
Economic research into losses incurred by European copyright holders due to the U.S. bars, restaurants and retail establishments' exemption

November 2016



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Acronyms

| | |
|-------|--|
| ASCAP | The American Society of Composers, Authors, and Publishers |
| APRA | The Australasian Performing Right Association |
| BMI | Broadcast Music, Inc. |
| CA | California |
| CMOs | Collective Management Organisation |
| ECI | Essec Conseil International |
| FL | Florida |
| GESAC | The European Grouping of Societies of Authors and Composers |
| IL | Illinois |
| IMRO | The Irish Music Rights Organisation |
| LA | Louisiana |
| NAICS | The North American Industry Classification System |
| NY | New York |
| PMP | Performance Management Partners |
| PRO | Performing rights organisation |
| PRS | The UK Performing Right Society |
| SACEM | The French Society of Authors, Composers and Publishers of Music |
| SESAC | The Society of European Stage Authors and Composers |
| SGAE | The Spanish Society of Authors and Publishers |
| TRIPS | The Agreement on Trade-Related Aspects of Intellectual Property Rights |
| WTO | World Trade Organization |
| ZAIS | The Polish Society of Authors and Composers |

1. Executive summary

Objective of the study

The European Grouping of Societies of Authors and Composers (GESAC) commissioned PMP, an independent external consultancy firm, to conduct a study in order to estimate the potential annual revenue losses for European copyright holders (songwriters, lyricists and music publishers) resulting from exemption 110(5)(B) of the U.S. Copyright Act. This provision exempts most bars, restaurants and retail stores from paying US PROs license fees when playing music on their premises through the medium of radio or TV. In 2000, the WTO ruled that this exemption was in breach of the TRIPS agreement and that the US would have to amend their copyright law in order to comply with their international copyright obligations. However, to this day, the United States have not amended the law. This not only severely penalizes right holders, but it also sets an international precedent and is problematic for the credibility of the WTO dispute settlement procedure.

Methodology

For the purpose of this present analysis, PMP developed a robust and reliable methodology which consists of the following:

- Use and analysis of existing statistical data to select a relevant market sizing to estimate revenue losses,
- Conducting a survey on music consumption in establishments in 5 different States: California, New York, Florida, Illinois and Louisiana,
- Analysis of the top 100 songs of each State's top radio to identify both European and American shares.
- Assessment of rights distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV in their establishment (see point 4.1.) in order to not overestimate the final result of total losses.

The experts consulted for the approval of the methodology and study results were renowned academics and collective management organisations from Europe and the United States.

Key observations and main results of this study:

- A closer examination of equipment conditions for large establishments enshrined in the section 110(5)(B), shows that due to technical progress and the width of the exception, it is very easy to find ways to be exempt from paying license fees.
- 25% of the works played in the surveyed States are partially or entirely part of a repertoire held by a European authors' society. 67% are from the repertoire of American author's societies. The remainder is related to other repertoires (Australasian and Canadian authors' societies, as well as non-affiliated authors).
- **The result of the study showed significant revenue losses for European music rights holders due to the U.S. Copyright Act, Section 110(5)(B) of about US\$44m in 2015.**
- **European rights holders were not the only ones harmed by this exception: revenue losses for American rights holders amounted to approximately US\$109m in 2015.**

2. Context

2.1. The TRIPS agreements and the Berne Convention

Signed off in April 1994 by all WTO members, including the United States, the TRIPS Agreement introduced longstanding international intellectual property standards into the multilateral trading system. Among key issues covered by the agreement, common ground-rules were defined to protect intellectual property through adequate standards in all member countries. These rules are based on the Berne Convention for the Protection of Literary and Artistic Works. In particular, exceptions and limitations have to be in line with the so-called "three test step" as defined in Article 13 of the TRIPS Agreement which stipulates the following:

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

2.2. Section 110(5)(B) of the US Copyright Act

The exemption for radio and television music performances is applicable to certain categories of establishments illustrated by the figures below:

This exemption applies only to radio and television performances and must conform to the following conditions:

Conditions to be exempt from paying performance rights for TV and Radio

1 All "small establishments"

-  Restaurants and  bars < **3,750 square feet**
-  Retail stores < **2,000 square feet**

2 For larger establishments: equipment conditions

For Radio



- Less than 6 loudspeakers
- Less than 4 loudspeakers in any one room or adjoining outdoor space
- There is no cover charge

For TV



- Less than 4 TVs
- Less than 1 TV in any one room
- All TVs used has a diagonal screen size smaller than 55 inches
- Audio portions of the audiovisual performance is communicated by means of less than 6 loudspeakers
- Less than 4 loudspeakers in any one room or adjoining outdoor space
- There is no cover charge

- No direct charge is made to see or hear the transmission or retransmission.
- No further transmission is made beyond the establishment.
- The transmission or retransmission is licensed by the copyright owner of the work publicly performed or displayed.

This means that rights holders whose music is publicly performed within these exempted establishments do not receive public performance royalties.

2.3. European Commission complaint to WTO

The aforementioned copyright exemption does not exist in Europe. This means that rights holders, European or non-European, are remunerated when their content is played in bars, restaurants and retail stores in the EU territory, regardless of the distribution channel or location. Due to reciprocal agreements with the US PROs, European societies collect rights from the local establishments where music is performed on behalf of the American rights holders. The collections related to American rights holders are transferred to American societies, which are then distributed to corresponding rights holders. However, due to the exemption of section 110(5)(B) in the US Copyright Act, there is no remuneration for rights holders when their works are played in exempted establishments in the United States.

In 1997, the Irish authors' society IMRO exposed the losses sustained by Irish authors and composers in the United States as a result of this exemption and lodged a complaint under the Trade Barriers Regulation, with the full support of GESAC. The April 1999 European Commission's request for a WTO panel under Article 6 of the DSU and Article 64.1 of the TRIPS Agreement was the direct consequence of this complaint.

In May 2000, the WTO panel concluded in favour of the petition by the European Union and recommended to the Dispute Settlement Body ("DSB") that the US exemption be amended, considering that Section 110(5) *"does not meet the requirements of Article 13 of the TRIPS Agreement and is thus inconsistent with Articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1 of that Agreement"*.

The US did not appeal and on 27 July 2000 the DSB adopted its recommendations and rulings based on the panel's decision. The United States informed the DSB of its intention to implement its recommendations and rulings in connection with this matter.

On 23 July 2001, the EU and USA agreed to look for ways to compensate European right holders for the economic losses due to this exemption until such time as the US Copyright Act was amended. WTO arbitrators determined the amount of the compensation for the losses incurred by EU right holders between 21 December 2001 and 21 December 2004 (US\$ 3.3 million - US\$ 1.1 million per year) and in September 2003, the US Administration transferred this amount for European right holders.

This amount was nowhere near the amount calculated by the Commission (over US\$ 25 million/year) and bore no relation to the conclusions of an economic report commissioned by IMRO (over US\$ 87 million/year). However, it did have a very important symbolic value as clear evidence, acknowledged by the US, of its breach with international agreements.

Despite the WTO panel ruling, section 110 (5) (B) and the recognition by the US themselves that that they do not comply with their international obligations, the US Copyright Act has still not been amended. This longstanding issue severely penalizes European authors as much as it does US ones.

3. Objectives and Methodology

3.1 Objectives

The present report aims to examine the effects of the US Copyright Act section 110(5)(B). More specifically it will analyze the losses incurred by European rights holders as well as US ones. Over 2 million¹ composers, lyricists and music publishers are members of European CMOs (GESAC members) and the 3 US PROs. These authors are all potentially affected by the American exemption, and the aim of this report is to assess the size of the harm. Previous evaluations of the losses using different methodologies, sources, and ways of computation have been made in the context of the WTO ruling (see annex 2). Fifteen years later, a new study was deemed necessary due to the radical changes in technology, the new ways of accessing and performing music, and the fact that data is now more widely available and in larger amounts.

3.2 General approach



1. Market Sizing

- Analysis of the legislation in order to identify which businesses are covered by the exemption.
- Evaluation of the total number of bars, restaurants and retail stores in the United States.
- Sizing of the "exempted establishments" market.



2. Sample constitution

- Preparation of a questionnaire with the aim to carry out a survey across a sample of businesses, sized to ensure appropriate representativeness.
- The questionnaire helps to identify 1) the percentage of businesses that play music in their establishment, and 2) for those businesses, how music is played (different kinds of devices).
- The sample is composed of 250 establishments within five representative States.



3. Survey

Survey conducted by ESSEC Junior Enterprise:

- Participants: 1,250 establishments (250 per State)
- 5 States: New York, California, Illinois, Florida, Louisiana



4. Analysis of European/American share of works

Identification of music played:

- Collecting the top 100 songs played on the top radio station in each selected State.
- Analysis of these lists with the PRS matching tool to identify for each song CMOs (European or American) linked to creators. Consequently, for each song analyzed, the American and/or European shares could be computed

¹ ASCAP: 585,000; BMI: 750,000; SESAC: 30,000; GESAC: over 1,000,000.



5. Computation

Computation of losses:

- Identification of the tariff that the (or each) establishment would have paid, had the exemption not been in place (the minimum tariff of each US PRO was used). Each amount was either validated by a PRO or was public information.
- Deduction of the management fees collected by US PROs from the amount of royalties destined to European societies.
- Deduction of the approximate amount distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV (see point 4.1.)

The methodology of the study was designed to be highly reliable:

- Only authoritative sources were used.
- The representativeness of the sample was guaranteed by state-of-the-art statistical rules.
- Computation methods respected the rules of statistics.

Furthermore, experts involved in this study provided a valuable assistance throughout the assessment process.

3.3 Project participants

Analysis experts

PMP Conseil – Consulting Team

Eric Dupont | Partner
Mathilde Tignon | Manager
Mickael Bokobza | Consultant

ESSEC Conseil International – Survey Team

First and main French junior enterprise specialized in international development consulting.

European Experts

The European Grouping of Societies of Authors and Composers (GESAC), comprises 32 of the largest authors' societies in the European Union, Iceland, Norway and Switzerland. As such, it represents more than 1 million creators and rights holders in the areas of music, audiovisual works, visual arts, and literary and dramatic works.

