥15,000	¥18,750	¥22,000	¥27,500	¥36,000	¥45,000
	Not exceeding ¥5,000	¥18,000	¥22,500	¥27,000	¥33,750	¥45,000	¥56,250
	Not exceeding ¥10,000	¥22,000	¥27,500	¥33,000	¥41,250	¥54,000	¥67,500
	Not exceeding ¥15,000	¥26,000	¥32,500	¥38,000	¥47,500	¥63,000	¥78,750
	Not exceeding ¥20,000	¥30,000	¥37,500	¥44,000	¥55,000	¥72,000	¥90,000
Not exceeding 60	Not exceeding ¥1,000	¥14,000	¥17,500	¥21,000	¥26,250	¥35,000	¥43,750
	Not exceeding ¥3,000	¥19,000	¥23,750	¥28,000	¥35,000	¥46,000	¥57,500
	Not exceeding ¥5,000	¥23,000	¥28,750	¥35,000	¥43,750	¥57,000	¥71,250
	Not exceeding ¥10,000	¥28,000	¥35,000	¥42,000	¥52,500	¥69,000	¥86,250
	Not exceeding ¥15,000	¥32,000	¥40,000	¥48,000	¥60,000	¥80,000	¥100,000
	Not exceeding ¥20,000	¥37,000	¥46,250	¥55,000	¥68,750	¥92,000	¥115,000
Not exceeding 80	Not exceeding ¥1,000	¥17,000	¥21,250	¥25,000	¥31,250	¥41,000	¥51,250
	Not exceeding ¥3,000	¥23,000	¥28,750	¥33,000	¥41,250	¥55,000	¥68,750
	Not exceeding ¥5,000	¥28,000	¥35,000	¥41,000	¥51,250	¥68,000	¥85,000
	Not exceeding ¥10,000	¥34,000	¥42,500	¥50,000	¥62,500	¥82,000	¥102,500
	Not exceeding ¥15,000	¥39,000	¥48,750	¥58,000	¥72,500	¥96,000	¥120,000
	Not exceeding ¥20,000	¥44,000	¥55,000	¥66,000	¥82,500	¥109,000	¥136,250
Not exceeding 120	Not exceeding ¥1,000	¥20,000	¥25,000	¥30,000	¥37,500	¥49,000	¥61,250
	Not exceeding ¥3,000	¥27,000	¥33,750	¥40,000	¥50,000	¥65,000	¥81,250
	Not exceeding ¥5,000	¥33,000	¥41,250	¥49,000	¥61,250	¥81,000	¥101,250
	Not exceeding ¥10,000	¥40,000	¥50,000	¥59,000	¥73,750	¥98,000	¥122,500
	Not exceeding ¥15,000	¥46,000	¥57,500	¥69,000	¥86,250	¥114,000	¥142,500
	Not exceeding ¥20,000	¥53,000	¥66,250	¥79,000	¥98,750	¥130,000	¥162,500
Not exceeding 160	Not exceeding ¥1,000	¥26,000	¥32,500	¥38,000	¥47,500	¥62,000	¥77,500
	Not exceeding ¥3,000	¥34,000	¥42,500	¥50,000	¥62,500	¥82,000	¥102,500
	Not exceeding ¥5,000	¥42,000	¥52,500	¥62,000	¥77,500	¥102,000	¥127,500
	Not exceeding ¥10,000	¥50,000	¥62,500	¥75,000	¥93,750	¥123,000	¥153,750
	Not exceeding ¥15,000	¥58,000	¥72,500	¥87,000	¥108,750	¥143,000	¥178,750
	Not exceeding ¥20,000	¥67,000	¥83,750	¥100,000	¥125,000	¥164,000	¥205,000
Not exceeding 200	Not exceeding ¥1,000	¥30,000	¥37,500	¥45,000	¥56,250	¥74,000	¥92,500
	Not exceeding ¥3,000	¥40,000	¥50,000	¥60,000	¥75,000	¥98,000	¥122,500
	Not exceeding ¥5,000	¥50,000	¥62,500	¥74,000	¥92,500	¥122,000	¥152,500
	Not exceeding ¥10,000	¥60,000	¥75,000	¥89,000	¥111,250	¥147,000	¥183,750
	Not exceeding ¥15,000	¥70,000	¥87,500	¥104,000	¥130,000	¥171,000	¥213,750
	Not exceeding ¥20,000	¥80,000	¥100,000	¥119,000	¥148,750	¥196,000	¥245,000
Not exceeding 300	Not exceeding ¥1,000	¥40,000	¥50,000	¥59,000	¥73,750	¥98,000	¥122,500
	Not exceeding ¥3,000	¥53,000	¥66,250	¥79,000	¥98,750	¥130,000	¥162,500
	Not exceeding ¥5,000	¥66,000	¥82,500	¥98,000	¥122,500	¥162,000	¥202,500
	Not exceeding ¥10,000	¥79,000	¥98,750	¥118,000	¥147,500	¥195,000	¥243,750
	Not exceeding ¥15,000	¥92,000	¥115,000	¥138,000	¥172,500	¥227,000	¥283,750
	Not exceeding ¥20,000	¥105,000	¥131,250	¥157,000	¥196,250	¥260,000	¥325,000
Not exceeding 400	Not exceeding ¥1,000	¥50,000	¥62,500	¥74,000	¥92,500	¥122,000	¥152,500
	Not exceeding ¥3,000	¥66,000	¥82,500	¥98,000	¥122,500	¥163,000	¥203,750
	Not exceeding ¥5,000	¥82,000	¥102,500	¥122,000	¥152,500	¥203,000	¥253,750
	Not exceeding ¥10,000	¥98,000	¥122,500	¥147,000	¥183,750	¥244,000	¥305,000
	Not exceeding ¥15,000	¥114,000	¥142,500	¥171,000	¥213,750	¥285,000	¥356,250
	Not exceeding ¥20,000	¥131,000	¥163,750	¥196,000	¥245,000	¥325,000	¥406,250

Not exceeding 500	Not exceeding ¥1,000	¥59,000	¥73,750	¥88,000	¥110,000	¥146,000	¥182,500
	Not exceeding ¥3,000	¥78,000	¥97,500	¥117,000	¥146,250	¥195,000	¥243,750
	Not exceeding ¥5,000	¥98,000	¥122,500	¥146,000	¥182,500	¥243,000	¥303,750
	Not exceeding ¥10,000	¥118,000	¥147,500	¥176,000	¥220,000	¥292,000	¥365,000
	Not exceeding ¥15,000	¥137,000	¥171,250	¥205,000	¥256,250	¥341,000	¥426,250
	Not exceeding ¥20,000	¥156,000	¥195,000	¥234,000	¥292,500	¥389,000	¥486,250
Not exceeding 750	Not exceeding ¥1,000	¥78,000	¥97,500	¥117,000	¥146,250	¥195,000	¥243,750
	Not exceeding ¥3,000	¥104,000	¥130,000	¥156,000	¥195,000	¥260,000	¥325,000
	Not exceeding ¥5,000	¥130,000	¥162,500	¥195,000	¥243,750	¥324,000	¥405,000
	Not exceeding ¥10,000	¥156,000	¥195,000	¥234,000	¥292,500	¥389,000	¥486,250
	Not exceeding ¥15,000	¥182,000	¥227,500	¥273,000	¥341,250	¥454,000	¥567,500
	Not exceeding ¥20,000	¥208,000	¥260,000	¥312,000	¥390,000	¥519,000	¥648,750
Exceeding 750	Not exceeding ¥1,000	¥98,000	¥122,500	¥146,000	¥182,500	¥243,000	¥303,750
	Not exceeding ¥3,000	¥130,000	¥162,500	¥195,000	¥243,750	¥324,000	¥405,000
	Not exceeding ¥5,000	¥162,000	¥202,500	¥243,000	¥303,750	¥405,000	¥506,250
	Not exceeding ¥10,000	¥195,000	¥243,750	¥292,000	¥365,000	¥486,000	¥607,500
	Not exceeding ¥15,000	¥228,000	¥285,500	¥341,000	¥426,250	¥567,000	¥708,750
	Not exceeding ¥20,000	¥260,000	¥325,000	¥389,000	¥486,250	¥648,000	¥810,000

In the event of a standard unit charge exceeding ¥20,000, the fee shall be a sum equal to the amount obtained by adding 20 percent of the applicable rates for charge "not exceeding ¥5,000" for each additional ¥5,000 or part thereof.

Table 3 (Category 1③)

Floor space	Manner of performance / Standard unit charge	Performances whose playing day does not exceed 10		Performances whose playing day exceeds 11 but not 19		Performances whose playing day exceeds 20	
		Monthly fee for use in a yearly basis	Monthly fee for use in a period basis	Monthly fee for use in a yearly basis	Monthly fee for use in a period basis	Monthly fee for use in a yearly basis	Monthly fee for use in a period basis
Not exceeding 45 sq.m.	Not exceeding ¥1,000	¥9,000	¥11,250	¥13,000	¥16,250	¥21,000	¥26,250
	Not exceeding ¥3,000	¥12,000	¥15,000	¥17,000	¥21,250	¥28,000	¥35,000
	Not exceeding ¥5,000	¥15,000	¥17,500	¥21,000	¥26,250	¥34,000	¥42,500
Not exceeding 60 sq.m.	Not exceeding ¥1,000	¥12,000	¥15,000	¥17,000	¥21,250	¥27,000	¥33,750
	Not exceeding ¥3,000	¥15,000	¥18,750	¥22,000	¥27,500	¥36,000	¥45,000
	Not exceeding ¥5,000	¥18,000	¥22,500	¥27,000	¥33,750	¥45,000	¥56,250
Not exceeding 90 sq.m.	Not exceeding ¥1,000	¥14,000	¥17,500	¥21,000	¥26,250	¥35,000	¥43,750
	Not exceeding ¥3,000	¥19,000	¥23,750	¥28,000	¥35,000	¥46,000	¥57,500
	Not exceeding ¥5,000	¥23,000	¥28,750	¥35,000	¥43,750	¥57,000	¥71,250
Not exceeding 120 sq.m.	Not exceeding ¥1,000	¥17,000	¥21,250	¥25,000	¥31,250	¥41,000	¥51,250
	Not exceeding ¥3,000	¥23,000	¥28,750	¥33,000	¥41,250	¥55,000	¥68,750
	Not exceeding ¥5,000	¥28,000	¥35,000	¥41,000	¥51,250	¥68,000	¥85,000
Not exceeding 180 sq.m.	Not exceeding ¥1,000	¥20,000	¥25,000	¥30,000	¥37,500	¥49,000	¥61,250
	Not exceeding ¥3,000	¥27,000	¥33,750	¥40,000	¥50,000	¥65,000	¥81,250
	Not exceeding ¥5,000	¥33,000	¥41,250	¥49,000	¥61,250	¥81,000	¥101,250
Not exceeding 240 sq.m	Not exceeding ¥1,000	¥26,000	¥32,500	¥38,000	¥47,500	¥62,000	¥77,500
	Not exceeding ¥3,000	¥34,000	¥42,500	¥50,000	¥62,500	¥82,000	¥102,500
	Not exceeding ¥5,000	¥42,000	¥52,500	¥62,000	¥77,500	¥102,000	¥127,500
Not exceeding 300 sq.m	Not exceeding ¥1,000	¥30,000	¥37,500	¥45,000	¥56,250	¥74,000	¥92,500
	Not exceeding ¥3,000	¥40,000	¥50,000	¥60,000	¥75,000	¥98,000	¥122,500
	Not exceeding ¥5,000	¥50,000	¥62,500	¥74,000	¥92,500	¥122,000	¥152,500
Not exceeding 450 sq.m	Not exceeding ¥1,000	¥40,000	¥50,000	¥59,000	¥73,750	¥98,000	¥122,500
	Not exceeding ¥3,000	¥53,000	¥66,250	¥79,000	¥98,750	¥130,000	¥162,500
	Not exceeding ¥5,000	¥66,000	¥82,500	¥98,000	¥122,500	¥162,000	¥202,500
Not exceeding 600 sq.m	Not exceeding ¥1,000	¥50,000	¥62,500	¥74,000	¥92,500	¥122,000	¥152,500
	Not exceeding ¥3,000	¥66,000	¥82,500	¥98,000	¥122,500	¥163,000	¥203,750
	Not exceeding ¥5,000	¥82,000	¥102,500	¥122,000	¥152,500	¥203,000	¥253,750

Not exceeding 750 sq.m	Not exceeding ¥1,000	¥59,000	¥73,750	¥88,000	¥110,000	¥146,000	¥182,500
	Not exceeding ¥3,000	¥78,000	¥97,500	¥117,000	¥146,250	¥195,000	¥243,750
	Not exceeding ¥5,000	¥98,000	¥122,500	¥146,000	¥182,500	¥243,000	¥303,750
Not exceeding 1,125 sq.m	Not exceeding ¥1,000	¥78,000	¥97,500	¥117,000	¥146,250	¥195,000	¥243,750
	Not exceeding ¥3,000	¥104,000	¥130,000	¥156,000	¥195,000	¥260,000	¥325,000
	Not exceeding ¥5,000	¥130,000	¥162,500	¥195,000	¥243,750	¥324,000	¥405,000
Not exceeding 1,500 sq.m	Not exceeding ¥1,000	¥98,000	¥122,500	¥146,000	¥182,500	¥243,000	¥303,750
	Not exceeding ¥3,000	¥130,000	¥162,500	¥195,000	¥243,750	¥324,000	¥405,000
	Not exceeding ¥5,000	¥162,000	¥202,500	¥243,000	¥303,750	¥405,000	¥506,250
Exceeding 1,500 sq.m	Not exceeding ¥1,000	¥137,000	¥171,250	¥205,000	¥256,250	¥341,000	¥426,250
	Not exceeding ¥3,000	¥182,000	¥227,500	¥273,000	¥341,250	¥454,000	¥567,500
	Not exceeding ¥5,000	¥228,000	¥285,000	¥341,000	¥426,250	¥567,000	¥708,750

In the event of a standard unit charge exceeding ¥5,000, the fee shall be a sum equal to the amount obtained by adding 20 percent of the applicable rates for charge "not exceeding ¥5,000" for each additional ¥5,000 or part thereof.

Table 4 (Category 1④)

Seating capacity	Manner of performance / Standard unit charge	Performances whose total playing time does not exceed 30 hours a month		Performances whose total playing time exceeds 30 hours but does not exceed 60 hours a month		Performances whose total playing time exceeds 60 hours a month	
		Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis	Monthly fee for use on a year basis	Monthly fee for use on a period basis
Not exceeding 20	Not exceeding ¥2,000	¥6,000	¥7,500	¥8,600	¥10,750	¥15,000	¥18,750
	Not exceeding ¥4,000	¥8,000	¥10,000	¥10,600	¥13,250	¥18,000	¥22,500
	Not exceeding ¥6,000	¥9,000	¥11,250	¥12,000	¥15,000	¥20,000	¥26,250
	Not exceeding ¥10,000	¥10,000	¥12,500	¥14,800	¥18,500	¥24,000	¥30,000
	Not exceeding ¥15,000	¥12,000	¥15,000	¥17,000	¥21,250	¥28,000	¥35,000
	Not exceeding ¥20,000	¥14,000	¥17,500	¥19,400	¥24,250	¥32,000	¥40,000
Not exceeding 30	Not exceeding ¥2,000	¥9,000	¥11,250	¥13,000	¥16,250	¥21,000	¥26,250
	Not exceeding ¥4,000	¥11,000	¥13,750	¥16,000	¥20,000	¥26,000	¥32,500
	Not exceeding ¥6,000	¥13,000	¥16,250	¥19,000	¥23,750	¥30,000	¥37,500
	Not exceeding ¥10,000	¥14,000	¥17,500	¥21,000	¥26,250	¥34,000	¥42,500
	Not exceeding ¥15,000	¥16,000	¥20,000	¥24,000	¥30,000	¥39,000	¥48,750
	Not exceeding ¥20,000	¥19,000	¥23,750	¥27,400	¥34,250	¥44,000	¥55,000
Not exceeding 40	Not exceeding ¥2,000	¥11,000	¥13,750	¥17,000	¥21,250	¥27,000	¥33,750
	Not exceeding ¥4,000	¥14,000	¥17,500	¥20,000	¥25,000	¥32,000	¥40,000
	Not exceeding ¥6,000	¥16,000	¥20,000	¥22,000	¥30,000	¥36,000	¥47,500
	Not exceeding ¥10,000	¥18,000	¥22,500	¥27,000	¥33,750	¥43,400	¥54,250
	Not exceeding ¥15,000	¥21,000	¥26,250	¥31,000	¥38,750	¥51,000	¥63,750
	Not exceeding ¥20,000	¥24,000	¥30,000	¥35,400	¥44,250	¥58,200	¥72,750
Not exceeding 60	Not exceeding ¥2,000	¥14,000	¥17,500	¥21,000	¥26,250	¥34,000	¥42,500
	Not exceeding ¥4,000	¥17,000	¥21,250	¥26,000	¥32,500	¥41,000	¥51,250
	Not exceeding ¥6,000	¥20,000	¥25,000	¥30,000	¥37,500	¥48,000	¥60,000
	Not exceeding ¥10,000	¥23,000	¥28,750	¥34,000	¥42,500	¥54,800	¥68,500
	Not exceeding ¥15,000	¥26,000	¥32,500	¥38,000	¥47,500	¥64,000	¥80,000
	Not exceeding ¥20,000	¥30,000	¥37,500	¥44,000	¥55,000	¥73,000	¥91,250
Not exceeding 80	Not exceeding ¥2,000	¥17,000	¥21,250	¥25,000	¥31,250	¥41,000	¥51,250
	Not exceeding ¥4,000	¥20,000	¥25,000	¥29,000	¥37,500	¥48,000	¥62,500
	Not exceeding ¥6,000	¥24,000	¥30,000	¥33,000	¥43,750	¥54,000	¥72,500
	Not exceeding ¥10,000	¥27,000	¥33,750	¥40,000	¥50,000	¥65,000	¥81,250
	Not exceeding ¥15,000	¥32,000	¥40,000	¥46,800	¥58,750	¥76,000	¥95,000
	Not exceeding ¥20,000	¥36,000	¥45,000	¥53,400	¥67,000	¥86,800	¥108,500

Not exceeding 120	Not exceeding ¥2,000	¥22,000	¥27,500	¥33,000	¥41,250	¥54,000	¥67,500
	Not exceeding ¥4,000	¥27,000	¥33,750	¥38,000	¥47,500	¥63,000	¥78,750
	Not exceeding ¥6,000	¥31,000	¥38,750	¥47,000	¥58,750	¥76,000	¥95,000
	Not exceeding ¥10,000	¥36,000	¥45,000	¥53,000	¥66,250	¥87,000	¥108,750
	Not exceeding ¥15,000	¥42,000	¥52,500	¥62,000	¥77,500	¥101,000	¥126,250
	Not exceeding ¥20,000	¥47,000	¥58,750	¥70,800	¥88,500	¥115,400	¥144,250
Not exceeding 160	Not exceeding ¥2,000	¥28,000	¥35,000	¥41,000	¥51,250	¥68,000	¥85,000
	Not exceeding ¥4,000	¥34,000	¥42,500	¥50,000	¥62,500	¥82,000	¥102,500
	Not exceeding ¥6,000	¥39,000	¥48,750	¥58,000	¥72,500	¥96,000	¥120,000
	Not exceeding ¥10,000	¥44,000	¥55,000	¥65,000	¥81,250	¥108,000	¥135,000
	Not exceeding ¥15,000	¥51,000	¥63,750	¥76,000	¥95,000	¥126,000	¥157,500
	Not exceeding ¥20,000	¥58,000	¥72,500	¥86,800	¥108,500	¥144,000	¥180,000
Not exceeding 200	Not exceeding ¥2,000	¥33,000	¥41,250	¥49,000	¥61,250	¥81,000	¥101,250
	Not exceeding ¥4,000	¥40,000	¥50,000	¥59,000	¥73,750	¥98,000	¥122,500
	Not exceeding ¥6,000	¥46,000	¥57,500	¥69,000	¥86,250	¥114,000	¥142,500
	Not exceeding ¥10,000	¥52,000	¥65,000	¥78,000	¥97,500	¥130,000	¥162,500
	Not exceeding ¥15,000	¥61,000	¥76,250	¥91,000	¥113,750	¥152,000	¥190,000
	Not exceeding ¥20,000	¥70,000	¥87,500	¥104,000	¥130,000	¥173,600	¥217,000
Not exceeding 300	Not exceeding ¥2,000	¥44,000	¥55,000	¥65,000	¥81,250	¥108,000	¥135,000
	Not exceeding ¥4,000	¥52,000	¥65,000	¥78,000	¥97,500	¥130,000	¥162,500
	Not exceeding ¥6,000	¥61,000	¥76,250	¥91,000	¥113,750	¥152,000	¥190,000
	Not exceeding ¥10,000	¥70,000	¥87,500	¥105,000	¥131,250	¥173,000	¥216,250
	Not exceeding ¥15,000	¥82,000	¥102,500	¥122,000	¥152,500	¥202,000	¥252,500
	Not exceeding ¥20,000	¥93,000	¥116,250	¥139,400	¥174,250	¥230,800	¥288,500
Not exceeding 400	Not exceeding ¥2,000	¥54,000	¥67,500	¥81,000	¥101,250	¥135,000	¥168,750
	Not exceeding ¥4,000	¥66,000	¥82,500	¥98,000	¥122,500	¥162,000	¥202,500
	Not exceeding ¥6,000	¥76,000	¥95,000	¥114,000	¥142,500	¥189,000	¥236,250
	Not exceeding ¥10,000	¥87,000	¥108,750	¥130,000	¥162,500	¥216,000	¥270,000
	Not exceeding ¥15,000	¥102,000	¥127,500	¥152,000	¥190,000	¥252,000	¥315,000
	Not exceeding ¥20,000	¥116,000	¥145,000	¥173,600	¥217,000	¥288,000	¥360,000
Not exceeding 500	Not exceeding ¥2,000	¥65,000	¥81,250	¥98,000	¥122,500	¥162,000	¥202,500
	Not exceeding ¥4,000	¥78,000	¥97,500	¥118,000	¥147,500	¥195,000	¥243,750
	Not exceeding ¥6,000	¥91,000	¥113,750	¥138,000	¥172,500	¥227,000	¥283,750
	Not exceeding ¥10,000	¥104,000	¥130,000	¥156,000	¥195,000	¥260,000	¥325,000
	Not exceeding ¥15,000	¥122,000	¥152,500	¥182,000	¥227,500	¥303,000	¥378,750
	Not exceeding ¥20,000	¥139,000	¥173,750	¥208,000	¥260,000	¥346,200	¥432,750
Exceeding 500	Not exceeding ¥2,000	¥87,000	¥108,750	¥130,000	¥162,500	¥216,000	¥270,000
	Not exceeding ¥4,000	¥104,000	¥130,000	¥156,000	¥195,000	¥260,000	¥325,000
	Not exceeding ¥6,000	¥122,000	¥152,500	¥182,000	¥227,500	¥303,000	¥378,750
	Not exceeding ¥10,000	¥139,000	¥173,750	¥208,000	¥260,000	¥346,000	¥432,500
	Not exceeding ¥15,000	¥162,000	¥202,500	¥243,000	¥303,750	¥404,000	¥505,000
	Not exceeding ¥20,000	¥186,000	¥232,500	¥277,600	¥347,000	¥461,600	¥577,000

In the event of a standard unit charge exceeding ¥20,000, the fee shall be a sum equal to the amount obtained by adding the balance between the applicable rates for charge not exceeding ¥20,000 and the one not exceeding ¥15,000.

Table 5 (Category 2⑤)

Floor space	Standard unit charge	Monthly fee per reception room	Fee per-reception per-day per use
Not exceeding 60 sq.m.	Not exceeding ¥3,000	¥5,000	¥1,500
	Not exceeding ¥6,000	¥6,000	¥1,800
	Not exceeding ¥9,000	¥7,000	¥2,100
	Not exceeding ¥12,000	¥8,000	¥2,400
Not exceeding 150sq.m.	Not exceeding ¥3,000	¥9,000	¥2,700
	Not exceeding ¥6,000	¥11,000	¥3,300
	Not exceeding ¥9,000	¥13,000	¥3,800
	Not exceeding¥ 12,000	¥15,000	¥4,400
Not exceeding 300 sq.m.	Not exceeding ¥3,000	¥14,000	¥4,100
	Not exceeding¥ 6,000	¥17,000	¥5,000
	Not exceeding ¥9,000	¥20,000	¥5,800
	Not exceeding ¥12,000	¥23,000	¥6,600
Not exceeding 450 sq.m.	Not exceeding ¥3,000	¥18,000	¥5,400
	Not exceeding ¥6,000	¥22,000	¥6,500
	Not exceeding ¥9,000	¥26,000	¥7,600
	Not exceeding ¥12,000	¥29,000	¥8,700
Not exceeding 600 sq.m.	Not exceeding ¥3,000	¥23,000	¥6,800
	Not exceeding ¥6,000	¥28,000	¥8,200
	Not exceeding ¥9,000	¥33,000	¥9,600
	Not exceeding ¥12,000	¥37,000	¥10,900
Not exceeding 750 sq.m.	Not exceeding ¥3,000	¥27,000	¥8,100
	Not exceeding ¥6,000	¥33,000	¥9,800
	Not exceeding ¥9,000	¥38,000	¥11,400
	Not exceeding ¥12,000	¥44,000	¥13,000
Not exceeding 1,500 sq.m.	Not exceeding ¥3,000	¥45,000	¥13,500
	Not exceeding ¥6,000	¥54,000	¥16,200
	Not exceeding ¥9,000	¥63,000	¥18,900
	Not exceeding ¥12,000	¥72,000	¥21,600
Not exceeding 3,000 sq.m.	Not exceeding ¥3,000	¥63,000	¥18,900
	Not exceeding ¥6,000	¥76,000	¥22,700
	Not exceeding ¥9,000	¥89,000	¥26,500
	Not exceeding ¥12,000	¥101,000	¥30,300
Not exceeding 4,500 sq.m.	Not exceeding ¥3,000	¥81,000	¥24,300
	Not exceeding ¥6,000	¥98,000	¥29,200
	Not exceeding ¥9,000	¥114,000	¥34,100
	Not exceeding 12,000	¥130,000	¥38,900
Exceeding 4,500 sq.m.	Not exceeding ¥3,000	¥99,000	¥29,700
	Not exceeding ¥6,000	¥119,000	¥35,700
	Not exceeding ¥9,000	¥139,000	¥41,600
	Not exceeding ¥12,000	¥159,000	¥47,600

In the event of a standard unit charge exceeding ¥12,000, the fee shall be a sum equal to the amount obtained by adding 20 percent of the applicable rates for charges “not exceeding ¥3,000” for each additional ¥3,000 or part thereof.

