

music & Copyright

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Access to Music Charge proposed as means of monetising P2P music use

An Access To Music Charge (AMC) paid to rights holders by Internet service providers (ISPs) has been proposed by members of an influential international forum as a way to maximise revenues from the use by consumers of digital recorded music. Last month there was near unanimity at the second annual meeting of the Steering Group (SG) in Kristiansand, Norway, that this was a viable means of monetising the online music user if made at the user's point of access through their ISP. In return, users would have access to the global recorded music repertoire with no DRM restrictions at no direct cost and would be able to exchange downloaded files.

The potential advantage of AMC for right holders is that such a system would provide revenues, currently lost to them, from consumers' use of unauthorised P2P networks. At the same time ISPs and music service providers (MSPs) would in turn be able to generate additional revenues if a significant percentage of P2P file-sharing was monetised. They would additionally be able to use music downloads to make their services more compelling, increase customer retention and grow average revenue per customer through offering further value-added products.

The 70-strong SG is not fully representative of the various interested parties. However, it includes executives of ISPs, online music services, major and independent record companies and authors' societies, as well as technology experts, lawyers and even a futurologist. Nonetheless, the AMC proposal is significant for a variety of reasons.

It comes at a time when several initiatives have been made based on the idea that ISPs should be more responsible for the actions of their users and that there are benefits for ISPs in forming partnerships with music rights holders. An example of this is the UK agreement between ISPs and UK record industry trade association BPI (see M&C 356/1, 360/1368/14 and below).

Separately, a number of national governments are either preparing legislation or threatening to do so in this area. The most advanced legislative project is the *Internet and Creation* law in France, which some other gov-

ernments have viewed positively. At the same time, there has been growing criticism of such moves, which are seen by consumer rights organisations and others as promoting the interests of rights holders at the expense of consumers (see M&C 366/1 and below).

The SG proposal address a significant number of these concerns. The central proposition is that the AMC, paid by ISPs to rights holders, would be subsumed into the monthly subscription paid by ISP subscribers. It would thus function as the point of entry for ISP, right holder and consumer to a position whereby access to recorded music, although valued as 'free', like that available from P2P services, is seen by all three groups as crucial and beneficial. For individual consumers the problems of P2P services, notably the fear of prosecution, malware and truncated downloads would disappear. ISPs would be able to more profitably promote recorded music through added-value offers (for which they would pay an increased amount to right holders) as a means of differentiating themselves from competitors. Right holders currently uncompensated for the unauthorised use of their copyrights would benefit from extra revenues.

Much more work needs to be done on the details of the AMC proposal, notably its impact on existing online music business models such as paid for downloads from legitimate online stores such as iTunes and Amazon MP, mobile full track sales or subscription services, but some initial statistical projections suggest that the proposal might be attractive to ISPs.

In the UK, Deltica, a company that monitors the activities of ISP customers, has made a series of calculations about the revenues and subscriber numbers of ISPs (see Statistics, page 6). Deltica has estimated the potential revenues ISPs would receive if they were able to convert only 5% of the traffic in unauthorised file-sharing taking place over their networks (see table on page 3). Deltica's figures, which the company says are tentative, are based on the assumption that the ratio of unauthorised shared P2P tracks to bought tracks is 20:1 and that 5% of unauthorised P2P downloads could be

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converted to licensing revenue to be shared between the ISP and right owners. At the SG meeting, ISP executives questioned the Deltica figures. Moreover, the cost of distributing such monies would be high – the monitoring infrastructure in existence for ISPs would have to be extensively improved, especially for some of the smaller ISPs – and the ISPs would expect a higher percentage of the gross revenues than has been retained by Apple's iTunes online music store. If these issues could be addressed positively and if the figure of £163m (\$326m) in new revenues was anything close to realistic, the ISP executives said they thought ISPs would be interested in the ANC scheme.

MUSIC & COPYRIGHT has projected Deltica's assumption of a 5% conversion rate for the global market (see table on page 3 right). This would increase the pro forma total digital recorded music revenues in 2007 to \$4.1bn from 2.9bn.

The potential advantages of AMC to both parties outweigh the problems of its implementation. Nevertheless there are significant problems. Beyond the cost of achieving such revenues, notably investment in an improved monitoring system, there is the issue of the revenue split between ISPs and right holders. In the past, right holders, particularly record companies, have sought sums that have left only small amounts for the service providers they licence. That has limited the incentive for ISPs to prioritise recorded music as a revenue stream.

That option is no longer possible: ISPs and MSPs need an easy and frictionless method of paying for the use of music on their networks. Otherwise, although AMC offers ISPs entry to a

new revenue stream, unless they are realistically rewarded their involvement will remain tentative. In addition, right holders must be able to differentiate between the basic AMC an ISP would pay and value-added offers to ISP subscribers.

