

**INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND
COMPOSERS**

BE/92/209

Terms of the licenses to be granted to television channels

ADOPTÉD by: Executive Bureau (BE London, 27-29 January 1992) with the
abstention of Ms. G. Messinger (ASCAP) and Mr. J. Matejcek
(SOCAN)

Date: 27/01/1992

Access rights: CISAC members

The Executive Bureau of CISAC, meeting in London on 27th, 28th and 29th January 1992,

Considering:

1. that television channels are broadcasting on an increasingly international basis, either as a result of technological progress or because of programme exchanges and sales,
2. that this phenomenon is being taken into consideration by the European institutions: the EEC through the "Television without Frontiers" Directive and the draft "Satellite-Cable" Directive, and the Council of Europe through the "Transfrontier Television" Convention and the draft European Convention on satellite television, to harmonize the legislations concerned, notably with regard to authors' rights,
3. that CISAC should contribute to the process of organizing European States in the field of television,
4. that, in view of the new democratic regimes which are being established in the countries of Eastern Europe, on the one hand, and the easing of restrictions on broadcasting, on the other, the authors Societies of such countries should develop new relations with public and private broadcasters,
5. the document entitled "Thoughts on lump sum and percentage-based tariffing" drawn up by the "Satellite/Cable TV" Working Group,

Approves the following Resolution:

CISAC considers that the licensing terms granted by the authors' Societies for the use of their repertoires by television channels should provide for remuneration consisting of a percentage of the financial resources needed by such channels - whether public or commercial - to carry out their activities.

This method of calculating the remuneration payable to authors should be preferred to tariffing on a lump sum basis.

Indeed, percentage tariffing:

- links the author's remuneration to the fortunes of the channel and, in the case of a commercial channel, to the receipts generated by the transmission of the author's works;
- enables the remuneration payable to authors to be adapted easily to the significance of the use of their works;
- can apply in any of the various bases of broadcasting, whatever the importance of the channel, its audience, its place of transmission or its nature;
- can adapt to the economy of each country, whatever its degree of advancement and whatever the evolution of its currency, and thus facilitates European harmonization of existing remunerations.

Two systems may be envisaged, namely one consisting of a variable rate based on the extent of the use of the repertoire of the contracting authors' Society (or Societies), or one consisting of a standard rate based on the nature or the type of television channel:

The system of rates adjusted in line with the use of the repertoire would work as follows:

In this case, a rate corresponding to a 100% use of the air time by the various repertoires (musical, dramatic, literary and plastic arts) is taken and the rate is reduced proportionally pro rata temporis where the actual use of the repertoires is less than 100%.

For example, if the rate for a 100% use of the repertoires is 10%, for a 50% use the rate will be 5% and for a 20% use it will be 2%.

The system of standard rates based on the type of channel can be described as follows:

In this case, the rate varies in the light of the channel's characteristics.

To illustrate this system by reference to the current practices of certain authors' Societies, it is possible to cite the following scale as an example:

- general entertainment channel: 5%
- thematic channel with substantial use of the repertoires (cultural): 8%
- thematic channel with low use of the repertoires (sports or news): 2% (the rate of 2% may be reduced to 1% below a 10% use of the repertoires).

The rate should be calculated on the basis of the broadcaster's total resources: advertising receipts, sponsoring, rental of air time, subscription fees in the case of pay television, bartering (exchanges of services or goods), subsidies from the State or local communities.

The real agency and production costs in the advertising field that have actually been put forward could be deducted from the gross receipts up to a ceiling set in the light of the typical level of such costs in the country concerned.

Adjustments could be made for deductions for public service broadcasters' schedules of conditions as well as during a commercial channel's first 2 or 3 years on the air.

It would be appropriate to provide for a minimum so as to protect authors against the low level of receipts when the channel first starts operating in the case of a broadcaster whose resources are derived mainly from advertising. This minimum would be calculated by applying the percentage rate which would have been charged on the receipts to the production expenses.

Depending on the relevant legislative provisions and the Organizations of the collective administration Societies administering the mechanical reproduction right, the latter could either be licensed separately, under a lump sum or percentage-based system, or it could be included in the licensing terms of the broadcasting contract.