

THE COLLECTIVE MANAGEMENT OF RIGHTS IN EUROPE

The Quest for Efficiency



July 2006

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EXECUTIVE SUMMARY

In the EU there are approximately 65 music licensing societies that collected € 5 billion in 2004 on behalf of authors, composers, publishers, performers and record companies.

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).

This study examines the legal framework governing collective management in the field of copyright and neighbouring rights in the European Union, with a particular emphasis on musical works¹.

The report also provides information on the economic, social and cultural value of collective management, predominantly in the field of music, highlighting Europe's competitive strength in rights management and the characteristics of rights management in the European Union.

It provides members of the European Parliament with information on national legislation governing collective management as well as a briefing on the reforms proposed by the European Commission in relation to the provision of online music services.

The study analyses the different options and summarises the views of the stakeholders. It considers the consequences of the scenario promoted by the European Commission with respect to:

- copyright and its management
- stakeholders' interests (users as well as right holders)
- EU internal market and competition objectives
- EU cultural objectives

It assesses the justification for the European Commission's action in this field and considers policy issues linked to the latest regulatory development in light of the EP's work, the ECJ jurisprudence as well as the latest market developments.

The merit of the Commission's Recommendation coupled with DG Competition investigation is to trigger an important re-think on rights management. It also launches a debate on the place of copyright and its exercise in the European integration process as well as the Lisbon strategy.

The concept of territoriality needs to factor in new ways of dissemination. This involves the setting up of structures to accommodate cross border usage.

Should these changes be market-led or subject to intervention by the regulator?

¹ In line with the priority of the European Parliament to consider this issue in light of recent Commission interest in collective management of musical works in the on-line sector in particular.

The European Commission seems determined to limit the effect of rights territoriality on the free provision of services. It also wants to limit the consequences of the monopolies that are inherent to collective 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. Facilitating trade is the key function of collective management bodies as transaction costs will often be a deterrent to unilateral action (in particular for individuals and small businesses) with the result that no trade occurs. The more right owners join a collecting society the further potential of reducing costs exists given the scope for gains from economies of scale. However it should be added that collective management also enhances the monopoly position of the management body whilst at the same time putting those bodies with less valuable repertoire at risk of becoming unviable.

Whilst nobody amongst the users' groups interviewed² contest the benefits in efficiency gains from collective management, they would like regulators to look at the risk of excessive licence fee as a result of abuse of monopoly power or of management inefficiency. They seek more transparency in particular in relation to cost allocation. They are concerned about productive inefficiency.

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, whether users or right holders.

The study concludes that a regulatory approach at EU level is rendered very difficult for essentially the following reasons:

- the territorial nature of copyright and the sheer complexity of licensing activities at international level
- the political imperative of promoting local cultures and diversity in a linguistically and culturally fragmented market
- the various tariffs and state of development of collective management at national level
- the difficulty of defining management efficiency in the implementation of competition rules
- the difficulty of ruling on collective management for all types of right holders and users (in particular why would the quest for efficiency and the development of online services be limited to music and online licensing of authors' rights?)
- the difficulty of providing pan European licences in the absence of a minimum of collaboration between the local collecting societies enabling the reciprocal representation of repertoire and a one stop shop.

Obstacles to EU rules in rights management are also due to the difficulty of setting up a pan European arbitration or dispute settlement mechanisms because of the need to take into consideration the local circumstances (including level of tariffs and structure of the industries) as well as legal traditions.

Efficiency of rights management has a relative value with different meanings according to the respective stakeholders or different DGs within the European Commission.

The study shows that rights management is not simply a legal matter to address the promotion of pan European licensing. There are also key political considerations. First, whether Europe wants to maintain

² EBU (public broadcasters), ACT (commercial televisions), EDIMA (digital media), IFPI and IMPALA (phonographic industry), Hotrec (restaurants, bars, etc), ECCA (cable operators).

an approach favouring individual rights over corporation rights³. Second, whether Europe wants to preserve solidarity between right holders (international artists and local artists) including the promotion of local cultures in a globalised entertainment environment.

It recommends that any decision regarding rights management should be taken in light of Article 151 of the EC Treaty which provides that the “community shall contribute to the flowering of the cultures of Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.

Article 151 (4) states that “the community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures”.

The study notes that the impact assessment leading to the Recommendation of the European Commission on collective management fails to measure the cultural impact of the proposed measure as well as its consequences on the rights of the 600,000 authors and composers in the EU.

The report advocates harmonisation of legal rules in relation to transparency, governance and accountability in rights management in line with the Resolution from the European Parliament adopted by unanimity on 15 January 2004⁴ calling on the European Commission “to examine, three years following the adoption of this resolution, whether the desired harmonisation, democratisation and transparency in relation to the management of copyright and neighbouring rights by collective management societies has been achieved and, if not, to take additional measures” (indent N° 61).

This study also proposes the negotiation of a charter between users and right holders to promote better understanding and limit conflicts between users and right holders in the exercise of copyright and neighbouring rights.

³ The continental system based on authors’ rights tends to favour stronger rights for individuals than copyright systems such as the UK which, although intended to grant similar rights, appear to result in a subtle weakening of position for individual creators.

⁴ OJ 16.04.2004 C92E/425

THE COLLECTIVE MANAGEMENT OF RIGHTS IN EUROPE: THE QUEST FOR EFFICIENCY

Introduction

This report has been commissioned by the European Parliament with a view to updating a 1998 study from Deloitte and Touche on collective rights management carried out for the European Commission⁵. The report seeks to:

- Provide an overview of collective management in music in terms of structure, economic value and also cultural and social value (**Part I, Chapter 3**).
- Provide an overview of regulatory developments in the context of EU policies (notably competition, internal market and cultural policies) (**Part I**).
- Describe the relevant national legislations dealing with collective management including the 10 new EU Member States. (**Parts II and III**).

Significant legal, regulatory and commercial developments have taken place since the report from Deloitte was undertaken. The latter needs therefore to be put in a different commercial as well as regulatory context.

There are different types of collecting society dealing with different rights. This study will concentrate on the management of copyright linked to the commercial exploitation of musical works⁶. The focus on music rather than other works collectively licensed reflects the fact that it is the "content" sector which makes the most use of collective management mechanism and which drive consumers to new delivery platforms (Internet, mobile). The particular concern about musical works and not sound recordings is linked to the priority given by the European Commission to the licensing of authors' rights in music, which is perceived as more problematic⁷.