Part of the attractiveness of the AMC model for an ISP is that it opens up a new revenue stream; part of the problem it would create is competition with existing online music stores, especially Apple's iTunes which currently has an 80% share of the legitimate download market. While such competition would generally be welcomed by record companies, a decline in iTunes sales, which might occur if AMC was widely introduced, could be counterproductive. The introduction of AMC would probably further erode physical sales of recorded music, which still represents 85% of total recorded music sales, and put further pressure on bricks and mortar retailers, many of whom are reducing the space they devote to CDs in favour of DVDs and games. However, if the AMC model poses significant problems, it is in some ways preferable to other approaches to the problem of unauthorised file-sharing. Most importantly, as a commercial agreement between rights holders and ISPs it avoids the involvement of regulators.

This last is particularly evident in recent developments around the French Internet and Creation law designed to fight unauthorised P2P activity through the implementation of a so-called 'three-strikes' scheme. Under the proposed law a newly-created independent authority, Haute Autorité Pour la Diffusion des Oeuvres et la Protection des Droits Sur Internet (HADOPI), is to be responsible for issuing warnings and potentially terminating Internet subscriptions in cases of infringement. At the request of right

the big figure:

26bn

The retail value of the global music industry in 2011, according to US research group eMarketer. eMarketer calculates that the value of music on mobile devices was \$1.7bn in 2007 and predicts that this will rise to \$7.3bn by 2011 to account for 56% of all music sales, while online music sales will rise from \$1.9bn in 2006 to \$7.5bn by 2011.

UK : potential annual additional gross online music revenues for the leading UK ISPs based on 2007 values

	Revs (£m)	Revs (\$m)
BT	46	92
Virgin	42	84
Carphone Warehouse Group	29	58
BSkyB	14	28
Others	32	64
TOTAL	163	326

Source: Deltica

The world : potential gross digital music revenues based on 2007 values (\$m)

Legal online sales	1,379
Converted P2P sales *	1,379
Mobile	1,350
TOTAL	4.108

* This is based on the assumption that the ratio of the sharing of unlicensed tracks to bought tracks is 20:1 and that 5% of unlicensed tracks could be converted to licensed revenue which could be shared between the ISP, as supplier, and rights owners.

Source: MUSIC & COPYRIGHT research

holders, HADOPI will have the power to demand from ISPs the identity of alleged infringers. This initiates a three-step process. A warning by email will be first sent, and if the infringements persist, a second warning will be sent by registered post. For the third infringement, HADOPI will be entitled to end the Internet access of the user for between three and 12 months.

The draft law has been approved by the French government and it will be debated in the two chambers of the parliament. However, it has already attracted opposition from a wide range of bodies, including members of the European Parliament, the Commission Nationale de L'informatique et des Libertés, the French Internet Society, the State Council, the Autorité de Régulation des Télécommunications and has received much criticism from parliamentarians, access suppliers and press commentators.

Concerned that the law may not be passed in the face of such opposition, French authors' society SACEM, an initial supporter of Internet and Creation, has proposed a solution that is somewhere between a global licence and an AMC. It would counteract the emerging consensus among French lawmakers that the right of a user to be connected to the Internet is greater than that of right holders to sever a connection used to download copyright material without authorisation. This view was made explicit in the European Parliament, which last month rejected any compulsory role for ISPs in dealing with file-sharing. The Swedish MEP Christofer Fjellner and the former prime minister of France, Michel Rocard successfully proposed an amendment to the French MEP Guy Bono's report on the Cultural Industries condemning any measure taken by the EU or nation states that conflicts 'with civil liberties and human rights and with the principles of proportionality, effectiveness and dissuasiveness, such as the interruption of Internet access'. There is a technological solution to this objection, for example, to disable a person's browser but allow them continued use of e-mail. However, it is still unclear whether governments would want to regulate on behalf of right holders in the face of such widespread opposition.

There is also some doubt as to whether either ISPs or right holders actually want government regulation. In the UK, ISPs and music rights holders are now engaged in serious negotiations

under increasing pressure from the UK government, which has threatened to legislate to resolve the online P2P problem unless the industries can create their own solutions.

The first practical outcome of these industry negotiations has been a series of warning letters sent by UK ISP Virgin Media to 800 of its customers whose accounts it is alleged have been used for illegal file-sharing. This marked the first stage in an agreement between Virgin Media and UK record industry trade association BPI, under which Virgin Media customers who have been found to distribute music files in breach of copyright will receive informative letters, one from each party.

User accounts are identified to Virgin Media on the basis of information supplied by the BPI. The letter is sent in an envelope marked: 'Important. If you don't read this, your broadband could be disconnected'. The letter begins 'We're writing to you about enjoying music on the Internet and about illegal downloading and file-sharing. It's an issue which affects you, so it's very important that you read this letter carefully.' The notice is signed by the CEO of the BPI.

Subsequently, the leading British broadband service provider BT has also started to issue notices to its subscribers warning them that they face losing their connection or even prosecution if they continue to use their account for illegal downloads. According to the BPI, more than 6.5m consumer broadband accounts in the UK are used to access music without permission using P2P services.