Table 6 (Category 3⑥)

Capacity (accommodation)	Type of facility and manner of Performance / Accommodation charge	Monthly fee: Reception halls — Performances, etc.	Monthly fee: Facilities other than reception halls (Bars, snack bars, dance halls, discotheques, etc.) — Live performances
Not exceeding 100	Not exceeding ¥7,000	¥9,000	¥9,000
	Not exceeding ¥10,000	¥11,000	¥11,000
	Not exceeding ¥15,000	¥13,000	¥13,000
	Not exceeding ¥20,000	¥15,000	¥15,000
Not exceeding 150	Not exceeding ¥7,000	¥12,000	¥13,000
	Not exceeding ¥10,000	¥15,000	¥16,000
	Not exceeding ¥15,000	¥17,000	¥19,000
	Not exceeding ¥20,000	¥20,000	¥21,000
Not exceeding 200	Not exceeding ¥7,000	¥14,000	¥17,000
	Not exceeding ¥10,000	¥17,000	¥21,000
	Not exceeding ¥15,000	¥20,000	¥24,000
	Not exceeding ¥20,000	¥23,000	¥28,000
Not exceeding 300	Not exceeding ¥7,000	¥18,000	¥21,000
	Not exceeding ¥10,000	¥22,000	¥26,000
	Not exceeding ¥15,000	¥26,000	¥30,000
	Not exceeding ¥20,000	¥29,000	¥34,000
Not exceeding 400	Not exceeding ¥7,000	¥23,000	¥25,000
	Not exceeding ¥10,000	¥28,000	¥30,000
	Not exceeding ¥15,000	¥33,000	¥35,000
	Not exceeding ¥20,000	¥37,000	¥40,000
Not exceeding 500	Not exceeding ¥7,000	¥27,000	¥33,000
	Not exceeding ¥10,000	¥33,000	¥40,000
	Not exceeding ¥15,000	¥38,000	¥47,000
	Not exceeding ¥20,000	¥44,000	¥53,000

①Accommodation charge" means any kind of charge for one night with 2 meals less tax which is imposed a customer. If there is a grade range of charges, the arithmetic mean will be considered the "accommodation charge."

②In case that a guest room (regardless of its nomination, a place principally intended for lodging guests) is a Japanese-style one, the Capacity of accommodation shall be calculated as follows:

The number of Capacity of Lodgers shall be calculated by dividing the number of tatami of a room by 3, and in case a room is also equipped with beds, the number of Capacity of lodgers shall be calculated by adding the number of beds.
Moreover, the following is considered a guest room:
(a) An attached room used as a guest room
(b) A guest room also used as a reception room

③ In the event of an accommodation charge exceeding ¥20,000, the fee shall be a sum equal to the amount obtained by adding, for each additional ¥5,000 or part thereof, 20 percent of the applicable fee for charges "not exceeding ¥7,000" to the applicable rates for charges "not exceeding ¥20,000."

④ In the event of capacity (accommodation) exceeding 500 persons but not 2,000 persons, the fee shall be a sum equal to the amount obtained by adding, for each additional 250 persons or part thereof, the applicable rate for capacity "not exceeding 100 persons" to the applicable rate for capacity "not exceeding 500

persons." In the event of capacity exceeding 2,000 persons," the fee shall be a sum equal to the amount obtained by adding the applicable rates for capacity "not exceeding 300 persons to the rates for "Not exceeding 2,000 persons."

⑤ The fee shall be a total sum of the amounts calculated separately in different Categories.

⑥ In the event that there are more than two facilities belonging to the same class, the fee shall be a sum equal to the amount obtained by adding the applicable rates for such facility (hereinafter referred to as "standard facility") 10 percent of the applicable rates for the other facility. In this case, if the rates are different for each facility, the facility with the highest rate shall be treated as the standard facility (if more than one facility has an equal rate amount, one shall be so chosen). For the reception hall in particular, the place for receptions (part enclosed by a fixed partition, such as a wall) shall be considered to be one facility.

⑦ The fees for singing to the accompaniment of Karaoke at facilities having a comprehensive licensing agreement on a yearly basis shall be, for the time being, as shown below:

		Monthly fee	
Class	Capacity	Reception halls	Facilities other than reception halls
1	Not exceeding 50 persons	¥4,000	¥3,500
2	Not exceeding 100 persons	¥7,500	¥4,500
3	Not exceeding 150 persons	¥10,500	¥7,500
4	Not exceeding 200 persons	¥13,500	¥9,000
5	Not exceeding 300 persons	¥18,000	¥12,000
6	Not exceeding 400 persons	¥22,500	¥15,000
7	Not exceeding 500 persons	¥27,000	¥18,000

(Note)
In the event of the capacity exceeding 500 persons for each class, the above ④ shall apply in the fee calculation.

⑧ The fee for performances in facilities other than reception hall by means of piano equipped with automatic performances mechanism and juke boxes (equipment allowing automatic performances by inserting a coin in a machine) and its similar one shall be calculated under the following scale for the time being.

Capacity of accommodation	Accommodation fee	Monthly fee
Not exceeding 100 persons	Not exceeding ¥7,000	¥6,000
	Not exceeding ¥10,000	¥8,000
	Not exceeding ¥15,000	¥9,000
	Not exceeding ¥20,000	¥10,000
Not exceeding 150 persons	Not exceeding ¥7,000	¥9,000
	Not exceeding ¥10,000	¥11,000
	Not exceeding ¥15,000	¥13,000
	Not exceeding ¥20,000	¥15,000
Not exceeding 200 persons	Not exceeding ¥7,000	¥12,000
	Not exceeding ¥10,000	¥15,000
	Not exceeding ¥15,000	¥17,000
	Not exceeding ¥20,000	¥20,000
Not exceeding 300 persons	Not exceeding ¥7,000	¥14,000
	Not exceeding ¥10,000	¥17,000
	Not exceeding ¥15,000	¥20,000
	Not exceeding ¥20,000	¥23,000

Not exceeding 400 persons	Not exceeding ¥7,000	¥17,000
	Not exceeding ¥10,000	¥21,000
	Not exceeding ¥15,000	¥24,000
	Not exceeding ¥20,000	¥28,000
Not exceeding 500 persons	Not exceeding ¥7,000	¥22,000
	Not exceeding ¥10,000	¥27,000
	Not exceeding ¥15,000	¥31,000
	Not exceeding ¥20,000	¥36,000

Table 7 (Category 1①,②,④ and Category 2⑤)

(1) In Category 1①,② and ④, the fees for singing to the accompaniment of Karaoke are as follows:

		Monthly fee
Seating capacity	Method of performance / Standard unit charge	Singing to the accompaniment of Karaoke
Not exceeding 20	Not exceeding ¥2,000	¥9,000
	Not exceeding ¥4,000	¥11,000
	Not exceeding ¥6,000	¥13,000
Not exceeding 30	Not exceeding ¥2,000	¥13,000
	Not exceeding ¥4,000	¥16,000
	Not exceeding ¥6,000	¥19,000
Not exceeding 40	Not exceeding ¥2,000	¥17,000
	Not exceeding ¥4,000	¥21,000
	Not exceeding ¥6,000	¥24,000
Not exceeding 60	Not exceeding ¥2,000	¥21,000
	Not exceeding ¥4,000	¥26,000
	Not exceeding ¥6,000	¥30,000
Not exceeding 80	Not exceeding ¥2,000	¥25,000
	Not exceeding ¥4,000	¥30,000
	Not exceeding ¥6,000	¥35,000
Not exceeding 120	Not exceeding ¥2,000	¥33,000
	Not exceeding ¥4,000	¥40,000
	Not exceeding ¥6,000	¥47,000
Not exceeding 160	Not exceeding ¥2,000	¥41,000
	Not exceeding ¥4,000	¥50,000
	Not exceeding ¥6,000	¥58,000
Not exceeding 200	Not exceeding ¥2,000	¥49,000
	Not exceeding ¥4,000	¥59,000
	Not exceeding ¥6,000	¥69,000
Not exceeding 300	Not exceeding ¥2,000	¥65,000
	Not exceeding ¥4,000	¥78,000
	Not exceeding ¥6,000	¥91,000
Not exceeding 400	Not exceeding ¥2,000	¥81,000
	Not exceeding ¥4,000	¥98,000
	Not exceeding ¥6,000	¥114,000
Not exceeding 500	Not exceeding ¥2,000	¥98,000
	Not exceeding ¥4,000	¥118,000
	Not exceeding ¥6,000	¥138,000
Not exceeding 750	Not exceeding ¥2,000	¥130,000
	Not exceeding ¥4,000	¥156,000
	Not exceeding ¥6,000	¥182,000
Not exceeding 1,000	Not exceeding ¥2,000	¥162,000
	Not exceeding ¥4,000	¥195,000
	Not exceeding ¥6,000	¥227,000

Exceeding 1,000	Not exceeding ¥2,000	¥227,000
	Not exceeding ¥4,000	¥273,000
	Not exceeding ¥6,000	¥318,000

In the event of a standard unit charge exceeding ¥6,000, the fee shall be a sum equal to the amount obtained by adding 20 percent of the applicable rates for charges "Not exceeding ¥2,000" for each additional ¥2,000 or part thereof to the applicable rates for charge "Not exceeding ¥6,000."

(2) In Categories 1①,②,④ and 2⑤, the fee for the use for the use of works for singing to accompaniment of Karaoke at places whose floor space for seats or reception hall does not exceed 165 sq.m., when being based on a comprehensive licensing agreement for the term of a year, shall be, for the time being, as shown below, notwithstanding (1) or Table 5 shown on the Tables.

Class	Floor space of seats or reception hall	Monthly fee
1	Not exceeding 33.0 sq.m.	¥3,500
2	Over 33.0 sq.m. and up to 66.0 sq.m.	¥7,500
3	Over 66.0 sq.m. and up to 165.0 sq.m.	¥12,000

(Notes)

ⓐ "Floor space for seats" means a total area for permitting customers to eat or drink, dance and sing (including aisles for customers usage). "Floor space for a reception hall" means the size of an area (enclosed by a fixed partition, such as a wall principally intended for a reception).

ⓑ In the event that the fees mentioned on Table applicable to Category 2⑤ are found to be lower than those provided for in these provisions, these provisions shall not apply.

ⓒ In Category 1 ④, if customers are made to sign for a particular purpose, such as in a competition under a master of ceremony for singing on a specially-built stage, the provisions of Table 7 shall not apply.

② In the case that ① above shall not apply

Table 8-1

In Category 1①,the fee applicable to performance per work per performance whose playing time does not exceed 5 minutes

Standard unit charge / Seating capacity (Floor space)	Not exceeding ¥1,000	Not exceeding ¥2,000	Not exceeding ¥3,000	Additional fee for each additional ¥1,000
Not exceeding 20 (30 sq.m.)	￥50	￥70	￥80	￥10
Not exceeding 30 (45 sq.m.)	￥80	￥90	￥100	￥20
Not exceeding 40 (60 sq.m.)	￥100	￥120	￥140	￥20
Not exceeding 60 (90 sq.m.)	￥120	￥140	￥170	￥30
Not exceeding 80 (120 sq.m.)	￥140	￥170	￥200	￥30
Not exceeding 120 (180 sq.m.)	￥190	￥230	￥270	￥40
Not exceeding 160 (240 sq.m.)	￥230	￥280	￥320	￥50
Not exceeding 200 (300 sq.m.)	￥280	￥330	￥390	￥60
Not exceeding 300 (450 sq.m.)	￥370	￥440	￥520	￥80
Not exceeding 400 (600 sq.m.)	￥450	￥550	￥640	￥90
Not exceeding 500 (750 sq.m.)	￥550	￥650	￥770	￥110
Exceeding 500 (750 sq.m.)	￥730	￥870	￥1,020	￥150

Table 8 -2

In Category 1②, the fee applicable to performance per work per use not exceeding 5 minutes

Standard unit charge / Seating capacity (Floor space)	Not exceeding ¥1,000	Not exceeding ¥3,000	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 40 (60 sq.m.)	¥80	¥100	¥120	¥140	¥170	¥190	¥30
Not exceeding 60 (90 sq.m.)	¥90	¥120	¥150	¥180	¥200	¥240	¥30
Not exceeding 80 (120 sq.m.)	¥110	¥150	¥180	¥220	¥250	¥280	¥40
Not exceeding 120 (180 sq.m.)	¥130	¥170	¥210	¥250	¥290	¥340	¥50
Not exceeding 160 (240 sq.m.)	¥170	¥220	¥270	¥320	¥370	¥420	¥60
Not exceeding 200 (300 sq.m.)	¥190	¥250	¥320	¥380	¥440	¥500	¥70
Not exceeding 300 (450 sq.m.)	¥250	¥340	¥420	¥500	¥580	¥660	¥90
Not exceeding 400 (600 sq.m.)	¥320	¥420	¥520	¥620	¥720	¥820	¥110
Not exceeding 500 (750 sq.m.)	¥370	¥490	¥620	¥740	¥860	¥980	¥130
Not exceeding 750 (1,125 sq.m.)	¥490	¥650	¥820	¥980	¥1,140	¥1,300	¥170
Exceeding 750 (1,125 sq.m.)	¥620	¥820	¥1,020	¥1,220	¥1,430	¥1,630	¥210

Table 8 -3

In Category 1③,the fee applicable to performance per work per use not exceeding 5 minutes

Standard unit charge / Floor space	Not exceeding ¥1,000	Not exceeding ¥3,000	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 45 sq.m.	¥60	¥80	¥100	¥120	¥140	¥150	¥20
Not exceeding 60 sq.m.	¥80	¥100	¥120	¥140	¥170	¥190	¥30
Not exceeding 90 sq.m.	￥90	￥120	￥150	￥180	￥200	￥240	￥30
Not exceeding 120 sq.m.	￥110	￥150	￥180	￥220	￥250	￥280	￥40
Not exceeding 180sq.m.	￥130	￥170	￥210	￥250	￥290	￥340	￥50
Not exceeding 240 sq.m.	￥170	￥220	￥270	￥320	￥370	￥420	￥60
Not exceeding 300sq.m.	￥190	￥250	￥320	￥380	￥440	￥500	￥70
Not exceeding 450 sq.m.	￥250	￥340	￥420	￥500	￥580	￥660	￥90
Not exceeding 600 sq.m.	￥320	￥420	￥520	￥620	￥720	￥820	￥110
Not exceeding 750 sq.m.	￥370	￥490	￥620	￥740	￥860	￥980	￥130
Not exceeding 1,125 sq.m.	￥490	￥650	￥820	￥980	￥1,140	￥1,300	￥170
Not exceeding 1,500 sq.m.	￥620	￥820	￥1,020	￥1,220	￥1,430	￥1,630	￥210
Exceeding 1,500 sq.m.	￥860	￥1,140	￥1,430	￥ 1 ,720	¥2,000	¥2,280	¥290

Table 8 -4

In Category 1④,the fee applicable to performance per work per use not exceeding 5 minutes

Standard unit charge / Seating capacity (Floor space)	Not exceeding ¥2,000	Not exceeding ¥4,000	Not exceeding ¥6,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 20 (30 sq.m.)	¥40	￥50	￥60	￥70	￥80	￥90	￥20
Not exceeding 30 (45 sq.m.)	￥60	￥70	￥80	￥90	￥100	￥120	￥20
Not exceeding 40 (60 sq.m.)	￥70	￥90	￥100	￥120	￥140	￥150	￥20
Not exceeding 60 (90 sq.m.)	￥90	￥110	￥130	￥150	￥170	￥190	￥30
Not exceeding 80 (120 sq.m.)	￥110	￥130	￥150	￥170	￥200	￥230	￥30
Not exceeding 120 (180 sq.m.)	￥140	￥170	￥200	￥230	￥270	￥300	￥40
Not exceeding 160 (240 sq.m.)	￥180	￥220	￥250	￥280	￥320	￥370	￥50
Not exceeding 200 (300 sq.m.)	￥210	￥250	￥290	￥330	￥390	￥440	￥60
Not exceeding 300 (450 sq.m.)	￥280	￥330	￥390	￥440	￥520	￥590	￥80
Not exceeding 400 (600 sq.m.)	￥340	￥420	￥480	￥550	￥640	￥730	￥100
Not exceeding 500 (750 sq.m.)	￥410	￥490	￥570	￥650	￥770	￥870	￥120
Exceeding 500 (750 sq.m.)	￥550	￥650	￥770	￥870	￥1,020	￥1,170	￥160

Table 8- 5

In Category 2⑤ and Category3⑥,the fee per work per use, not exceeding 5 minutes for performance or singing to accompaniment of karaoke, or in Category 1①,②and④, the fee per work per use, not exceeding 5 minutes for singing to accompaniment of karaoke.)

Standard unit charge or accommodation charge (Category 3 ⑥) / Seating capacity (Floor space)	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 40 (60 sq.m.)	￥90	￥110	￥130	￥150	￥20
Not exceeding 80 (120 sq.m.)	￥140	￥170	￥200	￥230	￥30
Not exceeding 120 (180 sq.m.)	￥180	￥220	￥260	￥290	￥40
Not exceeding 160 (240 sq.m.)	￥230	￥280	￥330	￥370	￥50
Not exceeding 200 (300 sq.m.)	￥270	￥330	￥380	￥440	￥60
Not exceeding 300 (450 sq.m.)	￥360	￥440	￥510	￥580	￥80
Not exceeding 400 (600 sq.m.)	￥450	￥540	￥630	￥720	￥90
Not exceeding 500 (750 sq.m.)	￥540	￥650	￥760	￥870	￥110
Not exceeding 600 (900 sq.m.)	￥630	￥760	￥890	￥1,010	￥130
Not exceeding 750 (1,125 sq.m.)	￥720	￥870	￥1,010	￥1,160	￥150
Not exceeding 1,000 (1,500 sq.m.)	￥900	￥1,080	￥1,260	￥1,440	￥180
Not exceeding,500 (2,250 sq.m.)	¥1,260	¥1,520	¥1,770	¥2,020	¥260
Not exceeding 2,000 (3,000 sq.m.)	¥1,620	¥1,950	¥2,270	¥2,600	¥330
Exceeding 2,000 (3,000 sq.m.)	¥1,980	¥2,380	¥2,780	¥3,170	¥400

Table 8-6

The fee per work per performance applicable to performances in the facilities other than reception hall mentioned in Category 3 ⑥ The fee for performances in facilities other than reception hall by means of piano equipped with automatic performances mechanism and juke boxes (equipment allowing automatic performances by inserting a coin in a machine) and its similar one shall be calculated under the following scale.

Accommodation charge (Category 3 ⑥) / Seating capacity (Floor space)	Not exceeding ¥5,000	Not exceeding ¥10,000	Not exceeding ¥15,000	Not exceeding ¥20,000	Additional fee for each additional ¥5,000
Not exceeding 40 (60 sq.m.)	¥40	¥50	¥60	¥70	¥10
Not exceeding 80 (120 sq.m.)	¥60	¥80	¥90	¥100	¥20
Not exceeding 120 (180 sq.m.)	¥80	¥100	¥120	¥130	¥20
Not exceeding 160 (240 sq.m.)	¥90	¥120	¥140	¥150	¥20
Not exceeding 200 (300 sq.m.)	¥110	¥140	¥160	¥180	¥30
Not exceeding 300 (450 sq.m.)	¥150	¥180	¥210	¥240	¥30
Not exceeding 400 (600 sq.m.)	¥180	¥220	¥260	¥290	¥40
Not exceeding 500 (750 sq.m.)	¥220	¥270	¥310	¥360	¥50
Not exceeding 600 (900 sq.m.)	¥260	¥320	¥370	¥420	¥60
Not exceeding 750 (1,125 sq.m.)	¥290	¥350	¥410	¥470	¥60
Not exceeding 1,000 (1,500 sq.m.)	¥360	¥440	¥510	¥580	¥80
Not exceeding 1,500 (2,250 sq.m.)	¥510	¥620	¥720	¥820	¥110
Not exceeding 2,000 (3,000 sq.m.)	¥650	¥780	¥910	¥1,040	¥130
Exceeding 2,000 (3,000 sq.m.)	¥800	¥960	¥1,120	¥1,280	¥160

SUPPLEMENTARY PROVISIONS

(Date of enforcement)

Of the provisions of this Tariffs, the provisions of Chapter II 1, 3. Performances of Musical Works in Entertainments other than Concerts, 4. Performances at Karaoke Facilities, 5.Performances, etc. at dance instruction institutes, 6. Performances, etc. at Places of Entertainment shall come into effect as from October 1, 2007.

7. Showing of Videograms

Where the provisions of 4., 5., and 6. of this Article do not apply, the fee for the use of works for showing by means of videograms shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

(1) Showing by means of telecommunication installations

The fee for the use of works for showing by means of telecommunication installations, such as CCTV (closed-circuit television), shall be shown below:

①(a) The annual fee for the use of works at lodging facilities, such as inns and hotels, shall be a sum equal to one percent of the business income (income including reception fees, advertisement fees, etc., not inclusive of the business income, arising from the use of such installations) earned in the previous year.

(b) If (a) above does not apply, the fee shall be ¥100 per receiving set monthly.

② The fee for use of works at premises such as department stores and exposition sites other than those in ① above shall be ¥2,000 per receiving set monthly.

(2) Other showings

To the showing of videograms other than that in (1) above, the fees provided for in Article 3. Films, 2. Exhibition (1) shall apply.

(Notes for Showing of Videograms)

①"Videograms" means the recording on which a work is reproduced under the provisions of Article 8.

②The fiscal year applicable to the provisions of (1)①(a) shall be one year in April and ending in March of the following year.

③ In the provisions of (1) ②, when a special circumstance exists, such as the installation of a great number of viewing sets at one site of showing, the fee shall be determined subject to the limit of the provisions of (1) ② by reference to the particulars.

④The application to (2) above of the provisions of Article 3. Films 2. Exhibition (1) shall be made as shown below:

(a) In the event of the admission charge exceeding ¥300, the fee shall be a sum equal to the amount obtained by adding, for each additional ¥150, to the applicable rate for the charge "exceeding ¥300" on the scale in item (1) above, the difference between the applicable rate for the charge "exceeding ¥300" and that for the charge "not exceeding ¥300."

(b) In the event of a seating capacity being unavailable at a site of showing, the seating capacity" not exceeding 500" shall be substituted. In the event of an admission charge not being made at a site of showing, the admission charge" not exceeding ¥150" shall be substituted.

⑤When a comprehensive licensing agreement is concluded for the showing of videograms in (2) above, the fee shall be determined subject to the limit of the fee calculated under (2) above by reference to the particulars including the monthly total number of showing and the status of showing operation.

Article 2. BROADCASTING, etc.

The fee for the use of works for broadcasts and recordings for broadcasting purposes (not inclusive of recordings of works for commercials) (hereinafter referred to "broadcasts, etc.") shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

1. Nippon Hoso Kyokai (hereinafter referred to as "NHK")

The annual fee for the use of works for broadcasts made by NHK, if it is fixed by a comprehensive licensing agreement for a year shall be a sum equal to one point five percent of its broadcast income from an enterprise for the fiscal year preceding the current fiscal year.

2. Commercial broadcasters engaged in broadcasts by means of terrestrial transmission

The annual fee for the use of works for broadcasts made by a broadcaster engaged in broadcast by means of terrestrial transmission, if it is fixed under comprehensive licensing agreements for a year shall be a sum equal to one point five percent of broadcast income from an enterprise for the fiscal year preceding the current fiscal year.

3. Commercial broadcasters engaged in satellite broadcasts

The annual fee for use of works for broadcasts made by broadcasters engaged in satellite broadcasts, if it is fixed by comprehensive licensing agreements for a year shall be a sum equal to the amount obtained by multiplying their broadcast income from an enterprise by the royalty rates shown (1) for each channel of the relevant satellite broadcasts.

However, in the event that the relevant broadcasters cannot sum up broadcast income from an enterprise for each channel, the fee shall be a sum equal to the amount obtained by multiplying broadcast income from an enterprise for all channels by the rate obtained on a pro-rated basis among the rates applicable to the related classification for each channel.

