

How to lawfully broadcast your soundtracks in bars, restaurants, hotels & other public spaces, from France?

When a France-based sound system provider reproduces some phonograms on soundtracks, in order to propose such soundtracks for broadcasting in public spaces such as restaurants, bars, hotels, or shops, he/she needs to have a proper strategy in place, to lawfully implement his/her business plan. Especially when it comes to fostering useful and productive relationships with French, as well as foreign, collecting rights societies. How can this legal compliance effort be done in the most time and cost efficient

manner, to assist the developing business of any France-based budding sound system provider?



1. Registering as a user-reproducer with both SPPF and SCPP

There are four neighbouring rights collecting societies, in France, as far as music neighbouring rights are concerned, as follows:

- SCPP, which is a neighbouring rights collecting society for phonogram producers (i.e. record labels) that qualify either as major or independent;
- SPPF, which is a neighbouring rights collecting society for phonogram producers that are independent labels only;
- ADAMI, which is a neighbouring rights collecting society for artists and performers and
- SPEDIDAM, which is a neighbouring rights collecting society for session musicians and vocalists.

Any new sound system provider based in France needs to be

aware of such neighbouring rights collecting societies, since some may come knock at his/her door, in order to collect royalties.

Indeed, which neighbouring rights collecting societies may have a legal, and financial, claim against a France-based sound system provider?

A distinction needs to be drawn, between:

- neighbouring rights' royalties collected on the basis of broadcasting phonograms, and
- neighbouring rights' royalties collected on the basis of reproducing phonograms.

As far as neighbouring rights' royalties collected on the basis of broadcasting phonograms are concerned, the French intellectual property code ("**IPC**") provides that 50 percent of the royalties paid by users (i.e. sites which broadcast phonograms, such as public spaces, TV channels, radio channels, etc.) are directed to the right owner of the phonogram, while the remaining 50 percent goes to artists-performers, session musicians and vocalists. Article L. 214-1 of the IPC provides for the payment of neighbouring rights' royalties relating to the right to broadcast, on the basis of scales which are, themselves, provided for in article L. 214-4 of the IPC. These royalties paid in relation to the right to broadcast are entitled "fair remuneration" ("*rémunération équitable*") and are distributed to phonogram producers via SCPP and SPPF, to artists-performers via ADAMI, as well as to session musicians and vocalists via SPEDIDAM.

However, as far as neighbouring rights' royalties collected on the basis of reproducing phonograms are concerned, these are paid by users (i.e. sound system providers who provide sound via physical media, automated broadcasting systems, or satellite/ADSL) to phonogram producers only. Article L. 213-1

of the IPC provides for the payment of such neighbouring rights' royalties relating to the reproduction right. These royalties are distributed to phonogram producers solely, via SCPP and SPPF.

Therefore, a France-based sound system provider, who reproduces phonograms on soundtracks which will then be broadcasted in the sites of his/her clients (i.e. bars, hotels, restaurants, retail stores, lifts, etc., collectively referred to as "**Clients' Sites**"), located either in France and/or, for example, in the United Kingdom, will have a statutory obligation to negotiate, finalise and sign a common interest general agreement ("*contrat général d'intérêt commun*") between a user sound system provider, and each one of the neighbouring rights' collecting societies for phonogram producers solely, i.e. SCPP and SPPF. Following the execution of such agreements, the sound system provider will pay SCPP and SPPF some royalties due under the right of reproduction of phonograms.

Clients' Sites, i.e. public places in which the soundtracks will be broadcasted via physical media, automated broadcasting systems, or satellite/ADSL, will pay neighbouring rights' royalties pursuant to the right to broadcast phonograms, to SCPP, SPPF, ADAMI and SPEDIDAM.

2. On the agreements to be entered into, between users-sound system providers, and SCPP and SPPF respectively

The templates of common interest general agreements, between users-sound system providers, and each neighbouring rights' collecting societies for phonogram producers, i.e. SCPP and SPPF respectively, are freely available on their websites (together, the "**Agreements**").

