



Artist to  
Business to Business  
to Consumer  
Audio Branding System

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## D7.6 ABC\_DJ Implementation in Territories Outside Europe

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**ABC\_DJ - Artist-to-Business-to-Business-to-Consumer Audio Branding System**

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# Table of Contents

<b>History .....</b>	<b>4</b>
<b>Glossary .....</b>	<b>5</b>
<b>Executive Summary .....</b>	<b>6</b>
<b>1. Introduction .....</b>	<b>7</b>
<b>2. International Research: Oceania, Asia and North America .....</b>	<b>8</b>
<b>2.1 Australia .....</b>	<b>8</b>
<b>2.1.1 International Agreements .....</b>	<b>8</b>
<b>2.1.2 Legislative framework .....</b>	<b>8</b>
<b>2.1.3 In-store Music in Australia .....</b>	<b>8</b>
<b>2.2 Japan .....</b>	<b>12</b>
<b>2.2.1 International Agreements .....</b>	<b>12</b>
<b>2.2.2 Legislative framework .....</b>	<b>12</b>
<b>2.2.3 In-store Music in Japan .....</b>	<b>12</b>
<b>2.3 United States of America .....</b>	<b>15</b>
<b>2.3.1 International Agreements .....</b>	<b>15</b>
<b>2.3.2 Legislative framework .....</b>	<b>15</b>
<b>2.3.3 In-store Music in the USA .....</b>	<b>15</b>
<b>3. International Research: Latin America .....</b>	<b>19</b>
<b>3.1 Mexico .....</b>	<b>20</b>
<b>3.1.1 International Agreements .....</b>	<b>20</b>
<b>3.1.2 Legislative framework .....</b>	<b>20</b>
<b>3.1.3 In-store Music in Mexico .....</b>	<b>20</b>
<b>3.2 Argentina .....</b>	<b>22</b>
<b>3.2.1 International Agreements .....</b>	<b>22</b>
<b>3.2.2 Legislative framework .....</b>	<b>22</b>
<b>3.2.3 In-store Music in Argentina .....</b>	<b>22</b>
<b>4. Summary and Conclusions .....</b>	<b>25</b>
<b>References .....</b>	<b>27</b>

## History

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## Glossary

<b>Acronym/Abbreviation</b>	<b>Full Name/Description</b>
ABC_DJ	Artist-to-Business-to-Business-to-Consumer audio branding system
CMO	Collecting Management Organization
EU	European Union
DSP	Digital Service Provider

## Executive Summary

This report lays the foundation for a possible transfer of novel audio branding and in-store music concepts, monetising schemes to Asia and the Americas. A first survey of procedural, legal, technical and cultural requirements for the export of audio branding services is produced.

Being the final analysis of our research, we have dedicated this document to the legal backdrop and regulations of publishing and mechanical copyright for services of background music in countries outside of the European Union. The findings and the success of our algorithmic predictions, especially when considering the conversion of semantic concepts into music, offers a new level of refinement and commercial suitability of playlists with a previously unknown quality and respective client-fit. This justifies focusing the research on this sector.

# 1. Introduction

This 7.6 Deliverable approaches part of our task to get more familiar with legal landscape and administration of intellectual property rights for in-store music services.

In previous Deliverables we focused on the European Union, analysing the community legislation and providing a closer look at the national legislation of the 28 member countries of the EU, in order to take a glimpse at their differences and similarities.

We have noted that the community environment is very synchronized when it comes to Intellectual Property and we hope to see that continue as we eliminate borders.

We have also noted that although legal matters are synchronised theoretically, there are big differences and obstacles in copyright administration which is conducted by Collective Management Organizations, which in many cases complicate an already difficult process of copyright administration for the users. It is full of complex authorisations, licenses and fees, which the users must face.

After performing a procedural analysis and seeing first hand the shortcomings and obstacles, we have put together specific recommendations which we feel would lead to simplifying the process, making it more transparent, secure, trustworthy and easy to use for all stakeholders, from the users to the rights owners.

After analysing the European framework we'd like to perform an approximation to territories outside of the EU, carrying out a small survey of the systems we find outside of our European borders and checking how they differ or resemble each other.

We have focused on those territories which form the main potential markets for internationalisation with the exception of China and the Middle East where an excessive legal uncertainty and a poor rights administration structure exists.

The countries we have chosen to research are USA, Mexico, Argentina, Australia and Japan. After our experience with European institutions where we had great difficulty obtaining information, we preferred to concentrate our efforts on a smaller but higher-level sample. Even then it required great effort to get attention of the licensing and collection departments in those countries. To achieve this we consulted collaborators in each of those territories. Without their invaluable collaboration it would have been impossible to collect the necessary information.