In any case, the fee calculated under the above provisions is lower than that shown below on the scale (2), the fee shown below on the scale (In the case that the relevant broadcaster has more than a channel, the amount obtained on a pro-rated basis among the fee for each classification) shall be applicable as the annual fee.

(1)

Classification	Royalty rate
Channel featuring music programs	2.25%
General channel	1.5%
News or sports, etc. channel	0.75%

(2)

Classification	Royalty fee
Channel featuring music programs	¥5,400,000
General channel	¥3,600,000
News or sports, etc. channel	¥1,800,000

4. Broadcasts made by the University of the Air Foundation

The fee for the use of works for broadcasts made by the University of the Air Foundation, if it is fixed under a comprehensive licensing agreement shall be determined by reference to the particulars, including the purpose in the use and the type of use, by mutual agreement between the Society and the broadcaster.

5. In case that an annual comprehensive licensing agreement does not apply

In case that an annual comprehensive licensing agreement does not apply, the fee shall be a sum fixed for each manner of use, on a per use, per work basis shown on the scale below:

(1) Broadcast

Broadcast made through national wide	Fee
Usage time: Not exceeding 5 minutes	¥64,000
Usage time: Each additional 5 minutes	¥64,000

(2) Recordings for broadcast purposes

Per number of duplicated copies of recordings	Fee
Usage time: Not exceeding 5 minutes	¥6,400
Usage time: Each additional 5 minutes	¥6,400

(Notes for BROADCASTING etc.)

i. In the case that an annual comprehensive agreement is concluded, "Fiscal year" means one year beginning in April and ending in March of the following year.

ii. "The broadcast income from an enterprise" as mentioned in 1. shall be a sum equal to the balance obtained by deducting the following, not inclusive of the consumption tax, from the total receiving fee income:
- Operation expenditure for contracts conclusion and fee collection
- Expenditure for reception improvements
- Expenditure for studies and researches, etc.
- Expenditure aiming at making up a deficit of receiving fee income
- Expenditure involved in protecting copyrights and in improving technology for information of administration

iii. "The broadcast income from an enterprise" of a broadcaster as mentioned in 2. means a sum equal to their total income involved in broadcast (not inclusive of the consumption tax), provided that, prior to fee calculation, a sum equal to the agency fees, and the income of any other broadcasters, not inclusive of the consumption tax. If it ever comes to be doubly registered on his books, shall be deducted from his books, shall be deducted from his total broadcast income from an enterprise.

iv. "The broadcast income from an enterprise" as mentioned in 3. means a sum equal to their total income obtained by deducting a sum equal to the agency fees and the expenditure aiming at receiving the pay broadcast fees (not inclusive of the consumption tax).

v. When the provisions of 2. shall apply in the event there is an association which is composed of broadcasters and entrusted with the right to fix the amount of a comprehensive, an annual fee for each of the broadcaster members, the amount fixed by the association for each of the members may be regarded as an annual fee for each of them to pay, provided that the total of such amounts is equal to the total of the annual fees as fixed in accordance with the provisions of 2.
However, for a newly-established station the above provisions shall not apply. In this case, a sum equal to its broadcast income from an enterprise shall be

determined by mutual agreement between the Society and the broadcaster.

vi. With respect to the provisions of 2, the fees for broadcasts of works in commercials (except in the case of the use of works in commercials produced by broadcasters by means of their own facilities for their own broadcasts), shall not be included in the annual fee calculated under the provisions 2. The fee provided on the scale below shall apply to such broadcasts on a per work and per use basis:

Category	Radio commercials	TV commercials
1	¥6,000	¥12,000
2	¥4,200	¥8,400
3	¥3,600	¥7,200
4	¥2,400	¥4,800
5	¥1,800	¥3,600
6	¥1,500	¥3,000

(a) The category in which the broadcaster shall belong to shall be determined by mutual agreement between the Society and the broadcasters.
(b) In the event of a work being repeatedly and continuously broadcasted in the same commercial, the fee amount may be lowered.

vii. Of broadcasters to which the provisions of 2. shall apply, the fee for community broadcasters shall be determined separately by mutual agreement between the Society and broadcasters within the limit of the provisions of 2.

viii. When the provisions of 3. shall apply, the fee for a newly-established station shall be calculated in line with the scale (2). In this case, if the term of broadcast does not exceed one year, the fee listed on the scale (2) may be lowered in accordance with the months of the broadcast.

ix. When the provisions of 3. shall apply, the term during which broadcast income from an enterprise is accrued in the previous year, does not exceed one year, the annual fee shall be calculated based on the amount converting to annual broadcast income of an enterprise.

x. When the provisions of 5. shall apply, the area where broadcast is transmitted at the same time is limited, the fee listed on the scale(1) may be lowered in consideration of the number of households receiving broadcast.

xi. When the provisions of 5. shall apply, and in the case corresponding to any of the followings, the fee shall be reduced to a sum equal to 6/12 of a work of the respective rates.
(a) For a vocal work, whose music is not copyrighted or is not under the administration of the Society.
(b) For a vocal work, whose lyric is not under the administration of the Society.

xii. In the case that the fee may not be determined under these tariffs due to the type of broadcasts such as those especially featuring music or those using new technologies, Article 14 shall apply.

Article 3. FILMS

The fee for the use of works for a film and for exhibition thereof shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

1. Synchronization

(1) Theatrical Films

(a) Theme, Feature of Background Type of Use

The fee for a theme, feature or background type of use of a work in a film shall be calculated for the music and the lyrics respectively in accordance with the following scale:

Playing time of work / Classification	Not exceeding 5 minutes	Exceeding 5 minutes but not 10 minutes	First 10 mins & each additional 10 mins or part thereof
Newsreel	¥400	¥800	¥800
Culture & Educational	¥1,200	¥2,400	¥2,400
Theatrical	¥4,000	¥8,000	¥8,000

(b) Background music specially composed for a film

The fee for the use in a theatrical film of background music specially composed for the film shall be calculated on the playing time of such music in accordance with the following scale:

Playing time of work / Classification	Not exceeding 5 minutes	Exceeding 5 minutes but not 10 minutes	First 10 mins & each additional 10 mins or part thereof
Newsreel	¥200	¥400	¥400
Culture & Educational	¥600	¥1,200	¥1,200
Theatrical	¥2,000	¥4,000	¥4,000

(2) Television Films

The fee for the use of a work in a television film shall be a sum equal to 20 percent of the respective rates calculated according to the formulas provided for in (1) of 1. Synchronization, provided, however, that in the event of such television film being used for a theatrical exhibition, the difference between the rate for a television film and that for a theatrical film shall be payable additionally for such use.

2. Exhibition

(1) The fee for one exhibition of a film shall be calculated in accordance with the following scale, except for the exhibition of those films coming within the scope of (2), (3) or (4) of 2. Exhibition:

Seating capacity	Admission charge	Classification		
		Theatrical	Newsreel	Cultural & Educational
Not exceeding 500	Not exceeding¥150	¥400	¥40	¥120
	Not exceeding¥300	¥600	¥60	¥180
	Exceeding ¥300	¥800	¥80	¥240
Not exceeding 1,000	Not exceeding¥150	¥600	¥60	¥180
	Not exceeding¥300	¥800	¥80	¥240
	Exceeding ¥300	¥1,200	¥120	¥360
Not exceeding 1,500	Not exceeding¥150	¥800	¥80	¥240
	Not exceeding¥300	¥1,200	¥120	¥360
	Exceeding ¥300	¥1,600	¥160	¥480
Exceeding 1,500	Not exceeding¥150	¥1,200	¥120	¥360
	Not exceeding¥300	¥1,600	¥160	¥480
	Exceeding ¥300	¥2,000	¥200	¥600

(2) For a film exhibitor contracting with the Society on a monthly fee payment basis, the fee for the exhibition of films shall be calculated in accordance with the following scale. However, in the event of the monthly total hours of the exhibitor being less than 150 hours, the fee shall be a sum to 50 percent of the respective rates in the scale, and in the event of such monthly total hours being less than 50 hours, the fee shall be a sum equal to 25 percent of such respective rates. For the purpose of calculating such hours of exhibition, there shall be excluded the hours of exhibition of those films contracted for under (3) of 2. Exhibition and those contracted for under (4) of 2. Exhibition by any of the member exhibitors of unions affiliated with the association referred to in (4) of 2.Exhibition.

Seating capacity	Type of exhibition / Admission charge	Monthly fee per seat			
		Theatrical with /without Newsreel, Cultural & Educational	Newsreel	Cultural & Educational	Newsreel Cultural & Educational
Not exceeding 500	Not exceeding ¥150	¥4	¥0.4	¥1.2	¥0.8
	Not exceeding ¥300	¥6	¥0.6	¥1.8	¥1.2
	Exceeding ¥300	¥8	¥0.8	¥2.4	¥1.6
Not exceeding 1,000	Not exceeding ¥150	¥6	¥0.6	¥1.8	¥1.2
	Not exceeding ¥300	¥8	¥0.8	¥2.4	¥1.6
	Exceeding ¥300	¥12	¥1.2	¥3.6	¥2.4
Not exceeding 1,500	Not exceeding ¥150	¥8	¥0.8	¥2.4	¥1.6
	Not exceeding ¥300	¥12	¥1.2	¥3.6	¥2.4
	Exceeding ¥300	¥16	¥1.6	¥4.8	¥3.2
Exceeding 1,500	Not exceeding ¥150	¥12	¥1.2	¥3.6	¥2.4
	Not exceeding ¥300	¥16	¥1.6	¥4.8	¥3.2
	Exceeding ¥300	¥20	¥2.0	¥6.0	¥4.0

(3) For a producer or distributor contracting with the Society for the exhibition of films, the fee for the exhibition of a film shall be, per print, a sum equal to 20 percent of the synchronization fee payable for such film.
(4) In the event of the Association of the Health of Life Social Environment (Hereinafter referred to "the Association"), organized under Article 53 of the "Law for the Rationalization and the Promotion of the Operation of Business Relating to the Health of the Life Social Environment," contracting with the Society on behalf of the members of its affiliated unions for the exhibition of films, the fee for one exhibition of a film shall be determined by mutual agreement between the Society and the Association, subject to a maximum, per print, of 20 percent of synchronization fee payable for such film.

(Notes for Films)

①"Theatrical Film" as therein used means a film which is produced for direct projection on the screen in a film theater or other similar premises; "Television Film" as herein used means a film which is produced for television broadcasting.
②"Exhibition" as herein used means the projection of films on the screen, and does not include any performance by means of radio or television broadcasting.
③For the purpose of this Article, advertising films and cartoon films shall come within the category of culture and educational films.
④Any payment made by the producer directly to the author or composer for his commission to create a work or for any other similar service shall not be substituted, in whole or in part, for the fee payable under 1, Synchronization.
⑤In the event that the fee is supposed to be determined by the trustor, the determined fee shall apply.
⑥For the purpose of calculating the fee for the exhibition of a film of foreign origin, or for the exhibition of a film of domestic origin for which any synchronization fee other than those provided for in the scale of 1. Synchronization has been determined, the synchronization fee for such film shall be considered to have been paid in accordance with such scales.
⑦"Admission Charge" as used in the scales in (1) and (2) of 2. Exhibition means a normal of customary admission fee for an adult, not exclusive of the consumption tax. In the event of all seats being reserved, the lowest grades charge for such reserved seats shall be applicable.
⑧For the purpose of applying the provisions in (1) and (2) of 2. Exhibition, actual size of the audience shall be substituted for the seating capacity of the premises in the event of no seating capacity being fixed, and the fee shall be calculated at the minimum rate in the respective columns of the scales in the event of no admission charge being made.

Article 4. PUBLICATIONS, etc.

The fee for the use of a work for visual reproduction by means of printing, photocopying and other methods shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

1. Books

(1) The fee for the use of a work in a folio or other book of music consisting mainly of music and/or lyrics shall be a sum equal to the product obtained by multiplying 10 percent of the retail selling price (not inclusive of the consumption tax) of such book by the number of copies. However, in the event of some of the works, used in the book, not being under the administration of the Society, the fee shall be a sum equal to the product obtained by multiplying the above-prescribed fee by the proportion which the number of works under the administration of the Society bears to the total number of works.

The fee for the use of a work in a book without a marked retail selling price shall be calculated in accordance with the rates provided for in 3 (2).

(2) The fee for a book other than the book as mentioned in (1) shall be per work calculated on the number of copies made for the music and the lyrics respectively in accordance with the following scale:

Not exceeding 2,500 copies	Not exceeding 5,000 copies	Not exceeding 10,000 copies	Not exceeding 50,000 copies	Not exceeding 100,000 copies	Exceeding 100,000 copies
¥1,200	¥2,400	¥4,000	¥6,000	¥8,000	¥12,000

2. Magazines and newspapers

The fee for a magazine or newspaper shall be, per work, calculated on the number of copies made for the music and the lyrics respectively in accordance with the following scales:

Not exceeding 10,000 Copies	Not exceeding 50,000 copies	Not exceeding 100,000 copies	Not exceeding 300,000 Copies	Not exceeding 500,000 copies	Not exceeding 1,000,000 copies	Exceeding 1,000,000 copies
¥5,100	¥10,200	¥13,600	¥17,000	¥25,500	¥34,000	¥51,000

3. Other publications

(1) The fee for the use of a work in a publication, such as sheet music, other than those mentioned in 1 and 2 shall be a sum equal to the product obtained by multiplying 10 percent of the retail selling price of such publication by the number of copies.

However, in the event of some of the works, used in the publications, not being under the administration of the Society, the fee shall be a sum equal to the product obtained by multiplying the above-prescribed fee by the proportion which the number of works under the administration of the Society bears to the total number of works.

The fee for the use of a work or works in a publication without a marked retail selling price shall be calculated in accordance with the rates provided for in (2) below.

(2) The fee for a publication other than the publication mentioned in (1) above, or an article, such as shop-curtain, towel and tea-cup, shall be, per work, calculated on the number of copies issued or made, respectively for the music and the lyrics, in accordance with the following scale, provided, however, that the fee for the use of a work or works on a monument, panel, poster or other similar support principally designated for display or posting to the public shall be, per work, ¥18,000 respectively for the music and the lyrics, irrespective of the number of copies made.

Not exceeding 2,500 copies	Not exceeding 5,000 copies	Not exceeding 10,000 copies	Not exceeding 50,000 copies	Not exceeding 100,000 copies	Exceeding 100,000 copies
¥1,800	¥3,600	¥6,000	¥9,000	¥12,000	¥18,000

(Notes for PUBLICATIONS)

① Any payment made by the licensee directly to the author or composer for his commission to create a work shall not be substituted for the fees payable under this Article.

② In the event that the fee is supposed to be determined by the trustor, the determined fee shall apply.

③ Notwithstanding the provisions in 1. (1) and 3. (1) above, in the event of special circumstances where, for instance, the number of pages occupied by one work conspicuously differs from that of those occupied by other works, the fee may be calculated by the proportion which the number of pages occupied by works under the administration of the Society bears to that of those occupied by works used.

④ The fee for the use of a work or works in academic or scientific books or periodicals being issued in a modest number of copies may be reduced, subject to the maximum of 20 percent of the rates payable under this Article.

Article 5. AUDIO RECORDINGS

The fee for the use of a work whose playing time is less than 5 minutes, mainly as sound use only, on recordings including a CD, a LP disc, a pre-recorded tape, a MD, a floppy disc, a hard disc, a flash memory, an IC memory card, and CD-ROM (hereinafter called "CDs, etc.") shall be a sum, per copy of such CD, etc., calculated hereunder, plus an amount equivalent to the consumption tax.

1. Commercial CDs, etc.

(1) Those with a marked retail selling price

The fee for the use of a work on a CD, etc. shall be a sum equal to the quotient obtained by dividing 6 percent of the retail selling price, not inclusive of the consumption tax, of such CD, etc. by the number of works contained or ¥8.10, whichever figure is the greater.

(2) Those without a marked retail selling price

The fee for the use of a work on a CD, etc. shall be ¥8.10.

2. Rental CDs, etc. for background music

The fee for the use of a work on a CD, etc. manufactured for background music service shall be, per annum, a sum equal to ¥1,200, irrespective of the frequency of use or the number of copies manufactured of such CD, etc., provided, however, that the licensee shall contract with the Society on an annual fee payment basis.

3. Other CDs, etc.

For CDs, etc. other than those coming within the scopes of 1. and 2. of this Article, the fee for the use of a work on such CD , etc. shall be a sum equal to the quotient obtained by dividing ¥400 by the number of copies manufactured of such CD , etc. or ¥8.10, whichever figure is the greater.

(Notes for AUDIO RECORDINGS)

① For the purpose of calculating the rate for a work whose playing time is more than 5 minutes, each additional 5 minutes or part thereof shall be considered to be one separate work.

② With respect to the use on audio recordings, in the event of the type of use or some specific circumstances preventing the rates payable under this Article from being applicable, other appropriate rates may be determined within the rates or the sum fixed in accordance with this Article by mutual agreement between the Society and the licensee.

③ For audio recordings intended for reproducing sounds exclusively with a sequence of images, the fee shall be calculated in accordance with the formulas provided for in 1.synchronization of Article 3. FILMS.

Article 6. MUSIC BOXES

The fee for the use of a work in a music box shall be, per movement, a sum equal to 7 percent of the shipping price (not inclusive of the consumption tax) of a movement, plus an amount equivalent to the consumption tax, provided, however, that the fee of a work in a special music box shall be, per movement, a sum equal to 10 percent of the price (not inclusive of the consumption tax) of such movement, plus an amount equivalent to the consumption tax.

(Notes for MUSIC BOXES)

① Any payment made by the user to the composer for his commission to create a work shall not be substituted for the fees payable under this Article.

② In the event of the purpose in the use, the type of use or some specific circumstances preventing the rates payable under this Article from being applicable, other appropriate rates may be determined within the rates fixed in accordance with this Article by mutual agreement between the Society and the licensee.

③ "Special Music Box" as herein used means a music box which is accompanied by an electrical amplifier, or a music siren and other similar apparatus.

Article 7. VIDEOGRAMS

The fee for the use of a work on a videotape, videodisk, DVD or other similar support designated for fixing a sequence of sound and images (hereinafter called "videogram"), to which the provisions of Article 3. FILMS are not applicable, shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

1. Videogram for retail sale to the public

The fee for the use of a work on a videogram shall be a total sum of the following basic fee and the duplication fee, except that only the duplication fee shall be applied for the use of a work on a videogram reproducing a product which has already been published under the authorization for synchronization.

(1) Basic fee: ¥800 per minute or part thereof of the playing time of a work, irrespective of the number of copies made.

(2) Duplication fee per copy: A sum obtained by the below-mentioned formula, per minute or part thereof of the playing time of a work on a videogram, or ¥3.20, whichever is the greater.

$$\text{Retail selling price of a videogram (not inclusive of the consumption tax)} \times \frac{4.5}{100} \times \frac{1}{\text{Total duration of the videogram (* 1)}} \times \frac{\text{Total playing time of works (*2)}}{\text{Cumulative playing time of works (*3)}}$$

*1: "Total duration of the videogram" means a period of time required for the playback of it, a fraction of minute being rounded to one minute.

*2: "Total playing time of works" means a sum total of the playing of the works, a fraction of minute being rounded to one minute after summation.

*3: "Cumulative playing time of works" means a sum total of the playing time of the works, any fractions of minute in which have been rounded to one minute.

2. Videograms other than the above

The fee for the use of a work on a videogram other than the videogram as provided for in 1. shall be a total sum of the following basic fee and duplication fee, except that only the duplication fee shall be applied for the use of a work on a videogram reproducing a product which has already been published under the authorization for synchronization.

(1) Basic fee: ¥800 per minute or part thereof of the playing time of a work, irrespective of the number of copies made.

(2) Duplication fee: ¥500 per minute per part thereof of the playing time of a work for up to 50 copies of a videogram, and ¥7 per minute or part thereof of the use of the work per copy in respect of copies beyond the 50 copies.

(Notes for VIDEOGRAMS)

①For recording on videograms made exclusively for public exhibition at theaters etc., the fee shall be calculated in accordance with the provisions of 1. Synchronization in Article 3. FILMS.

②In the event that the contents of the produced videograms for retail sales are theatrical films, or if they are television films (including animations), television dramas, original video films, and other films similar to theatrical films, which the total playing time of the works is up to 60 percent of the total duration of the videogram, the fee for the reproduction, except those in which music plays a major role, shall be a sum equal to 1.75 percent of the retail selling price (not inclusive of the consumption tax) of the videogram, per copy. However, in the event that this Note cannot be applied, provision 1. (2) of this Article shall be applied.

③The fee for intermittent or receptive uses of a work on a videogram shall be

calculated on the sum total of the playing times thereof.

④In the event that the amount or rate of the fee for a videogram embodying a dramatico-musical work in its entirety or a videogram entirely comprised of a summary or fragments of a dramatico-musical work is supposed to be designated by the trustor, the designated fee shall apply.

⑤In the event that the basic fee is supposed to be designated by the trustor, the designated fee shall apply.

⑥The amount of the fee for the reproduction in the form of a videogram of a television broadcasting program for the purpose of showing to the Japanese at diplomatic or commercial offices abroad may be determined within the scope provided for in 2. of this Article by mutual agreement between the Society and the user.

⑦For videogram usages where due to the characteristics of the usage this Article cannot be applied, the fee shall be determined within the rates and amounts of this Article upon negotiation with the user.

Article 8. CABLE BROADCASTING, etc.

The fee for the use of works in cable broadcasting and in recording for the relevant cable broadcasting (herein referred to as "cable broadcasting, etc.") shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax (this excludes cases where works are recorded as music for commercials).

1. Cable radio broadcasting, etc.

The fee for cable broadcasting, etc. by means of cable radio broadcasting shall be determined as follows:

(1) In case a yearly blanket licensing agreement is concluded

The annual royalty amount shall be the total of the amount obtained per channel by multiplying the cable broadcasting business income of the relevant channel corresponding to the previous fiscal year by the royalty rate in the following table.

However, when the business operator conducting the relevant cable broadcasting is unable to report the cable broadcasting business income per channel, the royalty amount shall be obtained by multiplying the cable broadcasting business income of all channels by the rate calculated by prorating the royalty rate of the category corresponding to each channel.

Category	Royalty rate
Channel entirely programmed with music	3.0%
Channel featuring music programs	2.25%
General channel	1.5%
News or sports, etc. channel	0.75%

(2) In case a yearly blanket licensing agreement does not apply

The following royalty amount shall be applied per work per use, depending on the usage method of the work:

① Cable radio broadcasting

For one cable radio broadcast of one work	Fee
Usage not exceeding 5 minutes	¥1,500 for each 1,000 households subscribing to the broadcast
For each exceeding 5 minutes	¥1,500 for each 1,000 households subscribing to the broadcast

② Recording for cable radio broadcasting

For one copy reproduced	Fee
Usage not exceeding 5 minutes	¥1,500
For each exceeding 5 minutes	¥1,500

2. Cable Television (CATV) broadcasting, etc.

The following is the fee for the use of works for CATV broadcasting, etc.

(1) When concluding an annual blanket licensing agreement
① When there is cable broadcasting operation income, the annual fee shall be 1/100 multiplied by the cable broadcasting operation income in the previous fiscal year. However, when the calculated sum is less than the amount in

table ②, then the fee in table ② shall be applied.

② Following are the fees for the use of works when there are no cable broadcasting operation income.

The number of households subscribing to the broadcast	Fees
Not exceeding 1,000	¥30,000
Not exceeding 3,000	¥50,000
Not exceeding 5,000	¥80,000
Not exceeding 10,000	¥100,000
Exceeding 10,000	The amount obtained by multiplying the number of households subscribing to the broadcast by ¥10

(2) When an annual blanket licensing agreement does not apply

The fee for per work, per use shall be determined in accordance with the following table.

① CATV broadcasting

Playing time per work and per use in CATV broadcasting	Fee
Not exceeding 5 minutes	¥1,000 for each 1,000 households subscribing to the broadcast
For each exceeding 5 minutes	¥1,000 for each 1,000 households subscribing to the broadcast

② Recording for CATV broadcasting

Per copy duplicated	Fee
Not exceeding 5 minutes	¥1,000
For each exceeding 5 minutes	¥1,000

(Notes for CATV broadcasting, etc.)

① In case that an annual blanket licensing agreement is concluded, the fiscal year begins in April and ends in March of the next year.

② The number of the households subscribing to the broadcast is that subscribing at the end of March every year.

③ The cable broadcasting business operator income as provided for in 1 is the total amount of subscription income, income arising from commercial broadcasting, etc, income arising from commissioned broadcasts, program production income and income arising from sales of programs, not inclusive of the consumption tax, from which the following items are deducted:

-Advertising agency commission
-Expenditure directly needed to collect subscription income

The CATV business operator income as provided for in 2 is the total amount of subscription income, income arising from commercial broadcasting etc, income arising from commissioned broadcasts, program production income, not

inclusive of the consumption tax, from which the following items are deducted:

-Advertising agency commission
-Expenditure directly needed to collect subscription income
-Amount payable to operators supplying programs for pay channels
-Amount payable to leasing operators when subscription includes amount for leasing home terminal

However, when the CATV business operation income is not available, the amount corresponding to the business income thereof may be determined within the scope of the total business income thereof by referring to the circumstances of usage, etc.

④ The fee for a CATV operator who has newly launched its business is determined within the scope of the provisions of 2(1)② by referring to the circumstances of usage.

⑤ In the previous fiscal year where the usage fees are calculated upon, when the period earning CATV broadcasting income is less than one year, the annual usage fee shall be calculated by converting the CATV broadcasting income into a yearly basis.