In particular, **IMRO**, **PRS for Music**, **SACEM**, **SGAE**, and **ZAIS** provided their expertise for this study.

American Experts

Serona Elton - Expert in the music business in the United States

Associate Professor and Chair, Music Media and Industry
Frost School of Music, University of Miami
Member of the Music and Entertainment Industry Educator's Association (MEIEA), the National Academy of Recording Arts and Sciences, Copyright Society of the U.S.A, and the Music Business Association

David Schreiber, PH.D. - Expert in the music business in the United States

Assistant Professor and Chair, Entertainment Industry Studies
Curb College of Entertainment & Music Business, Belmont University
Member of the Academy of Management (AOM), European Group of Organization Studies (EGOS) and the Music and Entertainment Industry Educator's Association (MEIEA)

4. Study results

4.1 Assessment of businesses covered by the exemption

The purpose of this stage was to determine how many businesses are exempt from paying license fees when music is played through radio or TV devices in their establishment.

According to the law:

The following are not infringements of copyright:

- (i) *Establishments other than a food service or drinking establishment [...] in which the communication occurs has 2,000 or more gross square feet of space or more.*
- (ii) *Food service or drinking establishment [...] in which the communication occurs has 3,750 gross square feet of space or more.*

The law adds additional exemption conditions which enable establishments that do not fall under the abovementioned rules to argue that they do fall under the exemption:

(I) if the performance is by audio means only:

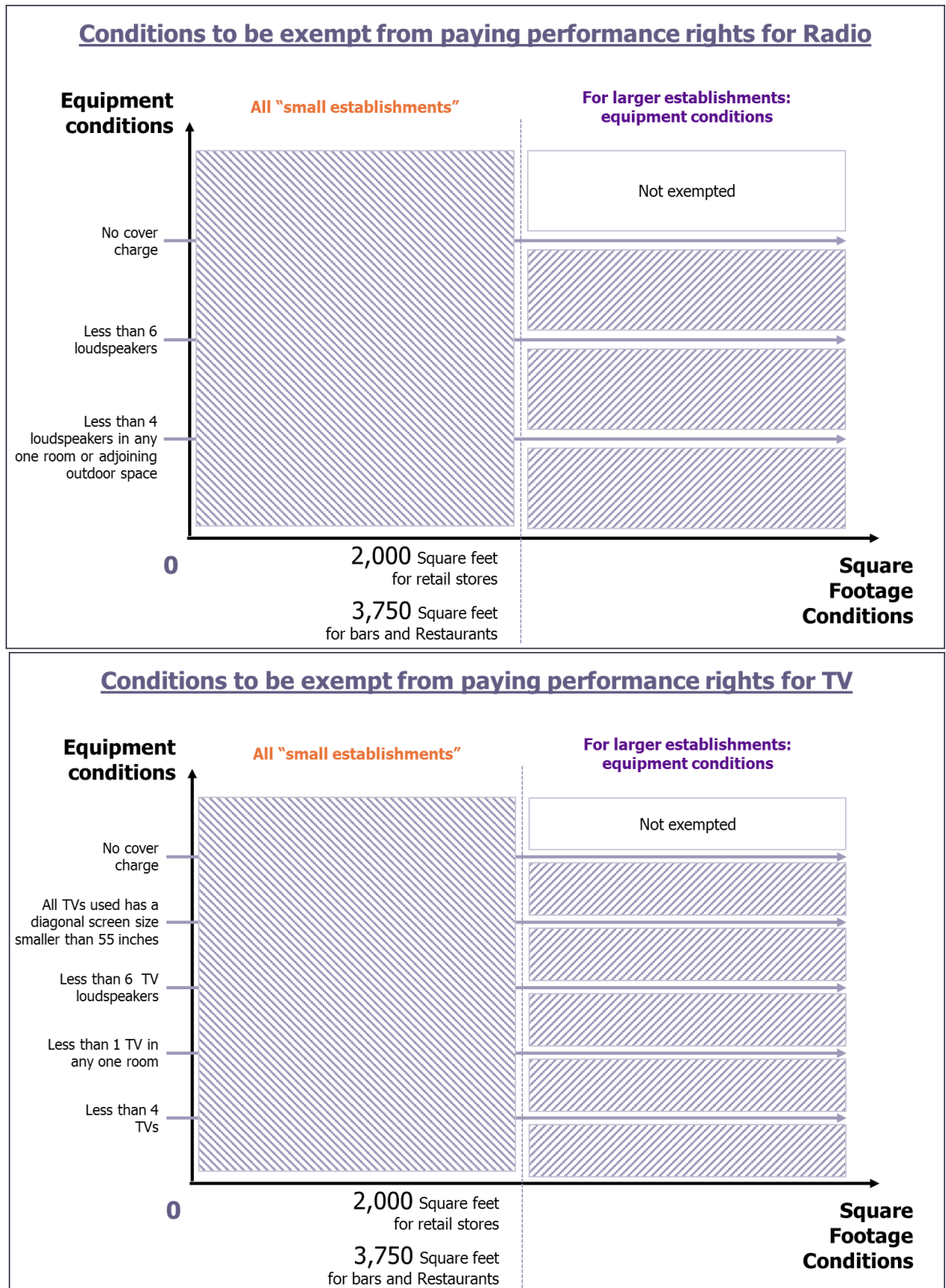
- *The performance is communicated by means of a total of not more than 6 loudspeakers,*
- *of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;*

or

(II) if the performance or display is by audiovisual means:

- *Any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices,*
- *of which not more than 1 audiovisual device is located in any 1 room,*
- *and no such audiovisual device has a diagonal screen size greater than 55 inches,*
- *and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers,*
- *of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.*

The exemption is very broad, and only very few bars, restaurants or retail stores have to pay license fees for playing music via radio or TV as illustrated throughout the figures below:



Exemption analysis

These illustrations clarify the kinds of bars, restaurants or retail stores that are not exempted:

1. The left part of the chart shows that all establishments with a square footage smaller than the 2,000 and 3,750 square feet limit are exempted.
2. The right part of the chart shows that all large establishments can be exempted under certain conditions.

Highlighting these conditions allows the assumption that it is easy to find ways to be exempt.

Some of the ways conditions can be met to avoid paying royalties:

- Position loudspeakers in such a way that less than 6 are required to play music performances: the volume capacity can be raised without increasing the number of speakers.
- Position fewer than 4 TVs in the establishment or less than 1 TV in any one room.
- Position many TVs with diagonal screen sizes below 55 inches.

Prior studies and data analysis

Beside this analysis, exhaustive research on prior studies that have been made on the subject, in particular on the assessment of number of establishments covered by the exemption, was conducted, as well as further research on existing publications and interviews of experts.

The most recent data was from 1999² and was therefore deemed outdated in light of the rapidly evolving technological landscape.

Conclusion

In conclusion, regarding all these elements, one can safely assume that almost all establishments can be exempted.

Based on data from "The US Census Bureau"³, 2,070,498 establishments⁴ were included in the study:

| | Retail stores | Bars | Restaurants | Total |
|--------------------------|---------------|--------|-------------|------------------|
| Number of establishments | 1,497,799 | 40,989 | 531,710 | 2,070,498 |

² UNITED STATES – SECTION 110(5) of the U.S. Copyright Act – Recourse to arbitration under article 25 of the DSU which stated that the percentage of exempted establishments was 58,5%

³ The principal agency for the U.S. Federal statistics, responsible for producing data about the US economy.

⁴ See appendix: detailed market sizing

However, taking all establishments into account may lead to an overestimated amount of losses as a few of establishments are paying royalties for playing music through radio or TV.

This is why a computation in two times is proposed:

1. In a first time [see point 4.6.1.], the computation includes all establishments in the United States, (exempted and non-exempted establishments).
2. In a second time [see point 4.6.2.], an adjustment is made removing from the computed losses the approximate amount distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV.

Establishments taken into account are coded according to the NAICS codes listed below

Retail stores:

- 441 Motor vehicle and parts dealers
- 442 Furniture and home furnishings stores
- 443 Electronics and appliance stores
- 444 Building material and garden equipment and supplies dealers
- 445 Food and beverage stores
- 446 Health and personal care stores
- 447 Gasoline stations
- 448 Clothing and clothing accessories stores
- 451 Sporting goods, hobby, musical instrument, and book stores
- 452 General merchandise stores
- 453 Miscellaneous store retailers
- 454 Non-store retailers
- 811 Repair and maintenance
- 812 Personal and laundry services

Drinking places:

- 7224 Drinking places (alcoholic beverages)

Eating places:

- 7225 Restaurants and other eating places

4.2 Sample constitution

Five States were chosen based on their geographical location and population size.

| State | Number of bars restaurants and retail stores | Location | Population (million) | Largest City |
|-----------------|--|--------------------|----------------------|---------------|
| New York (NY) | 160,444 | East coast | 19.75 | New York City |
| California (CA) | 227,042 | West coast | 38.8 | Los Angeles |
| Illinois (IL) | 81,927 | Midwest / North | 12.8 | Chicago |
| Florida (FL) | 135,134 | East coast / South | 19.9 | Miami |
| Louisiana (LA) | 29,419 | South | 4.6 | New Orleans |

The abovementioned States were chosen to create a pool of diversity in order to ensure sufficient representation in terms of culture, music genre preferences and population demographics. Moreover, the selected States represent one quarter of the entire U.S. population, an order of magnitude deemed representative of the country's preferences as a whole.

Among the five States, the sample size was defined by the three following factors:

1. [P] = 20%
Estimated percentage of music under European copyrights: 20% -value estimated by an internal analysis of the TOP 50 songs of a Californian radio station
2. [M] = 5%
Margin of error: [-5%; 5%] - interval indicating the acceptable sampling error range
3. [C] = 1.96
Confidence level: 95%, corresponding to 1.96 in the Standard Normal Distribution. - level of confidence allocated to each answer obtained

The formula below calculates the sample size for each State:

| |
|---|
| <p style="text-align: center;">Sample size = $C^2 \times P \times (1-P) / M^2$</p> <p style="text-align: center;">$(1.96^2 \times 20\% \times (1-20\%) / (5\%^2) = 245.86$</p> |
|---|

Hence, a sample of 250 establishments per State was obtained for a total of 1,250 establishments to include in the analysis.