We'd like to state that this Deliverable is in no way legal research about intellectual property in these 5 countries. What we'd like to do is point out the regulations of their legal systems, mention the treaties and agreements they are part of and which constitute the basis of different national systems. Above all, we focus on the rights administration for in-store music in these territories, investigating different CMOs which operate in those countries (always within the in-store music field) and working out how they operate.

## 2. International Research: Oceania, Asia and North America

### 2.1 Australia

#### 2.1.1 International Agreements

- ⑩ Berne Convention for the Protection of Literary and Artistic Works
- ⑩ Convention Establishing the World Intellectual Property Organization
- ⑩ Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- ⑩ Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- ⑩ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- ⑩ WIPO Performances and Phonograms Treaty
- ⑩ WIPO Copyright Treaty (WCT)
- ⑩ Uruguay Round Agreement: TRIPS Trade-Related Aspects of Intellectual Property Rights
- ⑩ Universal Copyright Convention (UNESCO).

In addition to these international treaties, in 2004 Australia and the USA adopted the Australia-United States Free Trade Agreement, AUSFTA.

Under this Australian Treaty the period of protection of literary, artistic, dramatic and musical works was extended to 70 years after the authors death.

#### 2.1.2 Legislative framework

The rule of law, which regulates copyright in Australia, is the Intellectual Property Law of 1968. This law was reformed many times over the years.

It establishes certain moral rights: the law against false attribution and the right for works to maintain their integrity.

#### 2.1.3 In-store Music in Australia

In Australia, much like in Europe, each time the music is reproduced or played live in a public place, or when the music is available on the internet, the business which engages in this activity must possess the license which authorises such use.

On the website of the Australian Government it clearly states that for the use of background music in a public place, the owner of said place must possess a specific licence.

This licence covers the use of any of the following devices for the broadcast of background music:

- Background music systems, including CD, tape player, radio, music services, or each zone or channel of a multi-channel device
- Radios or TV sets or large screens



- Audio or video jukeboxes.

There are different licensing regimes in Australia regarding the reproduction and playing of music and music videos that are protected by copyright:

- Licensing in relation to the composition, or musical work, is administered by the Australasian Performing Right Association / Australasian Mechanical Copyright Owners Society, (APRA AMCOS)
- The Phonographic Performance Company of Australia Limited (PPCA) and the Australian Record Industry Association Limited (ARIA) administer licensing in relation to the recording (for example, the CD or music in other formats).

Same as in Europe, the Music Supplier is responsible for mechanical rights payments and the final user is responsible for performing rights payments.

This means that the Music Supplier must obtain a license from AMCOS and from ARIA and the public establishments must obtain a licence from APRA and PPCA. APRA and AMCOS act jointly.

All of these CMOs have a blanket license for background music.

As we'll see the public establishments, which obtain services from a Music Supplier, can also make their payments to APRA and PPCA through their Music Supplier.

Let's start with rights management entity, APRA:

APRA has specific background music licenses for commercial establishments. For example, they charge an annual payment of AUD\$293.60 for a license which permits playing music in a restaurant or a coffee shop.

If the user pays AUD\$373 they can also play the music on their website. For AUD\$960.86, the user can have background music, music on the website and live performances by artists, DJs or karaoke in their establishment.

For stores, APRA offers other type of license. The price depends on the size of the store and the device being used. For example, for smaller stores, up to 150m<sup>2</sup>, the annual fee would be AUD\$79.46 using only one audio device. For a very large store, of more than 1.000m<sup>2</sup>, using 5 devices, the annual fee would rise to AUD\$397.23.

Comparatively, for example, copying music for playback on tablets, smartphones, CD players would cost AUD\$264.79 to be able to play up to 1000 songs. Every 500 additional songs would carry an additional cost of AUD\$105.92.

All of the fees for different types of businesses, from takeaways, vineyards, and hotels to ice rinks, can be found on the ASPRA website.

This refers to the collection. But how much of the collected amount does actually go to the copyright owner?

For every dollar (AUD) they collect, APRA returns 86 cents to the music creators. That means that they charge 13.6 cents for every dollar for what we call administration fees in Europe.

They also indicate on their website that the payments to music creators are based on the information provided by the radio channels, streaming services (the most common ones in Australia are Spotify, Tidal or Apple Music), popular music charts and music video channels.

It's a similar system to the one we have in Europe in that it doesn't reflect the real use of music when used as background music.

They literally state on the website:

"Fees from background music, music on hold and copying go into royalty pools and are distributed according to data on music use from radio stations, streaming services, ARIA (Australian Recording Industry Association) chart placings and music video channels. If you use music from certain background music suppliers, we distribute your licence fees according to the data reported to us by those suppliers."