Notes of explanation:

- The issue of rights management is extremely complex. It requires a basic understanding of the nature of copyright and its exercise. The relationship between the different stakeholders also needs to be understood - they are dependent on each others for their activities. In addition, users for some activities are right holders for others⁸.
- The report wishes to avoid as much as possible legal technicalities and aims as a priority to highlight policy issues linked to rights management.

⁵ http://www.europa.eu.int/comm/internal_market/copyright/docs/studies/etd1998b53000e79_fr.pdf

⁶ In line with the brief from the European Parliament.

⁷ This report does not deal therefore with sound recordings or other works collectively licensed in line with the EP's priorities, for the reasons given above. However, in Part I, Chapter 3, certain statistics on collecting societies representing producers and performers in terms of sound recordings have been included where available. This is to provide a more complete picture of the economic, social and cultural contribution of collecting management of music and sound recordings.

⁸ For example record companies are users when they require a licence for the musical works and lyrics they use in their sound recordings yet they are right holders in terms of their own copyright in the sound recordings they exploit.

The report was conducted by members of KEA European Affairs based in Brussels with input – in particular for parts II and III on national legislations – from subcontractors in Central and Eastern Europe as well as with the expertise of Brigitte Lindner, a German national registered with the Bar in London and specialised in copyright.

KEA carried out an extensive review of national and European legislation and jurisprudence, including a review of academic literature on the issue **(list in Annex A)**.

KEA carried out interviews with individual authors/composers, senior management from several companies, collecting societies and trade associations **(list in Annex B)**.

It addressed questionnaires to representatives of collecting societies (representing authors, performers and producers) with a view to assessing the market value of right management. KEA would like to thank in particular GESAC and AEPO/ARTIS for their collaboration in providing figures.

The bulk of the analysis was carried out in the first half of 2006, the assignment starting on 16 January 2006.

In the first part of this report we will examine the way rights management in music is addressed at EU level. The second part will analyse the national legal provisions governing collective management in the 25 EU Member States. The third part lists the provisions of national laws related to collective management.

PART I

RIGHTS MANAGEMENT IN THE EUROPEAN UNION

Part I considers the main issues dealt linked to the collective management of musical works. Chapter 1 identifies the main issues at stake and sets the context for their subsequent analysis in the following chapters: the structure of music rights management in Europe (Chapter 2); the economic and social value of rights management (Chapter 3) and the views of EU institutions (Chapter 4). An analysis of the complexities of a regulatory approach to collective management (Chapter 5) and an overview of recent market developments (Chapter 6) conclude Part I.

CHAPTER 1: THE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS IN THE EUROPEAN UNION – THE ISSUES

This chapter aims to highlight the main issues linked to the consideration of collective rights management at European level of musical works. Its intention is to present the structural, business and policy imperatives surrounding collective rights management, in a simple and accessible way.

The issues relate to:

- the place of songwriters and composers
- the characteristics of collecting societies
- the trigger for changes – the new digital economy
- the stakeholders and their positioning in a commercial battle
- the notion of efficiency in rights management
- copyright management as a bottleneck
- the views of the European Commission
- rights management as a cultural issue.

SECTION I

The songwriters and composers

This study relates to the management of copyrights in musical works belonging to individual authors and composers. At the heart of collective management lie the creators of songs and compositions. The creativity of individual authors and composers is the origin of the value chain from production to distribution of works of arts in the music field.

There are more than 600, 000 authors/composers in the European Union which are members of the collecting societies in the 25 Member States⁹.

Societies in Europe collected more than 4.35 billion Euro in 2004 on behalf of authors/composers and music publishers¹⁰. This is almost three times what is collected by societies in the USA and more than five times the amount collected in Japan¹¹. In comparison the sound recording industry is worth a little more than €10 billion¹² a year in the EU.

Collecting societies working for owners of neighbouring rights (performers and record producers) collected around € 643 million in 2004.

The study will concentrate on collecting societies representing authors, composers and music publishers.

⁹ These figures include heirs and heiress – as copyright protection extends until 70 years after the death of the author.

¹⁰ Revenues from both mechanical rights and performance rights societies.

¹¹ 1.5 billion Euros were collected in 2003 by HFA, ASCAP and BMI in the USA – Music and Copyright 292, (2005).

790 million Euros were collected by JASRAC in Japan in the year ending on March 31, 2006. GEMA in Germany collected alone 852.2 million Euros in 2004.

¹² IFPI, EU sales of audio products in 2004.

In this respect it should be highlighted that, as opposed to the other stakeholders, authors/composers are not organised in a pan-European trade association or lobby dedicated to their individual interests¹³. This group is currently reflecting on its independent representation in Brussels.

Individual creators interviewed as part of this study (see ANNEX B) take the view that the impact assessment leading to the Commission's Recommendation considers inadequately the relationship between authors and publishers.

They take the view that the issue at European Commission level is currently largely considered from a corporate point of view – whether right holders (music publishers or collecting societies) or users (record companies¹⁴, broadcasters, internet service providers (ISPs) etc).

Authors and composers are the original right owners – their contractual relationship with a music publisher will determine the extent of latter's rights in controlling the commercial exploitation of the work. In effect in relation to the total amount collected on their behalf by the societies in general – and in accordance to complex distribution rules – a third will go to the music publisher. This assignment or right transfer will exclude the rights already assigned directly by the author to the society as well as the authors' moral rights.

Complex contractual relationships between author/composers and the collecting societies as well as music publishers. Some authors take the view that a music publisher is not in position to centralise all the rights, in particular in authors' rights countries. This would limit the ability of collecting societies to license repertoire held by virtue of transfer from music publishers only. The authorisation of the author/composer would still be required.

The situation might be clearer in the countries with a copyright regime (as opposed to the authors' right regime). Indeed in the UK and the US music publishers all have assignments from the author/composer in terms of the rights that can be assigned.

Authors argue that a collective management system needs to take this contractual situation into account as it introduces legal insecurity on the scope of the rights licensed to users. The latter might still need to clear individual rights that have not been assigned to the publisher.

The "DG MARKT impact assessment largely fails to take into account this additional dimension and seems to be blinded by the UK/US copyright regime" according to an author interviewed.