Although they are softening their stances, the relationship between right holders and ISPs is far less developed than that between mobile phone companies and the music industry. Nokia's *Comes With Music* service, which is planned to be launched in the second half of this year, will provide downloads free of charge to consumers – they are being paid for by Nokia as a means of increasing its market shares and revenues. *Comes With Music* – and presumably any future deals of the same type – also differs fundamentally from subscription services whose consumers lose downloaded tracks when they terminate their subscriptions. *Comes With Music* replaces this with a 'subscription to own' model in which users retain downloaded tracks even after terminat-

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with consumers who avoid distributors of DRM-enabled music files. The Canadian version will focus largely on regional content, which is also favoured by that country's music consumers. Also in May, eMusic was required to remove several albums-worth of 1964-1970 material by the Rolling Stones from the Abco catalogue. This included *Let It Bleed*, *Beggars Banquet*, and *Aftermath*, which had earlier reportedly been cleared for licensing to eMusic by all the rights owners concerned.

Early 2008 saw conflicting market share claims on behalf of the growing number of music retailers servicing the US market. An article in US national newspaper USA Today in March reported that the six-month-old Amazon MP3 online store was

now the second largest seller of digital music in the country after Apple's iTunes, although no figures were cited to back up the claim. A subsequent ranking of US music stores based on estimates of annual revenues, sourced from research firm MultiMedia Intelligence, put iTunes at number one with \$1.8bn per year, followed by Rhapsody with \$149m, Napster with \$125m and eMusic at \$42m. While no agreed-upon ranking or cross-company comparative metric emerged from the debate, eMusic still claims that in terms of volume it sells more digital music than any company other than iTunes, and that in addition the company's payments to independent labels are the second largest in the US market.

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ing their subscriptions. This should be especially attractive to consumers because Comes With Music offers unlimited downloads and it seems at its launch will offer almost all the global repertoire. Since concluding its first licensing deal for the repertoire of a major international record company with UMG in December 2007, Nokia has signed an agreement with Sony BMG and last month WMG and Nokia concluded a deal whereby WMG repertoire will be made available through the *Comes With Music* service. Nokia expects to have an agreement in place with EMI for access to its repertoire before the launch of *Comes With Music*.

If Nokia's new business model, giving users unlimited access to DRM-free tracks, is a success, it would encourage ISPs to approach the economic potential of the similar AMC concept in a positive manner. A further attraction for ISPs is that the AMC scheme is also a means of avoiding the imposition of legal re-

sponsibilities through regulation of the type proposed in France.

However, it remains to be seen if recorded music right holders will be equally willing to curtail their campaigns against P2P file-sharers. National record industry associations continue to sue individuals as a means of limiting unauthorised file-sharing, whereas an AMC scheme would involve record companies prioritising monetising P2P activities over litigation. Music right holders would also need to accept less than their immediate revenues expectations from ISPs under an AMC scheme compared with their expectations of royalties from Comes With Music. The early signs are that the next cultural industry, the film business, to suffer serious levels of online piracy has learnt something from the problems faced by the record industry. Rather than sue individuals it has embarked on an education programme. In the UK the film studio-backed Industry Trust for Intellectual Property Awareness is launching a campaign to dissuade consumers from downloading films. The campaign focuses on 'Knockoff Nigel' a character that steals from the office fridge - and also illegally downloads films.

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Thailand

compilations, is widespread in street markets. They have been the subject of raids, but these are little more than a temporary deterrent as penalties are low and usually the raids are known of in advance. US copyright industries lobbying group IIPA estimated that losses incurred by the US music industry were \$21.7m during 2007, equivalent to 50% of the legitimate market. Total losses on all US-owned copyright material amounted to \$361m, with business software accounting for the vast majority. In its 2008 report, IIPA noted that government copyright authorities had stepped up raids on both retailers and CD manufacturers and were generally co-operating with copyright owners in enforcing IP rights. Thailand has 38 registered CD plants and actively enforces SID codes, while several small plants in areas bordering Laos and Cambodia had equipment confiscated during 2007. Even more worrying is the growth in digital piracy. According to a recent MTV Music Matters survey piracy accounted for 71% of all music downloads. In view of this the local industry association TECA is increasingly focus-

ing on digital piracy, working with ISPs and taking legal action against those hosting websites full of unauthorised material. Thailand's Copyright Law was last updated in 1995 but draft amendments are currently before parliament. These mostly deal with royalty collections as users of copyright songs have been subject to demands from several different bodies, all of whom claim to represent the rights holders. Collections by the Thai authors' society, Music Copyright Thailand Association, have decreased through being associated by users with other, often criminal, groups. The amendment deals specifically with collecting royalties for the right to communicate to the public of musical works, for a period of five years after the law is enacted. After the five years, the Ministry of Commerce can decide whether these collecting companies shall be entitled to administer other rights. Collection bodies must be registered companies and openly advertise the catalogues that they represent. In addition to those operating under the inadequate statute, GMM Grammy and RS have sought to collect their own royalties, adding to a unsatisfactory situation where music users complain of overcharging and of being faced with different royalty rates for different catalogues.