If a public establishment wants to use the music provided by their Music Provider it needs to have a "public performance license" from APRA AMCOS.

Some of those providers already have agreements with APRA AMCOS so if one establishment obtains services from those providers they do not have to apply for a separate license from APRA AMCOS. This is limited to background music. This means that the user can pay for the license through their background Music Supplier. They call this "collection & agency agreement".

Another benefit of obtaining services from Music Providers is that they report back to APRA all the relevant data so that the composers whose works is being used can receive fair payments based on the real use of their works.

We would like to have more details of the agreements with the providers since the web doesn't provide those specifics nor the license type to be signed, due to confidentiality. The only thing we can obtain is the licence application form.

## ARIA

ARIA provides licences on behalf of participating sound recording rights holders (ARIA Licensors) to individuals and organisations wishing to make legitimate reproductions of sound recordings for some specific limited purposes (such as commercial background music suppliers). Through their licensing services the Music Provider can access a wide range of sound recordings from major record companies and independent labels.

ARIA indicates that it covers the use of their repertoire, amongst other things, for use in jukeboxes/computerised music systems supplied to pubs, clubs, and for dance parties;

Aria asks licensees to provide information on the real use of the repertoire which is then to be used in fairer distribution of fees to copyright owners.

Much like all CMOs, they charge a certain percentage of collections for administration costs.

The process of obtaining licences is similar to what we have seen previously – first they must fill out a form with the information about their business and the type of music use, which ARIA will later revise when deciding to accept or reject license petition.

## PPCA

PPCA has more general licenses than APRA – these are used for shops, zoos, medical centres, and even funeral parlours (but it doesn't cover restaurants). They charge per room so even

if it's a large room it would only cost AUD\$187.19 per year, with every room needing its own licence.

Initially it seems that PPCA does not differentiate, like APRA, between music that is played directly from a CD and the music that is provided by background music providers.

Fees are distributed like this:

- For the owners of Australian recordings, they subtract 2.5% for charitable causes such as education etc., and the rest they divide between the PPCA registered artists and their labels. Registered artists receive 50% for each song and their labels the other 50%. If the artists were not registered than the label would receive the full amount.
- For the recording copyright owners not from Australia they send the payments to the respective label, which controls the distribution rights based on their respective agreements with artists.

These payments are also based on radio data (free and subscription based) and music and video programmes but they also use the information from major licensees.

These are some of the Music Providers which have agreements with APRA and PPCA to pay the public performance fees on behalf of their clients:

Habitat Digital seem to cover the APRA and PPCA licences for their clients.

If you are a Marketing Melodies client you can also manage your APRA and PPCA licences through Marketing Melodies.

Streamline also manages their clients mechanical and performance rights.

## 2.2 Japan

### 2.2.1 International Agreements

- Berne Convention for the Protection of Literary and Artistic Works
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- WIPO Performances and Phonograms Treaty
- WIPO Copyright Treaty (WCT).

### 2.2.2 Legislative framework

The Copyright Law 1970 defines a copyright work as a "production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain" (Copyright Law Article 2.(1)(i)).

Besides copyrights, the Copyright Law protects the rights of performers (singers and musicians), record producers (record labels and others), broadcasters and cable broadcasters, whose role is to disseminate copyright works to the general public, with rights called "neighbouring rights."

This law also stipulates three different types of moral rights:

Right of making the work public; Right of determining the indication of the author's name;  
Right of preserving the integrity.

### 2.2.3 In-store Music in Japan

In Japan, we found two societies for administration of copyright as it relates to in-store music:

- JASRAC (musical works).
- RIAJ (sound recordings).

JASRAC grants license for every form of copyright use including performances as in concerts, karaoke, airwave and cable broadcasting; CDs, records, tapes and other recorded media; audio-visual media such as DVDs, video tapes and films; published materials such as sheet music and lyric collections; CD rental; and interactive transmissions such as music download/streaming services.

#### PUBLIC ESTABLISHMENTS

Public establishments must pay JASRAC for public performance of the works administered by JASRAC

The fee is a sum equal to the amount obtained by adding to the amount calculated hereafter, the amount equivalent to the consumption tax.

JASRAC offers a blanket licence to repertoire users and differentiates the fees of blanket licence users and others.

They also split the fees in two categories: “for shops, etc. in general” and “for lodging facilities”.

The fees “for shops, etc. in general” are based on sqm of the establishment, with a scale of 6 options from the smallest of 500sqm to the largest of 9000sqm. “For lodging facilities” the fees are based on capacity of accommodation, with a scale of other 6 options with the smallest of 100 people to the largest of 500 people. In both cases, the fees are identical for each option, so that a 500sqm shop and an establishment with a capacity of 100 would pay the same fee.