Authors and composers have a different relationship with the collecting societies than publishers. In Europe only the Irish and UK society provide equal voting rights to the music publishers. The latter requests more of a say in the governing structures of the societies (societies in Greece, Portugal and Poland do not have publishers in their management board). One author put it this way: "I am unlikely to move to a society that is controlled by music publishers".

Therefore when the European Commission criticises the representation and control mechanisms of societies from a right holder's point of view¹⁵, it essentially relays a criticism from music publishers, not

¹³ GESAC represents collecting societies who operate on behalf of authors and composers and also publishers, rather than individual authors and composers.

¹⁴ Of course record companies are also right holders of the copyright in their sound recordings. They are mentioned here as users because, in the context of a report focussing on collective management of musical works, they are users.

¹⁵ Page 10 and 11 of the impact assessment document from the European Commission and pages 36 and 37 which summarise the positions taken by stakeholders. No dedicated representative of authors and composers is listed. As mentioned above, GESAC for example represents collecting societies, not authors and composers as such.

the individual authors as the latter control (apart in two Member States - UK and Ireland) the majority of the societies' board seats.

On the other hand many music publishers take the view that representation within the structure of the collecting societies should be commensurate to their economic power.

Therefore the rights management issue touches upon the philosophy underpinning copyright protection in Europe – copyright (protection of the investment) vs author's right (protection of the individual creator).

One composer interviewed put it this way: "The majority of authors and composers are not in a position to take a stance on the current debate – they are happy that there is a mechanism close to them that enables them to get regular cheques to pay their bills".

Another offered: "the debate on rights management touches on the relationship between individuals and their publishing house; it is not simply a debate on the efficiency of collective management".

Many authors and composers also highlight a main feature of collective licensing in Europe - solidarity amongst right holders. Collecting societies have to cater for all authors – whatever the amount of their remuneration, their talent or their productivity. This obviously has some impact on efficiency requirements and measurements.

Indeed according to figures from the UK society distributing performance income (PRS), out of 30,000 members, only 700 receive total performance income of more than 25,000 GBP (€36 140) with 16,000 earning under 100 GBP (€154) a year¹⁶.

These figures are common throughout Europe. These figures illustrate the fragility of the 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.

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

SECTION II

Collecting societies

The principle of collective management is a European invention (dating back from the end of the 19th Century). It is deeply rooted into national legislations in particular in relation to the management of authors/ composers rights¹⁷.

¹⁶ 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.

¹⁷ Collective management for neighbouring rights (performers and producers) dates back from the adoption of the Rome Convention in the 1960s

Collecting societies are characterised by the following:

- On one hand they are governed by their members (whether individuals and/or corporations) and protect the latter's interests. On the other hand, they are economic entities (even if non profit organisations) which need to fight for licensing business in order to survive. This implies recruiting members with sufficient rights catalogues to interest users (e.g. the fight for valuable Anglo American repertoire) as well as making enough deals with users to feed the administrative systems required and keep costs down.
- They are natural monopolies – with the inefficiencies attached to monopolies that live on territorial rights. Monopolies and territoriality are often seen as anathema to the European integration process.
- The authors societies suffer from a negative image (some regard this problem as often self inflicted). They are seen as arrogant and lacking in business skills and comprehension. They are rarely run by business managers.
- The authors' societies cannot be controlled by corporations as their board is essentially composed of individuals¹⁸. This also encourages accusations of not being business friendly).
- Authors' societies are often entrusted with public interest objectives by national governments to promote culture and creation. For example, they often act as sponsors for activities such as non-mainstream festivals, youth orchestras or contemporary musical ensembles. A significant amount of these cultural and social funds are subsidised by part of the remuneration collected (e.g. for private copying and other revenues which are not identifiable or difficult to identify such as income collected on behalf of foreign right holders).
- Collecting societies depend on each other to be able to license foreign repertoire. Foreign repertoire may represent the bulk of royalty income of a local collecting society. Any impact on the ability of a society to license international repertoire has important consequences for its ability to survive.
- The commonest form of licence used by collecting societies is the blanket licence. This contributes to solidarity amongst right holders (top stars get the same fee and at the same time as the developing artist) and is a solution to high costs of individual transactions.
- SMEs and individual creators are dependent on collective licensing mechanisms as they do not have in general the human and financial resources to license rights on an individual basis.

The collective licensing bodies representing authors and composers have developed into powerful institutions in several Member States. They have sometimes become pillars of state policy on cultural matters. The heads may be nominated by governments or be "connected" to the extent that their appointment is quasi political. Appointments in France, Germany, Italy and Spain for instance have been subject to such criticism. Some authors' societies have developed into political machines whose power has created much tension in particular amongst corporations which would like the societies to act more as businesses than public administrations (or "bureaucracies").

Criticism from the users can be summarised as follows:

"Licensing deals should evolve with the market situation and not be set in stone". "Monopolists are isolated from market realities. They are as a result inefficient for both the right holders they represent and the users".

Music publishers' representatives add to such criticism by highlighting the bureaucracy generated by the organisations and their archaic governance, comforted by an internationalised environment.

¹⁸ Except in UK and Ireland.

This creates a kind of unholy alliance with different and contradictory objectives, which are to a large extent reflected in the regulators' proposals that will also be examined in this report.

Contrary to banks (with whom societies are often – and wrongly in our view - compared by some users) collecting societies are “controlled” by their members – who are not shareholders. Their aim is to collect and distribute royalty income to their members (which are individuals and/or corporations).

Half of the 25 member countries of the EU provide¹⁹ in their legislation that the collecting societies should be non profit organisations.

In addition, 11 Member States legally oblige collecting societies to establish social or cultural funds or to allocate income to such aim, in particular in relation to income from private copying or unclaimed royalties²⁰. Even where no such obligation exists, all collecting societies in the EU (except in Cyprus) apply funds for social/cultural contributions.

6 countries in the European Union²¹ provide in their legislation that the societies are legal monopolies designated by the State. Even in territories which do not prescribe such formal monopoly status, the collecting societies for musical works in Europe are de facto monopolies.

SECTION III

The trigger for changes: digital delivery of music

The current commercial environment is different to that in 1998, the year of the Deloitte report.

At that time new legitimate services on the Internet had yet to be launched. The legitimate downloading of music was then in its infancy. Major record companies were reluctant to license their repertoire in the absence of a totally secure environment. They were also keen to pursue their own individual and shared distribution platforms. Rights management societies were slow to respond to licensing demand because of the size of the market place and its international nature as well as certain internal conflicts with members over rights mandates. Online and mobile licensing still represents less than 3% of collecting societies' revenue.