For each State, 250 interviewees were selected randomly among a large database provided by InfoUSA , a subsidiary of the Infogroup.

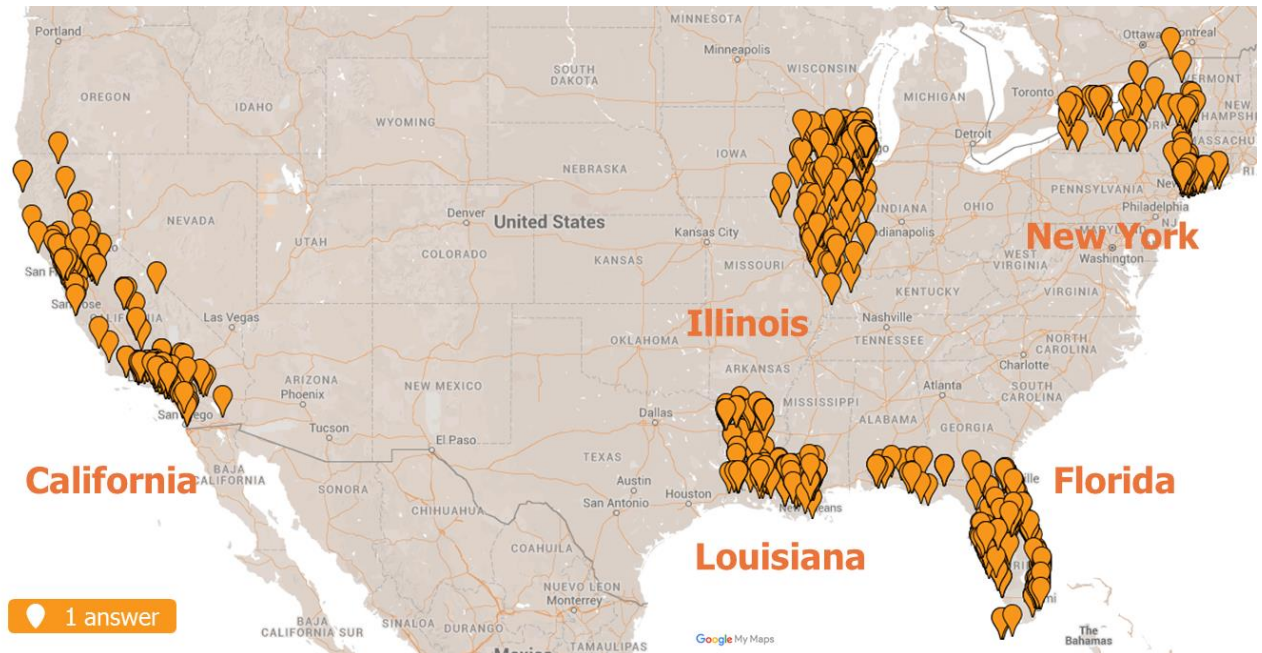
4.3 Survey

Below shows the questionnaire used for the telephone survey:

Questionnaire

1. Do you play music in your establishment? *YES / NO – [If NO, end the questionnaire]*
2. If YES, which source do you use to play music?
 - Radio – Which radio station (main ones)
 - TV – Which TV channel (main ones)
 - Streaming?
 - CD?
 - MP3
 - Jukebox?
 - Background supplier?
 - Live music?

In the map below⁵, each orange point represents an establishment that answered the questionnaire. The geographic diversity of the randomly selected sample for this research is clearly illustrated.



⁵ Google My maps

4.4 Data analysis

According to the survey, 48.3% of interviewees played music in their establishment. More bars and restaurants were found to play music than retail stores. The large scope of retail stores (14 NAICS codes – see page 14) interviewed could in part explain the low rate of those playing music.

The methodology used enabled a State by State focus in order to have an in-depth look at the local specificities, before final aggregation.

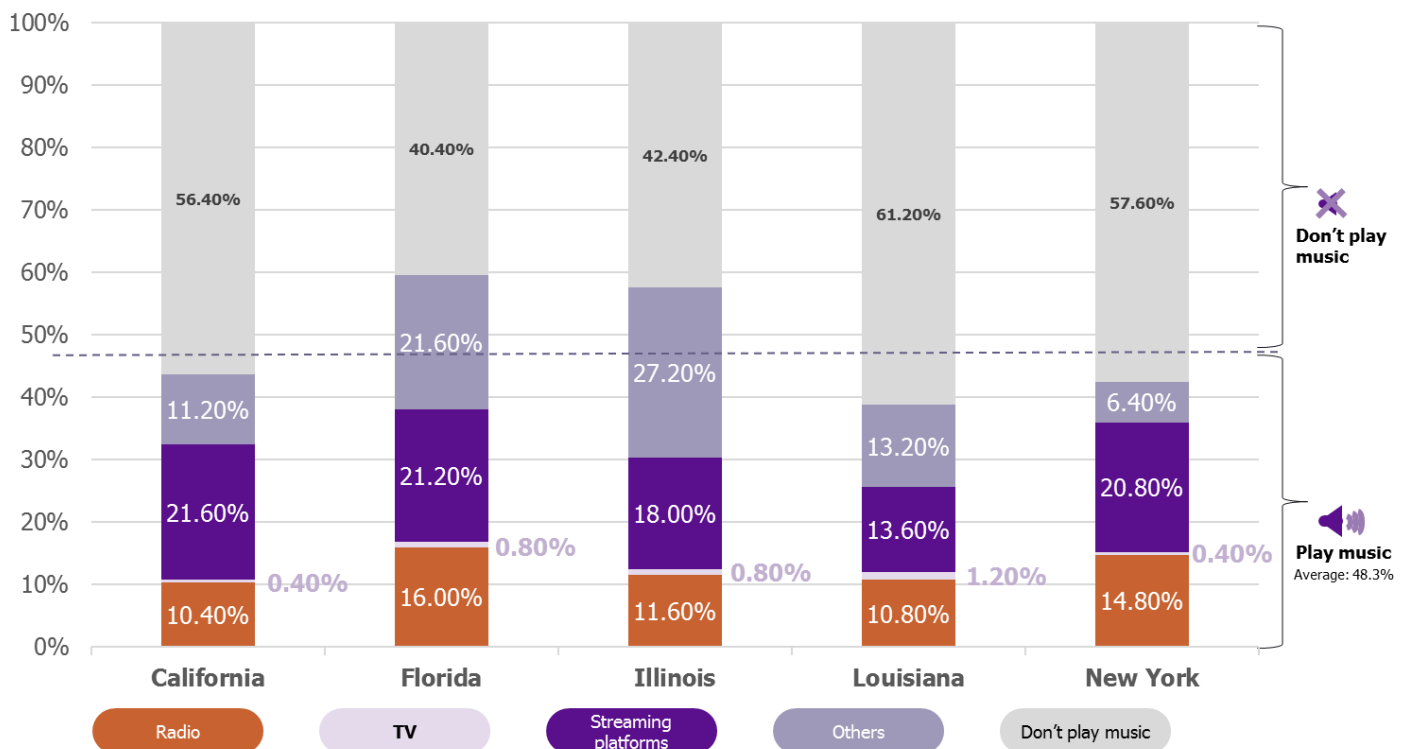
The following data presents the survey results:

| | California | Florida | Illinois | Louisiana | New York | Weighted average ⁽²⁾⁽³⁾ |
|---|------------|---------|----------|-----------|----------|------------------------------------|
| Bars, restaurants and retail stores | 227,042 | 135,134 | 81,927 | 29,419 | 160,444 | |
| Not play music | 56.40% | 40.40% | 42.40% | 61.20% | 57.60% | 51.71% |
| Play music through radio | 10.40% | 16.00% | 11.60% | 10.80% | 14.80% | 12.88% |
| Play music through TV | 0.40% | 0.80% | 0.80% | 1.20% | 0.40% | 0.57% |
| Play music through streaming | 21.60% | 21.20% | 18.00% | 13.60% | 20.80% | 20.48% |
| Play music through other devices ⁽¹⁾ | 11.20% | 21.60% | 27.20% | 13.20% | 6.40% | 14.36% |
| Total | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% |

(1) Other devices: jukebox, live music, personal devices, background suppliers

(2) Average weighted according to the number of establishments per State.

(3) Establishments playing music all means included: 48.3%.



KEY RESULTS:

- Almost the half of establishments that responded to the questionnaire said they played music.
 - Among exempted means (radio and TV): Radio was the most used means of playing music.
 - A non-significant number of respondents used TV as a mean to play music in their establishment.
 - All means included Streaming platforms were said to be the most used.
-

Important note

The methodology used was cautious, and the results of this study should be read as an absolute minimum in terms of percentage of establishments that play music.

Concerning the questionnaire, a lack of interest and time to respond can probably account for the low response rate. In addition, among those who responded, the low figure of establishments that said they played music could be explained by a concern that responses may result in royalty collections.

In the end, 3,200 establishments were contacted for this questionnaire in order to have 1,250 answers. This means a 39% response rate. Moreover, no on-site sampling was included in the research.

4.5 American and European share identification

The purpose of this phase was to identify the American and European shares in music played in the 5 States included in the survey.