As we mentioned, JASRAC differentiates between users with a blanket licensing agreement and users without. Background music fees can be found on their website but they don't indicate if they've been updated in 2018.

For the former, the annual fees would start at 6,000 yen to 50,000 yen.

For the latter, the monthly fees would vary from 1,200 yen to 50,000 yen.

If none of the previously mentioned specifications apply, the price per use can be established based on squared meters and capacity of the establishment, as before.

Therefore, for one use of the work, which doesn't exceed 5 minutes, the fee varies from 2 to 13 yen.

#### MUSIC SUPPLIER

In case an enterprise who supplies master recordings of BGM, such as an enterprise engaged in cable broadcasting or manufacture/lending of sound recordings, concludes a blanket 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 during the previous year

(exclusive the consumption tax).

\* The business income means income earned by enterprises supplying master recordings, regardless of its name, such as receiving fees, broadcasting fees, etc.

## RIAJ

In Japan, the copyright of sound recordings are protected by the system of neighbouring rights. This includes exclusive rights of reproduction, transfer, making transmittable and lending; and the rights to claim secondary use fees (fees for broadcasting sound recordings) and the remuneration for record rental (right following 1 year rental right), and the right to receive compensation for private audio and video recordings. These rights are equally granted to record producers of the countries that are members of international conventions covering record rights.

RIAJ administers neighbouring rights of producers of phonograms and performers whose performance is recorded in phonograms.

It issues various types of licenses:

- Television Broadcasting
- Online and Mobile Services
- Copying/Recording Content (Mechanical)
- Recording within Movies
- Recording for Commercial.

In some cases tariffs are determined by the copyright owner, in other cases they are established as a result of a private agreement with the user. For Online and Mobile services, for example, the license fee is determined based on the length of the use of music in the program, the amount of licensee's revenues from advertising, and other factors but a minimum payment is required.

There is no more useful information in English available on the RIAJ website for the purpose of this deliverable. We have asked RIAJ directly about their tariffs, licenses, requirements, etc. through a contact in Japan. However, despite making our questionnaire available to them, we have received no answer.

## 2.3 United States of America

### 2.3.1 International Agreements

- Beijing Treaty on Audiovisual Performances
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
- WIPO Copyright Treaty (WCT)
- WIPO Performances and Phonograms Treaty
- Berne Convention for the Protection of Literary and Artistic Works
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Convention Establishing the World Intellectual Property Organization
- Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works
- Convention concerning the Protection of the World Cultural and Natural Heritage
- North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America.

### 2.3.2 Legislative framework

When the United States joined the Universal Convention on Copyright, the U.S. Copyright Act was passed in 1976.

This law establishes the basic principles of copyright and introduces the “fair use” doctrine (purpose of the use, nature of the use, quantity and extension of the works used and potential effects in the market).

Therefore, this law eliminates the distinction between the published and non-published works—all the works are protected.

We should also mention the Digital Millennium Copyright Act established with the intention of adapting the intellectual property law to the digital landscape.

### 2.3.3 In-store Music in the USA

In the USA, SoundExchange collects and distributes royalties associated with sound recordings distributed by services operating under one of the statutory licenses. By contrast, ASCAP, BMI and SESAC collect and distribute royalties associated with the public performance of musical works.

#### ASCAP

Licenses are divided into the following categories:

- General Licensing
- Radio Licensing
- Television Licensing
- Web & Mobile Licensing.

Detailed information for each specific license is available on the respective website.

Rates are based on the manner in which music is performed (live, recorded or audio only or audio/visual) and the size of the establishment or potential audience for the music. For example, rates for restaurants, nightclubs, bars and similar establishments depend on whether the music is live or recorded, whether it's audio only or audiovisual, the number of nights per week music is offered, whether admission is charged and several other factors.

Retail store rates depend on the number of loudspeakers and square footage.

The rates for these two types of establishments are listed in their website, and can be accessed by the public.

As many other entities, it does offer a “blanket license” to perform any or all of the works in the ASCAP repertory. Licensees have to pay an annual fee for the license.

All paperwork necessary to secure any license can be done through the ASCAP website, since all the information needed in order to finalise the process is duly listed on it.

#### BMI

BMI is a performing rights organization representing songwriters, composers and music publishers. Often called PROs, these companies collect license fees from businesses that use music, including television and radio stations, broadcast and cable networks, new media, including the Internet and mobile technologies, satellite audio services like XM and Sirius; nightclubs, hotels, bars, restaurants and other venues, digital jukeboxes and live concerts. Deducting an administrative rate these license fees are then distributed as royalties to the songwriters, composers & music publishers the PROs represent.

