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A HOLISTIC APPROACH TO DIGITAL REVENUE

By Susan Butler

We pile our layers of winter coats, scarves and gloves onto a chair and select a corner table at a New York City Times Square hotel. He pulls out a small book and turns to a page with a drawing of a circle. He calls it a digital wheel.

It is split into three parts. One part represents revenue from digital services that use creative works. One part represents revenue from 'access' providers, like ISPs and cable and satellite operators. One part represents revenue from manufacturers of devices and blank media, those products that are used to make personal copies of creative works.

He points to the one part representing digital service revenue.

"Everything that the industry has been spending 99% [of its time focusing on] is only one-third of the value of the digital market," Jean-Noël Tronc, chief executive of French collective rights society Sacem tells me last night.

Sacem represents about 149,000 members who include songwriters (i.e., authors and composers who make up about 70% of the membership), humorists, audiovisual directors and publishers. Sacem collected about €810 million in royalties (digital and non-digital) last year. About €24.7 million were Internet-related royalties.

"We've all been very much focusing on grasping some part of the value created on the Web, whether from downloads or [subscriptions] or streams that are free to the consumer," he says. "We come to the problem that, as we say, the trees are hiding the forest. We aren't thinking about where the value has been created over the past 10 years in the digital sector. Of course the Web is absolutely key, but there is a vast part of this value that has not, in some parts of the world including the US, been captured by the creative industries, especially the music industry. In the overall digital economy, you have three functions: access, storage and treatment."

Treatment refers to digital services using, managing and optimizing creative works. Revenue from digital services.

Storage refers to revenue generated from private copy levies.

In 2012, government-appointed society Copie France collected €173.9 million (\$242.7 million; £145.5 million) in private copy levies. More than €43 million (25%) was used, by law, for cultural/social purposes. From the portion that Sacem received from Copie France, Sacem distributed to members about €51.3 million.

In 2012, the US collected in total about €1.5 million (\$2 million; £1.26 million). The UK collected zero; it does not have such levies.

BRIEF BACKGROUND

Copyright laws generally give an exclusive right to copyright owners to prevent other people from copying their work without permission. In some countries, there is an exception that permits copies of certain types of work to be made without permission if they are made by an individual for his or her own personal use (as opposed to commercial use).

To compensate right holders for that private copying, many countries have a private copy levy system in place. That levy is typically an amount paid by manufacturers or importers of certain types of electronic recording equipment and devices or for blank media created for recording, such as blank cassettes, CD-Rs, DVD-Rs and so on. The levy is often a set amount per product or sometimes a percentage of the product price. The cost is generally passed onto the consumer through the price of the product.

Depending on the country, the equipment and devices might include personal computers, tablets, smartphones, external hard drives, flash drives, memory chips in certain devices, MP3 players, satellite radio recorders and so on.

Germany in the 1960s was the first country to create private copy levies.

More than 20 European countries have these laws, but they vary greatly in what kinds of devices and what kind of media is covered. In contrast, the US has a law that applies to very few products.

The European government is expected to approve a Directive very soon, which will essentially outline private copy laws that all European Union countries must pass. It is meant to make the laws more consistent throughout the EU. Music Confidential will report on private copying more in depth at that time. (For those who want more information now, see Music Confidential, [Issue 30, 2010](#), 'Who Pays Fair Private Copy Levies').

CONSIDER THIS

Tronc pulls out his laptop and opens a document. Sacem gathered US and UK consumer electronics figures and then crunched some numbers. The figures are estimates, he cautions. He is presenting a theory.

How much revenue could be generated in the US and in the UK if there were private copy levies on just four kinds of products that are often used for digital entertainment?

First, select the devices. Smartphones, personal computers, tablets and external hard drives are often used to enjoy creative works (movies, TV programs, music, books, etc.). The companies that manufacture these products benefit in part because of this use. These are the four devices are used in the example. Excluded are other types of products that sometimes generate private copy levies, like DVD data, portable media players, video recorders, USB keys, CD data, memory cards, decoders, HiFi devices, memory in GPS or TV sets, videotapes, audiotapes, minidisks and floppy discs. France actually had levies on 17 categories of products in 2012.

Second, come up with the levies. Germany and France have private copy levies at fixed amounts per device. Sacem calculated a percentage-of-price levy from German or French 2012 levies:

- Smartphones 1.5% of retail value (France);
- Personal computers 1.3% of retail value (Germany);
- Tablets 2.1% of retail value (France);
- External hard drives 11.5% of retail value (France).