This left online service providers complaining about the difficulty of launching pan-European or national services with attractive copyright repertoire whilst such repertoire became available for free on illegal services through the P2P file sharing mechanism²².

Attitudes among right holders gradually changed towards legitimate services and the emergence of the iTunes services in particular in 2004 coupled with the marketing of the iPod, the Apple portable digital player, transformed the scene. There are now more than 335 legal online music services²³ (of which 200 are based in Europe).

¹⁹ Austria, Hungary, Portugal, Slovenia, Spain, the Czech Republic, Luxembourg, Latvia, Lithuania, Poland and Slovakia, Italy and France.

²⁰ Austria, Belgium, the Czech Republic, Denmark, Luxembourg, France, Germany, Italy, Portugal, Spain, Slovakia.

²¹ Italy, Belgium, Hungary, The Netherlands, Czech Republic and Malta.

²² Peer-to-peer file sharing (P2P) is the online transfer between individual users, without the need of intermediaries, of files (usually of sound or film recordings) stored on the users' computer and made accessible world-wide through the internet. P2P file sharing became widespread within two years from 1999 to 2001 thanks to a program software (later a website) called Napster.

²³ IFPI Digital Music Report 2006 – up from 50 two years ago.

MP3 files are the most traded items on the Internet, whether legally or illegally. According to the music trade publication Billboard (January 2006), there were 350 million legal downloads for the whole year of 2005. On the other hand there are each week 250 million illegal download. Piracy remains a clear obstacle to the development of online music services.

In addition mobile services have become a major source of income for right holders, in particular ring tones and download to mobile phones.²⁴

In Europe the majority of digital sales are through mobile in countries such as France, Austria, Italy, and Spain. The take up of mobile is far greater in Europe than in the USA. The impact assessment of the European Commission does not distinguish between the online and the mobile market. It focuses on the fact that the online market is less developed in Europe than in the USA. However the market for ringtones is far more developed in Europe than in the US²⁵. The digital music market in Europe is also as large as the digital market in Japan, a country traditionally far more technology friendly than Europe. As in Europe, the Japanese market is dominated by mobile sales over online sales.

Still, many hurdles remain to make it easier to obtain licences for the digital delivery of music. This is due to the structure of rights management in Europe as well as the cultural nature of the products subject to licensing.

Indeed the European entertainment/cultural market is characterised by its fragmentation along linguistic and cultural frontiers. This fragmentation is reinforced by the territorial nature of the rights subject to licence. This structural issue makes the establishment of an internal market more difficult to achieve (see Part I, chapter 5 below).

Similarly, the regulatory approach needs to take into consideration the fact that there are the different type of users. Some, the majority, will operate on a national basis and will seek a licence covering the world repertoire for just one territory (or linguistic territory). The more ambitious will seek international licences to benefit from the reach of the new media platforms (satellite TV, internet, and mobile telephony in particular).

The European Commission is essentially targeting international operators with a view to promoting the emergence of pan-European services. However the impact on national operators seeking a licence should not be underestimated as such licences represent the bulk of the rights management economy.

The European Commission notes that revenue flows from cable, satellite and Internet are independent of geographic locations. Therefore collecting societies are in a position to viably monitor the use made via these platforms from anywhere. This would allow collecting societies to enter the territories of other collecting societies and compete for services independently of the economic residence of the service provider. According to the Commission, this would justify the abandonment of territorial restrictions and favour the availability of multi-territory licences from any collecting society.

In 2006 these pan-European operators are essentially Liberty Media in cable; RTL, Music Choice Europe and MTVE in broadcasting; iTunes in digital music.

²⁴ The value of ringtones and downloads in the UK in 2005 was higher than the value of physical singles (Music and Copyright issue 313, February 2006) and mobile downloads are still in relative infancy.

²⁵ 1.7 Billion USD in Western Europe vs 0.5 Billion USD in North America (2005) – source strategy analytics, January 2006 – www.eMarketer.com.

SECTION IV

A commercial battle as much as a regulatory issue

Rights management touches upon very sensitive issues:

- The remuneration of creators and investors in creation
- The exercise of author' rights/copyright which remains the main incentive to promote innovation and creation
- The circulation of national music across Europe – a theme that is familiar to Europe's audiovisual policy (the MEDIA Programme) – and therefore cultural diversity.
- The emergence of new international digital services in Europe and the ability to foster market entry on a pan-European basis.
- The establishment of the internal market and the promotion of pan-European licensing.
- A framework that satisfies users as well as right holders in terms of transparency, supervision, governance and dispute resolution.

However the issue of rights management is foremost a commercial battle between:

- Right holders and users - users seeking to obtain the best licensing deal at the lowest possible costs and at fair and non-discriminatory terms.
- Different categories of right holders which are competing to manage the rights:
 - competition between collecting societies in the race to be among the predominant rights management societies in Europe. This has been given a new dimension since the adoption of the EC Recommendation on copyright management in October 2005. The societies from "smaller" countries are concerned about becoming mere agents of the societies from the largest EU countries (in effect, Germany, France, UK, Spain).
 - competition between management bodies and major entertainment companies that wish to:
 - manage the rights on behalf of artists or authors, independently of collecting societies,
 - centralise negotiations with users,
 - manage some of their own IP rights on an individual basis without mandating collecting societies.
 - possible competition between management bodies, record companies/ music publishers on the one hand and (top) artists on the other that may want in the future to negotiate individually, independently of any intermediaries.
 - Competition between music publishers and individual authors and composers for controlling the management board of collecting societies.

SECTION V

Efficiency for all?

All stakeholders are concerned about efficiency but the main incentive comes from pressure of the members on the society. They want administration and management costs to be productively efficient, in particular to ensure that net distributable revenues collected from users are as high as possible.

Other ways to motivate efficiency include:

- Improving internal governance
- Introducing competition between collecting societies
- Creating a mechanism of arbitration
- Encouraging collecting societies to collaborate to reduce overheads

As mentioned above, all stakeholders seek efficiency in rights management, in particular in relation to cross border activities. The quest for efficiency is one of the main justifications for the regulator's intervention. It is therefore important to understand what efficiency means for the different stakeholders.