BMI has a Commercial Music Service License Agreement for Music Providers. The fee is \$18.91 per location and per year. It is a minimum payment for 45 locations. This licence provides public performance rights for the BMI repertoire within the music provided by the service.

BMI offers a Retail License. The fees are determined by the number of locations, sq. footage, days of performance, etc. The minimum fee is about \$240 per year.

Most licenses can be paid for and obtained online.

## SOUNDEXCHANGE

SoundExchange is a non-profit performance rights organization designated by the U.S. Copyright Office as the sole administrator for statutory license fees. It collects statutory royalties from satellite radio (such as SIRIUS and XM), Internet radio (like Pandora), cable TV music channels and similar platforms for streaming sound recordings. SoundExchange collects and distributes digital performance royalties on behalf of nearly 175,000 recording artists and master rights owners. It accounts and administers direct agreements on behalf of rights owners and licensees.

The “Business establishment service” license category is intended for services which stream into retail business establishments (e.g bars, restaurants, retail stores, etc.) and is currently relying on the statutory license set forth Section 112 of the U.S. Copyright Act.

The statutory license used by Business Establishment Services is for the limited fabrication of ephemeral copies, the sole purpose of which is the public performance of sound recordings via digital audio transmissions into business establishments. The statutory license administered by SoundExchange does not cover interactive streaming or downloads of any kind, including downloadable “podcasts” of archived programming. If services offer podcasts including sound recordings, they need to obtain a direct license from the relevant copyright owners.

On the SoundExchange website we find the following information:

### *1) Minimum Fees.*

- 1. Amount: \$20,000. All payments must be accompanied by a signed and completed minimum fee Statement of Account.*
- 2. Recoupability of Minimum Fee: The minimum fee is credited against monthly liability accrued within the same calendar year. Services do not submit additional payment for that year until they have exceeded the minimum fee.*
- 3. Due date: Annual, on or before January 31. New services beginning the creation of ephemeral recordings on or after February 1 are required to pay minimum fees within 45 days after the end of the month in which such copies are made.*

### *2) Liability Rate, Payment, and Statements of Account.*

*2014-2018: 12.5% of annual Gross Proceeds*

*Reports of Use. Services are required to submit Reports of Use (i.e. the “playlists”) as described in 37 CFR 370.4.*

- 1. Frequency of Submission. Monthly, within 45 days after the end of each month.*
- 2. Content. Reports of Use must contain a complete census of all sound recordings accruing performance liability within the month.*



3. *Identifying Information. Each track listing must include the following:*
  1. *Name of Track as listed on the recording*
  2. *Name of Artist as listed on the recording*
  3. *ISRC as listed on the recording, or if unavailable, the combination of both the album name, and the marketing label as listed on the recording*
  4. *Audience Measurement. Each track must have associated with it the amount of “actual total performances” accrued by the track within the month. Services unable to provide audience measurement should not let this inability prevent timely submission, even if audience measurement is not included.*
  5. *Format and Delivery Specifications. Reports of Use are required to be electronically submitted in one of the following ways:*
    1. *E-mail to reports@soundexchange.com. This method is preferred for all services if the Report of Use contains fewer than 200,000 lines.*
    2. *FTP. This method is preferred for services submitting Reports of Use containing greater than 200,000 lines. To request a login ID and a password, please e-mail ftp@soundexchange.com.*
    3. *CD-R, DVD-R, or portable USB drive. If a service is unable to submit Reports of Use via e-mail or FTP, they may be delivered physically using the above media to SoundExchange, ATTN: Royalty Administration, 733 10<sup>th</sup> St., NW, 10th Floor, Washington, DC 20001.*

### 3. International Research: Latin America

Latin American CMOs date back to the first half of the 20th century. The influence of European societies, of both Spanish and Anglo-Saxon heritage, is quite noticeable.

Management organizations, in their capacity as fee revenue collectors, first arose in France. They came into being in an effort to meet the needs of authors and publishers, who were looking for solutions that would enable them to collect their royalties.

Although the Société des Auteurs et Compositeurs Dramatiques (SACD) was the first precedent of its kind, it was not until 1852 that the contemporary management society model was established with the creation of the SACEM. Later on, in 1899 the Sociedad de Gestión de Autores de España (SGAE) was founded.

Anglo-Saxon societies date back to 1910, starting in England with the foundation of the Mechanical Copyright-Protection Society, a year prior to the enactment of the Copyright Act, in 1911. In 1914 PRS and ASCAP in the USA ensued, but exclusively as public communication rights societies.

