The Market for Performance Rights in Sound Recordings: Bargaining in the Shadow of Compulsory Licensing

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The music business is, in some respects, more regulated than most other industries. For instance, most countries essentially impose a compulsory license on the owners of rights to sound recordings, requiring them to license the right to broadcast and publicly play their recordings to all who are willing to pay a standard rate. They cannot refuse to license; they cannot do exclusive deals; and, importantly, they cannot set their own prices. Instead, rates are set by courts, regulators, or legislatures rather than markets.

This institutional arrangement is quite unusual. Society usually leaves price setting to the market for good reasons. Regulators and courts simply cannot set "correct" prices, as they have neither the access to information nor the capacity to process it that millions of market participants do collectively. Moreover, non-market pricing violates important non-economic values such as self-determination and autonomy.

The imposition of remuneration-only rules has profoundly distorted the market for performance licenses for sound recordings. Drawing and applying new insights from the literature on Standard Essential Patents, this article explains the ways in which remuneration-only rules skew bargaining power in favor of licensees, suppress rates, ignore market conditions, and deprive consumers of choice and diversity in the market for music. It concludes with policy suggestions to ameliorate these distortions.