⑥ When calculating the fees for cable radio broadcasting, etc, in case it is difficult to determine the royalty by this tariff in cases such as where there is no cable broadcasting business income, the fees shall be determined upon discussion with the user within the scope of provision 1.

⑦ When the CATV broadcasting operator or the cable radio broadcasting operator concluded usage license agreement for CATV broadcasting, etc, which calculates the fees by provision 2, the fees for cable radio broadcasting, etc shall also be calculated by provision 2 for the time being.

⑧ In cases where the fee cannot be determined under these tariffs due to the type of cable broadcasts, the fees shall be determined within the scope of this tariff upon discussion with the user.

Article 9. LENDING

The fee for the use of works with respect to the lending of commercial phonograms to the public shall be a sum, calculated hereunder, plus an amount equivalent to the consumption tax.

(1)The fee for the use of works with respect to the lending of commercial phonograms to the public shall be calculated per copy (or tape) per each lending in accordance with the following scale:

Type	Fee
L.P.	¥50
Single	¥15
Compact disc	¥70
Pre-recorded tape	¥50

(2) Where a yearly contract, concluded by the Society with a person who engages in the business of lending commercial phonograms to the public calls for a monthly fee to be fixed, the fee shall be calculated per premises in accordance with the following table:

Class	Lending frequency per month	Monthly fee
1	Not exceeding 2,500 times	¥90,000
2	Not exceeding 3,000 times	¥110,000
3	Not exceeding 4,000 times	¥140,000
4	Not exceeding 5,000 times	¥180,000
5	Not exceeding 6,000 times	¥220,000
6	Not exceeding 7,000 times	¥250,000
7	Not exceeding 8,000 times	¥280,000
8	Not exceeding 9,000 times	¥320,000
9	Not exceeding 10,000 times	¥360,000
10	Not exceeding 11,000 times	¥400,000
For 11,000 times or over, ¥40,000 shall be added to each additional 1,000 times or part thereof.		

Notes: ① Lending frequency per month is the average on a per premise basis.
② Lending frequency per month is equal to a sum obtained by multiplying the following figures:

LPs	1
Singles (17cm)	0.3
Singles (30cm)	0.5
Compact Discs (12 cm)	1.2
Compact Discs (Mini album)	0.5
Pre-recorded tapes	1

Article 10. ON-LINE KARAOKE FOR COMMERCIAL USE

The fee for the use of works in public transmissions, other than broadcasts and wire diffusions, and in on-line Karaoke for commercial usage made by the following public transmissions (Of on-line Karaoke for commercial usage, these provisions are applicable to the use of works at commercial places, such as Karaoke premises, entertainment places, which are referred to hereinafter) (However, not inclusive of performances and singing at places where transmissions are received), shall be a sum calculated under the following 1 and 2, plus an amount equivalent to the consumption tax. In this Article, the fee includes that related to duplication (not inclusive of the case that duplication is made with image) and that related to public transmission.

1. Basic fee

(1) In the case that a comprehensive licensing agreement is concluded for basic fee, the fee shall be fixed per month in accordance with the number of access code set by a company engaged in on-line Karaoke transmission. The monthly fee will be calculated in the following formula.

Monthly fee will be ¥100,000 for number of access codes not exceeding 1,000. For each additional 1,000 codes, following fee will be charged.

Number of access codes	Added fee
Not exceeding 50,000	¥100,000
Exceeding 50,000 but not exceeding 100,000	¥90,000
Exceeding 100,000 but not exceeding 150,000	¥80,000
Exceeding 150,000	¥70,000

(2) In case (1) does not apply
The fee shall be fixed per month based on the number of works which are ready to be available to enterprises engaged in Karaoke facilities and entertainment places.
The monthly fee is ¥200 per work whose playing time is not exceeding 5 minutes.

2. Per usage fee

(1) In the case that a licensing agreement concerning the per usage fee is concluded the fee shall be fixed per month and per server and per terminal, etc.(hereinafter called "receiving apparatus" shall be a sum equivalent to 10 percent of service charge imposed on each receiving apparatus or ¥950, whichever is greater.
However, in the case that the fee equivalent to 14 percent of service charge is lower than ¥950, this percent based fee or ¥950, whichever is greater, shall apply.

(2) In case (1) does not apply
The fee shall be fixed each time a work is supplied (irrespective of through public transmissions or by means of reproductions) to premises such as Karaoke facilities and entertainment places, etc. by enterprises engaged in on-line Karaoke through access codes to receiving apparatus set by the premises.
The fee is ¥40 for use of a work whose playing time is not exceeding 5 minutes.

(Notes)

① Access code in this provision means code given to each data to comply with requests for on-line karaoke for commercial usage. The number of "access codes" means the total number of access codes for the works which JASRAC administers.

② When the provisions 1.(1) and 2.(1) apply, and a sum equivalent to 25 percent of the total amount of per usage fee is lower than monthly basic fee, 25 percent of the total amount of per usage fee shall be monthly basic fee irrespective of the number of codes.

③ When ② applies, and the total amount of monthly basic fee and monthly per usage fee is lower than ¥50,000, ¥50,000 shall be the fee for the month concerned.

④ Service charge provided for in 2.(1) means a sum (not inclusive of the consumption tax) required entities receiving service of on-line Karaoke to pay in compensation of receipt of service.

⑤ When service charge is not available, a sum equivalent to 170 percent of service charge income by a company engaged in on-line Karaoke (no matter which company earns the income) for each receiving apparatus may be considered to be service charge.

⑥ When 1.(2) or 2.(2) applies, in the case that playing time of a work exceeds 5 minutes, ¥200 or ¥40 shall be added for each additional 5 minutes in the provisions 1.(2) and 2.(2) respectively.

⑦ Among on-line karaoke for commercial usage, for the usage which is difficult to determine by the type of use, appropriate rates may be determined within the rates fixed in accordance with this Article by mutual agreement between the Society and the licensee.

Article 11. INTERACTIVE TRANSMISSIONS

The fee for the use of works in public transmissions using communication networks such as music transmissions and telephone services, other than broadcasting and wire diffusion, and reproductions which accompany such public transmissions (excluding those to which the tariff stipulated in Article 10 apply), shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

1. When a comprehensive usage license agreement is concluded

1-1. Commercial transmissions (when the main purpose of transmission is to use music for listening, karaoke, ring tone etc.)

1-1-1. Download type usages

(a) In case of transmission of data of works, the monthly fee shall be as follows.
ⓐ In case where the playback period, etc. is not limited

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">Regardless of whether there is advertising and/or other revenue, 7.7% of the information service charge per work per request or ¥7.70, whichever is higher, multiplied by the total number of requests received during the month.</td><td>¥6.60 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥5.50 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td colspan="2">Minimum fee</td><td colspan="2">If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.</td></tr>
</table>

ⓑ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end exceeds 7 days and is up to 30 days

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">Regardless of whether there is advertising and/or other revenue, 5.6% of the information service charge per work per request or ¥5.60, whichever is higher, multiplied by the total number of requests received during the month.</td><td>¥5 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥4.50 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td colspan="2">Minimum fee</td><td colspan="2">If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.</td></tr>
</table>

ⓒ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end is up to 7 days

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 4.5% of the information service charge per work per request or ¥4.50, whichever is higher, multiplied by the total number of requests received during the month.	¥3.85 per work per request multiplied by the total number of requests received during the month.
	No		¥3.50 per work per request multiplied by the total number of requests received during the month.
Minimum fee		If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.	

ⓓ Notwithstanding the provisions ⓐⓑⓒ, in case of data exclusively for ringtones

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 7.2% of the information service charge per work per request or ¥5, whichever is higher, multiplied by the total number of requests received during the month.	¥5 per work per request multiplied by the total number of requests received during the month.
	No		
Minimum fee		If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.	

(b) The monthly fee for usage of music in audio programs shall be as follows:
ⓐ In case where the playback period, etc. is not limited

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 7.7% of the information service charge per work per request or ¥7.70, or ¥3.8 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.	¥6.60 per work per request in audio program, or ¥3.30 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.
	No		¥5.50 per work per request in audio program, or ¥2.70 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.

Minimum fee	If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.

ⓑ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end exceeds 7 days and is up to 30 days

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 5.60% of the information service charge per work per request or ¥5.60, or ¥1.40 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.	¥5.50 per work per request in audio program, or ¥1.20 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.
	No		¥4.50 per work per request in audio program, or ¥1.10 multiplied by the number of works, whichever is higher, multiplied by the total number of monthly requests received during the month
Minimum fee		If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.	

ⓒ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end is up to 7 days

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 4.50% of the information service charge per work per request or ¥4.50, or ¥1.10 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month.	¥3.85 per work per request in audio program, or ¥0.96 multiplied by the number of works, whichever is higher, multiplied by the total number of requests received during the month. However, in case where the period during which the relevant data make available, or the number of reproduction by a receiver is limited to 3 days or three times, and the duration of reproduction is less than 10 minutes, fee is ¥2.50 multiplied by the total number of requests received during the month regardless of the number of works.

	No		¥3.50 per work per request in audio program, or ¥0.80 multiplied by the number of works, whichever is higher, multiplied by the total number of monthly requests received during the month. However, in case where the period during which the relevant data make available, or the number of reproduction by a receiver is limited to 3 days or three times, and the duration of reproduction is less than 10 minutes, fee is ¥2.50 multiplied by the total number of requests received during the month regardless of the number of works.
Minimum fee		If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.	

(c) The monthly fee for subscriptions shall be as follows:

ⓐ When agreement providing service to memory device of a receiver is cancelled, and immediately usage of the relevant work becomes impossible, monthly fee shall be 7.7% of the information service charge, or of advertising revenue, etc. or ¥ 77 multiplied by the total number of subscribers during the relevant month, whichever is higher.
When there is neither service charge nor advertising revenue, etc., the fee shall be ¥ 55 multiplied by the total number of subscribers during the relevant month. However, if the monthly fee calculated under this rate is under ¥5,000, ¥5,000 shall be the monthly fee.

ⓑ After agreement providing service to memory device of a receiver has been cancelled, and data do not becomes available within 6 months, monthly fee shall be 12% of the information service charge, or of advertising revenue, etc. or ¥ 120 multiplied by the total number of subscribers during the relevant month, whichever is higher.
When there is neither service charge nor advertising revenue, etc. fee shall be ¥ 85 multiplied by the total number of subscribers during the relevant month. However, if the monthly fee calculated under this rate is under ¥5,000, ¥5,000 shall be the monthly fee.

1-1-2. Streaming type usages

The monthly fee, regardless of the number of works to be made available for transmission simultaneously, shall be as shown on the schedule as follows.
However, the fee for the use of works where an information service charge is charged each time one work (one audio program) is used, shall be 4.5% of the information service charge or ¥4.50, whichever is higher, multiplied by the total number of requests received for such work (audio program) during the month, or the minimum fee stated on the following schedule, whichever is higher.
When there is neither information service charge nor advertising and/or other revenue, the fee shall be a yearly fee of ¥50,000. In such cases, when works are made available for transmission for a period of less than 1 year, regardless of the number of works

used, the monthly fee of ¥5,000, multiplied by the predetermined number of months the works will be used, may be determined as the applicable fee.

Category of service menu	Fee rate
Consisting mainly of music	3.5% of monthly information service charge and advertising and/or other revenue
General entertainment	2.5% of monthly information service charge and advertising and/or other revenue
Low ratio of music content, such as sports and news	1.0% of monthly information service charge and advertising and/or other revenue
Minimum fee	If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000.

The fee for when the number of works used in a single service menu is notably small, regardless of what is stipulated in the schedule above, shall be the fee rate or sum stipulated in Section 2 of this Article multiplied by the total number of requests received.

1-2. Commercial transmissions (when 1-1 is applicable, and when the usage is of a visual nature by using lyrics or, composition in letters, or in sheet music, etc.)

1-2-1. Download type usages or streaming type usages where the data can be printed at the receiving end

(a) The monthly fee for transmission of work data shall be as follows.

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">Regardless of whether there is advertising and/or other revenue, 10% of the information service charge per work per request or ¥10, whichever is higher, multiplied by the total number of requests received during the month.</td><td>¥6.60 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥5.50 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td colspan="2">Minimum fee</td><td colspan="2">If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.</td></tr>
</table>

The monthly fee for when foreign works are used, only for such foreign works, regardless of what is stipulated in the schedule above (except for the minimum fee), shall be the fee rate or sum stipulated in Section 2 of this Article multiplied by the total number of requests received.

(b) Monthly fee for subscription where the data can be printed at the receiving end shall be as follows:
Provision in 1-2-1 (a) above shall apply for the time being.

(c) Monthly fee for subscription where the data can not be printed at the receiving end shall be as follows:
When agreement providing service to memory device of a receiver is

cancelled, and immediately usage of the relevant work becomes impossible, monthly fee shall be 10% of the information service charge, or of advertising revenue, etc. or ¥ 100 multiplied by the total number of subscribers during the relevant month, whichever is higher.
When there is neither service charge nor advertising revenue, etc. fee shall be ¥ 55 multiplied by the total number of subscribers during the relevant month. However, if the monthly fee calculated under this rate is under ¥5,000, ¥5,000 shall be the monthly fee.

1-2-2 Streaming type usages where the data cannot be printed at the receiving end

Section 1-1-2 shall apply for the time being.

1-3. Commercial transmissions (when Sections 1-1 and 1-2 are not applicable, such as when the main purpose is to transmit non-musical works)

1-3-1. Download type usages

The monthly fee for transmission per work (per content) shall be as follows.

ⓐ In case where the playback period, etc. is not limited

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">Regardless of whether there is advertising and/or other revenue, 6.2% of the information service charge per work (or one content, similar throughout this schedule) per request or ¥6.20, whichever is higher, multiplied by the total number of requests received during the month.</td><td>¥5.30 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥4.40 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td colspan="2">Minimum fee</td><td colspan="2">If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.</td></tr>
</table>

ⓑ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end exceeds 7 days and is up to 30 days

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">Regardless of whether there is advertising and/or other revenue, 4.5% of the information service charge per work (or one content, similar throughout this schedule) per request or ¥4.50, whichever is higher, multiplied by the total number of requests received during the month.</td><td>¥3.85 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥3.50 per work per request multiplied by the total number of requests received during the month.</td></tr>
</table>

Minimum fee	If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.

ⓒ In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end is up to 7 days

		Information service charge	
		Yes	No
Advertising and/or other revenue	Yes	Regardless of whether there is advertising and/or other revenue, 3.6% of the information service charge per work (one cont	¥3.20 per work per request multiplied by the total number of requests received during the month.
	No	In case where data cannot be reproduced from a memory device of the receiving end to another memory device, and the playback period of the relevant data at the receiving end is up to 7 days net, similar throughout this schedule) per request or ¥3.60, whichever is higher, multiplied by the total number of requests received during the month.	¥2.80 per work per request multiplied by the total number of requests received during the month.
Minimum fee		If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.	

(a) The monthly fee for subscriptions shall be as follows:
When agreement providing service to memory device of a receiver is cancelled, and immediately usage of the relevant work becomes impossible, monthly fee shall be 5.8% of the information service charge, or of advertising revenue, etc. or ¥ 58 multiplied by the total number of subscribers during the relevant month, whichever is higher.
When there is neither service charge nor advertising revenue, etc. fee shall be ¥ 44 multiplied by the total number of subscribers during the relevant month. However, if the monthly fee calculated under this rate is under ¥5,000, ¥5,000 shall be the monthly fee.

1-3-2. Streaming type usages

The monthly fee, regardless of the number of works to be made available for transmission simultaneously, shall be as shown on the schedule as follows.
However, the fee for the use of works where an information service charge is charged each time one work (one content) is used, shall be 3.6% of the information service charge or ¥3.60, whichever is higher, multiplied by the total number of requests received for such work (content) during the month, or the minimum fee stated on the following schedule, whichever is higher.
The fee for when there is neither information service charge nor advertising and/or other revenue, shall be a yearly fee of ¥50,000. In such cases, when works are made available for transmission for a period of less than 1 year, regardless of the number of works used, the monthly fee of ¥5,000, multiplied by the predetermined number of

months the works will be used, may be determined as the applicable fee.

Category of service menu	Fee rate
Consisting mainly of music	2.8% of monthly information service charge and advertising and/or other revenue
General entertainment	2.0% of monthly information service charge and advertising and/or other revenue
Low ratio of music content, such as sports and news	0.8% of monthly information service charge and advertising and/or other revenue
Minimum fee	If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000.

When the number of works used in a single service menu is notably small, regardless of what is stipulated in the schedule above, the fee rate or sum stipulated in Section 2 of this Article multiplied by the total number of requests received may be determined as the applicable fee.

1-4. Non-commercial transmissions

1-4-1. Download type usages

The yearly or monthly usage fee for making up to 10 works available for transmission simultaneously shall be as follows.
However, the fee for when the usage is of a visual nature such as lyrics and sheet music and of foreign works, shall be the fee rate or sum stipulated in Section 2 of this Article multiplied by the total number of requests received.

General	Usage by individual for non-profit purpose	Usage by non-profit educational institution
The yearly fee shall be ¥50,000. When works are made available for transmission for a period of less than one year, the monthly fee of ¥5,000, multiplied by the predetermined number of months the works will be used, may be determined as the applicable fee.	Regardless of the type of usage, the yearly fee shall be ¥10,000. When works are used for a period of less than one year, the monthly fee of ¥1,000 multiplied by the predetermined number of months the works will be used, or when less than 10 works are to be used, the yearly fee of ¥1,200 per work, and when works are used for a period of less than 1 year, the monthly per work fee of ¥150 multiplied by the predetermined number of months the works will be used may be determined as the applicable fee.	Regardless of the type of usage, the yearly fee shall be ¥20,000. When works are used for a period of less than 1 year, the monthly fee of ¥2,000 multiplied by the predetermined number of months the works will be used, or when less than 10 works are to be used, the yearly fee of ¥2,400 per work, and when works are used for a period of less than one year, the monthly per work fee of ¥300 multiplied by the predetermined number of months the works will be used may be determined as the applicable fee.

1-4-2. Streaming type usages (except for foreign works, includes the showing of lyrics and sheet music on screen)

Regardless of the type of usage and the number of works made available for

transmission simultaneously, the yearly or monthly fee shall be as follows.

General	Usage by individual for non-profit purpose	Usage by non-profit educational institution
The yearly fee shall be ¥30,000. When works are made available for transmission for a period of less than one year, the monthly fee of ¥3,000, multiplied by the predetermined number of months the works will be used, may be determined as the applicable fee.	Regardless of the type of usage, the yearly fee shall be ¥10,000. When works are used for a period of less than one year, the monthly fee of ¥1,000 multiplied by the predetermined number of months the works will be used, or when less than 10 works are to be used, the yearly fee of ¥1,200 per work, and when works are used for a period of less than one year, the monthly per work fee of ¥150 multiplied by the predetermined number of months the works will be used may be determined as the applicable fee.	Regardless of the type of usage, the yearly fee shall be ¥20,000. When works are used for a period of less than one year, the monthly fee of ¥2,000 multiplied by the predetermined number of months the works will be used, or when less than 10 works are to be used, the yearly fee of ¥2,400 per work, and when works are used for a period of less than one year, the monthly per work fee of ¥300 multiplied by the predetermined number of months the works will be used may be determined as the applicable fee.

2. When a comprehensive usage license agreement is not applicable

The fee for when a comprehensive usage license agreement is not applicable shall be determined per work per request, and shall be determined by taking into consideration the details of the usage, with 20% of the information service charge per work per request or ¥20 each for the lyrics and music, whichever is higher, as the maximum fee.

(Notes for Interactive Transmissions)

[Term definitions]
Note 1

1-1. Commercial transmissions
Transmission made with revenue from information services charges or advertising and/or other revenue, and transmissions made by a commercial entity regardless of whether there is revenue or not.

1-2. Non-commercial transmissions
Transmissions made for non-commercial purposes by non-commercial entities, non-commercial groups or private persons.
However, transmissions of the following data shall be considered to be commercial transmissions.
(1) Commercial phonograms, etc. (not applicable when authorization specifically for non-commercial usage has been obtained from the rights owners of the commercial phonograms in question)
(2) Ring tone melodies including data specifically used for ring tone.

1-3. Download type usages
This shall mean a transmission type where the data is reproduced on the receiver's memory device for usage.

1-4. Streaming type usages

This shall mean a transmission type where the data is not reproduced on the receiver's memory device for usage.

1-5. Data of work

This shall mean data for either lyrics or music (including transmission of lyrics and music together), and unit of transmission per request in the form under which works cannot be received separately.

1-6. Data exclusively for ringtones

This shall mean the data used for ringtones of telephone calls and so on, whose total playing time is usually 45 seconds or less and which cannot be reproduced from the receiving terminal to other memory devices, including ringtones accompanied with visual materials and so on.

1-7. Audio programs

This shall mean the programs including narrations other than music, and other voices that is not music (excluding those including images), and the unit of transmission made per request in a manner that is impossible to receive separately.

1-8. Subscription

This shall mean a usage form which does not fix the period of offering transmission, a lot of work data, or contents, or audio programs are made available for transmissions within the service menu as a service preventing receivers from listening to and viewing programs immediately after the they cancel the transmission agreements, and that transmissions are made without limit of times of usage in download form(including a part of transmissions in streaming form are made incidentally with transmissions in download form).

However, with respect to usage in accordance with 1-3 above, this proposition shall include transmissions which can not be made within 6 months after a receiver has cancelled agreement of transmission.

1-9. Content

This shall mean a unit of data transmitted per request in a manner that is impossible to receive separately in usages accompanying moving pictures or usages of commercials.

1-10. Information service charge

This shall mean charges (excluding consumption tax, regardless of whether it is called content usage fees, membership fees, etc.) payable usually by the receiver as compensation for the use of interactive transmissions.

1-11. Advertising and/or other revenue

This shall mean all revenue other than information service charge revenue, regardless of whether it is called advertising revenue, sponsorship fees, etc.

1-12. Service menu

This shall mean a unit of service clearly indicated to facilitate the general recognition that it is an individual service within the services provided by a homepage (information provided over a network for which one operating entity holds responsibility).

1-13. Foreign works

This shall mean a work for which a music publishing agreement has been concluded between the author/composer and a music publisher established outside of Japan which is not a trustor of JASRAC, and for which the fee rate applicable for licensing under Article 4 Publications, etc. of the Tariffs in accordance with the stipulations of Article 16 of JASRAC's Stipulations for Copyright Trust Contract is set by the trustor.

1-14. Promotional listening

This shall mean transmissions conducted to promote usages in streaming form for commercial purposes licensable by JASRAC's Tariffs, for usage categories where music is used mainly, and is restricted to those that do not accrue information service charge and advertising and/or other revenue, and where the total performance duration of the work data is 45 seconds or less per work. This shall also include cases where Section 1-2 is applicable, and when part of the visual data to be transmitted is transmitted as a sample, and 30% or more of this is masked. In such cases, whether the receiver can print the sample is irrelevant.

1-15. Data storage proxy

This shall mean the free of charge lending of data storage domain by an operator licensed by JASRAC under this Article, as part of its service, for data transmitted by the operator exclusively to private persons, where the individual to whom the storage domain was lent is the only party that is authorized to access the stored works data.

1-16. Cost of medium

This shall mean cost for publishing advertisement paid to entities engaged in advertising medium business. Cost of medium paid per request shall be a unit cost of medium, and total cost paid in advance for publication of an advertisement shall be total cost of medium.

[Fee calculation units]

Note 2

This Article, as a general rule, calculates fees on a per service menu basis for each homepage. However, when there are plural service menus on a single homepage, after determining the applicable tariff categories for each service menu, fees for service menus in the same categories may be calculated together.

[Exceptions to the application of commercial transmission tariffs]

Note 3

Download type usages conducted by non-commercial entities, non-commercial groups or private persons with only advertising and/or other revenue (excluding usages as data which fall into the schedule in 1-2-(2) of Note 1 above), where the schedules in 1-1, 1-2 and 1-3 cannot be applied, for the time being, the yearly fee to make up to 10 works available for transmission simultaneously may be determined to be ¥60,000. When works are made available for transmission for a period of less than 1 year, the monthly fee of ¥6,000 for making up to 10 works available for transmission, multiplied by the predetermined number of months the works will be used, may be determined as the applicable fee. In either case, if the number of works to be made available for transmission simultaneously exceeds 10, the fee for up to 10 works shall be added for each additional 10 works or part thereof.

[Exceptions to the rules for information service charges]

Note 4

Where there is an information service charge, but when it is not established as a

per request information service charge, and is in a form such as a set monthly charge, a per work information service charge equivalent will be obtained by certain means, such as by dividing the information service charge set by such operator by the number of requests. However, any service with respect to subscription is not included.

Note5

The fee applicable for when a standard information service charge is set, but is deducted or exempted temporarily for certain reasons such as promotional campaigns, shall be calculated based on the standard information service charge.

[Exceptions to the rules for music used in advertisements]

Note 6

Notwithstanding the provisions from 1-1 to 1-3, in case of transmissions of commercials, for which reproduction for transmission was licensed, in manners of streaming, or of download, which makes available in the limited period, monthly fee paid by entities engaged in advertising business shall be 5% of a unit cost of medium per content, and per request, multiplied by the total time of request in a month, or ¥5,000, whichever is higher.

However, when a unit cost of medium, or the time of request is unknown, monthly fee shall be 7% of total cost of medium (when the period is more than a month, monthly fee shall be obtained by dividing by the time of the months during which transmissions were made fee), or ¥5,000, whichever is higher.