The first Latin American society was the Asociación General de Autores del Uruguay, established in 1929, followed by SADAIC in Argentina (1936), SACM in Mexico (1945), SAYCO in Colombia (1946) and SBACEM in Brasil, also in 1946. Little by little, the remaining countries in the region followed suit, the latest being SCD and ACDAM in Chile and Cuba respectively in 1987, and finally SOBODAYCOM in Bolivia in 1992.

All Latin American societies are signatories of the Berne and the Rome International Conventions, and hence, they function in a similar way to European societies. On the one hand, we have author-and-publisher societies, and on the other, performer-and-phonogram producer societies, that collect neighbouring rights royalties.

In America, two exceptions can be found where societies of the same nature coexist. One is the USA, where three different Performance Rights societies exist (ASCAP, BMI and SESAC). The other is Brazil where twelve management organizations compete among themselves, though as far as the end user is concerned, they must comply with the law of the land and deposit payments at ECAD, a single central office or “Escritorio” (Bureau), established in 1977. Some of these societies even manage musical works and sound recording rights, which is quite a novelty in the region.

In 1929 the managing organizations belonging to music publishers in charge of mechanical rights in leading European countries, founded the BIEM (Bureau International pour la Edition Mécanique) in France. Its main objective was to coordinate mechanical licenses at a european level.. Later on, BIEM agreed to relinquish theircollecting rights in favour of authors’ rights societies in each European country.

In this way, most Latin American societies operate in practice like BIEM does. Some either do so because they are members of that society such as SADAIC, SACM, SCD y AGADU, or as a consequence of the influence exerted by SGAE through its local agents - LATINAUTOR- that consolidated the management of mechanical rights authors’ societies in many countries, such as ADDAF in Brazil, SAYCO in Peru, SOBODAYCOM in Bolivia or ACAM in Central America.

We are now going to focus on two of the most thriving and emblematic societies in the region: SACM (Mexico) and SADAIC (Argentina).

## 3.1 Mexico

### 3.1.1 International Agreements

- ⑩ Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- ⑩ Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- ⑩ WIPO Copyright Treaty (WCT)
- ⑩ WIPO Performances and Phonograms Treaty
- ⑩ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- ⑩ Berne Convention for the Protection of Literary and Artistic Works
- ⑩ Convention Establishing the World Intellectual Property Organization.

### 3.1.2 Legislative framework

The rule of law, which regulates copyright in Mexico, is Federal Law on Copyright (consolidated text published in the Official Journal of the Federation on June 15, 2018).

### 3.1.3 In-store Music in Mexico

SACM criteria for collecting copyright fees in retail business establishments include the size of the venue, the number of tables (hospitality industry), and the nature (live, recorded) and use made of the music, etc.

The types of uses are differentiated into three tariffs or “rubros” similar to the classification found to be used by SGAE (Spain) and many other European societies: Necessary Music, Secondary Music, Essential Music. In this way, the tariffs are tailored to the level of relevance music has in each sector.

The currency employed in Mexico for collecting purposes is the UDA (Unidad de Derecho de Autor) that roughly translates as Copyright Currency Unit. The currency value is calculated yearly, on the basis of the minimum wage and the Index of Consumer Prices. The value of the UDA in 2018 is 98 Mexican Pesos.

This is the applicable tariff for hospitality industry venues and retail business stores:

MEXICO	“RUBRO” III IN-STORE MUSIC TARIFFS		
BAR, RESTAURANT	FROM 1 TO 20 TABLES FROM 21 TO 40 TABLES 41 TABLES OR MORE	UDAS* PER MONTH UDAS PER MONTH UDAS PER MONTH	4 8 10,5
RETAIL STORES	A) RECORDED MUSIC B) LIVE MUSIC C) LIVE MUSIC FOR BRANDS	UDAS PER MONTH UDAS PER EVENT UDAS PER EVENT	6 6 50

\*1 UDA: 98 MXN (MEXICAN PESOS) =4,3€

In countries subjected to grave monetary disruptions due to price fluctuations and inflation, as is the case in most of the Latin American region, the use of the UDA is a necessary step to guarantee a reasonable adjustment to the economic situation of each country every year.

Regarding the services provided by the Music Suppliers, the licenses that guarantee the collection of fees, pertaining mechanical rights associated to the reproduction of their repertoire in different devices (dubbing) is managed through the EMMAC-SACM portal. It is agreed that the intermediary, in this case the Music Supplier, may also collect the fees associated with Performance and Neighbouring rights, on behalf of their clients.

This allows for a more logical, unified and marketable view, that points in the direction of the single window/one-stop-shop we are advocating for, to be implemented in Europe.