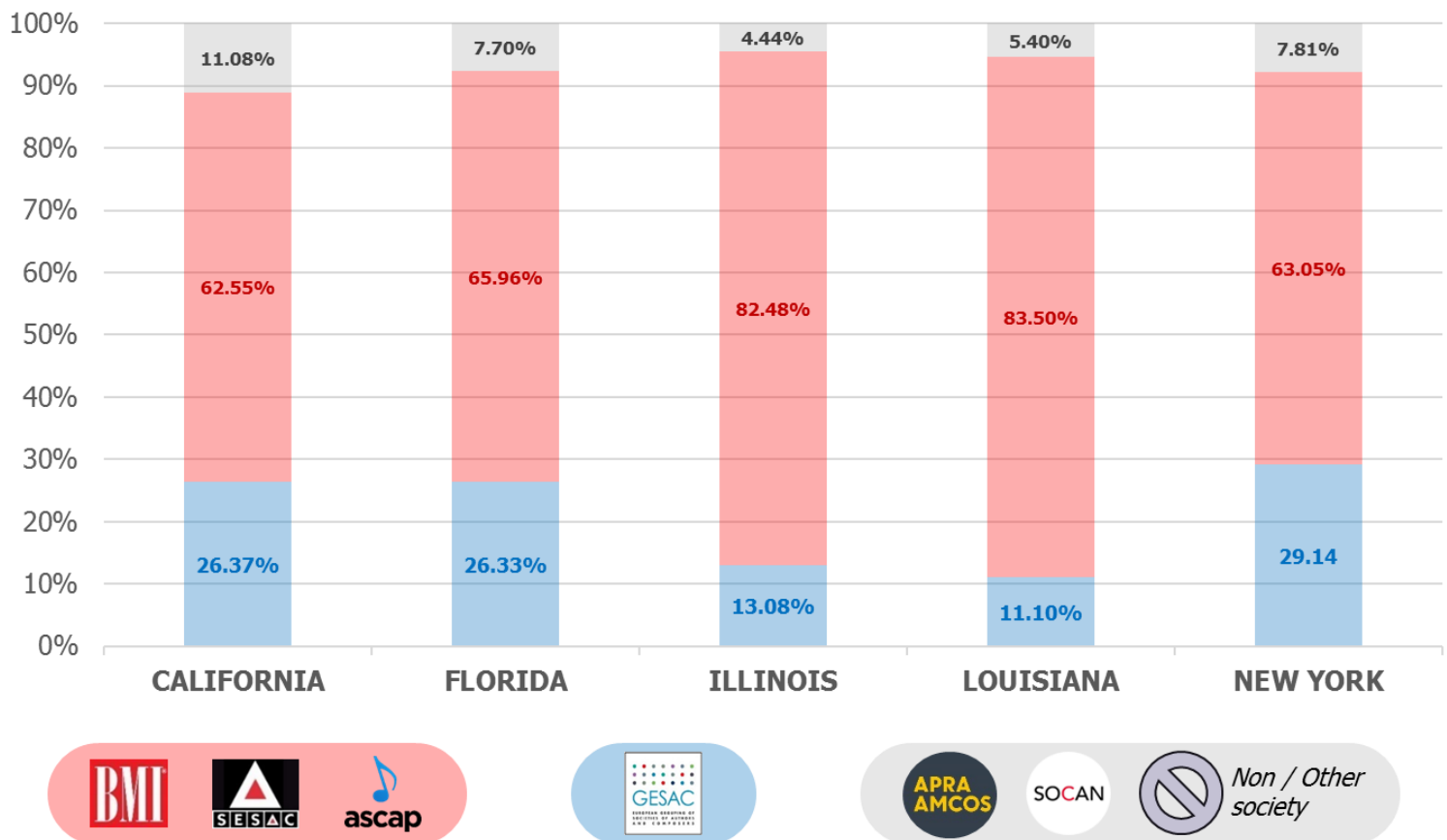
Radio: the 2015 Top 100 songs played on the most popular radio stations of each State that were identified by Nielsen Music were analyzed using the PRS matching tool

-An extract of these 5 lists of 100 songs provided by Nielsen Music is included in Appendix 3 of this report-

TV: as the percentage of TV used to play music is very low, it was assumed that the same top songs played on the radio are the ones that are broadcast on TV.

Note: Many European rights are collected in the United States by local sub-publishers. As some of this income flows back to the original European publisher, it was decided to consider US sub-publisher shares as European shares, since the original publisher was of European origin.

Results per State:



Analysis results taking into account the number of establishments of each State:

- Average European share weighted according to the number of establishments ⁽¹⁾ per State: 25%

$$\begin{aligned}
 &= \frac{(26.37\% * \text{nb estab. in CL}) + (26.33\% * \text{nb estab. in FL}) + (13.08\% * \text{nb estab. in IL}) + (11.10\% * \text{nb estab. in LO}) + (29.14\% * \text{nb estab. in NY})}{\text{Sum of establishments in CL, FL, IL, LO and NY}} \\
 &= \frac{(26.37\% * 227,042) + (26.33\% * 135,134) + (13.08\% * 81,927) + (11.10\% * 29,419) + (29.14\% * 160,444)}{633,966} \\
 &= 25\%
 \end{aligned}$$

- Average American share weighted according to the number of establishments ⁽¹⁾ per State: 67%

$$\begin{aligned}
 &= \frac{(62.55\% * \text{nb estab. in CL}) + (65.96\% * \text{nb estab. in FL}) + (82.48\% * \text{nb estab. in IL}) + (83.50\% * \text{nb estab. in LO}) + (63.05\% * \text{nb estab. in NY})}{\text{Sum of estab. in CL, FL, IL, LO and NY}} \\
 &= \frac{(62.55\% * 227,042) + (65.96\% * 135,134) + (82.48\% * 81,927) + (83.50\% * 29,419) + (63.05\% * 160,444)}{633,966} \\
 &= 67\%
 \end{aligned}$$

(1): see point 4.2 sample constitution.

4.6 Results: detailed computation

The annual revenue losses are computed in two times:

1. In a first time [point 4.6.1.], the computation includes all establishments in the United States, (exempted and non-exempted establishments).
2. In a second time [see point 4.6.2.], an adjustment is made removing from the computed losses the approximate amount distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV.

4.6.1 Part 1: First computation of the amount of losses

To calculate the annual revenue losses, this following formula was used:

| | | |
|---|--|--|
| | | Step 1 |
| 1 | (%) Music played through radio or TV | |
| | x | |
| 2 | (%) European or American share | |
| | x | |
| 3 | (%) Weighting coefficient | $\frac{\text{Drinking places, eating establishments and retail stores in the state selected}}{\text{Drinking places, eating establishments and retail stores in the 5 states selected}}$ |
| | x | |
| | | Step 2 |
| 4 | Total number of establishments in the USA (2,070,498) considering all establishment are exempted | |
| | x | |
| 5 | (\$) Royalty fees – Management fees (\$640.5) | |
| | = | |
| | (\$) Result | |

1. EU losses (exempted and non-exempted establishments are taken into account)

Step 1

| | California | Florida | Illinois | Louisiana | New York |
|---|------------|---------|----------|-----------|----------|
| 1 % of music played through radio & TV | 10.80% | 16.80% | 12.40% | 12.00% | 15.20% |
| 2 European share | 26.37% | 26.33% | 13.08% | 11.10% | 29.14% |
| % of European music played music through radio & TV | 2.85% | 4.42% | 1.62% | 1.33% | 4.43% |

| | | | |
|--|---|-------------|------------|
| 3 Drinking places, eating establishments and retail stores in each state Drinking places, eating establishments and retail stores in these 5 states | $\left(\begin{array}{c} 2.85\% \\ \times \\ 227,042 \end{array} \right) + \left(\begin{array}{c} 4.42\% \\ \times \\ 135,134 \end{array} \right) + \left(\begin{array}{c} 1.62\% \\ \times \\ 81,927 \end{array} \right) + \left(\begin{array}{c} 1.33\% \\ \times \\ 29,419 \end{array} \right) + \left(\begin{array}{c} 4.43\% \\ \times \\ 160,444 \end{array} \right)$ | $= 633,966$ | $= 3.36\%$ |
|--|---|-------------|------------|

Step 2

| | | |
|---|---|---------------|
| The number of businesses-weighted average of European music played through radio & TV | | 3.36% |
| 4 Total number of establishments | x | 2,070,498 |
| 5 Royalty fees* – Management fees | x | \$ 640.5 |
| Result | = | \$ 44,498,542 |

*: sum of ASCAP, BMI and SESAC minimum tariff

2. US losses (exempted and non-exempted establishments are taken into account)

Step 1

| | California | Florida | Illinois | Louisiana | New York |
|--|------------|---------|----------|-----------|----------|
| 1 % of music played through radio & TV | 10.80% | 16.80% | 12.40% | 12.00% | 15.20% |
| 2 American share | 62.55% | 65.96% | 82.48% | 83.50% | 63.05% |
| % of American music played music through radio & TV | 6.76% | 11.08% | 1.23% | 10.02% | 9.58% |
| 3 Drinking places, eating establishments and retail stores in each state | 227,042 | 135,134 | 81,927 | 29,419 | 160,444 |
| Drinking places, eating establishments and retail stores in these 5 states | 633,966 | | | | |
| | = 8.99% | | | | |

Step 2

| | | |
|---|---|----------------|
| The number of businesses-weighted average of American music played through radio & TV | | 8.99% |
| 4 Total number of establishments | x | 2,070,498 |
| 5 Royalty fees* – Management fees | x | \$ 640.5 |
| Result | = | \$ 119,265,327 |

*: sum of ASCAP, BMI and SESAC minimum tariff

4.6.2 Part 2: Adjustment of losses computation

This section aims at estimating the amount distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV (see point 4.1.) in order to adjust the computation of section 4.6.1.

Steps in the methodology to estimate this amount are the following:

=====

1. According to the ASCAP 2015 annual report, "General & background" collection represents 18% of the total collection.

"General & background" includes collection within bars, restaurants and retail stores as well as collection within hotels, camping, disco, etc. More details for this category are not communicated through the annual report.

=====

2. However, for a given author society, member of the GESAC, collection within bars restaurants and retail stores represents 37% of all General rights collected.

=====

3. Among all bars, restaurants and retail stores, the percentage of those playing music through radio or TV can be estimated thanks to the survey results. (see point 4.4; in average 13.45% of establishments use radio or TV to play music).

=====

4. The amount distributed by US PROs to European authors' societies and American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV can be approximated: $37\% \times 18\% \times 13\% = 0.9\%$

=====

Recap of the approximation:

| | | |
|------------------|---|-------------|
| A | Percentage of ASCAP "General & background" collection within ASCAP total collection (<i>source: ASCAP annual report</i>) | 37% |
| B | Percentage for one given society of collection within bars, restaurants and retail stores among general collection (<i>source: member of Gesac</i>) | 18% |
| C | Percentage of bars, restaurants and retail stores playing music through radio or TV platforms (<i>source: survey</i>) | 13% |
| A x B x C | US PROs collection within bars restaurants and retail stores which are non-exempted and pay royalties to play music through radio or TV | 0.9% |

Consequently, we consider that 0,9% of the amount distributed by US PROs to European authors' societies and American creators is under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV.

Final result: European losses

European main authors' societies received from US PROs⁶ US\$60m in total for 2015.

