

US judge hands Pandora a partial victory on royalties

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A banner for Pandora Media Inc., the online-radio company, hangs in front of the New York Stock Exchange on June 15, 2011 in New York City

A US judge handed Internet radio company Pandora Media a partial victory in a royalties dispute with music publishers and songwriters in a decision released Wednesday.

The decision, closely watched for its impact on the fast-growing online

radio industry, keeps intact the royalty rate paid by Pandora, the largest US Internet radio firm.

US District Judge Denise Cote set a five-year royalty rate owed by Pandora to the American Society of Composers, Authors and Publishers (ASCAP) for licensing music at 1.85 percent, the same level as currently exists.

ASCAP had sought a gradual increase in the rate to 3.00 percent in 2014 and 2015, while Pandora had argued the royalties should be dropped to 1.70 percent.

Cote's ruling suggested a hesitancy to wade too deeply into rate-setting in a fast-changing industry.

"Any change in rate structure would have to be made with care based on a thorough understanding of the market and the uses of music in the market," she said.

ASCAP had said that, all things being equal, listeners prefer variety of music and ASCAP should be compensated accordingly. But ASCAP's contention was "unsupported," Cote said.

"Listeners often like to hear music that they already know that they like, or music very similar to music they already like," she said.

Cote also dismissed ASCAP's stance that Pandora was "cannibalizing" [music](#) sales, concluding that the service, like conventional radio, actually promotes sales.

"Pandora itself has buy buttons that permit listeners to buy digital downloads from Amazon and Apple, and they use them with some frequency," she wrote. "There is no evidence that artists have taken steps

to prevent Pandora from playing the artist's work."

But Cote stopped short of handing Pandora a victory on its position that the rate should be dropped to 1.70 percent.

Pandora had argued the lower rate made sense given that ASCAP has agreed a 1.70 percent royalty in a separate deal with a group of parties that includes terrestrial radio stations.

A 'close' call

Cote said Pandora's request was a "close" call, but rejected it, in part because the overall revenues from terrestrial radio "swamp" those from Internet services.

Pandora said it appreciated the decision.

"We appreciate the important role the rate court serves in determining the fair market value of an ASCAP license," a Pandora spokesman said.

"We look forward to working with all interested parties to ensure that consumers continue to benefit from innovative technologies such as Pandora and copyright owners receive fair and reasonable compensation for their creative contributions."

ASCAP is "pleased the court recognized the need for Pandora to pay a higher rate than traditional radio stations," said ASCAP chief executive John LoFrumento.

"But recent agreements... make clear that the market rate for Internet [radio](#) is substantially higher than 1.85 percent."

Cote's ruling was distributed to the litigants Friday, but was under seal

until Wednesday.

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