

The Independents Voice

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Collective Management of Rights – a European model?

Rights management is at the heart of Europe's creative industries.

Collective management is also an area where Europe has a leading market position in the world. In the EU there are approximately 65 music licensing societies which collected 5 billion euro in 2004 on behalf of authors, composers, performers and record companies.

Societies representing authors/composers and music publishers in Europe collected more than 4.3 billion euro in 2004. This is more than twice than what equivalent societies collected in the USA¹. (In comparison, the sound recording industry generates just over 10 billion² euro a year in the EU).

Collecting societies working for owners of neighbouring rights (performers and record producers) collected around 750 million euro in 2004.

Collecting societies in music representing authors, composers and performers count around 900 000 members in the EU (the definition of members includes: authors, composers, music publishers, musicians and performers).

The European Commission is considering an overhaul of the system which is perceived as inefficient because of the complexity of the licensing process in a market characterised by fragmentation and territorial rules.

Users of music which operate on a pan European basis would like the facility to negotiate a one stop shop licence for the usage of the entire repertoire – some of them would like the ability to negotiate the best possible deal with any collecting society and therefore encourage open competition on royalty tariffs.

The European Commission has decided to intervene on this matter on two fronts with:

- the adoption of a recommendation in October 2005 proposing a new way to manage the licensing process.
- the consideration of an anti-trust complaint from pan European broadcasters RTL against authors' societies international body, CISAC, the international confederation of societies of authors and composers. The European Commission opened formal proceedings on 7 February 2006 against CISAC, objecting to certain provisions of the CISAC model contract governing the management of rights on the internet and reciprocal representation agreements between societies.

The Commission's initial finding was that the CISAC contract model might restrict competition in two ways because:

- authors would be prevented from freely choosing their collecting society
- societies would be prevented from offering international licences to commercial users located outside their respective territories.

As a result, the issue of collective rights management is dealt with by two different departments within the European Commission – internal market and competition. However, both departments have not developed the same objectives and visions on the way rights should be licensed in Europe.

On the one hand, DG Markt encourages competition amongst collecting societies to recruit members at the expense of other societies. On the other hand DG Competition promotes the idea that societies should compete for licensing business on the basis of lower tariffs or management fees. However, both share the view that pan-European licences should be granted to users regardless of where they may reside geographically.

Whilst this internal debate rages on, the European Parliament is closely watching. It is acting on its own initiative as the recommendation's decision making process and the competition proceedings exclude the elected body from formal consultation. The EP produced its own report to consider the impact of the European Commission's proposals on the market of rights licensing. Its main concern seems to be whether the smaller national societies in Europe would be threatened by the onslaught of the larger societies that would take all the lucrative international business. The EP condemns the vision of a dual system that is currently promoted by the European Commission – one for international artists and another one for local artists which would put the latter at a competitive disadvantage in the licensing process.

The EP is concerned that:

1. National repertoire administration would suffer higher management costs.
2. Collecting societies representing national repertoire would lose bargaining power as users would be looking for the more attractive international repertoire.
3. International users may no longer seek to license national repertoire or will want to pay less for it.
4. Local authors and composers would not be paid on the same tariff as international authors and composers (solidarity will be lost).
5. Societies controlling international repertoire would have no incentive to recruit certain right holders.
6. Smaller societies unable to compete are unlikely to gather international repertoire independently of reciprocity representation agreements.

The matter is complex and there is no simple solution when considering rights management. Essentially collective management enables right owners and users to jointly access lower transaction costs. By reducing transaction costs, collective management increases the range of rights that are traded.

1. 1.5 billion euro were collected in 2003 by HFA, ASCAP and BMI in the USA – Music and Copyright 292, (2005). GEMA in Germany collected alone 852.2 million euro in 2004.
2. IFPI, EU sales of audio products in 2004.



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Facilitating trade is the key function of collective management bodies as transaction costs will often operate as a deterrent (in particular for individuals and small businesses) with the result that no trade occurs. Given the scope for gains from economies of scale, the more right owners that join a collecting society, the more likely it is that costs will diminish. However, for some, collective management also enhances the monopoly position of the management body whilst condemning bodies with less valuable repertoire to become uneconomic.

The justification for collective licensing may differ for an artist or a company – but essentially collective licensing is the cheapest way to administer certain rights as it proposes convenience to users that would have normally had to track down the individual rights holders for licensing purposes.

Solidarity is another main feature of collective licensing in Europe which has been brought to light by authors and composers.

According to figures from the UK society that distributes performance income (PRS), out of 30,000 members, only 700 receive total performance income of more than 25,000 GBP (36 140 euro) with, 16,000 earning under 100 GBP (154 euro) a year³.

This scenario is common throughout Europe. These figures highlight the precarious position of copyright creators and the importance they attach to a system characterised by solidarity between high earners and the occasional or less popular creators.

It shows that collecting societies have to cater for all authors – whatever their remuneration, their talent or their productivity. This has obviously some impact on efficiency requirements and measurements.

In any event, whether for music or a film, trade in rights will only occur where it is profitable for both sides to do so. Transaction costs will often be a deterrent (in particular for individuals and small businesses) with the result that no trade occurs. Facilitating trade in copyright is the key function of collective management bodies.

Do they succeed in fulfilling this function?

Whilst no-one from the users' groups contests the benefits in efficiency gains from collective management, they request attention

from the regulator on the potential for excessive licence fees as a result of the abuse of monopoly power or of management inefficiency. They request more transparency in particular in relation to cost allocation. They stress alleged productive inefficiency.

The potential for excessive licence fees as a result of monopoly power will depend on the degree of buying power of the user.

Indeed the degree of market concentration in the field of media and in the music sector in particular is a factor that needs to be taken into account when assessing the capacity of societies to abuse their monopoly power.

The specificities of collective rights licensing are well known:

- It creates national monopolies
- It is fragmented in line with languages and geographies (repertoire is administered along linguistic frontiers).

This linguistic and cultural fragmentation is difficult to accommodate with the aim of the internal market and free market imperatives.

It remains to be seen who will gain from this upheaval triggered by the Recommendation of the European Commission and whether the quest for the relative notion of "efficiency" and legal certainty will be shared by all stakeholders, users or right holders.

Foremost, the debate on rights management is a political discussion on the degree of specificity. This type of collective structure should be recognised by the regulator as taking into account the characteristics of the European cultural market which is linguistically fragmented and essentially composed of SMEs and individuals operating in their national market.

Moreover, Member States would resent a situation where the collection ability of their local society is weakened, thus having an impact on their cultural policy which is partly funded by the activities of such bodies. 11 Member States decree in their legislation that collective management bodies should support cultural or social missions⁴.

Authors/composers insist that they remain the primary parties interested in this debate and any system should accommodate their requirements as they are the creators of the works that are at the heart of the digital revolution and the development of Europe's creative industries (music, cinema, book publishing).

**KEA report for the European Parliament is available
on its website at www.keanet.eu**

3. Source: Between a Rock and a Hard Place – The problems facing freelance creators in the UK media market-place by Lionel Bently – The Institute of Employment Rights – March 2002. A DCMS publication from 2002 Counting the Notes provides that fewer than 2500 writer members of PRS earn more than 10 000 GBP a year.

4. Austria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Italy, Portugal, Slovakia and Spain.