The approximate amount distributed by US PROs to European authors' societies under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV is $\text{US\$60m} \times 0.9\% = \text{US\$537k}$

Final result: European losses adjusted: $\text{US\$44,499k} - \text{US\$537k} = \text{US\$43,961k}$.

=====

Final result: US losses

Amounts of domestic distribution for authors and creators affiliate to US PROs are:

- ASCAP domestic distribution: US\$573m. Source: ASCAP 2015 annual report
- BMI: Only the total distribution amount is available in the BMI 2015 annual report: US\$877m
 - In the ASCAP report, the domestic distribution represents 66% of the total distribution. This ratio can be used to approximate the BMI domestic distribution: $\text{US\$877m} \times 66\% = \text{US\$580m}$
- SESAC: No available information

Total: US\$1,153m

The approximate amount distributed by US PROs to American creators under their collection within non-exempted bars, restaurants and retail stores which must pay royalties for playing music through radio or TV is $\text{US\$1,153m} \times 0.9\% = \text{US\$10,328k}$

Final result: US losses adjusted: $\text{US\$119,265k} - \text{US\$10,328k} = \text{US\$108,937k}$

As detailed throughout this report, exemptions for radio and television performances described in section 110(5)(B) of the U.S. Copyright Act led to substantial revenue losses for both American and European music right holders.

Writers and Publishers' interests are adversely affected by this exemption. The yearly music performance licensing revenues that would have been collected, had there been no exemption amounts to **US\$44m for European creators and US\$109m for American creators**.

This means a total yearly loss of about US\$153m including European authors' societies and American creators.

⁶ Information communicated by main authors societies in Europe

4.7 Sensivity tests

These sensitivity tests aim to prove the overall stability of results computed by testing hypotheses took into account in the computation.

Several assumptions have been taken:

- A. Percentage of bars, restaurants and retail stores playing music in their establishment
- B. Percentage of music played through radio or TV in bars, restaurants and retail stores
- C. Share of European/American rights holders in the music played.

These tests below reveal that even if an assumption has been overestimated, underestimated, or changes from year to year, the final result remains stable and reliable over time.

-
- What would be the losses if the radio use decreases by 1 percentage point?
 - The final result decreases by 3.6%.
 - What would be the losses if 100% of bars play music in their establishments:
 - The final result increases by 4.5%.
 - What would be the losses if the European share of music increases by 1 percentage point, [Hit songs rights holders are variable from one year to the next]
 - The final result increases by 4.0%.
-

These sensitivity tests clearly prove the reliability of the final results over time: key parameters change do not significantly alter the final losses.

5. Sources

Sources used for the study:

Market Sizing



Number of bars, restaurants and retail stores in the United States

Top songs



Top 100 songs (ranked by aggregate spins) broadcast on top audience station (excluding non-music stations) in 2015 in the selected US States



Top 75 digital songs broadcast in 2015 in the United States of America

Matching tool



Copyright Identification of the most played songs

PRO annual report and website



License tariffs to play music⁷ and management fees on collection⁸

⁷ Minimum license tariff took into account from each US PRO form ASCAP: US\$237; BMI: US\$363; SESAC: US\$269

⁸ ASCAP: 36.1% (source: ASCAP); BMI : 19% (source: CISAC) ; SESAC : 27.1% (because no data was available for SESAC, the average between BMI and ASCAP figures has been taken into account).

6. Appendix

6.1 Appendix 1 – Extract of the Copyright Law of the United States of America.

<http://www.copyright.gov/title17/92chap1.pdf>; July 31, 2001.

Section 110 · Limitations on exclusive rights: Exemption of certain performances and displays:

Notwithstanding the provisions of section 106, **the following are not infringements of copyright:**

[...]

(5)(A) *except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless -*

(i) a direct charge is made to see or hear the transmission; or

(ii) the transmission thus received is further transmitted to the public;

(B) *communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if-*

(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2,000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and-

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and-

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(iii) no direct charge is made to see or hear the transmission or retransmission;

(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

6.2 Appendix 2 – Previous estimations of the losses

Press release

ip/97/549 - Brussels, 23 June 1997.

COMMISSION CHALLENGES US EXCEPTIONS TO AUTHORS EXCLUSIVE RIGHTS

IMRO estimates losses caused to its members at ECU 1.21 million per annum (approximately USD 1.4 million). Furthermore, as other EU Member States' musical works are also available on US markets, the alleged US practices have an effect on all EU authors and not only on the complainant. Losses of the whole of the Community industry are estimated at **ECU 27 million ECU per annum**.

COMMISSION DECISION of 11 December 1998 under the provisions of Council Regulation (EC) No 3286/94 concerning section 110(5) of the Copyright Act of the United States of America (notified under document number C(1998) 4033) (98/731/EC)

Estimations made by the Commission reveal that the direct loss of licensing income to Community right holders for performing rights in music (i.e. composers and arrangers of music, lyricists and music publishers) resulting from the application of Section 110(5) amounts **to between USD 3.8 and 6.8 million a year**.

While the Commission was investigating the home-style exemption, US Congress was examining a bill amending Section 110(5) of the US Copyright Act in view of widening its scope. On 6 and 7 October 1998, the bill, entitled 'Fairness in Music Licensing Act', was adopted by, respectively, the US House of Representatives and the US Senate. The bill consists of adding a new subparagraph B to Section 110(5) of the US Copyright Act which provides for a further exception to the rightholders' exclusive right to authorise public communication of their works, while the home-style exemption remains unchanged under subparagraph A. The new subparagraph B now applies to a much wider range of beneficiaries, namely eating, drinking and other commercial establishments provided that they fulfil a certain number of conditions, mainly with regard to the surface of the establishment and the number of loudspeakers used. It covers the use of any type of audiovisual device, and is thus not limited to the use of a 'home-style' apparatus only. The bill was signed by the President of the United States on 27 October 1998, to enter into force 90 days after enactment. Since this means that, from a legal point of view, the bill is now part of the US legal order, although its entry into effect has been delayed for 90 days, it can already be the object of a dispute settlement procedure under WTO.

World Trade Organization – WT/DS160/R

15 June 2000 - (00-2284)

United States Section 110 (5) of the US Copyright Act – Report of the panel

The European Communities estimates that the annual loss to all right holders amounts to **US\$53.65 million**.

The EC calculation takes as the starting-point the number of establishments that may qualify for the exception.

Second, the European Communities makes a reduction from that number using the US hypotheses that 30.5 per cent of all eating and drinking establishments with a surface area below 3,750 square feet actually play music from the radio.

Third, it applies to the remaining establishments the appropriate licensing fees selected from the licensing schedules of ASCAP and BMI.

The United States estimates that the maximum annual loss to EC right holders of distributions from the largest US collecting society, ASCAP, as a result of the Section 110(5) exemption, is in the range of **US\$294,113 to US\$586,332**. Applying the same analysis, it estimates that the loss from the second largest society, BMI, is **US\$122,000**.

In its calculation of ASCAP's distributions, the United States takes as a starting-point the total royalties paid to EC right holders by ASCAP.

Second, it reduces the amount attributable to general licensing (i.e. licensing of commercial background music services, and a wide variety of licensees, including conventions and sports arenas, as well as restaurants, bars and retail establishments).

Third, it makes a deduction to account for licensing revenue from general licensees that do not meet the statutory definition of an "establishment".

Fourth, it deducts from the general licensing revenue the portion that is due to music from sources other than radio or television (e.g., tapes, CDs, commercial background music services, jukeboxes, live performances); and

fifth, it reduces this amount to account for licensing revenue from general licensing of eating, drinking or retail establishments which play the radio but do not meet the size and equipment limitations of subparagraph (B) and thus do not qualify for the business exemption.

The EC calculation covers all right holders, while the US calculation covers only the EC right holders' share.

EC arguments that, in respect of all conditions of Article 13, the effect on all right holders from all WTO Members must be taken into account. For the European Communities, the specific impact on EC right holders is not at issue at this stage of the dispute settlement process, but could become relevant only in the context of Article 22 of the DSU concerning compensation or the suspension of concessions or other obligations equivalent to nullification or impairment suffered. The United States has limited its estimations of the economic impact of subparagraph (B) to the actual losses caused by it to the EC right holders.

The United States estimates that this share is between 5 and 13.7 per cent of ASCAP's distributions of domestic income, and 8.15 per cent of the BMI's distributions.

Neither EC or US calculation takes into account the distributions of the third US CMO, SESAC, or music played on the television. The calculations do not attempt to estimate the losses from establishments above the size limits of subparagraph (B) of Section 110(5), which however comply

with the respective equipment limitations. It appears that neither party assumes that these factors would essentially change the outcome of their estimations.

Market share of music of EC right holders.

The European Communities submits that at least 25 per cent of all music played in the United States belongs to EC copyright owners. This figure is based on an industry estimate according to which the United Kingdom performing artists had a 23 per cent share of the US record sales in 1988. The European Communities appears to imply that this figure concerning United Kingdom performing artists would be indicative of the share due to EC composers and other copyright holders of the royalties collected for the amplification of music transmissions. The European Communities adds that another way to estimate EC authors' market share is to look at the royalty distributions by the US CMOs. The European Communities gives a figure, provided by ASCAP for 1998, indicating what percentage of its total distributions were paid to EC right holders; this figure is not reproduced here, given that the figure was given to the European Communities in confidence.

The United States disagrees with the EC's implication that 25 per cent of royalties collected in the United States are due to EC right holders. According to the United States, a 1998 internal EC analysis of the economic effect of the home-style exemption on EC right holders estimated that just 6.2 per cent of ASCAP revenues were distributed to all foreign CMOs, and that just 5.6 per cent of BMI revenues were due to all foreign CMOs. Obviously, the percentage payable to the EC collecting societies would be significantly less than these figures for total payments to all foreign CMOs.

The panel took note of these estimations, which are illustrative of the market conditions. However, the panel was of the opinion that its assessment of whether the prejudice, caused by the exemptions contained in Section 110(5), to the legitimate interests of the right holder is of an unreasonable level was not limited to the right holders of the European Communities.