## 3.2 Argentina

### 3.2.1 International Agreements

- ⑩ Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- ⑩ WIPO Copyright Treaty (WCT)
- ⑩ WIPO Performances and Phonograms Treaty
- ⑩ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- ⑩ Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- ⑩ Universal Copyright Convention (UNESCO)
- ⑩ Convention Establishing the World Intellectual Property Organization
- ⑩ Berne Convention for the Protection of Literary and Artistic Works
- ⑩ Inter-American Convention on the rights of the author in literary, scientific and artistic works.

### 3.2.2 Legislative framework

The rule of law, which regulates copyright in Argentina, is the Law No. 11.723 of September 28, 1933, on Legal Intellectual Property Regime (Copyright Law, as amended up to Law No. 26.570 of November 25, 2009).

### 3.2.3 In-store Music in Argentina

The case of Argentina is very similar to what we have found to be commonplace in most European territories. As a BIEM society, and a signatory of the Rome Convention, it joins efforts with just one copyright entity, SADAIC and a sole neighbouring rights CMO, CAPIF. Therefore, retail businesses must acquire two different licenses in order to legally play music: One with SADAIC and another with CAPIF. There is no joint fee collection body representing both societies.

#### SADAIC TARIFFS

SADAIC operates in a similar way to Mexico’s SACM regarding tariff calculation.

There is a sweeping tariff system in place, as it is also the case for SACM or SGAE, which includes three kinds of tariffs (“rubros”) referencing the level of intensity or relevance of the music use.

ARGENTINA	"RUBRO" III IN-STORE MUSIC TARIFFS	
POINT OF SALE	UNIT	VALUE
BAR, RESTAURANT	UP TO 20 TABLES...	40 COFFEES*
	ADDITIONAL TABLE...	TWO ADDITIONAL COFFEES
RETAIL STORE	SIZE	
	SMALL...	2 CD**
	MEDIUM...	3 CD
	LARGE...	5 CD

\*COFFEE PRICE: 50 ARS (ARGENTINE PESO) =1,15€  
 \*\* CD PRICE: 550 ARS =12€

Remarkably, the calculation unit employed for hospitality industry venues is the same as the cost of a coffee in the establishment in question, thus honouring their Italian heritage. This is undoubtedly a practical measure to accommodate the “rubro” to the parlour’s economic activity, effectively adapting the cost to the venue’s price range.

The calculation method is not as adequate as far as retail stores are concerned, since it is based on the price of an audio CD, which is affixed. This does not allow room for pricing flexibility as is the case in the aforementioned example, since retail lacks the ability a given hospitality industry venue has to modify the sales price of a cup of coffee.

It is widely understood that the perception of service, exclusivity and luxe adds real value

to the price tag in the case of the hospitality industry, which translates into a more expensive cup of coffee, i.e. However, applying those same values to the price of an audio CD would seem unacceptable.

#### CAPIF TARIFFS:

CAPIF is Argentina's chamber of record labels. Record labels issued a mandate for CAPIF to grant licenses exclusively concerning customer non-interactive usage, and collecting dubbing rights (public performance related fees in retail business establishments) on their behalf.

The license permits the Music Provider to create a database containing phonograms, of which non-interactive playlists will consist of. It also does not permit the end user any interaction such as pausing, skipping, or selecting phonograms contained in a playlist.

#### Monthly tariffs:

- a – 10% gross income
- b – \$60 per listening point.

Guaranteed monthly minimum of six thousand Argentinian pesos (\$6.000), currently approx. 137€.

#### PROFOVI:

CAPIF also lends its framework to PROFOVI, the one-stop-shop for the issuing of licenses concerning neighbouring rights in 22 LATAM countries. The tariffs are the following.

#### Monthly tariffs:

- a – 10% gross income
- b – USD 4 per listening point.

Guaranteed monthly minimum of three thousand five hundred USD (USD3,500), currently approx. 3.060 €.

In any case, CAPIF reserves the right to increase said the above mentioned fees up to 20% of the gross income, pending on further information on the venue.

In all cases, background music providers must submit monthly payments and list the phonograms used, to allow for the proper disbursement of the fees collected.

Bars and restaurants that do not engage with service providers are not monitored and criteria for disbursement follows radio cue-sheets reporting.

We can observe that retail store costs are similar in the cases of Mexico and Argentina. Yet it is worth noting that the costs for bars and restaurants in Argentina are about four times the cost of a medium sized parlour in Mexico.

Once again this points to the great arbitrariness of license cost assignment criteria, and the lack of regional harmonization in this area, which is also the case in Europe.