- For the **author/ composer**, efficiency is the ability of a society to collect and distribute royalties (as high as possible) at regular intervals (ideally monthly) to ensure prompt and fair payment. Many authors feel, however, that societies should not sit unduly on the money collected for interests on bank account to pay for management costs. They want to understand the money flow and take the view that the societies shield them from the power of large publishers. They also want strong societies capable of standing up to powerful media companies.
- For the **music publisher** efficiency means (as for authors) fast processing of payment with minimum management costs on the basis of a royalty rate that is not undercut by competition amongst the collecting societies. The music publishers generally want collecting societies to be run like a business with equivalent governance requirements.
- For **collecting societies** efficiency resides in users taking up the licences they require and making intelligible and usage reports and payments on time to reduce management costs. Societies also rely on membership and prompt registration of rights by members. Efficiency resides in the ability to represent a sizeable and prized catalogue of rights that will attract users to lucrative licensing deals. Competition between societies leads to the demise of reciprocal representation agreements²⁶, the mechanism established by the societies to provide pan-European services. Monopoly societies in this sense serve efficiency because they are the only way to overcome the high transaction costs of administering millions of works and thousands of users. Savings in transaction costs offset the monopoly disadvantage. Monopoly also counterbalances the collective dominance of large international media conglomerates (large music companies and broadcasters) and in the negotiation process.
- For the **user**, efficiency resides in transparency of tariffs (and rights subject to licence) and accounting practices, lower royalty rates and the facility of a licence on a one stop shop basis and at non discriminatory terms. They want competition amongst societies and the ability to shop around for the best deal. Rights territoriality is an archaism for some operators operating at international level. The need for collecting societies is however never put into question.

²⁶ A reciprocal representation agreement is a contract between two collecting societies whereby the societies give each other the right to grant licences for any public performance of copyrighted musical works of their respective members.

- For the **European Commission** efficiency has a different definition whether you deal with DG Competition or DG Internal Market:
 - DG Competition: efficiency means competition on management costs and the ability for any collecting society to provide a blanket agreement for the entire European repertoire on a multi-territory basis – independently of any harmonisation of tariffs – in relation to cable, satellite, Internet and mobile services. The Santiago agreement (providing reciprocal representation agreements) can survive on the condition that provisions on customer allocation and territorial restrictions disappear.
 - DG Internal Market: efficiency means better governance and fewer societies to deliver pan European licences. Reciprocal representation agreements are no longer needed for on-line. Users should negotiate with fewer societies for pan-European licences.

Whatever the efficiency definition, it should be highlighted that no interested parties (even US based companies) promotes the US system of rights management. The latter is considered as less efficient and prone to legal uncertainty as large quantities of rights are not available collectively²⁷.

Right holders consider that competition amongst the two largest societies in the USA (BMI and ASCAP) to recruit members for their performance income leads to management inefficiency with resources spent on advertising/marketing services instead of managing and monitoring rights. They believe that such a system would work only for high earners with large sums of advances paid to well know authors by the societies to poach them from the competing society. US societies collect far less income for their constituents than their sister organisations in Europe²⁸.

SECTION VI

Copyright – a bottleneck to the emergence of new services?

Whilst there is some evidence that the licensing of music has acted initially as a bottleneck to the emergence of new services – it would be wrong however to blame it solely on collecting societies or the territorial nature of copyright.

We should remember that major record companies started providing licences to digital services in a serious way only as from 2004 and this thanks to the launch of the Apple service: iTunes. Indeed the threat of piracy combined with the attempt to control online distribution slowed down the licensing process of the major repertoire owners - the "majors"²⁹.

The repertoire of independent record companies – which represent 20% of the European market - is still largely licensed on an individual and essentially national basis. The cost of establishing a collective licensing structure has prevented so far the licensing of independent music on an international scale.

Very often exploitation rights are split on a territorial basis to different licensees which act as representative of the licensor's music catalogue in a given territory.

²⁷ On mechanicals for instance the US collecting society (Harry Fox Agency) would control only 85% of the repertoire making it more costly for users to gather all the necessary rights.

²⁸ 1.5 billion Euro vs 3.9 billion Euro in the EU.

²⁹ The 4 major companies - Universal, Sony-BMG, EMI, Warner- jointly hold an 80% market share of the sound recording market. They are also the largest music publishers with an estimated 70 % market share.

In addition the use of a song may involve the clearance of rights in relation to 3 different right holders (not necessarily with the same nationality) in relation to three different usages involving a large combination of rights management bodies.

Territoriality is inherent to copyright exploitation. Nobody would want to acquire a European licence for distribution whilst the exploitation takes place only in one territory. Service providers know this and their launch strategy factors this in. To reach out to local consumers, they operate national marketing and sales operations. The need to digitise local repertoire and the related costs also explain the launch in stages territory by territory of pan European services. This is clearly the strategy of Apple with its iTunes service.

Another structural impediment to change resides in the reciprocal representation agreements³⁰. These act as a brake to more innovative licensing deals since societies can threaten to withdraw repertoire if another collecting society steps out of line³¹.

However, without reciprocal representation agreements, it is impossible to empower a single society for the licensing of the world repertoire.

The licensing operation also needs a willing partner: the licensee.

Users are accused by right holders of dragging their feet to agree licensing terms. Users take the view sometimes that the promotional value of being part of the service constitutes sufficient remuneration, in particular for the smaller right holders. The independent record companies encountered this problem in their initial dealings with Apple and MTVE.

Experience shows that users will tend to apply less favourable terms in their dealings with right holders in a weak bargaining position because of the catalogue of rights they represent. This may be due to imbalance of market power or legal uncertainty over the scope of a given right.

For instance, it took 7 years for right holders in Belgium and the Belgian Cable operators to agree on terms. During that term, no royalties were paid. Remedies are weak as shutting down cable operator³² services for the failure to pay copyright would lead to strong protest from consumers and voters.

Diverging interpretation of the law is also given as reason for not agreeing on terms, for instance some broadcasters contest the simulcast right of record companies.

Newly established collecting societies in Central and Eastern Europe in particular are confronted with great difficulties in enforcing their rights with users. This is reflected in the low level of royalty collection in some of these countries (see Part I, chapter 3).

³⁰ A reciprocal representation agreement is a contract between two collecting societies whereby the societies give each other the right to grant licences for any public performance of copyrighted musical works of their respective members – ECJ *Ministère public vs Tournier* case 305/87 ECR 2521 para 17.

