Remunerating Authors and Performers – Are Statutory Fair Compensation Provisions Sufficient?

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One of the big challenges in the current digital environment is to secure that creative activity is sufficiently compensated in order to keep up the production level of new works and performances.

Challenges have occurred in the digital era concerning income from streaming services. Authors and performers experience a large reduction in their revenues, even though their content is used to a great degree on platforms like YouTube, Facebook etc. We will demonstrate research, inter alia from the music industry showing that producers’ revenue loss from the transition to the digital economy is far lower than that of composers and performers. Performers streaming rights are to a large extent assigned to producers, and research confirm a ‘leakage’ of revenues on part of the performers if they choose artist contracts instead of licensing the music themselves.

In Norway, new legislation has recently been enacted to safeguard authors and performers bargaining position, inter alia by introducing a mandatory provision of ‘fair compensation’, following up similar provisions in eg. Germany and the Netherlands, and anticipating at least to some extent instruments in the recently adopted DSM Directive of the European Union. Such provisions do, however, not affect the factual bargaining power imbalance, that individual authors and performers face when negotiating contracts with producers. The question we want to raise, is whether there are other ways of handle for example the streaming market in order to secure that performers and authors receive a greater share of the total income. In an impact assessment from the EU it is suggested to strengthen the author and performers bargaining power through more extensive use of collection societies.

Thus, one possible solution, which will be discussed further, is increased use of mandatory collective licensing, for example of streaming services, in order to provide for greater transparency and securing fair remuneration for authors and performers in the streaming market.