Key points to note, in relation to the Agreements, are that:

- there is some leeway while negotiating with SCPP and SPPF the terms of the Agreements, before they are finalised;
- SCPP owns 77 percent of the social repertoire of phonograms in France, while SPPF owns 23 percent of the social repertoire of phonograms registered in France, and these prorata numeris are set out in the calculation formula used to determine the amount of the royalty owed under the right of reproduction, as explained below;
- both SCPP and SPPF have entered into reciprocal agreements with the UK neighbouring rights' collecting society PPL, which implies that, a priori, it is not needed that a France-based sound system provider enters into a similar contract than the Agreements, with PPL, even if his/her soundtracks are broadcasted on Clients' Sites located in the United Kingdom;
- both SCPP and SPPF warrant and represent that the phonogram producers, members of their respective social repertoires, have obtained prior authorisation from artists-performers, session musicians and vocalists, to the reproduction of each of the phonograms registered in their social repertoires, in compliance with article L. 212-3 of the IPC;
- the annual turnover, exclusive of tax, generated by the sound system provider, will be the sole amount taken into account by SCPP and SPPF, when computing the royalty due under the right of reproduction;
- the formula to calculate the royalty is equal to $((\text{annual turnover excl. tax} * 15 \text{ percent}) * 23 \text{ percent})$ for SPPF, where 23 percent represents the prorata numeris applicable to SPPF, as explained above;
- the formula to calculate the royalty is equal to $((\text{annual turnover excl. tax} * 15 \text{ percent}) * 77 \text{ percent})$

for SCPP, where 77 percent represents the prorata numeris applicable to SCPP, as explained above;

- both SCPP and SPPF have put in place some guaranteed minimums, for royalties, depending on the number of phonograms reproduced on a Client's Site per year; which amounts must be set out in the Agreements;
- SCPP requests the sound system provider to pay a royalties' deposit, while SPPF does not request any deposit;
- sound system providers have strenuous reporting obligations, as they need to send to SCPP and SPPF, on a regular basis, a filled-out excel spreadsheet, which sets out all the data to be reported, in relation to each one of the phonograms reproduced on their soundtracks, which belong to the respective social repertoires of SCPP and SPPF;
- soundtracks, as well as automated broadcasting systems, must allow for phonogram protection tools, such as digital rights management tools, which protect phonograms from unauthorised copy and
- data about phonograms can be traced and found in the databases of SCPP and SPPF, in particular their IRSC numbers.

SCPP and SPPF legal teams are useful to better understand the Agreements, as well as to negotiate, possibly customise, and then finalise such Agreements.

To conclude on this note, neighbouring rights' royalties that any France-based sound system provider must pay represent 15 percent of his/her annual turnover, exclusive of tax.

What about any eventual royalties on copyright?

3. Relationships between users – sound system providers and SACEM-SDRM

Sound system providers do not have any statutory obligation to register with SACEM, i.e. the French music copyright collecting society, or to the "*Société pour l'administration du droit de reproduction mécanique des auteurs*" ("**SDRM**").

Indeed, Clients' Sites will pay royalties to SACEM and SDRM, relating to public performance rights and mechanical reproduction rights, provided for in article L. 122-4 of the IPC, through a representation agreement entered into by the authors, their beneficial owners as well as SACEM and SDRM, pursuant to article L. 132-18 of the IPC.

For example, a restaurant located in Paris will pay an annual fixed price exclusive of tax of 1,783.69 euros, pursuant to the royalties due under the public performance rights and the mechanical reproduction rights of the musical compositions of authors-composers registered with SACEM and SDRM.

Therefore, there is no obligation for a sound system provider to register with SACEM, in order to pay any royalties due under the right to reproduction, since his/her Clients' Sites located in France will pay such royalties, which are included in the annual fixed price exclusive of tax, that they will directly pay to SACEM and SDRM.

However, SACEM and SDRM recommend that professional sound system providers share their digital declarative forms (i.e. the reporting data on each phonogram which needs to be set out on an excel spreadsheet provided by SSCP and SPPF) with them. This way, SACEM and SDRM can make a realistic and exact sharing of the rights due under the mechanical reproduction, because they have the accurate information relating to each phonogram and musical composition reproduced on a soundtrack, which is then broadcasted in each Client's Site located in France. So SACEM is currently putting together a charter, for

the attention of professional sound system providers, in order to educate them on the need to report about the musical compositions which have been reproduced, to SACEM.

As far as Clients' Sites located in the United Kingdom are concerned, SACEM has entered into a reciprocity agreement with the UK music copyright collecting society, PRS, in order to ensure that royalties collected by PRS in the name and on behalf of SACEM, be then sent to SACEM as soon as possible, for distribution to the appropriate authors and their beneficial owners, all members of SACEM.

To conclude, setting up a profitable sound system provider business in France comes with a few hoops and hurdles, from a regulatory standpoint. However, if these intricacies are rightly tackled, through appropriate software solutions (especially to deal with the strenuous reporting obligations on each phonogram reproduced on each soundtrack) as well as tactical and effective legal advice, nothing should come in the way of any savvy and business-minded sound system provider because he/she will have set up constructive and mutually beneficial relationships with French collecting rights societies.

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