

Covid-19: points to note on effects on performance rights sector for international independent right holders

WIN's Performance Rights focus group met in April to review the impact on the global performance rights sector of measures to address the Covid-19 crisis around the world.

Below are key points for all associations and their member companies to be aware of, since the effects of the crisis are significant and wide reaching.

This paper will be updated in response to feedback from associations and companies gathered over the coming weeks and months.

1. Public Performance

- Public performance revenues will be down at least for the period of precautionary measures as a minimum. This will have an impact in most countries and for most labels.
- In addition to the temporary closure of clubs and bars, the majority of one-off music events (eg festivals) have been cancelled until well into the latter part of the year.
- It will probably be many months after measures are lifted before footfall and revenues from public performance return to pre-crisis levels.

2. Broadcast

- Commercial broadcast will be affected by downward pressure on advertising spend, in response to reduced consumer spending / recession
- State broadcast may see less immediate effects, but could be affected over the longer term if government funding reduces as a recession unfolds.

3. Private copy levies

- PC levy revenues will be affected. There will be a drop in carrier sales during any period of recession, reducing revenues collected over unpredictable timelines.
- Proxies for distribution will also be affected over time, as results may be skewed by the effects of the crisis in other areas (eg the sudden drop in physical sales will have a significant effect where MLCs include physical sales in their proxy calculations).

4. Practical issues and context

- Public Performance revenues for the affected period will see a significant reduction, perhaps around 30%-50%.
- Time lines in this sector are long: current payments are for prior and more 'normal' usage periods – payments for affected periods will not flow through to right holders until MLC distribution cycles take place in months to come.
- The effects may not therefore be visible for a long time, and will take several future distributions in order to be able to assess impact.
- It will probably not be for another 24 months before the full effect of the crisis will be known. This may not mean that things will have returned to pre-crisis levels during this period. If commercial users are put out of business, the return to pre-crisis levels will take years.
- Different countries are taking different measures, so timings and effects will be very different country by country.
- Different measures are being implemented by different MLCs. For example, credits may be issued for licenses paid for but not used. Similarly MLCs may offer extensions to users who have paid but who have put their usage on hold.
- It will be very hard to predict the effect of users going out of business altogether, and the extent to which there will be no renewed payments in future.
- Admin costs within MLCs will very likely increase to accommodate the additional work required to deal with effects of the crisis.
- Where MLCs are in partnership with authors societies or other third parties, an impact should be expected, potentially with regard to fees, service levels, and ultimately a drop in revenues received.
- Issues concerning legal reciprocity between countries may see more attention during this period.
- It is possible that MLCs may look to broaden support for local members in other ways (eg cultural funds, grants etc), which may have a detrimental impact on non-local right holders. It should be noted that some independents may benefit from this, which may be helpful.

5. Points specific to labels and right holders

- Right holders need to be aware that advances from existing funds may help in the short term, but will extend the period for which depressed revenues will be available. Only in rare cases have initiatives been put in place by collecting societies to allocate resources beyond what would be due to right holders under normal circumstances.
- If receiving an advance, right holders should be very clear on the calculation basis and periods taken into account by the advance. In the event that over-advanced sums are subject to recoupment, the recoupment will further delaying a return to pre crisis revenue levels.
- Rights holders for whom performance revenues make up a significant proportion of revenues need to act now to ensure they can deal with cashflow issues as and when

they hit. This may be staggered across a long period of time, to cover various different distribution schedules in different countries.

- Right holders should check the dates of prior distributions from MLCs, and plan for drops in income at equivalent times points in the coming year(s)
- Right holders whose businesses depend on multiple revenue streams like physical, live, merch and synch will see these revenues decline. These activities have all been affected in their own ways by the crisis, and while it is usually beneficial to have a mix of revenue streams, it will be problematic when several are affected simultaneously as a result of the broad and unprecedented nature of the crisis.
- Right holders for whom streaming and digital revenues are not enough to support their businesses will be particularly affected by the combined effect of depressed revenues from performance and other revenues. Central and East Europe would likely be an example of this.
- Companies should look carefully at their financial planning for the next 12 months and beyond, with a view to managing cashflow. This is especially important for companies whose performance payments make up a significant proportion of their overall revenues, but who have not yet seen any immediate impact of the crisis at this early stage (April 2020).
- These companies may need to speak with their banks and/or investors to implement adequate measures to manage significant drops in income, which may remain for a long period while sector revenues recover.
- Where a right holder uses an agent or partner to collect revenues or manage this area in other ways, they should contact their partners to ascertain exactly what the impact will be to their revenues.

6. Points to note for TAs and right holders

- The international independent sector needs to be aware of the various complex forces at play in this part of the industry, and be warned that impact on the performance rights sector will not be immediate, but will be long lasting.
- This paper will be circulated to all WIN TA contacts and to IMPALA. Recipients should review and take note of any points relevant to them. More importantly, they should pass the paper on to their member labels, to help them plan ahead.
- WIN will be in touch with TAs to check reactions and feedback from member labels. This paper will be updated accordingly.
- WIN and IMPALA are supporting associations in assessing what help may be available from MLCs.
- Both entities are also supporting efforts to encourage broadcasters to play more local content.

7. Related issues

- We are aware of one instance where an MLC has attempted to license recorded music used in 'public' activities which are now taking place on digital platforms.

Where the platforms are also music platforms (eg Facebook, YouTube) there is an obvious licensing conflict.

- However TAs should ask their local MLCs what measures are in place to license 'public' activities which are moving to video-conferencing services (eg Zoom or Facetime). In this instance, exploitation moves from public performance/communication to the public to non-interactive digital/webcasting. These activities could be licensed on a collective basis, subject to the usual methods in place to monitor usage, adopt fair and transparent distribution rules, etc.

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