Fee for transmission in download format by which there is no limit on the playback period can be determined within the rates and amount of this Article upon negotiation with the user.

[Rules for advertising and/or other revenue]

Note 7

When Sections 1-1-2 or 1-3-2 apply, and where advertising and/or other revenue cannot be reported per service menu in a single website, the user may choose to apply either (a) or (b) below only for those service menus.

(a) When counting / analysis is undemanding	The amount obtained by multiplying the percentage of page views associated with such service menu (or a rate equivalent) among the total number of page views constituting the homepage, by the total advertising and/or other revenue, may be used as the advertising and/or other revenue for fee calculation purposes. However, in such cases substantiating documentation is required.
(b) When counting / analysis is demanding	The amount obtained by dividing the advertising and/or other revenue for the entire homepage by the total number of service menus may be used as the advertising and/or other revenue per service menu. However, in such cases, 1 is added to the number of service menus for service menus not using works, regardless of the number of such service menus. When the number of service menus not using music is more than 5 times the number of service menus using music, 1 may be added to the number of service menus for each 5 service menus not using music.

Note 8 [Exemption of fees]

Fees are exempt for data storage proxies for which applications are submitted prior to commencement to JASRAC and approved by JASRAC.

Note 9

Fees are exempt for promotional listening to which (a) (b) or (c) below apply and for which applications are submitted prior to commencement to JASRAC.

(a) When a user using works under Sections 1-1, 1-2 or 1-3 provides promotional listening of works on the same screen as that on which the receiver makes requests.

(b) When a producer of products mainly using works such as commercial phonograms in which works are reproduced legally, provides on its homepage promotional listening of works reproduced on such products to promote sales of such products.

(c) When a performer, phonogram producer or other such neighboring right owner provides promotional listening of such performance or phonogram on his/her/its own homepage.

Note 10 [When more than one Section is applicable]

The fee for when more than one Section in Sections 1-1 through 1-3 apply to a single usage type provided in a single service menu, shall be as follows.

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="2">Information service charge</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td rowspan="2">Advertising and/or other revenue</td><td>Yes</td><td rowspan="2">The amount obtained by dividing the information service charge and/or advertising and/or other revenue (information service charge only when Sections 1-1-1, 1-2-1 or 1-3-1 apply) by the number of applicable sections, and applying each of the applicable sections.</td><td>¥6.60 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td>No</td><td>¥5.50 per work per request multiplied by the total number of requests received during the month.</td></tr>
<tr><td colspan="2">Minimum fee</td><td colspan="2">If the monthly fee calculated under this schedule is under ¥5,000, ¥5,000 shall be the monthly fee. In this case, when works are made available for transmission for a period of 5 days or less, the fee shall be a daily fee of ¥1,000 multiplied by the number of days the works are used.</td></tr>
</table>

Note 11 [Usage in advertisements]

When music is to be used in a way in which this Article is applicable to advertise a service or a product, permission must be obtained from the author/composer in advance.

Note 12 [Fees for works made available for transmission]

The fees calculated under this Article shall include fees for all works made available for transmission in such service menu, regardless of whether requests are made.

Note 13 [Arrangements for usages where this Article in not applicable]

For interactive transmissions where due to the characteristics of the usage this Article cannot be applied, the fee shall be determined within the rates and amounts of this Article upon negotiation with the user.

Article 12 BGM (Background music)

In case works transmitted in public through wire diffusions in public are communicated in public as BGM by means of receiving apparatus, or by means of phonogram records legally made, the fee shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

1. The fee for facilities

(1) For shops etc. in general

Classification	Floor space of a shop, etc.	Yearly fee
1	Not exceeding 500 sq.m.	¥6,000
2	Not exceeding 1,000 sq.m.	¥10,000
3	Not exceeding 3,000 sq.m.	¥20,000
4	Not exceeding 6,000 sq.m.	¥30,000
5	Not exceeding 9,000 sq.m.	¥40,000
6	Exceeding 9,000 sq.m.	¥50,000

(2) For lodging facilities

Classification	Capacity	Yearly fee
1	Not exceeding 100 persons	¥6,000
2	Not exceeding 200 persons	¥10,000
3	Not exceeding 300 persons	¥20,000
4	Not exceeding 400 persons	¥30,000
5	Not exceeding 500 persons	¥40,000
6	Exceeding 500 persons	¥50,000

2. The fee in the case that an enterprise who supplies master recordings concludes a comprehensive licensing agreement

Notwithstanding the provisions 1, in case an enterprise who supplies master recordings of BGM, such as an enterprise engaged in wire diffusions or manufacture/lending of sound recordings, concludes a comprehensive licensing agreement on behalf of their customers to whom they supply master recordings, the fee shall be a sum equal to 1% of the business income earned by enterprise who supplies sound recordings during the previous year (not inclusive of the consumption tax).

(Note for BGM)

① The business income means income earned by enterprises supplying master recordings no matter what appellation they use for such income, such as receiving fee, broadcasting fee, etc.

② 1% as provided for in this Article shall be substituted for 0.6% in the fiscal year 2002, for 0.7% in the fiscal year 2003, for 0.8% in the fiscal year 2004, for 0.9% in the fiscal year 2005.
(Note) Each fiscal year is from April to March of the next year.

③ The fee payment is excluded, for the time being, for use of works in welfare institutions, medical facilities or educational institutions and for use of works mainly targeted to only workers in offices, factories, etc. or for slight use of works in short time in street stalls, etc. and for use thereof not falling under Article 38 (1).

Article 13. CD GRAPHICS, etc.

In the event a work is used on a CD, a floppy disc, a hard disc, a memory flash, etc., in which lyrics or scores are shown on a display (hereinafter called "CD graphics, etc."), the fee for a work whose playing time is less than 5 minutes on a CD graphic shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

1. Commercial CD Graphics, etc.

(1) Those with a marked retail selling price
The fee for the use of a work on a CD graphic , etc. shall be a sum equal to the quotient obtained by dividing 6 percent of the retail selling price (not inclusive of the consumption tax) of such CD graphic , etc. by the number of works contained, or ¥11, whichever is greater.

(2)Those without a marked retail selling price
The fee for the use of a work on a CD graphics, etc. shall be a sum equal to ¥11.

2. Other CD Graphics, etc.

The fee for the use of a work on a CD graphics, etc. other than those provided for in 1. shall be a sum equal to the quotient obtained by dividing ¥600 by the number of copies manufactured, of such CD graphic, etc., or ¥11, whichever is greater.

(Notes for CD GRAPHICS, etc.)

① For the purpose of calculating the rate for a work whose playing time is more than 5 minutes, each additional 5 minutes or part thereof shall be considered to be one separate work.

② With respect to the use on CD graphics, etc., in the event the type of use or some specific circumstances prevent the rates under this Article from being applicable, other appropriate rates may be determined within the rates or the sums fixed in accordance with this Article by mutual agreement between the Society and the licensee.

Article 14. IC MEMORY CARDS FOR KARAOKE USE

In the event of the type of use of a work on an IC memory card in which a lyric is shown together with a sound on a display, and which is mainly used in Karaoke with one microphone (hereinafter called "IC memory card for Karaoke usage"), the fee for a work whose playing time is no more than 5 minutes on an IC memory card for Karaoke use shall be a sum calculated hereunder, plus an amount equivalent to the consumption tax.

1. Commercial IC Memory Cards for Karaoke use

(1) Those with a marked retail selling price

The fee for the use of a work on an IC memory card for Karaoke usage shall be a sum equal to the quotient obtained by dividing 6 percent of the retail selling price, not inclusive of the consumption tax, of such IC memory card for Karaoke use by the number of works contained or ¥11, whichever is greater.

(2) Those without a marked retail selling price

The fee for the use of a work on an IC memory card for Karaoke usage shall be a sum equal to ¥11.

2. Other IC Memory Cards for Karaoke use

The fee for the use of a work on an IC memory card for Karaoke usage other than those provided for in 1. shall be a sum equal to the quotient obtained by dividing ¥600 by the number of copies manufactured, of such IC memory card for Karaoke usage, or ¥11, whichever is greater.

(Notes for IC memory cards for Karaoke use)

① For the purpose of calculating the rate for a work whose playing time is more than 5 minutes, each additional 5 minutes or part thereof shall be considered to be one separate work.

② With respect to the use on IC memory card for Karaoke usage, in the event of the type of use or some specific circumstances preventing the rates payable under this Article from being applicable, other appropriate rates may be determined within the rates or the sums fixed in accordance with this Article by mutual agreement between the Society and the licensee.

Article 15. OTHERS

In the event of the type of use of a work preventing the provisions of Article 1 through 14 under the present Tariffs from being applicable, the fee thereof may be determined by mutual agreement with the licensee in consideration of the purpose or manner of such use and other circumstances.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

The Tariffs shall come into effect as of November 1, 2001, which is 30 days after the date when the Commissioner of the Agency for Cultural Affairs has accepted the application submitted by JASRAC. However, Article 13 providing for BGM shall come into effect as from April 1, 2002.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Article 9.2 providing for Cable Television (CATV) and Article 12 providing for Interactive Transmissions shall come into effect as from April 1, 2002.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Article 1.1 providing for Dramatic Performances of Dramatico-musical Works and Article 1.2 providing for Performances of Musical Works at Concerts shall come into effect as from October 1, 2003.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Note of Chapter I General Provisions and Chapter II, Article 8 providing for Videograms shall come into effect as from July 1, 2004.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Chapter II, Article 12 providing for Interactive Transmissions shall come into effect as from April 1, 2005.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Chapter I General Provisions, Chapter II, Article 5 providing for Audio Recordings, Article 13 providing for CD Graphics, etc., Article 14 providing for IC Memory cards for Karaoke usage, and Article 15 providing for Others shall come into effect as from January 1, 2006.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Chapter II, Article 2 providing for Broadcasting, etc. and Article 11 providing for Interactive Transmissions shall come into effect as from January 1, 2007.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Chapter II, Article 1.3 providing for Performances of Musical Works in Entertainments other than Concerts, Article 1.4 providing for Performances at Karaoke facilities, Article 1.5 providing for Performances, etc. at Dance Instruction Institutes, and Article 1.6 providing for Performances, etc. at Places of Entertainment shall come into effect as from October 1, 2007.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Of the Tariffs, Chapter I General Provisions, and Chapter II, Article 8 providing for Cable Broadcasting, etc. shall come into effect as from August 1, 2008.

SUPPLEMENTARY PROVISIONS
(Date of enforcement)

Among the Tariffs for Use of Musical Works, Chapter II Article 10 “On-Line Karaoke for Commercial Usage” shall come into effect as from April 1, 2009.

Royalty Rates Schedule VR-OD 7

for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions

Net amounts plus value added tax at the statutory rate

I. Scope of Application

The following royalty rates apply exclusively to the use of works and rights in and to GEMA repertoire within the scope of Music-on-Demand offers, which involve the downloading of audio works of music and/or of music videos (in particular music video clips, concert recordings) – hereinafter collectively referred to as "musical works" – by the end user via internet-based or mobile services.

Downloading describes both the ultimate storage and the production of a restricted copy (tethered download) of a musical work on a storage medium of the end user. The copy is restricted in that playing is tied to a particular time. The end user is that person, who makes use of the Music-on-Demand offer for private purposes with or without a fee.

In particular streaming uses as well as ringtone melodies and dial tone background melodies shall be excluded from the scope of application of this Tariff.

II. Royalties

1. Obligation to pay royalties

The obligation to pay royalties is incurred:

a) by the reproduction of musical works from GEMA's repertoire in databases, documentation servers or similar storage media (e.g. server computers),
b) by making musical works from GEMA's repertoire available to the public,
c) by transmitting musical works from GEMA's repertoire,
d) by the actual call-down of a musical work from GEMA's repertoire by the end user or
e) by the conclusion of a subscription, under which musical works are provided for calling down, even if there has been no corresponding call-down of musical works by the end user.

2. Standard royalty for the downloading of single titles and albums

The standard royalty amounts to 10.25 % of the computation basis.

Within the meaning of this Tariff, an "album" is defined as a compilation of any number of single titles, which is created by a record label itself or, if created by the licensee, was approved by a record label. Single titles compiled into bundles, playlists or the like by the end users themselves shall be excluded from the definition of album for the purposes of this Tariff.

3. Minimum royalty for the downloading of single titles and albums

The minimum royalty for each musical work and/or album called down by the end user amounts to

Amount in Euro	
0.091	per single title
0.0875	for each title in an album with 2 to 7 musical works,
0.075	for each title in an album with 8 to 12 musical works,
0.0725	for each title in an album with 13 to 15 musical works,
0.0625	for each title in an album with 16 and 17 musical works and
0.0563	for each title in an album with 18 or more musical works.

Notwithstanding the above, full units comprising 26 titles each shall be remunerated at EUR 0.0563 for albums that were not compiled by a record label. The remuneration for works exceeding such 26 tracks shall be calculated at the graduated minimum royalty rates given above.

The above minimum royalty rates apply to musical works with a playing time of up to 10 minutes. If the playing time of the musical work is longer than 10 minutes, the minimum royalty relating to the respective musical work is increased by one fifth for each additional minute.

4. Royalty provisions for "limited subscriptions"

a) *Definition of term*

A "limited subscription" shall be deemed to exist when the end user obtains for a particular, possibly recurring, period of time a fixed contingent of specific call-down options, with which he/she can either call down only musical works that can be freely selected ("homogeneous subscriptions") or other contents (e.g. games, applications) or audiovisual contents ("heterogeneous subscriptions") by way of downloading.

b) *Standard royalty for limited subscriptions*

The standard royalty for limited subscriptions amounts to 10.25 % of the computation basis.

Notwithstanding the above, the standard royalty rate for the calendar year 2012 (to serve as a test phase) shall amount to 9.225 % of the computation basis. During the test phase, GEMA will collect and analyse further information about the business model, and in particular about user behaviour, substitution effects among the services offered and intensity of usage.

c) Minimum royalty for limited subscriptions

The minimum royalty for limited subscriptions shall be subject to the provisions under **Section 3**.

5. Computation basis

The computation basis shall be all net revenue (gross revenue less value added tax at the applicable rate) accruing through the use of music and therefore in particular

- the net end-user price for the respective call-down of a musical work or album and/or the subscription, i.e. the respective amount paid by the end user less value added tax, and

- separately financed or calculated monetary benefits and considerations, such as for example transmission and provision fees, or payments arising from advertising, sponsoring, barter, compensation or gift transactions. The same shall also apply to foreign revenue, provided it relates to the operation of the service to be licensed in Germany.

6. Pro rata calculation

a) In the event that the service to be licensed does not solely contain offers falling within the scope of application of the present Tariff, this shall be taken into consideration on a pro rata basis in determining the computation basis as per Section 5, notwithstanding the fact that the revenue deducted in this way can be used within the scope of any licensing that may be necessary for other offers of the service to be licensed, which do not fall under this Tariff.

b) In the event that musical works, in which GEMA holds no or only pro rata exploitation rights, are used within the scope of the service to be licensed, this shall be taken into account on a pro rata basis in the calculation of the royalty in compliance with the above provisions.

7. Audio samples

In case the service to be licensed grants the end user the possibility to call down excerpts of works from GEMA's repertoire up to 90 seconds in length by streaming for the purpose of promoting the sale of downloads and without the possibility of ultimate storage on a storage medium of the end user (so-called audio samples), the following royalty provisions shall apply:

- for a service to be licensed with up to 1 million individual downloads EUR 187.50 / annum
- for a service to be licensed with up to 10 million individual downloads EUR 625.00 / annum
- for a service to be licensed with over 10 million individual downloads EUR 2,500.00 / annum.

Notwithstanding the above, the service to be licensed remains obliged to provide clarification pursuant to Section III. 1. d).

III. General Provisions

1. Scope of grant of rights

a) The grant of rights for the operation of the service to be licensed shall be restricted to the right pursuant to Art. 16 UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Art. 19a UrhG to make works from GEMA's repertoire available to the public. Within the scope of operation of the service to be licensed, the following uses may be covered, subject to proper licensing:

- Incorporating works from GEMA's repertoire into databases, documentation systems or similar storage media (e.g. server computers),
- Making works from GEMA's repertoire available to the public,
- Storing works from GEMA's repertoire as a download on terminal equipment for private use by the end user.

b) The exploitation rights granted may not be transferred to third parties.

c) The grant of rights shall not cover any other rights, in particular arrangements and the right to combine works from GEMA's repertoire with works of other types, nor offers of dramatico-musical works, either in their entirety, as a cross-section, or major parts thereof (so-called "Grand Rights"), nor shall it cover graphic rights or rights in the sheet music or text-related images.

d) The moral rights of authors may not be violated. Any alterations to a work with a view to using it in the Music-on-Demand offer, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Where works from GEMA's repertoire are used directly or indirectly for advertising purposes, the relevant authorisations must be obtained separately by the service provider of the service to be licensed, insofar as moral rights of authors are involved.

2. Acquisition of authorisation for use in due time

The rights forming the subject of this Tariff shall only be deemed to have been granted, if GEMA's authorisation was obtained prior to commencement of use, i.e. in particular before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

3. Rights of third parties

Rights of third parties, for example in the case of using scores for which royalties have been paid, shall remain unaffected.

4. Territorial scope

This tariff shall apply to acts of usage and corresponding offers, which are made within Germany and/or for the German market.

5. General agreement

Members of organisations, which have concluded a general agreement with GEMA for the above royalty rates, are granted a general-agreement discount on the respective royalty rates upon conclusion of the relevant individual agreement.

6. Period of validity

The royalty rates shall apply to the period from 1 January 2012.

Royalty Rates Schedule VR-T-H 1

for the reproduction of works from GEMA's repertoire on commercial audio carriers (phonographic records, music cassettes, compact discs, minidiscs and digital compact cassettes) and their distribution for personal use

Net amounts plus value added tax at the current rate of 7 %

I. Royalties

1. General royalty

a) Percentage royalty

Subject to the terms outlined in the following paragraph, the royalty shall amount to 13.75 % of the highest price for dealers published by the producer (PPD) (excluding VAT) for the audio carrier in question.

If the producer applies retail selling prices that are fixed or recommended in Germany and these prices are generally paid by the public at large, the royalty rate is calculated at 10 % of the said prices (excluding VAT).

The highest published prices for dealers and the fixed or recommended retail selling prices are based on the relevant price lists published on the date of delivery of the audio carrier.

If the producer is not in a position to provide price lists, the royalty shall be fixed on the basis of the price generally applied by the other domestic producers for the category of audio carrier in question (excluding VAT), unless the producer has in good time reached an agreement with GEMA about the calculation of the royalty, the outcome of which shall be consistent with the preceding paragraphs.

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b) Minimum royalty

The minimum royalty and maximum number of works or fragments of works on a **phonographic record**:

Category	**Number of protected works per record**	**Minimum royalty per record €**
45/17 N (playing time up to 8 mins.)	2 works or up to 6 fragments	0,1473
45/17 EP (playing time up to 16 mins.)	up to 4 works or up to 12 fragments	0,1753
45 maxi single (playing time up to 16 mins.)	up to 4 works or up to 12 fragments	0,2639
33/17 1/3 EP (playing time up to 20 mins.)	up to 6 works or up to 18 fragments	0,2743
33/25 1/3 LP (playing time up to 30 mins.)	up to 10 works or up to 24 fragments	0,3627
33/30 1/3 LP (playing time up to 60 mins.)	up to 16 works or up to 28 fragments	0,4836

Minimum royalty and maximum number of works or fragments of works on a **music cassette**:

Category	**Number of protected works per music cassette**	**Minimum royalty per music cassette in €**
I. Playing time up to 60 mins.	up to 16 works or up to 28 fragments	0,3720
II. Playing time up to 120 mins.	up to 32 works or up to 56 fragments	0,6199

Minimum royalty and maximum number of works or fragments of works on a **compact disc**:

Category	Number of protected works per compact disc	Minimum royalty per compact disc in €
I. CD-single/ CD-maxi-single (playing time up to 23 mins.)	up to 5 works or up to 12 fragments	0,2480
II. CD standard, only 12 cm (playing time up to 80 mins.)	up to 20 works or up to 40 fragments	0,6199

c) Minidisc and digital compact cassette

Maximum number of works or fragments of works on a minidisc (MD) or digital compact cassette (DCC):

Category	Number of protected works per MD or DCC
Minidisc (playing time up to 80 mins.)	up to 18 works or up to 30 fragments
Digital Compact Cassette (playing time up to 80 mins.)	up to 18 works or up to 30 fragments

d) Budget minimum royalty

The following budget minimum royalties shall be payable on the following categories of audio carrier no earlier than one year after the original date of issue of the audio carrier, calculated from the beginning of the accounting period in which the first release was made:

Category	Budget minimum royalty in €
LP 33/30 cm	0,2756
CD standard, only 12 cm	0,3534
Music cassette up to 60 mins.	0,2120
Music cassette up to 120 mins.	0,3534

2. Exports

In respect of exports to non-European countries, other than those countries where the royalty is fixed by law (such as USA and Canada), the price upon which royalties shall be calculated shall be the price applicable to sales in the national territory, the royalty being calculated in accordance with conditions accepted by GEMA or its agent in the country of sale, including in particular those relating to minimum royalties. Where the producer can provide evidence of the price applicable in the country of destination, these prices shall be taken as the basis for calculating the royalty, provided that the local currency is convertible.

For exports to non-European countries, in which the royalty is fixed by law, the statutory royalty shall be payable. Nevertheless, GEMA and the producer may agree to apply to such exports – with the exception of exports to USA and Canada – the royalty in force for sales within the national territory.

In respect of exports to European countries, the royalties shall be calculated and paid in accordance with all the terms agreed in the country of import, it being understood that the national prices shall apply in the case of exports to an EU country and the prices of the country of destination for all other exports, provided that in the latter case the local currency is convertible. If no evidence of the prices in the country of destination can be provided by the producer, the national prices shall apply.

Section II, Par. 1 e) second paragraph shall not apply to exports.

II. General provisions

1. Calculation

a) Compilation
24 protected works or 48 fragments of protected works may be reproduced in a compilation album on CD standard (12 cm), minidisc or digital compact cassette, provided its contents comprise at least 50 % re-released recordings of protected works or fragments of protected works.

The number of protected works and/or fragments, which may be reproduced on an analogue cassette, if this cassette contains the same recordings as a CD, DCC or MD album or a compilation album, corresponds to the number of protected works and/or fragments that may be reproduced on the corresponding digital carrier. In such case, the cassette shall be subject to the same restrictions regarding the maximum playing time as the corresponding digital carrier.

b) Exceeding the number of works and/or fragments of works
If the producer wishes to reproduce on one and the same audio carrier (phonographic record, tape or cassette) a number of protected works or fragments exceeding that mentioned above, the royalty due for the audio carrier in question shall be increased in the same proportion, except in the case of repeated reproduction of the same work with the same copyright owners or of fragments involving the same copyright owners on the same audio carrier, which are to be regarded as one fragment or one work, as the case may be. Moreover, original works of short duration, with the exception of works of so-called light music, may be reproduced without any limitation as to number on a single 45 rpm 17 cm or category I cassette containing only works of this type.

c) Complete works and fragments of works
Where one and the same audio carrier (phonographic record, tape or cassette) reproduces complete protected works and complete fragments of protected works, each work shall count as two points and each fragment as one point. The total number of points permitted is equal to the number of fragments indicated

in Section I Par. 1. b) and c) as well as Section II Par. 1. a) above. Graphically published pot-pourris shall be regarded as complete works. Reproductions of fragments of works involving the same copyright owners, and repeated reproductions of the same work with the same rights owners as referred to in Par. b) above, shall be regarded as one complete work or fragment, as the case may be.

Any reproduction of a work with a playing time not exceeding 1 minute and 45 seconds shall be considered to be a fragment, unless the whole work has thus been reproduced.

d) Exceeding the playing time
If the total permitted playing time is exceeded by more than 60 seconds, the royalty payable shall be increased in the same proportion.

e) Pro rata royalty
Where works from GEMA's repertoire and works not belonging to its repertoire are reproduced simultaneously, GEMA shall receive a pro rata royalty according to the proportion that the playing time of each work from its repertoire bears to the total playing time.

The share of the royalty thus attributed to a work or a fragment of a work from GEMA's repertoire shall never be less than the fraction corresponding to the number of works or fragments of works indicated in Section I. Par. 1. b) and c) as well as Section II. Par. 1. a) of this Royalty Rates Schedule.

2. Acquisition of the authorisation to reproduce and to distribute in due time and scope of the authorisation

The royalty rates shall only apply, if the authorisation to reproduce and to distribute is obtained from GEMA in due time beforehand. The authorisation shall cover only the rights vested in GEMA with respect to reproduction and distribution for personal use via audio carrier dealers.

The moral rights of authors shall not be violated.

The authorisations of the rights owners must be obtained, whenever advertising is directly or indirectly associated with the use covered by the tariff.

3. Members of organisations, which have concluded a general agreement with GEMA for the VR-T-H 1 royalty rates, are granted a general-agreement discount on the relevant royalty rates upon conclusion of each individual agreement.

www.gema.de

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SACEM and YouTube Reach an Agreement

Songwriters, composers, publishers and the French YouTube community all benefit

PARIS, 30 September, 2010 –SACEM (*société des auteurs, compositeurs et éditeurs de musique*), France's largest collecting society representing authors, composers and publishers today announces the first French collection society deal with the video platform YouTube.