For the example, Sacem then used an average percentage of 1.7% of retail value as the levy.

Based on 2012 consumer electronics figures (from International Data Corp.):

- The US would have generated \$2.186 billion in private copy revenue;
- The UK would have generated \$442 million in private copy revenue.

Such amounts would be distributed to multiple copyright sectors (not just music), but by comparison in 2012:

- In the US, digital recorded music trade revenue was \$2.598 billion (per IFPI);
- In the UK, digital recorded music trade revenue was \$448 million (per IFPI).

Some countries use a fixed percentage of the levies collected to help support cultural or creative programs.

If a US or a UK law would require a cultural contribution of 25% or 50%, under the example:

- \$546 million or \$1.093 billion would be pumped into the US sector;
- \$111 million or \$221 million could kick-start new development in the UK sector.

Perhaps such a contribution could be used to help develop new creative talent or entrepreneurial small businesses (either creative companies or technology companies that would enhance digital creation or the digital distribution markets).

By my calculation, adding a 1.7% levy would mean, for an iPad mini, paying \$406 instead of \$399 or, for an iPad Air, paying \$507 rather than \$499.

That increase doesn't seem like much. Yet consumer electronics and consumer rights advocates often argue that any private copy levy would increase prices, reduce sales and harm the economy.

Tronc says that he and Britain's PRS for Music chief executive Robert Ashcroft conducted a test.

They shopped for iPhones in London and in Paris.

After gathering the prices, they considered the difference in purchasing power. London has a higher standard of living than Paris. After calculating the prices based on purchasing power parity, they discovered that iPhones in London are about 8% more expensive than iPhones in Paris even though the UK does not have a private copy levy and France has a levy, says Tronc.

In Spain, lobbying groups convinced politicians to kill the private copy law. It was bad for consumers and bad for the economy, they argued. Instead, right holders receive a share of general tax revenues. If the arguments were true, then the prices for the devices should have dropped after the law was abolished.

"Our Spanish colleagues made a study last year," says Tronc. "The prices of the devices went up. People can be very naïve. What is the [consumer electronics] industry? Simply gross and [profit] margin."

The estimated revenue figures for the US and the UK could be viewed as a bit unrealistic. Indeed, it would take quite a lobbying effort to persuade the US and the UK governments to follow European laws and to focus on only those four devices.

"But nobody ever achieved anything big by thinking small," says one executive familiar with the figures.

Whether or not this part of the digital wheel could become a reality for American and for Brits, it certainly reflects one big piece for Sacem and reportedly for many other right holders in about 40 countries worldwide. The UK government is currently leaning toward making private copying permissible without compensation to right holders.

AND THEN THERE WERE THREE

While Tronc speaks passionately about the importance of private copy levies—or what he prefers to call creative digital remuneration—to emerging countries, my eyes keep moving to the third part of his digital wheel.

Access. I bring his focus back to that revenue.

"In France, the operators [ISPs, cable, satellite] are paying remuneration to our members because the operators carry TV channels," he says casually. "We negotiate with them. This year it [is expected to be] more than €20 million."

My eyebrows rise. My mouth drops slightly.

I send a flurry of emails around the world overnight. I have not yet found from my quick research another country where right holders have negotiated a fee from such operators for this additional communication to the public (similar to a public performance right).

In most countries, local TV broadcasters pay a performance (communication to the public) royalty for music in the programs. In France, local broadcasters pay a royalty that covers the rights to reproduce and to communicate. Sacem's position is that the ISPs, cable operators and satellite services that provide those TV channels through their boxes to consumers are again communicating those works to the public. So the society negotiated a royalty equal to a percentage of the operators' revenue.

Note that last summer, Music Confidential covered a position taken by Belgian collective society Sabam's chief executive Christophe Depreter. Sabam is asking a tribunal to decide that under copyright law, the ISPs are communicating copyrighted works to the public and that Sabam members should be compensated for those communications (Music Confidential, Issue 26, 2013).

Sacem negotiated it.

"We all look at the US market, but when we start thinking about the basics of the markets, we realize that in fact there are some dimensions in the way that the markets are organized, the way that regulations work, which [show] that the European model has some advantages," says Tronc. "If a company is benefitting from what you create, it should compensate you. It's the basics of copyright. I'm simply saying that when we talk about the big strategy for the industry at a global level, we should not be over-focused on one part of the market."