³¹ This is the point defended by the Dutch collecting society BUMA/STEMRA which advocates the end of reciprocal representation agreement which would penalise the smaller societies in competition against the larger ones.

³² Cable operators would prefer that all rights be settled by the broadcasters whose programme is retransmitted. This would put cable operators on equal footing with satellite broadcasters which seem to be able to obtain central licensing deals. They also contest that some large users such as private broadcasters RTL and SAT1 in Germany have set up collective licensing bodies to negotiate with cable operators, the retransmission rights

Some argue that it would be crucial to set up an arbitration and dispute settlement mechanism. However that would depend on conditions which are a long way off in the absence of a unified cultural market and harmonised tariff, it is difficult to envisage an effective pan-European dispute resolution system. How could a German judge decide on the validity of a royalty fee established in the UK for instance?

Therefore whilst licensing should be international, dispute resolution would remain territorial for as long as the market is fragmented culturally and in terms of tariffs – this is another contradiction which adds to the complexity of the issue. In terms of national dispute resolution mechanisms, as Chapter 4 demonstrates, there are in fact few Member States that have either effective or dedicated systems in place. Some rightsholders argue that this would help existing difficulties over agreeing rates and tariffs.

Voluntary codes of conduct might also be a useful tool to guide relationships between right holders and users. They would improve mutual understanding and establish clear rules for good faith negotiation and contractual implementation.

The new Member States of the EU should be encouraged to support their local collective licensing bodies in their mission to represent right holders' interests with users and enforce the "*acquis communautaire*".

The process of rights management varies greatly between countries of the EU, reflecting the history of copyright implementation in the various EU Member States. Right holders wish to avoid a situation enabling a society with less management experience (and lower royalty tariffs) to act as a clearance body for pan-European consumption of international repertoire.

SECTION VII

The views of the European Commission

In parallel, regulatory pressure is becoming more intense. This intervention is guided by internal market and competition policy justifications.

Traditional internal market policy was essentially concerned with harmonising legislation on copyright and neighbouring rights with a view to eliminating barriers to the free circulation of IP protected goods and services. In 2001, the European Union adopted the EU directive on the harmonisation of certain aspects of copyright and related rights in the information society to harmonise rights related to online distribution of copyright protected works.

Today the focus of DG MARKT is on the management of rights with a view to facilitating the acquisition of multi-territorial licences, more suited to the Internet age.

The European Commission concluded that "the current management of intellectual property – within defined territories that are usually national borders – is a source of considerable inefficiency. It also hinders the entry of new Internet based services that rely on IP protected content"³³.

³³ Tilman Lueder – Head of the Copyright Unit – DG Internal Market – speech on 2nd of March 2006 – Content for Competitiveness conference in Vienna – www.contentconference.at

In its impact assessment the European Commission reproduced the lobbying argument from EDIMA³⁴ estimating the cost of rights clearance (the negotiation) for online exploitation in Europe to reach € 237,500 Euro³⁵.

The European Commission issued a Recommendation on 18 October 2005 regarding online music licensing³⁶.

This recommendation lists measures for improving EU wide licensing of copyright with a view to "lowering the cost of access to protected content without compromising right holders income"³⁷.

The same European Commission – through its Competition directorate – is following this matter very closely and is encouraging in parallel (with some differences – see Part I, chapter 4 below) certain market developments.

Most recently it issued on 31 January 2006 a statement of objections against CISAC, the international confederation of authors and composers societies representing 210 member societies in 109 countries³⁸. This followed a complaint from pan-European broadcaster RTL in November 1999 and Music Choice Europe in 2005.

In the meantime, the European Commission is putting the territorial nature of the copyright openly into question. Indeed the head of cabinet of Commissioner Reding, Mr Rudolf Strohmeier stated on 2nd March 2006 at an EU presidency event:

"If in the longer term we want European content and creative industries to be able to compete on a global scale, and to achieve their full potential in driving European competitiveness, we may start calling into question the territoriality of copyright protection in Europe"³⁹.

SECTION VIII

Rights management as a cultural issue?

The single market in relation to cultural goods and services exists essentially in relation to Anglo-American music (e.g. rock, pop, rap), Hollywood movies and classical music (although the latter has become marginal in term of sales – less than 7% of the recorded music market).

Remedying the territorial fragmentation of licensing cannot be made without considering the impact on the production and distribution of local cultural creation and the different categories of right holders and their size (individuals, micro businesses and small and medium sizes companies - 95% of the music sector is composed of SMEs).

³⁴ EDiMA, the European Digital Media Association, is an alliance of digital media and technology companies who distribute audio and audio visual content on line. Members include Apple, Amazon, Tiscali.

³⁵ Page 33 of the EC Impact assessment. At a workshop organised at the European Parliament (ITRE committee) on 31 May 2005 EDiMA representatives alleged that the cost would amount to 475 000 Euros.

³⁶ Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services.

³⁷ Tilman Lueder – Head of the Copyright Unit – DG Internal Market – speech on 2nd of March 2006 – Content for Competitiveness conference in Vienna.

³⁸ Case COMP/C2/38.698 – CISAC of 31 January 2006.

³⁹ Vienna conference content for competitiveness 2nd of March 2006 "European content in a global and converging environment".

According to the European Commission the new digital distribution platforms and the international appeal of some artists legitimise the establishment of a new paradigm promoting the emergence of a new kind of collecting society.

Some question whether the efficiency goal would serve only the international (typically top selling Anglo-American) artists that are traded in the online world.

The consequence of such an approach for the societies that continue to deal with the off line world - still the most important source of income for the local artists – is unknown. This was not considered in the impact assessment. The consequences remain also to be assessed in relation to income set aside by the collecting societies for cultural and social purposes as mandated by law in 11 Member States⁴⁰.

Local European content hardly circulates. The challenge is to ensure that the encouragement for pan-European licensing changes this and that the policy will not marginalise further European talent and the expression of local cultures in a globalised world.