The license covers the international repertoire managed by SACEM including in particular the anglo-american-repertoire of multinational publishers, as well as other works managed by SACEM present on the platform, from the launch of the service in France to 2012.

This agreement means that authors, authors-directors, humorists, composers and publisher members that SACEM represents will now be paid when their work is used on YouTube.

This is yet another step in YouTube's ongoing effort to help foster the creation of French content and reward French artists for creative works available online.

In France and throughout the world, YouTube is a comprehensive destination with content that ranges from the educational to the entertaining, and music is a core component.

Bernard Miyet, CEO of SACEM, said: "This agreement demonstrates once more the willingness of SACEM to promote the legal use of works online, especially on video-sharing platforms. Indeed, it is important and symbolic that YouTube, the largest video-sharing site, pay French creators when their content is discovered and viewed on the site. I am satisfied that the open-mindedness of each and a common will to end in a well-balanced result allowed us to surmount the difficulties inherent to the negotiation of an agreement concerning such an innovative but complex model "

Christophe Muller, Director of Partnerships Southern and Eastern Europe and Middle East, YouTube adds: "Since the launch of YouTube in Europe we've been working hard to forge relationships that allow YouTube users to enjoy their favourite songs and discover new music on the site. We are extremely pleased to have reached an agreement with SACEM to help their members earn revenue and to enable new musical talents to emerge."

David Guetta says: "We've been partners of YouTube since 2007, and we use it every day to allow our community of fans to access our content globally. My YouTube channel, reaching about 350M views, is the key element of our online commitment. I'm thrilled to take this new step with the French music industry. It's a great new adventure for artists that will help us receive greater recognition for our work."

Alain Chamfort, author, composer, performer and Vice President of the Sacem Board adds: «This is an incredible step forward for authors recognition and respect of copyright».

About SACEM:
SACEM aims to represent and defend the interests of authors, composers and music publishers to promote music creation. Its primary mission is to collect royalties and distribute them to beneficiaries whose works have been broadcast or reproduced. Private organization SACEM is a civil society non-profit run by the creators and music publishers. It has nearly 132 000 French and foreign members, representing more than 40 million musical works forming the global directory. After Dailymotion, Wat.tv and more than 1500 active agreements with the Internet operators, YouTube comes to be added to the SACEM partners.

International Media contacts
SACEM/Fabienne Herenberg
+ 33 1 47 15 45 55
+ 33 6 84 95 29 80
fabienne.herenberg@sacem.fr

Letter from SACEM to UK publishers, July 2010

As you may be aware, we have been negotiating with Google/YouTube since 2006.

Such negotiations have been long and difficult, since we had to go through many objections and diverging views on the scope of the agreement, the rights to be covered, rates to be applied and basis of this remuneration and the possible liability of You Tube to pay Copyright.

Google/YouTube and we could agree on some annual amounts for France, Monaco and Luxembourg. This agreement will retroact as from 1 January 2006 and run until 31 December 2012. Even though we thought that this agreement was to end on December 2010 or December 2011, since we will only sign in the course of 2010, Google/You Tube demanded to include year 2012 due to the duration of past negotiations.

After all the debates, proposals and counter proposals we have experienced during this negotiation, the amounts mentioned by Google/You Tube as being the ones they could finally agree to pay for that period, appear to be fair with regard to the exploitations of the musical works on their service and in comparison with other agreements we have signed on the basis of a rate and annual minimum (as, for example, with DailyMotion) and would prevent us from entering into a litigation, the outcome of which remains uncertain considering the recent French court cases regarding Web.2.0 platforms. For your complete information, such amounts have recently been approved by SACEM's Board of Members.

Taking into account the fact that mechanical rights you own in the so called Anglo American repertoire has been withdrawn from SACEM as from January 1st 2010, we would be grateful if you could confirm on those exceptional circumstances and on a non precedential basis your agreement to include the above mentioned repertoire in the scope of the licence to be granted by SACEM/SDRM to Google/YouTube for its operations in France, Monaco and Luxembourg for the 1 January 2006 - 31 December 2012 period.

Please be assured that SACEM is intent on protecting the value of the rights you could agree to include in the scope of that specific agreement in the same manner as for its own rights and will not conclude any deal unless it believes such deal satisfactorily protect its own rights.

PERFORMER ALLOCATION POLICY

PPL divides the Performer Track Allocation between performers on a sound recording in accordance with the classification of each performer and the number of performers on the sound recording.

Note that PPL's Performer Allocation Policy only applies to the extent that there is not a valid Performer Share Agreement

CLASSIFICATION OF A PERFORMERS CONTRIBUTION

Each performer on a sound recording shall be categorised as a Contracted Featured Performer, an Other Featured Performer or a Non-Featured Performer.

A **Contracted Featured Performer** is a performer who is bound by an exclusive agreement with the relevant record company, to perform on the sound recording.

An **Other Featured Performer** is a performer who contributes an audible performance to the sound recording and is:

• a lead vocalist not exclusively contracted to the commissioning record company;
• a performer not exclusively contracted to the commissioning record company but whose personal or professional name appears with or is linked to the name of the Contracted Featured Performer on the track; or
• a performer who is entitled under the terms of a contract with the Contracted Featured Performer to receive royalties from sales of the recording. (Contracted Featured Performers and Other Featured Performers are referred to as Featured Performers.)

A **Non-Featured Performer** is a performer who is not a Contracted Featured Performer or an Other Featured Performer. Examples of Non-Featured Performers include session musicians and backing singers.

For more information about how to provide evidence to support a claim to qualify as one of these performer categories, read the website FAQs on how to submit a claim.

For the purposes of allocating PPL revenues to a performer on a sound recording, it is the classification of that performer that is relevant, not the number of contributions made by that performer to that sound recording.

Where PPL is aware that a sample has been used, all performers on the sampled recording (irrespective of which part of the sampled recording has been used) are added to the performer line-up on the new sound recording as Non-Featured Performers; although Featured Performers on the sampled recording may be added as Other Featured Performers in certain circumstances. Further, only those performers who qualified for payment on the sampled recording will qualify for payment for the use of the sampled recording on the new sound recording.

DIVISION OF PERFORMER TRACK ALLOCATION BETWEEN PERFORMERS

The Performer Track Allocation is initially divided 65 / 35 between Featured Performers and Non-Featured Performers respectively. However, where PPL is notified that a sound recording has a conductor and an ensemble of more than 40 performers, the Featured Performers (who may include

the conductor) shall be allocated 32.5%, and the other performers shall be allocated 67.5%, of the Performer Track Allocation.

The share allocated to Featured Performers is the Featured Performer Share, and the share provisionally allocated to Non-Featured Performers is the Non-Featured Performer Share.

When it is believed that all performers have been correctly linked to a sound recording, the performer line-up is set as 'line-up complete' and the Performer Track Allocation is divided as follows:

1. Where there are no Other Featured Performers on the sound recording, all the Contracted Featured Performers are allocated equal shares of the Featured Performer Share. However, where there are both Contracted Featured Performers and Other Featured Performers, the Featured Performer Share is allocated so that each Contracted Featured Performer receives a share twice the value of each Other Featured Performer.

2. All Non-Featured Performers on the sound recording are allocated equal amounts of the Non-Featured Performer Share, and the value of each such share is set out here.

3. Where the allocations to Non-Featured Performers do not use all of the Non-Featured Performer Share, the remainder is allocated between all the performers on the sound recording (including the Featured Performers), in proportion to their initial share of the Performer Track Allocation.

Stages 1 and 2 above are together known as the 'Initial Allocation', whilst stage 3 is known as the 'Secondary Allocation'.

Until a sound recording is line-up complete, PPL allocates shares to performers on the basis of the number of performers that are expected to perform on the recording (which varies by musical genre). For example, if the record company informs PPL that there are five Non-Featured Performers on a recording but at the time of a distribution only three are linked, the three linked performers and the two 'missing' Non-Featured Performers are each allocated the same shares. This means that the linked Non-Featured Performers can be paid without waiting for all the Non-Featured Performers to be identified and that the 'missing' Non-Featured Performers do not lose money that should be allocated to them (and they will be able to claim interest).

EXAMPLES OF FEATURED PERFORMER SHARES

Examples of how Featured Performer Share ('FPS') of the Performer Track Allocation is divided are set out below:

Number of C's	Number of O's	% OF FPS to each C	% of FPS to each O
5	0	13	0
0	5	0	13
2	1	26	13

INITIAL ALLOCATION OF THE NON-FEATURED PERFORMER SHARE

The Initial Allocations of the Non-Featured Performer Share are set out in the fifth column below:

Special Circumstances	Number of Non-Featured Performers (including Performers on sampled recordings)	% of Performer track allocation ascribed Featured Performers	% of Performer track allocation ascribed Non-Featured Performers	% of Performer track allocation initially allocated to each Non-Featured Performer
	0	100	0	0
	1 - 5	65	35	7
	6 - 10	65	35	3.5
	11 - 20	65	35	1.75
	21 - 40	65	35	0.88
	41 - 90	65	35	0.39
	91 - 9999	65	35	0.32
Conductor plus ensemble	41 - 90	32.5	67.5	0.75
Conductor plus ensemble	91 - 9999	32.5	67.5	0.61

Note that any remainder of the Non-Featured Performer Share shall be divided amongst all performers on the sound recording in the Secondary Allocation.

DIVISION OF RECORD COMPANY TRACK ALLOCATION

The Record Company Track Allocation is allocated to the record company that has transferred the relevant rights in that sound recording to PPL (or has appointed PPL as its agent to control those rights).

Where record companies have agreed between them that they share ownership of the relevant rights in a sound recording, then PPL will allocate the Record Company Track Allocation in accordance with the terms of their agreement.

If a sound recording includes a sample, then PPL will allocate the Record Company Track Allocation to the record company registered as the rights owner on the PPL Repertoire Database (usually the record company that released the sound recording containing the sample, rather than the record company that controlled the sampled recording) unless PPL is informed otherwise. The record company that receives the Record Company Track Allocation is responsible for making any payments to other record companies who have rights in the sound recording.

Where a performer is allocated a share of the Performer Track Allocation but is a non-qualifying performer, the performer's share is allocated to the record company (or companies) in the same manner as the Record Company Track Allocation.

PERFORMER ROLE CODES

To help calculate the share of revenues that individual performers should receive from use of a sound recording, a performer is assigned a contributor category and role code.

Role codes are split into a number of types – not all of which are eligible for payment. Each type is further sorted into different instrumental, vocal or studio personnel performances, so that it is easy to identify what each performer contributed to a sound recording.

Payable roles are generally ones which provide an audible contribution to the final sound recording.

Non-payable roles are generally studio activities which add no audible contribution to the final sound recording.

PAYABLE ROLES

There are a number of payable roles. These are broken down into groups depending on the activity or instrument being played.

See below all of the roles within each group.

BRASS

Role	Code
Alphorn	ALP
Alto Horn	ALH
Alto Trombone	ATR
Alto Valve Trombone	AVT
Bankia	BKA
Bass Trombone	BTR
Bass Trumpet	BTP
Bass Tuba	BTB
Brass Bass	BRB
Bugle	BUE
Cornet	CTO
Corno Da Caccia	CDC
Dung-Chen	DUN
Euphonium	EUP
FanfareTrumpet	FFT
Flugelhorn	FLH
French Horn	FRH
Horn	HRN
Horn	HOR
Hunting Horn (Valved)	HHN
Piccolo Trumpet	PCT
Sackbut	SCK
Slide Trumpet	STP
Sousaphone	SOU
Tenor Horn	TNH
Trombone	TRM
Trompeta	TOA
Trumpet	TRU
Trumpet (Eflat)	TEF

Tuba	TUB
ValveTrombone	VTR

ELECTRONICS

Role	Code
Barrel Organ	BRO
Barrel Piano	BPN
Beat Box	BBX
DJ	D_J
DJ (Scratcher)	SCT
Emulator	EMU
Fairground Organ	FGO
Hurdy Gurdy	HUR
Musical Box	BOX
Ondioline	OND
Optigan	OPG
Polyphon	PPN
Programmer	PRG
Sampled Performer	SAP
Sampler	SAM
Symphony	SYM
Theremin	THR
Variophon	VOP
Vocoder	VCO

KEYBOARDS

Role	Code
Calliope	CPE
Celeste	CST
Chamber Organ	CBO
Chamberlin	CHB
Cinema Organ	CNO
Clavichord	CVC
Clavier	CLV
Clavinet	CVT
Dulceola	DCL
Electric Keyboard	EKB
Electric Organ	EOR
Electric Piano	EPF
Flute Organ	FLO
Fortepiano	FTP
Hammond Organ	HAO
Harmonium	HMN
Harpsichord	HRP
Harpsipiano	HPN
Lute-Harpsichord	LHC
Lyricon	LYR
Mellotron	MLN
Melodeon	MEL
Melodica	MLD
Muselar	MSR

Ngoma	NGO
Novachord	NVC
Ondes Martenot	ODM
Organ	ORG
Piano	PIA
Player Piano	PLP
Positive (Organ)	PTV
Regals	RGL
Spinet	SPI
Square Pianoforte	SPF
Stylophone	STY
Synthesizer	SYN
Tack Piano	TPF
Theatre Organ	THO
Toy Piano	TYP
Virginals	VGL
Wurlitzer Organ	WUO

GUITAR

Role	Code
Acoustic Bass Guitar	ABG
Acoustic Guitar	AGT
Archlute	ALU
Autoharp	AUH
Baglama	BLM
Bajo	BAJ
Bajo Sexto	BJS
Balalaika	BLK
Bandola	BDA
Bandol¡N	BDN
Bandora	BDR
Bandurria	BRR
Banjo	BNJ
Banjo-Dulcimer	BDU
Banjo-Mandolin	BAM
Banjulele	BJL
Bass Guitar	BGT
Bass Lute	BLE
Bass Tambura	BTM
Biwa	BWA
Bouzouki	BOU
Bouz_R	BZR
Cavaco	CVA
Cavaquinho	CAV
Charango	CHA
Chitarrone	CTR
Cifteli	CFT
Citole	CIT
Cittern	CTT
Colascione	CSC
Cuatro	CUA
Cumbus	CBU
Dan Nguyet	DNG

Danburo	DNB
Dobro	DOB
Dobro-Bass	DBA
Dombra	DOM
Dotara	DRA
Dutar	DUT
Electric Bass Guitar	EBG
Electric Guitar	EGT
Electric Sitar	EST
English Guitar	EGU
Five String Banjo	FSB
Fretless Bass Guitar	FBG
Fretless Guitar	FGT
Gimbri	GIM
Guitar Synthesizer	GTS
Guitarra	GUR
Guitarron	GTN
Guitsteel	GTL
Harp Guitar	HGT
Hawaiian Guitar	HAG
Hoddu	HOD
Huapanguera	HUA
Jarana	JAR
Jumbush	JMB
Kabosa	KBS

MISCELLANEOUS

Role	Code
Accompanist	ACM
Aeolian Harp	AEO
Aketse	AKE
Ambtara	AMO
Animal Sounds	AMN
Apongalahy	AGH
Babasa	BAB
Bambaro	BBR
Bass	BAS
Broom	BRM
Bullroarer	BLR
Chapman Stick	CHS
Cheng	CHG
Clog Dancer	CGD
Comb	COB
Dance	DAN
Daxaphone	DAX
Doumbaki	DOU
Doumbi	DBI
Droma	DMA
Flexatone	FLX
Foot Stamping	FST
Foot Tapping	FTA
Genggong	GEN
Glass Harmonica	GLH

Gorodao	GDO
Gu	GU_
Gunje	GNJ
Instruments	INS
Jews Harp	JWH
Kazoo	KAZ
Khulsan Khuur	KKH
Khuur	KHU
Lira Organizzatai	LIO
Murcang	MCG
Ngomi	NGM
One-Man Band	OMB
Pipe And Tabor	PAT
Sal	SAL
Saw	SAW
Siren	SIR
Sound Effects	EFX
Souvliari	SOL
Steam Locomotive Sounds	SLS
Step Dancer	STE
Tap Dancer	TDA
Tefi	TFI
Tenor	TEN
Unidentified Payable Role	UPR
Violarina	VLR
Whip	WHP
Whistling	WHG

PERCUSSION

Role	Code
Adufe	ADF
African Congo Drums	AKD
Afuche	AFU
Agogo	AGG
Angklung	AKL
Apentemma	APT
Asiko	ASK
Atchere	ACH
Balafon	BLF
Bass Drum	BSD
Bass Marimba	BMA
Bata	BAT
Bell Tree	BLT
Bells	BEL
Bembe	BMB
Bendir	BEN
Bo (Bell)	BOB
Bo (Cymbals)	BOC
Bo ?	BO_
Bodhr N	BDH
Body Percussion	BPE
Bombo (Bass Drum)	BBD
Bombo (Frame Drum)	BBF

Bombo ?	BBO
Bones	BNS
Bongos	BNG
Cabasa	CBS
Caixa	CXA
Caja	CJA
Caj¢N	CJN
Calabash	CBH
Campana	CAM
Carillon	CRL
Castanets	CAS
Caxixi	CXI
Ceng Ceng	CCE
Changgo	CGG
Chap Lek	CHK
Chimes	CHM
Chinese Drum	CHD
Ching (Cymbals)	CHI
Chocalho	CLH
Clappers	CPS
Clapping	CLP
Claves	CLS
Congas	COA
Congos	COO
Cowbell	COW
Crotales	CTL
Cuica	CUI
Cymbals	CYM
Daf	DAF
Daire	DAI
Damaru	DAU
Darabukka	DRB
Davul	DVL
Def	DEF
Dhol	DHL
Dholak	DHK
Di (Slit Drum)	DIS
Di ?	DI_
Diaff	DFF
Djembe	DJM
Dohol	DOH
Doira	DOI
Donno	DON
Dril-Bu	DRI
Drum	DRM
Drum Machine	DMM
Drums	DRU
Duff	DUF
Duggi	DUG
Dumbelek	DBK
Dumbuks	DUM
Dundun	DDN
Electronic Drums	EDS
Electronic Organ	ENO
Electronic Percussion	EPE
Electronic Vibraphone	EVB

Finger Clicks	FNL
Finger Cymbals	FNC
Frame Drum	FDM
Gambang	GBN
Gamelan	GAM
Ganga	GAN
Gangsa	GGS
Gankogui	GKG
Ganza	GZA
Gbedu	GBD
Gender	GNR
Ghara	GHR
Ghatam	GHA
Ghati	GHI
Gini	GIN
Glockenspiel	GKS
Gong	GON
Gourd Rattle	GRD
Grantang	GRG
Griot	GRI
Gua'chara	GCA
Guayo	GUA
Gubgubi	GUB
Gudugudu	GUD
Guiro	GUI
Gung	GUG
Hammer	HAM
Hand Bells	HBE
Hi-Hat	HHT
Hosho	HOS
Hudukka	HDK
Jawan	JWA
Jegogan	JGG
Jublag	JUB
Jug	JUG
Kaiamba Rambo	KRM
Kalimba	KAL
Kanjira	KNJ
Kartal	KTL
Kelenang	KLN
Kelenang	KEL
Kempul	KMP
Kempur	KPR
Kendang	KND
Kenong	KOG
Kenyir	KYI
Ketuk	KTK
Khol	KHO
Kkwaengwari	KKW
Klong	KLO
Klong Khaek	KLK
Kong Wong Yai	KWY
Korintsana	KTS
Lamba	LBA
Lamellaphone	LLL
Log Drum	LGD

Lokole	LOK
Lukeme	LUK
Madal	MDL
Maddalam	MDD
Manjira	MJR
Manjur	MJU
Maracas	MRC
Marimba	MAR
Marimbula	MRM
Mbira	MBA
Metallophone	MTP
Mirwas	MRW
Mong	MNG
Morrisette	MRT
Mrdanga	MRD
Nakers	NAK
Nal (Drum)	NAL
Nao	NAO
Naqqara	NAQ
Nattuva Talam	NTT
Okonkole	OKK
Pakhavaj	PAK
Palmas	PMS
Pandeiro	PDO
Pandereta	PDT
Pano	PAN
Pujador	PJD
Rain Stick	RST
Ranat Ek	RNE
Ranat Thum	RNT
Rattle	RTT
Reco-Reco	RRC
Repicador	RPC
Repique	RPQ
Reyong	RYO
Riqq	RQQ
Rnga	RNG
Rol-Mo	RLM
Rubboard	RBD
Sabaro	SAB
Sanza	SZA
Saron	SRO
Scraper	SCR
Sekere	SEK
Shaker	SHK
Sil-Snyan	SIL
Slentem	SLM
Snare Drum	SDM
Spoons	SPO
Steel Drum	SDR
Surdu	SRD
Tabal	TBA
Tabla	TAB
Tabor	TOR
Taiko	TAI
Tal	TAL

Talking Drum	TDM
Tam Tam	TMT
Tama	TMA
Tambora	TBO
Tamborim	TMM
Tambourine	TBR
Tambur (Drum)	TAU
Tambur (Gong)	TMU
Tapan	TPN
Tar	TAR
Tar (Frame Drum)	TAF
Tavil	TAV
Temple Block	TPB
Tibetan Bowls	TBW
Timbal	TIM
Timbales	TBL
Timpani	TMP
Tom-Tom	TTM
Tombak	TMB
Tongtong	TTG
Toumbas	TBS
Traps	TPA
Triangle	TGL
Tubular Bells	TBB
Tumba (Goblet Drum)	TUA
Tumbadora	TUM
Txalaparta	TXA
Udu	UDU
Untuned Percussion	UPE
Vibra-Slap	VBR
Vibraphone	VIB
Washboard	WSB
Wind Chimes	WCH
Wobble Board	WOB
Woodblock	WDB
Xylophone	XYL
Xylorimba	XYR
Yunluo	YUN
Zarb	ZAR
Zil	ZIL
Zirbaghalia	ZIR

STRING INSTRUMENTS

Role	Code
Arpeggione	APE
Bandura	BRA
Bass Viol	BVL
Cello	CEL
Chinese Harp	CHH
Cimbalom	CBM
Double Bass	DBB
Dulcimer	DUL
Electric Appalachian Dulcimer	EAD

Electric Cello	EVC
Electric Fiddle	EFI
Electric Harp	EHR
Electric Upright Bass	EUB
Electric Viola	EVA
Electric Violin	EVI
Electronic Cello	ECE
Electronic Violin	EVN
Fiddle	FID
Hammered Dulcimer	HAD
Harp	HAR
Imitation Bass	IMB
Indian Harp	INH
Irish Harp	IRH
Koto	KOT
Lyre	LRE
Omnichord	OMN
Santur	SNT
Tea Chest Bass	TCB
Tenor Viol	TVL
Tiompan	TOP
Treble Viol	TVI
Triple Harp	THP
Viol	VOL
Viola	VIA
Viola Bastarda	VLB
Viola DaGamba	VDG
Viola D`Amore	VDA
Violin	VIO
Violino Piccolo	VNP
Violoncello Piccolo	VCP
Violone	VNE
Zither	ZIT

VOCALS

Role	Code
Actor	ACT
Alto (Voice)	ALT
Animal Sounds Impersonator	ANI
Announcer	ANN
Backing Vocals	BVC
Baritone (Voice)	BRT
Bass-Baritone (Voice)	BBT
Bass (Voice)	BVO
Beat Box (Vocal)	BTX
Caller	CAL
Cantor	CNR
Castrato (Voice)	CAT
Chanting	CHT
Comedian	CMD
Commentator	CMT
Contralto (Voice)	CNT
Counter-Tenor (Voice)	CTN

Dj (Spoken Word)	DJS
Dj (Toaster)	TST
Falsetto (Voice)	FLS
Haute-Contre (Voice)	HTC
Humming	HMM
Impersonator	IPE
Instructor	IST
Interviewee	IVE
Mc	M_C
Mezzo-Contralto (Voice)	MZC
Mezzo-Soprano (Voice)	MZS
Minister	MIN
Mouth Music	MMU
Narrator	NAR
Poetry Reader	POE
Preacher	PRE
Presenter	PRT
Rapper	RPR
Reciter	RCR
Reporter	REP
Shouting	SHO
Soprano (Voice)	SOP
Speech	SPE
Spoken Word	SPW
Storyteller	STO
Tenor (Voice)	TVO
Treble (Voice)	TRE
Vocal Effects	VFX
Worship Leader	WOR
Yodelling	YOD

WIND INSTRUMENTS

Role	Code
Accordion	ACC
Algaita	AGA
Algoja	ALG
Alto Clarinet	ALC
Alto Crumhorn	ACR
Alto Flute	ALF
Alto Recorder	ARE
Alto Saxophone	ASX
Anatara	AAA
Andean Flute	AFL
Anglo-Concertina	ANG
Bagpipes	BAG
Baritone Saxophone	BRS
Baritone (Saxhorn)	BTN
Bass Accordion	BAC
Bass Clarinet	BSC
Bass Concertina	BCT
Bass Crumhorn	BCR
Bass Dulcian	BDC
Bass Flute	BSF

Bass Recorder	BRC
Bass Saxophone	BSX
Basset Clarinet	BTC
Basset Horn	BSH
Bassoon	BSS
Bombarde	BOM
Border Pipes	BRP
Bottle	BTT
Button Accordion	BTA
C Melody Saxophone	CMS
Chamber Pipes	CBP
Chinese Flute	CNF
Clarinet	CLA
Clarinet (C)	CLC
Clarinet (E Flat)	CLE
Concertina	CRT
Contrabass Clarinet	CTC
Contrabass Flute	CBF
Contrabass Saxophone	CSX
Cor Anglais	CAN
Didjeridu	DID
Dilli Tuiduk	DTD
Doneli	DNL
Double Bassoon	DBS
Double Clarinet	DCT
Double Flute	DFL
Duduk	DUD
Dulcian	DCN
Electric Accordion	EAC
Electronic Wind Instrument	EWI
Electronium	ELN
English Bagpipes	ENB
English Concertina	ENC
English Horn	ENH
Fife	FIF
Flute	FLU
French Bagpipes	FRB
Harmonica	HRM
Heckelphone	HKP
Highland Bagpipes	HPI
Japanese Wooden Flute	JWF
Lakota Flute	LAF
Low Whistle	LWH
Lowland Pipes	LLP
Manzello	MZL
Mouth Bow	MBW
Mouth Organ	MRG
Northumbrian Small Pipes	NSP
Oboe	OBO
Oboe D'amore	OBD
Oboe Dacaccia	ODC
Ocarina	OCA
Panpipes	PPP
Piano Accordion	PIN
Piccolo	PIC
Pipes	PIP

Recorder	REC
Reeds	RDS
Saxello	SLO
Saxophone	SAX
Scottish Small Pipes	SSP
Shakuhachi	SHH
Shuttle Pipes	SHP
Sopranino Clarinet	SCL
Sopranino Recorder	SRE
Sopranino Saxophone	SIS
Soprano Crumhorn	SCM
Soprano Sax (C)	SSC
Soprano Saxophone	SSX
Swanee Whistle	SWH
Tenor Recorder	TER
Tenor Sarrusophone	TSA
Tenor Saxophone	TSX
Tin Whistle	TIN
Treble Flute	TFL
Treble Recorder	TRR
Trompetica China	TRC
Uilleann Pipes	UIL
Whistle	WHI
Wooden Flute	WFL
Woodwind	WWD
Xiao	XIA

NON-PAYABLE ROLES

Non-payable roles are those which do not add an audible contribution to the final sound recording. These roles are therefore not eligible for payment.