Submission to the EU Commission on behalf of the IMRO - August 2001
Dr Andrew Burke (University of Edinburgh)
Chris Montgomery MBA (Vice-President, MP3.Com)

Estimated total potential loss of EU music composer royalty revenue in the US retail related sector affected by section 110(5) of the US Copyright Act (as Amended): **US\$87,009,461**

The actual loss is this amount less any revenue collected on behalf of EU composers in affected market segments by ASCAP, BMI and SESAC.

- The report does not investigate the loss of revenue to EU owned music publishing companies (particularly the major multinationals) which are likely to be substantially more than the estimate above. For example, over the last decade European Union record companies have generally accounted for over 50% of the US album market (source: BPI). European market share of US music publishing revenues in affected sectors would be expected to be of a similar magnitude. The calculations in this report are based on a market share of just 10%.
- The percentage of retail stores that are unlicensed is unknown due to the fact that ASCAP, BMI and SESAC do not make the data available. Industry experts in the IMRO believe this figure to be very low. The EU Commission itself previously accused these organisations of "abandoning" music licensing in retail related market segments. Andrew Burke used a weighting of 1 for this component of the formula. Therefore, its estimate includes whatever revenues ASCAP, BMI and SESAC are actually collecting in these sectors. In this sense it is a gross calculation that needs to net this revenue out. On the basis of EU industry opinion he believes that this reduction in the estimate will be relatively minor.

**World Trade Organization – WT/DS160/ARB25/1
9 November 2001
(01-5417)**

United States Section 110 (5) of the US Copyright Act -Recourse to arbitration under Article 25 of the DSU

The arbitrators recall that, during the proceedings before the Panel, each of the parties suggested a different approach to the calculation of the level of EC benefits nullified or impaired as a result of the operation of Section 110(5)(B). One, referred to as the "bottom-up" approach, was advocated by the European Communities. The other one, called the "top-down" approach, was supported by the United States. The Panel did not take position on which one was the most appropriate to determine the level of nullification or impairment of EC benefits. Before the Arbitrators, the parties elaborated on their respective approaches, which are briefly summarized below.

Under the "bottom-up" approach, the European Communities takes as its starting-point the number of establishments that may qualify for the exemption. Second, the European Communities makes a reduction from that number using the US hypothesis that xx% of all eating and drinking establishments with a surface area below 3,750 square feet actually play music from the radio. Third, it applies to the remaining establishments the appropriate licensing fees selected from the licensing schedules of ASCAP and BMI. The European Communities reaches a level of nullification or impairment of benefits of **US\$25,486,974**.

Under the "top-down" approach, the United States takes as its starting-point the three-year average (1996-1998) of the total royalties paid to EC right holders by ASCAP and the total paid by BMI to EC right holders in 1996. Thereafter, it proceeds through successive deductions. It identifies the amount attributable to general licensing. Then it makes a deduction to account for licensing revenue from general licensees that do not meet the statutory definition of an "establishment". Thereafter, it deducts from the licensing revenue the portion that is due to music from sources other than radio and television. Finally, it reduces this amount to account for licensing revenue of eating, drinking and retail establishments which play the radio but do not meet the size and equipment limitations of Section 110(5)(B) and thus do not qualify for that exemption. The United States reaches a level of nullification or impairment of benefits of **US\$446,000 to US\$733,000**.

The Arbitrators were not bound to choose between the EC or the US methodology, but could develop their own methodology and make their own estimates, on the basis of all arguments and evidence submitted by the parties. Therefore, while using essentially the US methodology, they applied some elements of the EC methodology and estimates in our calculations and made assessments of their own.

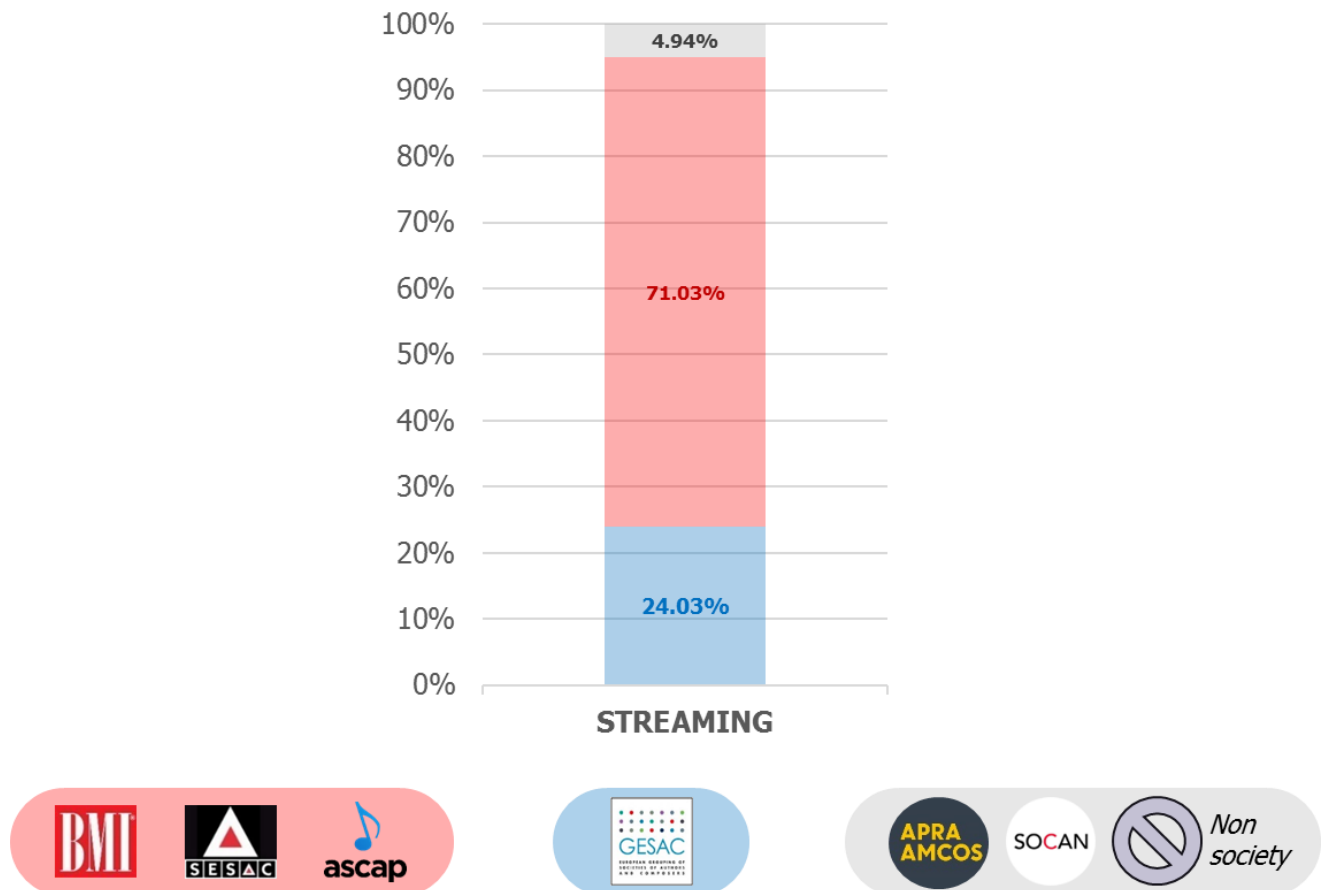
The Arbitrators determined that the level of EC benefits which are being nullified or impaired as a result of the operation of Section 110(5)(B) amounts to **1,219,900 per year**.

6.3 Appendix 3 – Streaming market

The analysis is extended to the streaming market in order to measure its significance in categories of establishments researched.

The Top 75 “streaming songs” for 2015 in the USA provided by Billboard was used. The list is detailed in the appendix 5 of this report.

Share of European, American and other repertoire in the Top 75 of streamed songs.



The list of songs showed an average of

- 24.03% of European shares
- 71.03% of American shares

1. A. Potential streaming revenue for European authors' societies (collection in all bars restaurants and retail stores is taken into account.)

Step 1

| | California | Florida | Illinois | Louisiana | New York |
|--|-------------------|-------------------|------------------|------------------|-------------------|
| 1 % of music played through streaming | 21.60% | 21.20% | 18.00% | 13.60% | 20.80% |
| | x | x | x | x | x |
| 2 European share | 24.03% | 24.03% | 24.03% | 24.03% | 24.03% |
| | = | = | = | = | = |
| % of European music played music through streaming | 5.19% | 5.09% | 4.33% | 3.27% | 5.00% |
| % of European music played music through streaming | (5.19% x 227,042) | (5.09% x 135,134) | (4.33% x 81,927) | (3.27% x 29,419) | (5.00% x 160,444) |
| 3 Drinking places, eating establishments and retail stores in each state | | | | | |
| Drinking places, eating establishments and retail stores in these 5 states | | | 633,966 | | |
| | | | | | = 4.92% |

Step 2

| | | |
|--|---|---------------|
| The number of businesses-weighted average of European music played through streaming | | 4.92% |
| 4 Total number of establishments | x | 2,070,498 |
| 5 Royalty fees* – Management fees | x | \$ 640.5 |
| Result | = | \$ 65,249,078 |

*: sum of ASCAP, BMI and SESAC minimum tariff

1. B. Potential streaming revenue for American artists (collection in all bars restaurants and retail stores is taken into account.)

Step 1

| | California | Florida | Illinois | Louisiana | New York |
|--|------------|---------|----------|-----------|----------|
| 1 % of music played through streaming | 21.60% | 21.20% | 18.00% | 13.60% | 20.80% |
| x | x | x | x | x | x |
| 2 American share | 71.03% | 71.03% | 71.03% | 71.03% | 71.03% |
| = | = | = | = | = | = |
| % of American music played music through streaming | 15.34% | 15.06% | 12.78% | 9.66% | 14.77% |
| | | | | | |
| % of American music played music through streaming | 15.34% | 15.06% | 12.78% | 9.66% | 14.77% |
| x | x | x | x | x | x |
| 3 Drinking places, eating establishments and retail stores in each state | 227,042 | 135,134 | 81,927 | 29,419 | 160,444 |
| | | | | | |
| Drinking places, eating establishments and retail stores in these 5 states | 633,966 | | | | = 14.54% |

Step 2

The number of businesses-weighted average of American music played through streaming

14.54%

| | | |
|-----------------------------------|---|----------------|
| 4 Total number of establishments | x | 2,070,498 |
| 5 Royalty fees* – Management fees | x | \$ 640.5 |
| Result | = | \$ 192,864,251 |

*: sum of ASCAP, BMI and SESAC minimum tariff

2. Adjustment of the potential revenue computed

| | | |
|-----------|--|------|
| A | Percentage of ASCAP "General & background" collection within ASCAP total collection (source: ASCAP annual report) | 37% |
| B | Percentage for one given society of collection within bars, restaurants and retail stores among general collection (source: member of Gesac) | 18% |
| C | Percentage of bars, restaurants and retail stores playing music through streaming platforms (source: survey) | 21% |
| A x B x C | US PROs collection within bars restaurants and retail stores is 1,4 of their total collection: | 1.4% |

Consequently, we consider that 1.4% of the amount distributed by PROs to European authors' societies and American creators is under their collection within bars, restaurants and retail stores playing music through a streaming platform. Thus, this percentage is not to be taken into account to compute the potential revenue.