Right holders are concerned that the impact assessment of the European commission is limited to the economic and social impact of its recommendation ⁴¹ and fails to address its cultural impact. This is despite two vital considerations. First, 11 Member States of the European Union assign a specific cultural and/or social role to collecting societies. Second, article 151(4) of the EU Treaty obliges a cultural impact assessment by providing that:

"The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures"

SECTION IX – Conclusion

What is certain is that the status quo will not survive. Changes are on the way and actors are positioning themselves in a battle that will interest the European Parliament as it touches on several important policy issues:

- The protection and enforcement of copyright/authors' rights.
- The preservation of individual creators and SMEs' interests in the battle for the control of pan-European rights management.
- The development of the information society and pan-European services in Europe. How can rights management be conducive to the emergence of new services and foster market entry?
- Transparency and governance issues.
- The promotion of cultural diversity and expression in the implementation of competition and single market policies in compliance with article 151 of the EC Treaty⁴².

⁴⁰ The possibility of such contributions is legally recognised in a further four Member States and in all other Member States except Cyprus, such contributions are made on a voluntary basis.

⁴¹ Page 40 of the Impact assessment from DG Markt.

⁴² Article 151(4) EC Treaty "The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures".

The merit of the Recommendation, coupled with DG Competition's investigation is to trigger an important re-think on rights management but also launch a debate on the place of copyright and its exercise in the European integration process.

The European Commission seems determined to limit the effect of rights territoriality on the free provision of services. It also wants to limit the consequences of the monopolies inherent to collective rights management.

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

Finding the balance remains the challenge!

CHAPTER 2

MUSIC RIGHTS MANAGEMENT IN EUROPE

This Chapter considers the structure of collective rights management in Europe.

SECTION 1 – Introduction on copyright and rights management

Copyright is intended to protect literary, artistic, musical and other original works. It grants a monopoly to its owner to reward his/her creativity, or investment in creativity by corporations.

The right is territorial as it is granted by national legislation. It grants right holders essentially a monopoly right on the commercial exploitation of its creation in this territory.

Without copyright, popular works could be copied and sold without any reward to the creator of the work. Copyright includes the exclusive right to authorise or prohibit the making of copies of the work, as well as its distribution, its performance and its communication to the public (including the making available for interactive services).

Therefore copyright is crucial to the functioning of cultural industries. As for trademarks and patents, it provides an essential incentive for innovation and creativity. This reasoning has underpinned EU legislative actions in this field. The EU also sees a competitive advantage in sustaining strong IP industries for its competitiveness in world trade.

The information society directive (Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167 22 June 2001) confirms the importance of copyright protection to sustain creativity and to encourage cultural/content industries in Europe to remain competitive⁴³.

The exercise of copyright has always been under great scrutiny. The advent of new technology and the ability offered by technology to share, arrange, create has added a new spin to this scrutiny.

There are essentially two ways for right holders⁴⁴ to exercise their copyright and neighbouring rights:

- the first way is to exercise this right on an individual basis by negotiating directly with the user of the right. For instance, Apple needs to obtain a licence from Warner Music to be able to make the latest Madonna track available on its iTunes service for download on the consumers' iPod. However Apple will also require the authorisation of the composer and authors of Madonna's song (Swedish author Christian Karlsson for instance). Steve Job's company will have to seek a licence from the societies

⁴³ Indent 4: " A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation."

⁴⁴ In the case of music, right holders are: the author of the song, the composer of the music, the music publisher entrusted by the author/composer to manage his commercial rights, the performing artist and finally the record company. Right users are essentially broadcasters (TV, radio) record companies (for mechanicals), internet service providers, telecom companies, consumer electronics and computer manufacturers (in relation to private copying levies), restaurants, public places, discothèques, hairdressers etc.

representing the authors, composers and music publishers in the territories the download is being made available.

This leads us to the second way of exercising rights – through collective licensing bodies.

Licensing through collective bodies has been set up:

- On one hand, by individual authors, music publishers and performers/musicians⁴⁵ - with a view to collecting remuneration and administering their rights. To this effect the society will negotiate terms with users, for example with record companies for their use of a song on a record (the mechanical right) or the broadcaster's performance of the song, for instance.
- On the other hand, by corporations to negotiate and licence secondary rights (traditionally secondary to the sale of recordings/CDs) with a view to lower administrative costs (record producers have set up such mechanisms to licence broadcasters and restaurants for instance for the use of recorded music)⁴⁶. More recently, they have also set up mechanisms to license simulcasts and webcasts collectively⁴⁷.

There is neither a hierarchical relationship nor a difference in quality between the two forms of exercise. Individual licensing is the preferred one in principle as it allows the right holder to negotiate and collect the fees directly (no middlemen). For practical reasons, however, due to the form of usage or the number of users seeking a licence, collective licensing is often the most effective way to administer the moral and commercial interests of the artists or of a company (record company or music publisher). For many users it also represents the only way they can obtain licences for the entire repertoire (one licence negotiation instead of thousands).

The justification for collective licensing may differ for an individual or a company – but essentially collective licensing is the cheapest way to administer certain rights as it proposes convenience to users who do not need to track down the individual rights holders for licensing purposes.

The individual author is not in a position to control or monitor all forms of usage (performance, broadcast, reproduction, download). As a result, he transfers his rights or mandates a collecting society to exercise his rights on his behalf whether in his country of residence or abroad. Performers, music publishers and record companies do the same – they mandate a society to administer their rights for them as a matter of economic efficiency.

Essentially collective management allows trading of rights to take place by reducing transaction costs. It is also an element allowing a level playing field as all users have to obtain a licence. By reducing transaction costs, collective management increases not only the range of rights that are traded but also the volume of trading.

Collective administration exists in the field of music, literature, photography, film, performing arts etc. It is, however, only under scrutiny in the music field. This is because of the importance of music as a driver to new technology and new services. The other reason is that collective licensing is far less developed in other content sectors. For instance, in the audiovisual field, rights are essentially negotiated between the user and the producer.

⁴⁵ Such collective licensing bodies are more recent for performers and musicians with the adoption of the Rome Convention in 1961.

⁴⁶ Such collective licensing bodies date back to the implementation of the Rome convention which granted neighbouring rights to record producers and performers.

⁴⁷ See more below, Chapter 4, Section 2, Point 2.1

Collective licensing is hardly used in relation to film exploitation on networks apart from in relation to the cable retransmission right and private copying for producers, performers and authors (film director, scriptwriter etc). This is due to the fact that the right of commercial exploitation are entrusted to the film producer.

It is however possible that such collective licensing may become more common with a view to facilitating the making available of European films on pan European platforms. In some countries such as France, collective licensing body will be able to collect from the users the royalties due to film directors and screenwriters in relation to VOD exploitation that has been negotiated by the producers on their behalf. In Spain the collecting society for audiovisual producers EGEDA is managing a platform to license VOD rights to users. A similar initiative exists in Denmark.