See below for an example of these roles.

Role	Code
Arranger	ARR
DJ (Mixer)	DJX
Engineer	ENG
Engineer (Vocal)	ENV
Executive Producer	EPR
Executive Remaster Producer	ERP
Mixer	MIX
Producer	PRD
Producer (Rhythm track)	PRR
Producer (Vocal)	PRV
Remaster Engineer	RME
Remaster Producer	RMP
Remix Engineer	REN
Remixer	REM
Sound Director	SDD

Unidentified	UNI

CLAIMS BY STUDIO PRODUCERS

A studio producer will be deemed to have performed on a sound recording if:

(i) they contributed an audible contribution (such as playing an instrument or singing); or

(ii) they conducted or musically directed another performer's live performance as it was being recorded (a so-called "Performing Producer"). For the avoidance of doubt, alterations made to the track after the recording has been made, such as edits or remixes, will not be deemed to be performances (unless these new versions involve new audible performances as in (i)).

Please see separate document for more details on studio producers.


PRS
for MUSIC

Help Centre
Writer members
Publisher members
Money
Online Services
Joining us
What we do
ICE Help Centre
Online Query Assistant
YouTube Deal Help

YouTube Deal - Help centre

In this area, we answer the most commonly asked questions from writer members.

When are the first YouTube royalties being distributed?

The first YouTube royalties will be paid in April 2010.

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When was the deal with YouTube signed?

The MCPS-PRS Alliance became the first collecting society outside the US to sign a deal with YouTube in August 2007. This deal terminated at the end of 2008, and this new *PRS for Music* deal was signed in September 2009 following a lengthy re-negotiation.

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Which territories does the YouTube deal cover?

The deal covers musical works streamed to users in the UK.

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What period does the new deal cover?

1 January 2009 to 30 June 2012.

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How much money does YouTube pay *PRS for Music* for the use of music on their service?

The deal is subject to a confidentiality agreement (similar to the last deal) which means that we are not able to disclose full terms of the deal. We recognise that this is not ideal and this is not something that *PRS for Music* feels particularly comfortable about given its desire to be as transparent as possible with its members, however it was necessary for us to agree to these provisions in order to secure the deal. Members do however have the assurance that the deal was subject to discussion by and the approval of the Boards and that any subsequent distribution policy will be approved by the Boards and any relevant Board sub committees through the normal processes.

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When are the first YouTube royalties being distributed?

We are currently evaluating whether the various deadlines for receipt of data and its subsequent processing mean that the first distribution can be made in December, or whether it will need to be held in April 2010. The final decision will be made after the November Board meeting. Our objective is to ensure that the monies are paid to members as soon as is practicable.

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What period does the first royalty distribution cover?

This is yet to be decided and will depend upon whether the deadlines can be met for achieving a distribution in December 2009 or whether this needs to take place in April 2010. We will inform members when the decision has been made, i.e. at the end of November.

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How often will YouTube royalties be distributed in future?

We are planning to return to a quarterly distribution cycle in 2010.

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How does *PRS for Music* know what's been played on YouTube?

YouTube will continue to provide information to *PRS for Music* in formats that have been agreed between the two organisations and *PRS for Music* and YouTube are working closely together to improve the matching of YouTube data with *PRS for Music*'s database and the quality of data going

forward. For example, YouTube use 'finger-printing' technology to help identify which videos on their service match the content supplied directly to them by record labels and other content owners.

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What is the process being used to pay out YouTube royalties?

We have developed a distribution system which we believe is fair and accurate given the constraints on the data. In the first stage of the process, the data reported by YouTube is automatched against *PRS for Music*'s systems. Following that, *PRS for Music* will then manually match as much members' music as possible in other videos, up to the point where manual-matching stops being cost-effective.

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What is auto-matching?

Auto matching is a process where *PRS for Music* systems compare the data sent by the licensee to the data stored in the *PRS for Music*'s databases. If the data is similar enough our systems automatically link the two in order to pay a royalty. This obviously depends on good quality data to enable the match. Because of the user uploaded nature of the majority of YouTube content, the quality of information available is often not as high as data received from traditional broadcast sources.

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How is data manually matched?

Manually matching data involves *PRS for Music* staff analysing the data reported by YouTube in order to link it to the works registered by our members. In some instances, it may also involve viewing individual YouTube videos in order to determine if they contain members' music, and then to identify and match the music to our database.

This is obviously a time-consuming and expensive process. And additionally, because of the user uploaded nature of YouTube content, manually matching music within viewed videos can still present difficulties. It is not always obvious what music has been included.

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How much will songwriters, composers and publishers be paid for the use of music on YouTube?

YouTube is unlike TV broadcasts, where a single 'play' reaches potentially millions of viewers: each video is potentially only watched by one viewer and the pot of money will have to be divided across these many views.

So, for example, a work that has been viewed 5 million times on YouTube may well have been viewed the same number of times as just one usage on prime time terrestrial TV.

This means that YouTube videos will generate 'micro-payments' in royalties and it will therefore take many of these micro-payments (ie streamed works) to equal £1.

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Will members be paid for every performance of their

work on YouTube?

No. Given the vast volumes of videos on the service, many with little or no music related metadata attached to them, clearly identifying the full extent of music usage on the service is both a challenge for Google and then subsequently for *PRS for Music*. Both parties have agreed to work together to improve the quality of this data and its reporting going forward.

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Do works have to be registered with PRS for Music in order to receive a royalty payment from YouTube?

Yes, as in all other cases, works can only be paid if *PRS for Music* has been notified of their existence and they appear on our database. Works can be registered easily online

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What if a work is used in a derogatory way?

The usual derogatory exclusions will apply. If *PRS for Music* becomes aware that a members' work fits the definition of derogatory use, *PRS for Music* can notify YouTube on that members' behalf and work with YouTube to remove that content. Under the Joint Online Licence, a derogatory use is defined as a parodied work, or one that is insulting or detrimental to the composer of the commercially released sound recording.

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Do royalties include payments for the synchronisation right as well as for the performing and mechanical right?

The licence includes synchronisation rights where they are required. Your performing right royalties will be shown on your PRS statements and your MCPS statement will show a total figure per track which includes the payment for all aspects of the mechanical right.

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Are library works included in the deal?

Yes, library works are included alongside commercial recordings and will be paid out wherever we are able to match them.

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PRS INFORMATION

Links:
Website – www.prsformusic.com
General Info - http://www.prsformusic.com/creators/Pages/default.aspx
Joining - http://www.prsformusic.com/creators/joiningus/join_us/Pages/joinus.aspx

Benefits of PRS:

· Transparency – broadcast rates, admin rates and live details all instantly available on the website and over the phone etc.
· Lowest admin rate in the world – c. 10.7%.
· International tracking team – we'll make sure we track down money from usage in other countries that might have gone astray.
· Detailed statements – play-by-play breakdown of income by source, track and region.
· Ease of use – self-serve reporting of shows/song registration etc.
· We can represent acts globally - great relations across globe, and especially with societies in Europe.
· Licensing and payment of online services such as Youtube, Spotify etc.

Other things we do:

· Showcasing/promo opportunities. Almost Famous showcases with Fandango at 229/Power Down at Metropolis studios/British Music Embassy@SXSW.
· Links with creative industry in UK and Europe.
· M Magazine/M online – www.m-magazine.co.uk features, interviews and acoustic sets Coverage across social networks.
· Weekly featured artists, bimonthly new music podcasts.
· Partnerships/sponsorships of events such as The Great Escape, the Ivors and many grass roots.
· Gigs and clubs scheme – royalties from the very first gig where an act plays their own songs.
· Funding through the PRS for Music Foundation – such as the British Music Abroad scheme http://www.prsformusicfoundation.com/Funding/British-Music-Abroad.

Mechanical Royalty Rates in Major Ex-US Territories
Current as of March 2012
Prepared by Dan Coleman

N.B: Percentages below are multiplied by the applicable price, and then divided by the number of licensable musical compositions on the album (divided by one (1) if a single track sale).

In most ex-US territories, online retailers (e.g. iTunes)—not record labels—are responsible for accounting mechanical royalties to the local collective music copyright society.

In some territories digital rates are for a "bundle" of mechanical and performance rights, with some examples of such splits indicated below (Mech%/Perf%).

Japan (JASRAC)

Physical:

6% of retail price or 8.10 JPY, whichever is greater.[1]

Digital (full download):

7.7% of retail price or 7.70 JPY, whichever is greater, split 65/35 (mech/perf).[2]

Germany (GEMA)

Physical:

13.75% of Published Price to Dealers ("PPD") (excluding VAT), or if unavailable, 10% of the retail price.[3]

Digital (full download):

10.25% with floor of 0.0563 EUR[4]

France (SACEM/SDRM)

Physical:

11% of Published Price to Dealers ("PPD") (excluding VAT), or if unavailable, 8% of the retail price.[5]

Digital (full download):

12% (excluding VAT), with a floor of 0.07 EUR per download per single, and 0.70 EUR per download of an album up to 15 tracks (0.0435 per album track in excess of 15).[6]

UK (PRS/MCPS)

Physical:

8.5% of PPD, or if unavailable, 6.5% the retail price, multiplied by the number of copies manufactured. The charge is reduced proportionately if any of the music is Public Domain or non-MCPS repertoire.[7]

Digital (full download):

(for online retailers with annual revenue in excess of 12,500 GBP)

8% with floor of 0.02 GBP per track, split 75/25 (mech/perf)[8]

[1] JASRAC Tariffs for the Use of Musical Works retrieved 26 February 2012 (encl.)
[2] Ibid.
[3] GEMA Royalty Rates Schedule VR-T-H 1 retrieved 26 February 2012 (encl.)
[4] GEMA Royalty Rates Schedule VR-OD 7 retrieved 26 February 2012 (encl.)
[5] http://www.sacem.fr/cms/site/en/home/users/Rates/the-license-fee-for-producing-a-record retrieved 26 February 2012
[6] http://www.sacem.fr/cms/site/en/home/users/music-on-demand retrieved 26 February 2012
[7]http://www.prsformusic.com/users/recordedmedia/cdsandvinyl/Pages/AP1AP2.aspx retrieved 26 February 2012
[8]http://www.prsformusic.com/users/broadcastandonline/onlinemobile/MusicServices/oml/Pages/onlinemusiclicences.aspx retrieved 26 February 2012

That Sync-ing Feeling

By Keith C. Hauprich and Dan Coleman

Keith C. Hauprich (KH): We've discussed in previous columns that there is an ebb and flow to the various music publishing revenue streams. That is, certain sources of income become far more important as our business evolves.

Dan Coleman (DC): In recent years, synchronization fees from film and TV uses have been increasingly coveted. A sync use implies several favorable components for the music publisher: (1) an upfront, directly negotiated payment for the license, (2) a future revenue stream from performing rights royalties related to the use, and last but certainly not least, (3) the publicity generated from the context.

KH: It seems to me we should point out that many music-based companies, including labels and publishers, are bulking up their A&R/Creative Services teams despite the morose forecast for our industry. Such additions have primarily served two purposes. The first, to pitch content for use by the film, television and videogame communities. The second, to discover and sign up and coming artists and composers whose sound and/or writing ability are "sync friendly."

I don't think that there are too many secrets to reveal about synchronization licenses in the U.S. Are there any challenges when these licenses are issued outside the U.S. or throughout the world including the U.S.?

DC: How publishers administer sync rights is a complex issue, because there is no consistent business practice that can be applied internationally.

The basic problem with defining synchronization rights globally is that they constitute a hybrid of rights under copyright that our domestic case law and business practices have evolved to recognize, but that are conceptualized differently in different territories. With the help of some wonderful independent publisher colleagues, I've been able to distinguish the salient differences in certain countries.

Halit Uman, the owner of Parisian music publishing company Halit Music, points out that French intellectual property law does not recognize a "synchronization right." Halit explains that, in the case of cinematic uses, the synchronization of music to the audiovisual imagery is considered a species of mechanical right that the French collective rights society (SACEM) has excluded from licensing. The effect is that publishers can negotiate directly with film producers.

All of my ex-U.S colleagues pointed out that *commercial advertisements* are the one context where sync clearances most closely resemble U.S.A. business practices: The license must be granted directly by the administrator of the copyright.

Geoff Paynter, of Gallo Music Publishers in South Africa, points out that if a show features prominent commercial sponsorship (such as an on-screen logo), it would fall outside the realm of a blanket license and require a direct synchronization agreement. This does not preclude a copyright owner from assigning the negotiating task to an agent, of course, and in some territories the agent may be a collective copyright society (e.g., CMRRA in Canada).

That said, in some territories (such as Australia) a TV network's own promos might not require a separate sync fee (it would be covered under the blanket license with APRA) whereas in many territories, the fact that it is an advertisement would qualify it for a separate fee. Outside of commercials, the treatment of sync rights is subject to territorial nuances. For example, it is customary in many territories for mechanicals to be paid on audiovisual products (such as DVDs) and sync "buyouts" are uncommon or prohibited.

There is also a right to receive a "broadcast mechanical" royalty (a.k.a. "mechanical performance," or "fixation fee") in many territories, in consideration of ephemeral "cart" copies containing copyrighted music used for broadcast purposes. The broadcast mechanical can be seen as offsetting the lack of a specific sync fee in certain cases.

One important area is the extent to which TV networks in many countries are the de facto *producer* of content (as opposed to merely the distributor). This distinction means that a broadcast network's sync use of a song as background music to a drama it produced would fall under its blanket license with the applicable society. If the drama were distributed in home-video format, then a separate mechanical would be paid.

KH: Far less complex but no less challenging are situations where a publisher owns, administers and/or controls less than 100 percent of the rights in and to a musical composition throughout the world. For example, one publisher may control the composition within the United States and Canada and another publisher may control the same composition throughout the world excluding the United States and Canada.

Rather than letting too many moving parts (or publishers) get in the way, there is a means to minimize the disruption of licensing caused by having multiple publishers.

A publisher would be wise to include a version of the following provision within its agreement with the underlying copyright owner:

> Notwithstanding anything contained herein, solely for purposes of any particular nonexclusive synchronization license for worldwide rights that is reasonably necessary for synchronization uses originating in the Territory (i.e., for a territory that is less than the world), "Territory" shall mean the world, except: that as to any and all residual or ancillary income incidental to such use beyond the overall so-called "synchronization fee" that is more readily divisible by country (e.g., public performances from broadcast of the applicable audiovisual work where such performances are paid by the various societies in each country of the world, mechanical royalties in connection with any soundtrack album release pursuant to individual licenses in each country of the world, etc.), (i) Publisher shall only be entitled to collect such ancillary or residual income earned in the Territory; and (ii) the underlying copyright owner and/or its third-party publisher/administrator shall only be entitled to collect such ancillary or residual income earned outside the Territory. Moreover, notwithstanding anything contained herein, Publisher acknowledges and agrees that the underlying copyright owner and/or its third-party publisher/administrator shall have rights, on a reciprocal basis on same terms as Publisher for synchronization uses originating outside the Territory.

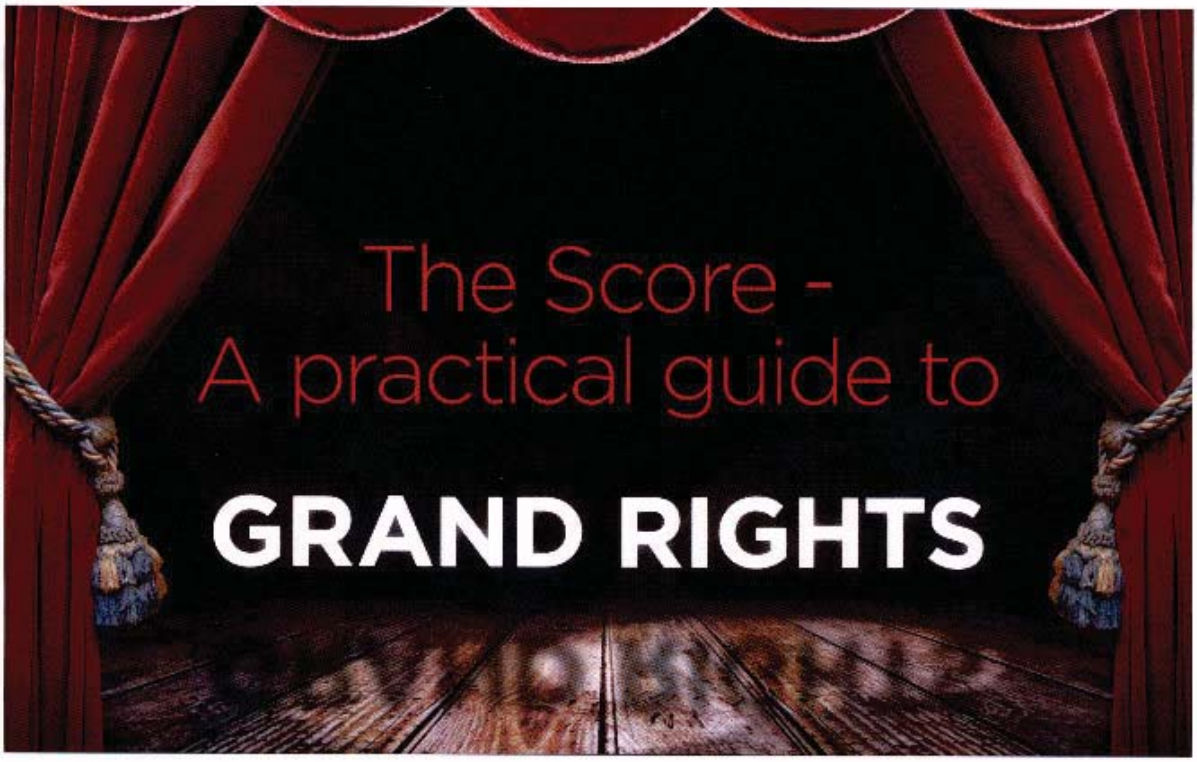
DC: Along with territorial complexities come technological ones. Only a few years ago, a synchronization "buyout" meant all cinema, TV and home video. Lately, many prospective licensees hope to stay ahead of the curve by asking for synchronization in "all media now known or hereafter devised" right away, rather than risk having to return to the copyright licensor when they start implanting chips containing movies into consumers' brains (*. . . free with your purchase of a large cappuccino!).* Publishers can protect themselves by inserting what has come to be known as "linear-only" language:

> Any and all media containing the use licensed by this agreement must embody the program substantially as generally released (which for this purpose shall be deemed to include so-called "director's cut(s)," advertisements permitted herein, versions adapted for the visually or hearing impaired, or other similarly altered versions), and the viewer must not be invited to manipulate the images and/or audio program material in a non-linear progression. For the purpose of this agreement, the inclusion of expository material, so-called "chapter stops," or other addressable locator codes of any kind on the applicable storage device will not be deemed to constitute non-linear manipulation.

KH: As Internet-connected set-top boxes bring the Internet experience into our living rooms, mobile devices blur the line between platforms, and technology increases the capacity for content to be delivered quickly and without compromising quality, it would seem that our appetite for audiovisual entertainment is at an all-time high. Given such rate of consumption, the potential for growth and the inalienable link between films, television and videogames and music, synchronization income may some day rival the time-tested bottom-line drivers of mechanical income and public-performance income. Only time (and a really good auditor) will tell. . .

Keith C. Hauprich is the father of three beautiful daughters, Ashleigh, Mackenna and Amber. He also happens to be the Vice President, Business & Legal Affairs for Cherry Lane Music Publishing Company, Inc., one of the world's leading independent music publishers, where he serves as in-house counsel and is responsible for all legal matters.

Dan Coleman (Managing Partner of "A" Side Music, LLC) was born in New York City and educated at the University of Pennsylvania and The Julliard School. His original concert music has been commissioned, performed, and recorded by leading American symphonies and chamber ensembles. Dan has composed string arrangements for popular albums on the Geffen, A&M, and Atlantic record labels, including projects by Lisa Loeb and Calexico. In 2001, Dan served as an orchestrator for David Mamet's caper film *Heist*. In 1999, Dan entered the music publishing business as the administrator for R&B songwriter John Legend's nascent catalog. Currently Dan administers "A" Side's roster of musical luminaries, including Rock and Roll Hall of Fame inductee Ronnie Spector, leading jazz pianist Brad Mehldau, and many others. Dan enjoys commenting on music publishing and copyright matters, and has been invited as a guest speaker to Harvard, MIT, Johns Hopkins, and the University of Arizona Rogers School of Law.



The Score - A practical guide to GRAND RIGHTS

*In our second 'The Score' feature, **Nicola Riches** explains Grand Rights and debunks the complexities that surround this specific royalty*

As traditional means of income fall (most notably mechanical revenues), writers and publishers are looking to capitalise on alternative sources. There are certain aspects in the management of Grand Rights which make them mysterious to some, but overall it is a simple concept.

The Grand Right is the right reserved for the creator of dramatico-musical material. The Grand Right only exists in a musical work which is written specifically for a particular dramatic usage, whether that is opera; a stage musical; or a ballet production. Or, by way of explanation, another more amusing definition might be: "A musical performance whereby if it takes place in costume and you can throw something at it, there's a Grand Right."

The Grand Right belongs with the author of the musical work and indeed, it is very valuable. Protected by the writer not only because it can be a very lucrative income stream, but also by its nature, the composition is used in a specific dramatic context. This way the creator would more often than not require a greater deal of control and approval over it.

Maybe surprisingly, Grand Rights are not included in the UK's Copyright Act. Grand Rights are borne out of practice and convention: they are the product of an industry, as opposed to a statutory definition. It is the same with 'Dramatico Musical Work'. There exists a definition for a 'Dramatic Work' and a 'Musical Work' but not a 'Dramatico Musical

> "If it takes place in costume and you can throw something at it, there's a Grand Right"

Work'. This probably explains why there is sometimes debate about what constitutes a Grand Right and Grand Rights' usage.

PRS for Music does not license the Grand Right – it remains with the writer and/or publisher. Historically, collecting societies were set up to license rights and collect income where the writer was unable to do it themselves. More often a writer was able to deal on a one-to-one basis with a theatre company/producer, so *PRS for Music* was therefore not required.

> "There is sometimes debate about what constitutes a Grand Right and Grand Rights' usage"

ARE GRAND RIGHTS INCLUDED IN PUBLISHING CONTRACTS?

Publishing agreements in the past did not include Grand Rights. They typically covered 'small rights' but Grand Rights are nowadays more regularly included in British publishing contracts and it is often the case that a songwriter would have to fight to get them removed. In America the situation is different – usually as part of the inclusion of the phrase 'in all rights throughout the world' it is deemed that Grand Rights would automatically be covered.

WHAT IS THE DIFFERENCE BETWEEN A GRAND RIGHT AND GRAND RIGHTS USAGE?

According to the Music Publishers Association (MPA), a Grand Right exists in a work that has been specially written for dramatic performance, whereas a Grand Right 'usage' is where a 'small right' (those typically belonging to the writer and publisher in a song) is being used in a dramatico-musical context or presentation. The MPA is currently looking deeper into this situation and how definitions are being toyed with depending on different stage productions – it will reveal its findings in the coming months.

JUKEBOX MUSICALS – EXAMPLES OF GRAND RIGHTS 'USAGE'

The growing grey area is 'Jukebox Musicals' – musicals which have a narrative arc and heavily feature songs, but not songs which were specifically written for 'dramatico' purposes, eg *Mamma Mia!*, *We Will Rock You* and *Jersey Boys*. In the case of these presentations there has been the inclusion of a dramatic narrative arc which requires the inclusion of those songs, therefore giving the writer the entitlement to call for a Grand Right.