Final result: European authors' societies potential revenue

European main authors' societies received from US PROs⁹ US\$60m in total for 2015.

The approximate amount distributed by US PROs to European authors' societies under their collection within bars, restaurants and retail stores playing music through a streaming platform is:
 $\text{US\$60m} \times 1.4\% = \text{US\$819k}$

Final result: European authors' societies potential revenue adjusted: $\text{US\$65,249k} - \text{US\$819k} = \text{US\$64,430k}$

Final result: American creators' potential revenue

Amounts of domestic distribution for authors and creators affiliate to US PROs are:

- ASCAP: US\$573m (source: see point 4.6.2.)
- BMI: US\$580m (source: see point 4.6.2.)
- SESAC: No available information

Domestic collection of all US PROs: US\$1,153m

The approximate amount distributed by US PROs to American creators under their collection within bars, restaurants and retail stores playing music through a streaming platform is:
 $\text{US\$1,153m} \times 1.4\% = \text{US\$15,742k}$

Final result: American creators' potential revenue adjusted: $\text{US\$192,864k} - \text{US\$15,742k} = \text{US\$177,122k}$

The extended analysis to the streaming shows potential revenue for European music rights holders: about US\$64m and for American rights holders: about US\$177m.

⁹ Information communicated by main authors societies in Europe

6.4 Appendix 4 – Market sizing

The following table shows the number of establishments by NAICS (The North American Industry Classification System) code. The NAICS code is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

| | California | Florida | Illinois | Louisiana | New, York | USA |
|-------|------------|---------|----------|-----------|-----------|-----------|
| 441 | 10,023 | 8,278 | 3,953 | 1,889 | 4,906 | 117,633 |
| 442 | 5,284 | 3,781 | 1,929 | 731 | 3,372 | 50,595 |
| 443 | 5,390 | 3,574 | 1,892 | 595 | 3,495 | 46,760 |
| 444 | 6,632 | 4,223 | 2,690 | 1,316 | 4,681 | 76,951 |
| 445 | 17,369 | 9,220 | 5,797 | 1,874 | 18,673 | 150,178 |
| 446 | 9,961 | 7,310 | 3,435 | 1,603 | 8,056 | 92,398 |
| 447 | 7,344 | 6,112 | 3,862 | 2,399 | 4,678 | 111,583 |
| 448 | 17,906 | 11,532 | 5,555 | 2,399 | 12,345 | 147,237 |
| 451 | 4,900 | 2,911 | 1,664 | 250 | 3,071 | 46,340 |
| 452 | 3,395 | 3,333 | 1,910 | 1,255 | 3,056 | 52,377 |
| 453 | 11,006 | 7,789 | 3,999 | 1,497 | 7,342 | 108,065 |
| 454 | 8,259 | 5,134 | 2,566 | 518 | 5,088 | 65,251 |
| 811 | 23,701 | 14,087 | 9,641 | 2,931 | 12,523 | 212,140 |
| 812 | 24,690 | 15,310 | 9,287 | 2,198 | 23,920 | 220,291 |
| 7224 | 3,253 | 1,796 | 2,651 | 826 | 3,357 | 40,989 |
| 7225 | 67,929 | 30,741 | 21,096 | 6,868 | 41,881 | 531,710 |
| Total | 227,042 | 135,131 | 81,927 | 29,149 | 160,444 | 2,070,498 |

NAICS descriptions:

Retail stores:

- 441 Motor vehicle and parts dealers
- 442 Furniture and home furnishings stores
- 443 Electronics and appliance stores
- 444 Building material and garden equipment and supplies dealers
- 445 Food and beverage stores
- 446 Health and personal care stores
- 447 Gasoline stations
- 448 Clothing and clothing accessories stores
- 451 Sporting goods, hobby, musical instrument, and book stores
- 452 General merchandise stores
- 453 Miscellaneous store retailers
- 454 Non-store retailers
- 811 Repair and maintenance
- 812 Personal and laundry services

Drinking places:

- 7224 Drinking places (alcoholic beverages)

Eating places:

- 7225 Restaurants and other eating places

6.5 Appendix 5 – Survey results

Survey results by State.

| | California | | | | Florida | | | | Illinois | | | |
|-----------------------------|--------------|--------------|---------------|-----------------------------|--------------|--------------|--------------|-----------------------------|--------------|--------------|--------------|-----------------------------|
| | Bar | Restaurant | Retail | Total | Bar | Restaurant | Retail | Total | Bar | Restaurant | Retail | Total |
| Don't play music | 7 23.33% | 33 47.14% | 101 67.33% | 141 56.40% | 4 13.33% | 10 14.29% | 87 58.00% | 101 40.40% | 6 20.00% | 14 20.00% | 86 57.33% | 106 42.40% |
| Play music | 23 76.67% | 37 52.86% | 49 32.67% | 109 43.60% | 26 86.67% | 60 85.71% | 63 42.00% | 149 59.60% | 24 80.00% | 56 80.00% | 64 42.67% | 144 57.60% |
| Radio | 3 13.0% | 11 29.7% | 12 24.5% | 26 23.9% | 7 26.9% | 15 25.0% | 18 28.6% | 40 26.8% | 0 0.0% | 4 7.1% | 25 39.1% | 29 20.1% |
| TV | 1 4.3% | 0 0.0% | 0 0.0% | 1 0.9% | 1 3.8% | 1 1.7% | 0 0.0% | 2 1.3% | 1 4.2% | 1 1.8% | 0 0.0% | 2 1.4% |
| Streaming platforms | 4 17.4% | 16 43.2% | 34 69.4% | 54 49.5% | 5 19.2% | 15 25.0% | 33 52.4% | 53 35.6% | 3 12.5% | 18 32.1% | 24 37.5% | 45 31.3% |
| Jukebox | 5 21.7% | 3 8.1% | 0 0.0% | 8 7.3% | 4 15.4% | 4 6.7% | 0 0.0% | 8 5.4% | 13 54.2% | 7 12.5% | 0 0.0% | 20 13.9% |
| Live | 7 30.4% | 2 5.4% | 0 0.0% | 9 8.3% | 2 7.7% | 3 5.0% | 0 0.0% | 5 3.4% | 3 12.5% | 7 12.5% | 0 0.0% | 10 6.9% |
| Personnal devices (CD, MP3) | 3 13.0% | 5 13.5% | 3 6.1% | 11 10.1% | 7 26.9% | 22 36.7% | 12 19.0% | 41 27.5% | 4 16.7% | 10 17.9% | 15 23.4% | 29 20.1% |
| Background supplier | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% | 9 16.1% | 0 0.0% | 9 6.3% |
| Total | 30 | 70 | 150 | 250 | 30 | 70 | 150 | 250 | 30 | 70 | 150 | 250 |

| | Louisiana | | | | New York | | | |
|-----------------------------|--------------|--------------|---------------|-----------------------------|--------------|--------------|--------------|-----------------------------|
| | Bar | Restaurant | Retail | Total | Bar | Restaurant | Retail | Total |
| Don't play music | 5 16.67% | 25 35.71% | 123 82.00% | 153 61.20% | 8 26.67% | 40 57.14% | 96 64.00% | 144 57.60% |
| Play music | 25 83.33% | 45 64.29% | 27 18.00% | 97 38.80% | 22 73.33% | 30 42.86% | 54 36.00% | 106 42.40% |
| Radio | 5 20.0% | 11 24.4% | 11 40.7% | 27 27.8% | 8 36.4% | 10 33.3% | 19 35.2% | 37 34.9% |
| TV | 0 0.0% | 1 2.2% | 2 7.4% | 3 3.1% | 0 0.0% | 0 0.0% | 1 1.9% | 1 0.9% |
| Streaming platforms | 12 48.0% | 16 35.6% | 6 22.2% | 34 35.1% | 7 31.8% | 15 50.0% | 30 55.6% | 52 49.1% |
| Jukebox | 2 8.0% | 0 0.0% | 0 0.0% | 2 2.1% | 1 4.5% | 0 0.0% | 0 0.0% | 1 0.9% |
| Live | 1 4.0% | 1 2.2% | 0 0.0% | 2 2.1% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% |
| Personnal devices (CD, MP3) | 5 20.0% | 14 31.1% | 8 29.6% | 27 27.8% | 6 27.3% | 5 16.7% | 4 7.4% | 15 14.2% |
| Background supplier | 0 0.0% | 2 4.4% | 0 0.0% | 2 2.1% | 0 0.0% | 0 0.0% | 0 0.0% | 0 0.0% |
| Total | 30 | 70 | 150 | 250 | 30 | 70 | 150 | 250 |

6.6 Appendix 6 – Analyzed songs

Extract of the Top 100 songs (ranked by aggregate spins) broadcast on highest audience stations (excluding non-music stations) in 2015 in the US States of New York, Louisiana, Florida, Illinois and California – The entire lists remain confidential.

| Rank | Station Format | Song Title | Artist |
|------|--------------------|-----------------------|-----------------------|
| 1 | Adult Contemporary | Thinking Out Loud | Ed Sheeran |
| 2 | Adult Contemporary | Blank Space | Taylor Swift |
| 3 | Adult Contemporary | Style | Taylor Swift |
| 4 | Adult Contemporary | Lips Are Movin | Meghan Trainor |
| 5 | Adult Contemporary | Shut Up And Dance | Walk The Moon |
| 6 | Adult Contemporary | Shake It Off | Taylor Swift |
| 7 | Adult Contemporary | All Of Me | John Legend |
| 8 | Adult Contemporary | Just Give Me A Reason | P!nk Feat. Nate Ruess |