## 4. Summary and Conclusions

There is a lot of confusion when it comes to reach an agreement on how background music can be defined and what criteria should rule its exploitation. According misunderstandings have complicated and unnecessarily bureaucratized licensing procedures and requirements for licensing music to both end users and Music Providers in the field of in-store music.

Throughout the course of our work, one main idea has been gaining traction: A business that uses music to improve its commercial prospects has a lot in common with a radio station. We believe this fact, that might seem self-evident, is maybe our inquiry's greatest finding.

The radio sector is thoroughly homologated worldwide, both from the standpoint of the use of musical repertoire, as well as from the agreed upon criteria governing tariffs.

A shop, like a radio, has an audience and generates revenue through the commercial exploitation of its goods. Thus, the criteria employed by the radio sector – the degree of relevance of the use of the music, the station's revenue, etc.- must be the guiding principles for the usage of background music at a global scale.

As to management organisations, the European model seems to carry more weight than others across the globe. This is a natural occurrence given the broad consensus concerning international agreements (Berne and Rome, above all others) and most copyright societies' strong affiliation to the BIEM model; the great exception being the USA. The USA is not a Rome Convention signatory, and thus, neighbouring rights are mostly managed on an individual basis there, by contracting directly with MROs and settling payments through private agreements. The European system guarantees a better defence of small-sized music producers, since public management is more transparent and regulated, though it is also true that it makes the processing of licences harder, since it does set territorial borders for the end user.

Due to the many existing CMOs, approx. one hundred, serving a proportionally reduced population of 500 million, Europe is at the same time possibly the most hostile territory for Music Providers. In the USA just three CMOs service a population of about 325 million. This is not a singularity exclusive to our sector, but it does point to the many deficiencies and limitations still facing the European single market.

As being outlined in previous research performed within the ABC\_DJ project (see D7.1 and D7.2), we find a degree of harmonization in the legislation applied to the sector, however the expression of the norms through the CMOs involved yields a high degree of arbitrariness and distortion, which is hard to understand for users. The license fee calculation in Argentina for instance: the price of a cup of coffee or the price of an audio CD, or the calculation of the value of the UDA (copyright currency unit in Mexico), the area extension in square meters in Western Europe, whether or not the venue is located in a rural area or in the city instead and so on exemplify the inconsistencies in the worldwide market for in-store music. The diversity of criteria across the World is stunningly variegated and whimsical. As we have long proposed, the only way to succeed at quickly adapting to the market, is through close collaboration with CMOs to strive for criteria



unification, and joint collection of licensing fees. In order to achieve this goal, a profound review of the licensing process is paramount, as we concluded in 7.5.

The 2014/26 directive governing the digital single market, the approval, this same year, of the Music Modernization Act in the USA, the multi-territorial hubs such as Armonia and ICE in Europe, or PROMOVI in Latin America, and the initiatives emerging in Australia, with a view to 2019 with OneMusic.com, point in the direction of further simplification of administrative processes. No doubt this will have a direct repercussion on an increase in the contract of Music Provider services around the World.

It is a stringent conclusion that a majority of in-store music users do so illicitly and resort to low-quality, home-based methods to cover their needs. There is ample margin for improvement in marketing music services to public establishments. A clear, uniform and transparent set of criteria will bolster private investment and the growth of the sector.

Finally, we want to reiterate the practical goals we need to move towards, while avoiding excessive modification of the current management framework. We need to generate conscience to promote one-stop-shop systems in each country. Also, administrative processes should be easier to navigate for the end user (public establishments such as bars, restaurants, retail venues and so on) in order to improve fee collection. This is already being done in some territories (e.g. Spain, the UK or Australia). However, there are still many other countries where bureaucratized processes are tedious and take huge amounts of time. We must advocate for an extension of powers for digital licensing hubs of the likes of ICE and ARMONIA. It is them who must lead the management of Music Providers in the same fashion as they are already doing with DSPs (Spotify, Deezer, etc.). Lastly, we must articulate the collection of public performance related payments from the end user through the Music Providers. In this way, it would be possible to unify rights management processes through service brokers.

Asides from simplifying things for the service users, it offers great advantages to the CMOs, since Music Providers would be required by contract to report the use made of the repertoire. In this way, not only the usage is clarified, but excellence in distribution of revenues would be achieved through their disbursement on a pay-per-use basis.

Finally, we would like to thank each and every person who has helped us in the difficult task of gathering information from the CMOs –information that ought to be transparent and easily accessible to the public, but sadly isn't.

These are: John Echevarría, Javier Asensio, Josephine North Kensuke Hidaka, Analia Donnaruma, Eduardo Falcone y Humberto Hernandez.

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