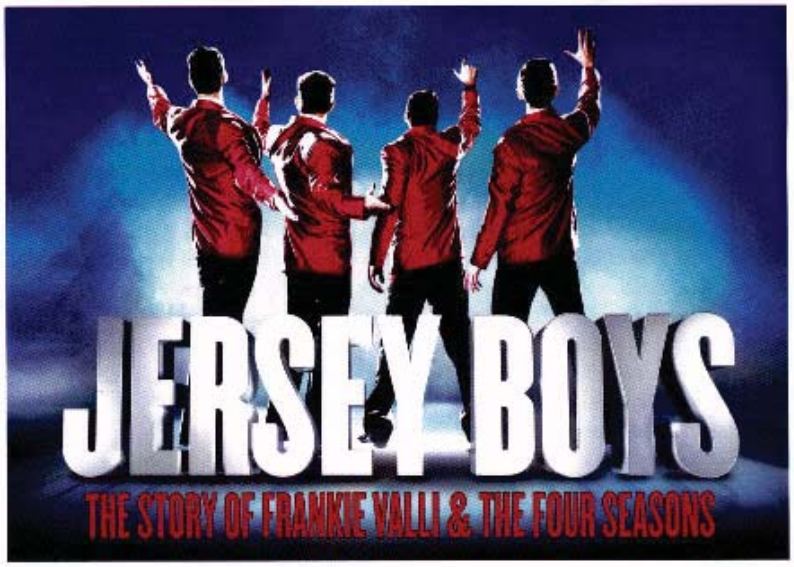
In most cases *PRS for Music* has the rights to license the rights for those popular music songs, but it has introduced a variant to its articles (7F) which allows songwriters to semi-withdraw the rights to negotiate a Grand Right with the theatre producer. The songs are then treated as quasi Grand Rights in that *PRS for Music* will continue to collect the income based on the performing (small) right, but the writer is clear to negotiate directly with a theatre production company or producer.

By way of example, Queen control their own Grand Rights and license their music to the *We Will Rock You* show as Grand Rights 'usage', despite the songs having not been written in the first place for dramatic presentation.

Obtaining Grand Rights 'usage' for 'Jukebox Musicals' is complicated by the fact that there might be a number of writers and publishers responsible for the songs.

GRAND RIGHTS VS SMALL RIGHTS

It has been said that occasionally it might make sense for the writer to license their music as a 'small right' to theatre producers therefore allowing *PRS for Music* to automatically license it and



Grand Rights can become a complicated issue for 'Juke Box Musicals' such as the West End hit *Jersey Boys*

collect performance income, rather than strike a Grand Rights deal.

If the music is licensed as a Grand Right 'usage' and the publisher who brokered the deal collects the income from the theatre, the income might be used to offset any advance the writer has received from the publisher.

If the writer does not have Grand Rights written into their contract, *PRS for Music* can treat the usage as a small right and therefore collect the 50 per cent share (on the basis of a 50:50 per cent publisher/writer split) of the performance income that is owed to them.

WHAT DO GRAND RIGHTS EARN?

There are normally three recipients of Grand Rights income: the composer of the music, the lyricist and the writer of the narrative (script/book etc).

There seems to be a conventional split: between 2-3 per cent each of gross box office takings totalling something between 6-9 per cent. By way of comparison, if you have a stage show with small rights usage – that is, a concert the royalty tariff is 3 per cent of box office rising to 4.8 per cent for classical concerts. Incidentally, it is thought the Palladium in London would aim to make £400,000 a week in box office takings.

This has recently opened a whole can of worms as to what is regarded to be the 'box office' or 'gross box office takings'. Is it net after production costs or is it gross taken direct from the box office? According to PRS chair Guy Fletcher, negotiating what exactly are 'box office takings' can depend upon the experience and status of the writer.

Theatre producers these days are more and more operating a 'royalty pool' ensuring that production costs are taken off the gross box office sum before anyone gets Grand Rights payments. Production costs might include choreographers, costume designers and make-up artists, who have all been given a 'point' by the director – a future percentage of income with little by way of upfront payments in order to stage the production as cheaply as possible. This will significantly reduce the Grand Rights payment figure.

> "There are normally three recipients of Grand Rights income: the composer of the music, the lyricist and the writer of the narrative"

It has also been suggested that it is common for 65 per cent of a big stage production's takings (after production costs) to normally go to the producers of the show, while the remaining 35 per cent will be allocated to the royalty pool on a pro-rata or point basis.

It is also possible to license your Grand Rights for a one-off flat fee. For example, if you are self-published or have a deal in place with a small publisher and you are approached by a small operation outside the U.K, you might feel that weekly administration of income based on box office or royalty pool is too laborious. In those instances, there might be a case for one-off licensing.

BASING STAGE WORKS/OPERA/BALLET ON LITERARY WORKS

In the instance where a 'Stage Work'/'Opera'/'Ballet' is based on a specific literary work, the division of Grand Rights works as follows: Publisher/Composer/Librettist (Opera) – unless the writer writes their own Libretto/Original Writer. They would expect a split of gross box office takings minus VAT.

The composer Stephen McNeff, for example, based his 2004 opera *Clockwork* on the writings of Philip Pullman. It was a major success at the Linbury Studio Theatre at the Royal Opera House, Covent Garden. McNeff says that when he is offered a commission for an opera, his publishers will ask what he intends to base the opera on. If he draws from source material which is in the public domain he says "champagne corks pop," however, if he wants to work with a 'living' writer he says a series of protracted negotiations end up taking place with either their literary publisher or that writer's estate. This can sometimes cause delays or difficulties.

GRAND RIGHT LICENSING

Depending on the level of production, a Grand Rights licensing deal can change. A huge West End production or Royal Opera House show is obviously treated differently to music that might feature in a school or university performance. The deal depends on the kind of production and how central the music is to it. On the plus side, Grand Rights payments come swiftly and quickly – sometimes weekly, if not monthly.

PROFIT-SHARE ARRANGEMENTS ON ANCILLARY RELEASES

It is becoming increasingly more frequent that a producer will ask the publisher/writer to enter into a profit-sharing deal when putting together a DVD release of a production, for example. Writers/publishers are warned that where you cannot control expenses/costs of such projects and there is no guarantee as to the transparency of money spent, it is probably wise not to enter into such arrangements.

SUBPUBLISHING AGREEMENT

THIS AGREEMENT is made as of the 1st day of January, [redacted] by and between [redacted], and [redacted] ("Subpublisher").

In consideration of the following mutual promises and agreements, the parties agree as follows:

1. During the period of Owner's rights hereunder, Owner hereby grants to Subpublisher for the territory of [redacted] (the "Territory"), the following rights in and to each and every musical composition controlled by Owner during the term hereof for the Territory, including any and all arrangements and any and all versions thereof. The Compositions currently controlled by Owner are set forth on Schedule "A" attached hereto and by this reference incorporated herein (the "Compositions"):

(a) The exclusive right to print, publish and vend copies of the Compositions in the Territory and to collect any and all royalties and fees payable by reason thereof;

(b) The exclusive right of non-dramatic public performance of the Compositions for profit and of licensing such rights to others and to collect any and all royalties and fees derived therefrom in and for the Territory subject only to the various agreements between Subpublisher and Subpublisher's performing rights societies;

(c) The exclusive right, but only with respect to sales within the Territory during the term of this agreement, to grant non-exclusive licenses for the manufacture and sale in the Territory of mechanical and electrical production of the Compositions, including, but not limited to phonograph records, compact discs, prerecorded tapes (cartridge, cassette or reel-to reel), transcriptions, piano rolls or any unknown audio only format, and to collect all royalties and fees payable by reason thereof on sales within the Territory of such audio devices;

(d) The non-exclusive right (with Owner's prior written consent) to grant non-exclusive licenses for the recording and synchronization of the Compositions in and with respect to motion pictures, television productions, video cassettes, video discs and other audio visual devices produced in the Territory and to collect all royalties and fees payable for the distribution or exhibition thereof in the Territory; and,

(e) Subject to Owner's prior written approval, the non-exclusive right to grant licenses in and for the Territory for any form of use (whether now known or hereafter devised) of the Compositions or any part thereof for or in connection with purposes of trade, advertisements, commercials or merchandising.

2. Owner does not warrant or represent that in the case of each and every Composition it will have the right to transfer and assign to Subpublisher all of the rights hereinabove set forth, but Owner shall grant to Subpublisher all of the aforesaid rights which it has the right to grant, subject to any restrictions which are or may be imposed upon Owner's use or exploitation of any Composition.

3. Owner hereby reserves unto itself all rights in and to the world-wide copyrights in the Compositions and all rights existing under such copyrights other than the rights that are specifically herein granted to Subpublisher. Without limiting the foregoing, Owner specifically reserves to itself:

(a) All so-called "grand rights" and the exclusive right to dramatize the Compositions and to license the use and performance of such dramatic versions throughout the territory of the world

excluding the Territory. In the event Subpublisher licenses any such grand rights within the Territory, written notice of such shall be given to Owner;

(b) The exclusive right to license world-wide uses of the titles of the Compositions;

(c) The exclusive right to make literary versions of the Compositions or literary works based on the Compositions throughout the world, and to print, publish and vend such literary versions (as well as the dramatic versions aforementioned) throughout the world;

(d) The exclusive right to grant licenses for the entire world or for any portion of the world outside the Territory for the synchronization of the Compositions with sound motion pictures, television productions, video cassettes, video discs or other audio-visual devices together with the right to publicly perform for profit the Compositions which are contained in such sound motion pictures, television productions, video cassettes, video discs or other audio-visual devices, and Subpublisher shall not be entitled to share in any fees received by Owner with respect to such world-wide use or use outside the Territory; and,

(e) The exclusive right outside the Territory to grant license and to collect the income derived therefrom for any use, with the advertising of, commercials for or merchandising relating to products or services of any kind.

(f) Notwithstanding anything to the contrary set forth herein, Subpublisher is entitled to collect one hundred percent (100%) of all mechanical royalties and synchronization income as well as fifty percent (50%) of all performing rights income generated by the Compositions within the Territory.

4. Subpublisher shall pay Owner the following royalties in respect of the Compositions and Subpublisher agrees that during the term of its rights, it shall have the duty to collect and to be responsible for the prompt collection of all earnings regarding the Compositions payable within the Territory:

(a) Eighty-Five Percent (85%) of all gross monies paid by licensees of Subpublisher as royalties for the mechanical or other reproduction of the Compositions embodied in records or other devices sold in the Territory;

(b) Eighty-Five Percent (85%) of the publisher's share of all gross broadcasting, television and other performance fees and synchronization fees with respect to the Composition;

(c) Eighty-Five Percent (85%) of all gross monies paid by licensees of Subpublisher from any other sources whatsoever in connection with the Compositions;

(d) No royalties shall be paid by Subpublisher upon a reasonable number of professional copies distributed for professional exploitation;

(e) Subpublisher shall only license the mechanical or other reproduction rights in the Compositions for records or other devices to the authorized manufacturers of such recordings and all such licenses shall be issued at the highest prevailing rates in the Territory;

(f) Owner and Subpublisher acknowledge that Subpublisher shall collect royalties under paragraph 4(a) above only with respect to records and devices sold in the Territory, irrespective of whether such records or devices are manufactured within the Territory or outside of the Territory. Accordingly, Subpublisher shall not collect royalties hereunder with respect to records and devices manufactured within the Territory but sold outside of the Territory;

(g) To the extent that authorization from Owner is necessary or desirable, Owner hereby grants to Subpublisher the right and authority within the Territory to collect gross income from performing rights societies, mechanical rights societies, licensing and/or collection agencies or any other persons, firms or

corporations and to collect such monies with respect to unclaimed, unregistered or unallocated receipts, bonuses, or other sums distributed to Subpublisher by reason of seniority or otherwise not calculated on the basis of actual uses of the Compositions to which Subpublisher is or shall be entitled (hereinafter referred to as "Accruals.") Subpublisher agrees to pay to Owner at the times hereinafter set forth, a percentage of Accruals, which percentage shall be calculated by taking the total amount of each such distribution and multiplying it by a total amount of each such distribution and multiplying it by a fraction, the numerator of which shall be ninety percent (90%) of the performing or mechanical fee distributions, as the case may be, from such society or agency to Subpublisher allocable to identified uses of any and all musical compositions controlled by Subpublisher (including the Compositions) during the relevant accounting period(s);

(h) If there is more than one country in the Territory, the royalties payable to Owner shall be calculated and paid based on earnings of the Compositions at the source giving rise to such earnings in each such country of the Territory. Any fees which Subpublisher shall pay in order to secure the collection of royalties earned by the Compositions (other than fees paid to any appropriate mechanical rights or performing rights societies in any portion of the Territory) shall be borne by Subpublisher out of its retained share of earnings hereunder; and

(i) Subpublisher agrees to use its best efforts to maximize the gross income of the Compositions in the Territory and to exploit the Compositions in the Territory.

(j) Notwithstanding the foregoing, Subpublisher acknowledges that the Compositions are divided into four categories, which categories shall be referred to herein as the "A", "B", "C" and "D" Compositions. Owner shall advise Subpublisher in writing of the category into which each Composition falls at the time Owner submits the same to Subpublisher. Subpublisher shall prepare a separate statement for each category of Compositions reflecting royalty rates payable to Owner as follows:

Category	Royalty Rate
"A"	85%
"B"	80%
"C"	75%
"D"	85%

Additionally, Subpublisher shall prepare a separate supplementary statement to Owner reflecting the differential between eighty-five percent (85%) and the rates provided above, e.g. five percent (5%) with respect to category "B" songs and ten percent (10%) with respect to category "C" songs and shall pay the sums due to Owner on the Supplementary Statement at the time and in the fashion set forth in paragraph 5 below.

5. (a) Within sixty (60) days after each June 30 and December 31 of each year, Subpublisher shall prepare and furnish to Owner complete, detailed and itemized accounting statements showing all receipts and collections of every kind by Subpublisher with respect to the Compositions covering the preceding six (6) months. All royalty payments shall be sent to Owner on or before the date payment is due. Prompt and accurate accountings and payments shall be of the essence of this agreement, and failure to make accurate and timely payments shall entitle Owner to cancel this agreement and cause an immediate reversion to Owner of all copyrights and rights assigned hereunder, specifically including the right to collect and commission royalties and fees earned prior to the date of cancellation.

(b) The statements to Owner provided for under this agreement shall include the following for each of the Compositions in detail:

(1) Total gross income on the basis of each type of income received (i.e., printing income, performance income, mechanical income, and synchronization income)

with an itemization as to the source of each amount of gross income collected by or credited to Subpublisher's and Owner's share of each type of income. All such statements shall reflect income separately for each country in the Territory.

(2) The title of each printed edition sold in the Territory, the retail selling price and number of copies sold thereof, and the amount of promotional copies, if any distributed.

(3) Period during which income was earned.

(4) Titles of any Compositions on records released in the Territory, the record company manufacturing such records, and the number of records sold itemized as to each such record.

(5) The performance credits for each of the Compositions.

(6) An itemization and explanation, in the English language, of any deductions made.

(7) Any amounts paid to any lyricists, translators or arrangers.

(c) Upon Owner's request, Subpublisher shall promptly furnish Owner with copies of statements received by Subpublisher and licenses relating to the use or exploitation of the Compositions in the Territory.

(d) Subpublisher shall permit Owner or its representatives to inspect, at the place of business of Subpublisher, during usual business hours, and upon reasonable notice, all books, records and other documents of Subpublisher, and to make copies or excerpts therefrom, to the extent that they relate to the Compositions, for the purpose of verifying royalty statements rendered hereunder by Subpublisher.

6 All translations, arrangements, or adaptations of the Compositions (hereinafter referred to as the "Local Version") shall be made at the sole cost and expenses of Subpublisher, and all royalties, fees, shares of mechanical or performing rights income, or other compensation payable to any translator, arranger and/or adaptor (hereinafter referred to as the "Local Writer") shall be paid out of Subpublisher's share of income hereunder, and Owner shall receive the same share of income hereunder as it would have otherwise received had no such Local Version been made. Subpublisher shall make its best efforts to ensure that the Local Version is faithful to the fundamental character of the original lyrics to the extent permitted by the local language. No Local Version of any Composition hereunder shall be filed with any performing or mechanical rights society in the Territory until a recording of such Local Version of any Composition has been recorded and released in the Territory. Any such Local Version so registered as a separate composition with any such mechanical rights or performing rights society and copies of all such registrations shall be sent to Owner immediately upon the filing of such registration. Subpublisher shall also furnish to Owner two (2) copies of any such Local Version within thirty (30) days of such translation or otherwise, and copies of any and all contracts or other arrangements requiring the payment of compensation to any Local Writer immediately upon the execution of any such agreements. Owner shall further have the right at any time, upon notice in writing to Subpublisher, to require that translations of any Local Version together with literal English translation thereof, be submitted for its approval. To the extent permitted by the rules of performing rights and mechanical rights societies in the Territory, Licensee shall provide that the Local Writer's share of performing rights and mechanical rights income be limited to the Local Version of the Composition only. In the event that such share may not be so limited, Subpublisher, prior to authorizing the making of such Local Version, shall so advise Owner in writing and no translations shall be permitted hereunder except upon the express prior written approval of Owner. If Subpublisher breaches any of the provisions of this subparagraph, Owner, in addition to any its other

rights and remedies (which shall include the right to terminate this agreement), shall have the right to require Subpublisher to reimburse Owner for any portion of such translator's, arranger's or adaptor's fees, royalties or other compensation which is deducted from Owner's or any original's writer's share of income from the Compositions, and Subpublisher shall promptly make such reimbursement

7. As a condition precedent to the right to print editions of the Compositions, Subpublisher shall cause Owner's name to be printed on the title page of each copy of the Compositions(s) that may be printed by or for Subpublisher in the Territory, and all such copies shall also bear proper notice of copyright in Owner's name, or in such name or names as Owner may designate in accordance with any applicable copyright law, including the Berne Convention and the Universal Copyright Convention. Any editions of the Compositions not conforming to the above requirements shall be deemed to have been published without Owner's consent. All editions of the Compositions in the Territory shall also bear the name(s) of the original composers or lyricists of the Compositions and any other credits furnished to Subpublisher by Owner.

8. (a) The term of this agreement shall commence as of January 1, [redacted] and continue through December 31, [redacted] (the "Term"); provided, however, that Subpublisher is hereby authorized to collect and remit in accordance with the provisions hereof all amounts heretofore earned in the Territory and derived from the Compositions, which accounts have not heretofore been collected on behalf of Owner by an authorized agent of Owner.

(b) The Term shall be extended from year to year unless either party shall give the other party written notice of termination not less than thirty (30) days prior to the end of any such extension year.

9. Subject to paragraph 5(a) above, at the expiration or sooner termination of this agreement, all rights of any kind or nature assigned to Subpublisher hereunder shall revert to Owner and be Owner's sole and exclusive property.

10. Owner shall not ship or authorize anyone to ship into the Territory any printed copies of the Compositions, except such copies as may be forwarded to Subpublisher pursuant to the terms hereof provided that if Subpublisher fails to print or import printed versions of any of the Compositions, Owner may import such printed editions into the Territory free of the terms hereof.

11. Owner hereby grants to Subpublisher the non-exclusive right to enforce and protect Owner's rights in the Compositions in the Territory, in any suits or proceedings in the name of Owner, all at the expense of Subpublisher. Subpublisher further undertakes not only to protect and enforce the copyrights of the Compositions and any subsequent copyrights derived therefrom in the Territory, but also to undertake all necessary proceedings to prevent and restrain infringement of copyrights in the Territory. In the event of any recovery, after deducting the expenses of litigation, that percentage of the resulting net proceeds conforming to the percentages set forth in paragraph 4 above, shall be paid by Subpublisher to Owner. Subpublisher shall not settle or dispose of any claims regarding the Compositions without Owner's prior written consent. In the event any claims are asserted or proceedings are brought against Subpublisher concerning the Compositions, Subpublisher shall immediately notify Owner of same and forward to Owner copies of any documents giving rise to such claims or proceedings. Upon receipt of the same, Owner shall instruct Subpublisher of the course of action to be taken. In the event Subpublisher shall fail to notify Owner of such claims or proceedings, Subpublisher shall be responsible for any damages sustained by Owner

12. This agreement shall be binding upon the parties hereto and their respective successors and assigns. Subpublisher may assign or sublicense any of its rights hereunder in the ordinary course of business (but not this agreement), provided that Owner shall nevertheless be entitled to receive the royalties payable hereunder without diminution by reason of such assignment; Subpublisher shall remain liable for all such royalties, and Owner shall receive its royalties computed at the source and at the times specified herein, notwithstanding such assignment

13. Any notice required or desired to be given to either party hereunder shall be in writing and shall be served by registered air mail, charges prepaid, by FAX with a copy by mail, addressed to the respective parties at their addresses set forth on Page 1 hereof or to such other addresses as either party may hereafter designate in writing to the other party.

14. The parties hereto shall execute any further documents and do all acts necessary to fully effectuate the terms and provisions of the agreement.

15. In the event Subpublisher becomes insolvent or is declared a bankrupt or the equivalent thereof, in any voluntary or involuntary proceedings, or if Subpublisher makes an assignment for the benefit of creditors or the equivalent thereof, then this agreement and all of Subpublisher's rights hereunder, including but not limited to the right to collect any royalties or other fees then earned but not yet paid shall automatically terminate and revert to and shall be the sole and exclusive property of Owner, free and clear of any rights, claims or demands on the part of Subpublisher, its successors, assigns or licensees, without in any way affecting the rights of Owner. If Subpublisher fails to perform any obligation required of it hereunder, then Owner, in addition to such other rights or remedies which Owner may have at law or otherwise, under this agreement, may elect to cancel or to terminate this agreement upon giving written notice to Subpublisher, as hereinafter provided, without prejudice to any rights or claims Owner may have. Owner's right to terminate as hereinabove provided shall be conditioned upon the giving of written notice to Subpublisher setting forth in detail the cause of said termination and indicating Owner's intent to so terminate. Subpublisher shall have thirty (30) days from the giving of said notice within which to cure said default before the notice of termination shall become effective.

16. This agreement cannot be altered or modified, in part or in full, in any way except by an instrument in writing signed by the parties hereto, unless otherwise expressly provided herein. No failure by Owner to act in connection with any breach or default by Subpublisher hereunder shall be deemed a waiver of such breach or failure nor shall any such failure to act affect Owner's right to thereafter enforce the terms and conditions of this agreement or to exercise any of Owner's rights or remedies hereunder.

17. This agreement shall be governed by and construed under the laws of the State of California, United States of America and the venue for any action to be brought by either party against the other respecting this agreement shall be in the County of Los Angeles, California. Owner may make service of process on Subpublisher by registered air mail and Subpublisher shall have thirty (30) days after receipt of such process in which to respond.

18. Notwithstanding anything to the contrary contained herein, in the event that any of the amounts payable pursuant to paragraph 4 above are delayed or disapproved of or disallowed by any governmental authority of the Territory, Owner shall have the right to terminate this agreement by giving Subpublisher written notice thereof, in which event all rights of any kind or nature herein granted to Subpublisher shall immediately revert to and be the sole and exclusive property of Owner and Subpublisher shall retain no interest whatsoever in and to any of the Compositions.

19. Except as otherwise specifically set forth herein, no alleged breach by either party shall be deemed material unless the aggrieved party gives written notice of breach to the other party and the other party fails to cure such breach within thirty (30) days after such notice is given pursuant to paragraph 13 above.

20. It is expressly agreed that Subpublisher shall not be entitled to deduct or withhold income or other similar tax from sums payable to Owner hereunder pursuant to the laws of the Territory unless Subpublisher shall furnish to Owner, with each payment, a certificate in the form of an affidavit setting forth the amount of tax which shall have been withheld, the rate of tax, and any other necessary

information which shall enable Owner, upon presentation of such certificate, to obtain income tax credit from the United States Internal Revenue Service for the tax so withheld.

21. Subpublisher shall have the right within the Territory to use the name, likeness, and biographical material with respect to the writers of the Compositions, to the extent that such right has been granted to Owner by such writers.

22. During the Term of this agreement, Publisher agrees that it shall use its best efforts to do the following on behalf of Owner:

(a) to directly register all Compositions in the name of [redacted]C with [redacted] and/or any other applicable performing rights society or societies in the Territory;

(b) to ensure that all label copy for releases within the Territory credits [redacted] as the publisher;

(c) Publisher hereby acknowledges and confirms that such computer and corresponding computer software, all computer diskettes, catalog listings, demos and all other materials provided to Publisher by Owner with respect to the Compositions shall remain Owner's sole and exclusive property throughout the entire term of this agreement.

23. At the expiration of the Term of this agreement, Publisher will turn over to Owner or its designee copies of all catalog listings, society registrations, computer royalty information, all magnetic media, computer diskettes, computer and software purchased by Owner, lists of demos, top lines and all other materials or documentation requested by Owner which may be desirable to re-register the Compositions or to collect income relating to the Compositions after Publisher's rights expire hereunder.

IN WITNESS WHEREOF, the parties have set their hands as of the day and date first above written.

AGREED TO AND ACCEPTED:

[redacted]
("Owner")

By: [redacted]

By: [redacted]

AGREED TO AND ACCEPTED:

[redacted]
("Subpublisher")

By: _____
An Authorized Signatory

SCHEDULE "A"

Each and every musical composition owned or controlled by Owner or hereafter acquired by Owner during the term hereof in the ordinary course of business, provided the rights in such musical compositions are or do become available to Owner for the Territory during the term of this agreement.