



Licensing and Sale of Copyright and the (Un) willingness to Pay

August 13, 2010 by Bob Tarantino

The *New York Times* had an excellent article last week ("The Music-Copyright Enforcers" by John Bowe) (hat tip: Miri Frankel at The 1709 Blog) which explores the task and challenges facing performing rights organizations (the entities, such as SOCAN (in Canada), ASCAP and BMI (in the US)) which license the public performance of musical compositions.

During her five years with BMI — on trips to Texas, Ohio, Florida, Washington — Baker has learned a lot: managers of adult clubs tend to be polite. People who run coffee shops tend to be difficult. Skating rinks are a pain — they have the longest outgoing messages in the world. Casinos owned by Indian tribes are tough. Every decision goes to the tribal council, and it can take forever. Arts and crafts festivals, forget it; creative types never have any money. ("You'd think they'd get it," Baker said, "But . . ." She waved her hand.) The most important rule of the road, however, is never — Baker looked me in the eye — eat in the venue, even if they invite you. Because God only knows what they might put in your food.

... Once contacted by BMI, owners are given a worksheet. Does their venue use a radio, CD players, karaoke machine? Do they feature live music? If so, how often? How many people can the venue legally hold? For smaller businesses with low capacity that don't make much use of music, a license may be as little as \$300 a year. For really big operators, the cost might be as much as \$9,000 per location per year, the maximum BMI is permitted to charge a single customer. (The fees are distributed to artists based on what BMI calls "an appropriate surrogate" — local radio or TV — that reflects a sampling of bars and restaurants in the area.)

... The excuses fell like rain. On the road, Baker's client-management software offers her a list of common excuses — 24 in all — to keep track of what she's told. But in the end, she knows it's a game, a game she's going to win. Because after all the phone calls, letters and visits, she possesses a secret weapon: the law. Whether or not a music user believes copyright infringement is a big deal, violators face fines of anywhere from \$750 to \$150,000 per song. If after several years, a violator refuses to back down, Baker ups the ante and sends what is known in-house as "the Larry Stevens letter," named after one of Baker's bosses, informing them that their case is being referred to BMI's lawyers. Most but not all cases are settled out of court. That's because in 51 years, BMI has never lost a single case it has tried.

The article is rich in that same sort of revealing background information and on-the-ground reporting, and is a treasure for anyone who's interested in how this area of the music industry functions.

As Miri Frankel's post on the article describes, PROs face (and have always faced) a reluctance on the part of some commercial music users to pay license fees for such uses —



but that's nothing particularly unique, since many people would, in most cases, prefer to get something for nothing, as aptly illustrated by James Gannon in his post [Independent PC Game Developers Experiment With TPM-Free Releases](#):

Some independent game producers have taken a different path. In order to provide their customers with a hassle-free experience, the independent makers of the World of Goo and Machinarium games each (separately) released their game free of any TPM – whether devices controlling access to the game or controlling the ability of the game to be copied. Unfortunately, these developers found very little success with their “respect the consumer” strategies.

After the great World of Goo had been released for a few months, the developers reported that the piracy rate for the title was somewhere near 90%...

I still think that one of the best (and most concise) pieces on the challenges arising at the interface of, among other things, digital technology, “free” culture and basic economics is Andrew Potter's February 2008 article ["No one likes to pay for music—or much else"](#); as Potter observes:

If you're trying to square the notion of free culture with how the economy works, a handy rule of thumb is this: in the end, the consumer pays for everything. So when it comes to seemingly free media like radio and television, they are funded for the most part by commercial advertising, which is in turn paid for at the cash register by consumers. ... In the end, you get the culture you pay for, which is why the motto that everyone involved should be rallying around is “Free Lunch.” As in, there's no such thing as a.

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