Top 75 digital songs in 2015 in the United States of America

| Rank | Station Format | Song Title | Artist |
|------|-------------------|----------------------------------|--|
| 1 | Internet platform | RAP QUEEN | Fetty Wap |
| 2 | Internet platform | UPTOWN FUNK! | Mark Ronson Featuring Bruno Mars |
| 3 | Internet platform | WATCH ME | Silento |
| 4 | Internet platform | SEE YOU AGAIN | Wiz Khalifa Featuring Charlie Puth |
| 5 | Internet platform | THINKING OUT LOUD | Ed Sheeran |
| 6 | Internet platform | THE HILLS | The Weeknd |
| 7 | Internet platform | SUGAR | Maroon 5 |
| 8 | Internet platform | EARNED IT (FIFTY SHADES OF GREY) | The Weeknd |
| 9 | Internet platform | CHEERLEADER | OMI |
| 10 | Internet platform | CAN'T FEEL MY FACE | The Weeknd |
| 11 | Internet platform | 679 | Fetty Wap Featuring Remy Boyz |
| 12 | Internet platform | SHAKE IT OFF | Taylor Swift |
| 13 | Internet platform | POST TO BE | Omarion Featuring Chris Brown & Jhene Aiko |
| 14 | Internet platform | LEAN ON | Major Lazer & DJ Snake Featuring MØ |
| 15 | Internet platform | BLANK SPACE | Taylor Swift |
| 16 | Internet platform | WHERE ARE U NOW | Skrillex & Diplo With Justin Bieber |
| 17 | Internet platform | ALL ABOUT THAT BASS | Meghan Trainor |
| 18 | Internet platform | TAKE ME TO CHURCH | Hozier |
| 19 | Internet platform | LOVE ME LIKE YOU DO | Ellie Goulding |
| 20 | Internet platform | HOTLINE BLING | Drake |
| 21 | Internet platform | NASTY FREESTYLE | T-Wayne |
| 22 | Internet platform | WHAT DO YOU MEAN? | Justin Bieber |
| 23 | Internet platform | WORTH IT | Fifth Harmony Featuring Kid Ink |
| 24 | Internet platform | GANGNAM STYLE | PSY |
| 25 | Internet platform | NO TYPE | Rae Sremmurd |
| 26 | Internet platform | MY WAY | Fetty Wap Featuring Monty |
| 27 | Internet platform | GOOD FOR YOU | Selena Gomez Featuring A\$AP Rocky |

| | | | |
|----|-------------------|-------------------------------|---|
| 28 | Internet platform | 7/11 | Beyonce |
| 29 | Internet platform | HOT BOY | Bobby Shmurda |
| 30 | Internet platform | I DON'T F**K WITH YOU | Big Sean Featuring E-40 |
| 31 | Internet platform | SHUT UP AND DANCE | WALK THE MOON |
| 32 | Internet platform | HELLO | Adele |
| 33 | Internet platform | ONLY | Nicki Minaj Featuring Drake, Lil Wayne & Chris Brown |
| 34 | Internet platform | G.D.F.R. | Flo Rida Featuring Sage The Gemini & Lookas |
| 35 | Internet platform | BAD BLOOD | Taylor Swift Featuring Kendrick Lamar |
| 36 | Internet platform | FLEX (OOH OOH OOH) | Rich Homie Quan |
| 37 | Internet platform | LIPS ARE MOVIN | Meghan Trainor |
| 38 | Internet platform | CHANDELIER | Sia |
| 39 | Internet platform | B**** BETTER HAVE MY MONEY | Rihanna |
| 40 | Internet platform | ELASTIC HEART | Sia |
| 41 | Internet platform | I'M NOT THE ONLY ONE | Sam Smith |
| 42 | Internet platform | STITCHES | Shawn Mendes |
| 43 | Internet platform | HIT THE QUAN | iLoveMemphis |
| 44 | Internet platform | LET IT GO | Idina Menzel |
| 45 | Internet platform | OFTEN | The Weeknd |
| 46 | Internet platform | COCO | O.T. Genasis |
| 47 | Internet platform | SLOW MOTION | Trey Songz |
| 48 | Internet platform | HEY MAMA | David Guetta Featuring Nicki Minaj, Bebe Rexha & Afrojack |
| 49 | Internet platform | CENTURIES | Fall Out Boy |
| 50 | Internet platform | ALL EYES ON YOU | Meek Mill Featuring Chris Brown & Nicki Minaj |
| 51 | Internet platform | WANT TO WANT ME | Jason Derulo |
| 52 | Internet platform | LOVE ME HARDER | Ariana Grande & The Weeknd |
| 53 | Internet platform | BLESSINGS | Big Sean Featuring Drake |
| 54 | Internet platform | BANG BANG | Jessie J, Ariana Grande & Nicki Minaj |
| 55 | Internet platform | SOMEBODY | Natalie La Rose Featuring Jeremih |
| 56 | Internet platform | LOCKED AWAY | R. City Featuring Adam Levine |
| 57 | Internet platform | CLASSIC MAN | Jidenna Featuring Roman GianArthur |
| 58 | Internet platform | DEAR FUTURE HUSBAND | Meghan Trainor |
| 59 | Internet platform | JUMPMAN | Drake & Future |
| 60 | Internet platform | DRAW ME DOWN | One Direction |
| 61 | Internet platform | TUESDAY | I LOVE MAKONNEN Featuring Drake |
| 62 | Internet platform | FOURFIVESECONDS | Rihanna & Kanye West & Paul McCartney |
| 63 | Internet platform | I DON'T MIND | Usher Featuring Juicy J |
| 64 | Internet platform | PHOTOGRAPH | Ed Sheeran |
| 65 | Internet platform | STAY WITH ME | Sam Smith |
| 66 | Internet platform | BACK TO BACK | Drake |
| 67 | Internet platform | FIGHT SONG | Rachel Platten |
| 68 | Internet platform | COOL FOR THE SUMMER | Demi Lovato |
| 69 | Internet platform | JEALOUS | Nick Jonas |
| 70 | Internet platform | THE HEART WANTS WHAT IT WANTS | Selena Gomez |
| 71 | Internet platform | AGAIN | Fetty Wap |
| 72 | Internet platform | ENERGY | Drake |
| 73 | Internet platform | ONE LAST TIME | Ariana Grande |
| 74 | Internet platform | WHERE YA AT | Future Featuring Drake |
| 75 | Internet platform | YOU KNOW YOU LIKE IT | DJ Snake & AlunaGeorge |

6.7 Appendix 7 – Additional presentation of the two academic experts

Serona Elton and David Schreiber provided guidance throughout the whole project. They were involved in every stage of the project.

Serona Elton

Serona Elton is an associate professor, Director of the Music Business & Entertainment Industries Program, and Chair of the Music Media & Industry Department at the University of Miami Frost School of Music. She also works for Warner Music Group as Vice President, Business Solutions, and has previously worked/consulted for EMI Recorded Music, Sony Music Entertainment, and Universal Music Group, working in areas related to royalties, copyright/mechanical licensing, rights management, and metadata. Serona is very active in numerous organizations in the music industry, currently serving as a trustee of the Copyright Society of the U.S.A., and recently serving as president of the Music and Entertainment Industry Educators Association (MEIEA).

She is a licensed attorney in New York and Florida, has published numerous articles about the music industry, and directed several industry conferences.

David Schreiber

David Schreiber is an Assistant Professor and Chair of the Entertainment Industry Studies program at Belmont University in Nashville, TN. His research interests include the influences upon strategic decision-making practices within music industry micro-enterprises and the role of strategic sexual performance as it is used in creative and cultural industry organizations. He is also working on two textbooks: *Managing Organizations in the Creative Economy: Organizational Behaviour for the Cultural Sector* through Routledge Publishing in the UK and *Principles and Practice of the Global Music Business* through Kendall Hunt Publishing. Furthermore, David is an Associate Editor of the MEIEA Journal, a member of the Academy of Management (AOM), European Group of Organization Studies (EGOS) and the Music and Entertainment Industry Educator's Association (MEIEA).

Prior to his time in academia, David began his career as an independent musician and teacher before moving into a Regional Sales Manager at Schmitt Music. He later took positions as a Marketing and Business Development Manager for Shiny Penny Productions, in the licensing and royalty department of Miami Records, as Business Development Manager at Pivot Entertainment and managed artist Dean Fields.

6.8 Appendix 8 – ESSEC Conseil international Presentation

ESSEC Conseil International is the first and main French junior enterprise, specialized in international development consulting.

Within 30 years, ECI have conducted more than 600 missions for several companies, such as SME or multinationals. References: Accor Hotels, Dyson, Pernod Ricard, Kraft.

www.essec-conseil-international.com

6.9 Appendix 9 – PMP Presentation

PMP helps Authors Societies building and implementing adapted strategies and new Business Models



Definition and assessment of strategic partnerships

- Identification and prioritization of collaboration areas
- Identification of different collaboration scenarios
- Impacts analysis and quantitative assessment of potential savings (financial and human resources) in case of collaboration



Definition and implementation of back office platform

- Identification of potential synergies related to back office activities between several CMOs
- Definition of a Request For Proposal for the implementation of such synergies
- Assessment of tenderers' proposals (technical and financial aspects)
- Elaboration of recommendations for final partner selection



Integration of Online sphere in current internal processes

- Definition of main Online processes (iTunes, Spotify, YouTube and Deezer)
- Identification and definition of the most relevant indicators to monitor Online chain on a strategic and operational basis and to answer internal collaborators' needs, members and partners
- Elaboration of dashboards mock-ups for IT development team



Reengineering of distribution processes in order to cope with IT tools transformation

- Collection of business needs from collection management to rights allocation processes to optimize processes with the implementation of new IT tools
- Elaboration of requirements specifications for IT teams
- Coordination between all optimization processes



Simplification of rights financial management

- Describe complex process and mechanisms built to treat certain types of rights
- Identify opportunities inducing financial flows simplification, harmonization and traceability improvement



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