The territorial licensing of films is also more difficult for the European Commission to challenge considering the jurisprudence of the European Court of Justice in the Coditel case⁴⁸. Indeed the court provides that the commercial exploitation on a territorial basis is legitimate in relation to the performance of audiovisual works (with a view to respecting the sequences of exploitation or release windows).

In any event, whether for music or a film, trading 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 a key function of collective management bodies. The question is, do they succeed in fulfilling this function?

SECTION 2

Collective management – benefits and costs

The management of rights is a system whereby a right holder authorises a third party to manage commercial usages of his protected work. Under copyright legislation the right granted to a user is territorial by nature.

A writer, artist or music publisher has a variety of sources from which he may receive income for a particular copyright protected work. A single work or performance may reach its audience through commercial recordings, live performance, broadcast, download, simulcast etc or a combination of these.

In view of the complex process of monitoring, collection and distribution of revenues, collecting societies act on behalf of all those with an interest in intellectual property rights.

The functions of collecting societies

The principal function of collecting societies is to licence and collect revenue from the exploitation of the copyright of their members.

⁴⁸ Case 62/79 Coditel v Cine Vog films [1980] ECR 881

This implies the following activities:

- Identify potential users.
- Negotiate a licence fee with users (commercial and legal negotiations). A wide range of tariffs and terms is required to cater for the small hairdresser who may pay 20 Euros a month to the largest radio or TV stations paying large sums of money.
- Collect the licence fee from the user.
- Monitor the usage (to prevent abuse and illegal activities).
- Distribute fees collected to the individual right holders (an individual or a company).
- Generate standard contracts.

In addition 11 Member States legally oblige societies with functions of quasi public interest such as supporting the arts by financing new creation, or with social activities (pension funds) for their members⁴⁹. On this matter the ECJ⁵⁰ held that collecting societies do not undertake a service of general economic interest which would exempt them from the application of EC rules on competition.

Collecting societies are required to administer rights for all comers, however small the market for their works.

To finance themselves collecting societies typically charge a flat percentage of the proceeds of users' income from blanket licences.

Authors' societies have also set up lobbying platforms to represent their own interests and the interests of their members with EU institutions (GESAC)⁵¹. Some collecting societies representing performers/musicians have similarly set up their own associations, AEPO-ARTIS⁵² and GIART⁵³.

No such organisation has been set up by collecting societies representing record producers – the latter tend at board level to be controlled by the major record companies (whether by outright control or de facto ability to control, for example by blocking decisions). It is assumed that their interests are represented by IFPI⁵⁴ which manages a performance rights committee composed of all the collecting societies representing producers of phonograms and in some countries, such as Germany or UK⁵⁵.

The above associations often work together with other associations on a joint platform with a view to promoting copyright or fighting against piracy.

Some of them benefit from EU support to promote the emergence of effective collective licensing bodies in Central and Eastern Europe as well as to conduct education programmes for police and customs on anti-piracy measures.

⁴⁹ Austria, The Czech Republic, Italy, Portugal, Slovakia, France, Belgium, Denmark, Spain, Luxembourg, Germany.

In other EU Member States such contributions are made on a voluntary basis, except in Cyprus.

⁵⁰ See GVL case 7/82 GVL vs Commission of the European Communities [1983] ECR 483 at para 32.

⁵¹ GESAC is an umbrella organisation representing 34 of the largest authors' societies in the European Union, Norway and Switzerland in the area of music, graphic and plastic arts, literary and dramatic works, and audiovisual as well as music publishers.

⁵² AEPO-ARTIS unites 27 European collective management organisations for music and audiovisual performers and represents them at European level.

⁵³ GIART –The International Organisation of Performing Artists- GIART was created in 2003 by Spanish, Italian, Dutch and Portuguese collective management societies of performing artists.

⁵⁴ IFPI represents major record companies and other labels with over 1450 members in 75 countries and affiliated industry associations in 48 countries. IMPALA, which was set up by the main independent record companies and national associations across Europe to represents the collective interests of the independents is not a member of this committee.

⁵⁵ In the UK, for example, PPL has an agreement with performer societies to collect on their behalf.

Rights usually managed collectively

The rights managed collectively are as follows:

- The **mechanical right** is the right to mechanically reproduce a musical work on a sound recording (licence paid by record companies to reproduce an author's work on a CD for instance).
- The **private copying exception**. This is an exception to the reproduction right for certain purposes. It is exercised collectively for authors, composers, publishers, performers and producers in the audio, audiovisual field as well as reprography.
- The **public performance right** – This right is licensed collectively through societies by performers, producers, authors/composers, publishers, to discotheques, bars, restaurants and other public places playing music⁵⁶.
- The **communication to the public right** – this right is licensed for example to radios and TV. However music videos are licensed by major record companies directly on an individual basis to MTVE, the largest international music video TV channel. This right includes webcast or simulcast but the latter's scope is debated with broadcasters. Most independents in Europe license their music video rights collectively via a pan-European deal administered on their behalf by VPL in the UK.
- The **making available to the public right** or the on-demand right – which is the right to communicate to the public a work, by wire or wireless means, in such a way that the public may access the work at any time and from any place (interactivity). This right is:
 - licensed collectively by authors/composers, performers and by independent record producers.
 - licensed individually by major record companies and some large independents.

It should be noted that in some EU countries, certain categories of rights listed above are subject to mandatory collective management - that is to say, right holders cannot manage their rights on an individual basis and are obliged to assign them to a collecting society of their choice (even though in some cases they have but one choice). A detailed analysis of this issue is presented in Part II of the study).

Main advantages of collective licensing

For users

- Create a one stop shop to access local and/or world wide repertoire thus avoiding multiplication of negotiations with right holders, and lowering transaction costs for users.
- Provide legal security against copyright claims.

For right holders

- Increase royalty payments and provide remuneration to creators and artists.
- Increase trade in rights, including rights that individually would not be economic to trade.
- Mutualise risk and costs in managing rights in a way that supports smaller right owners.

⁵⁶ The Barcelona Court of Appeal referred to the European Court of Justice on 7 June 2005 for a preliminary ruling in the proceeding between SGAE (Spanish Authors Society) and Rafael Hoteles SL (Case 2005/C 257/05). The ECJ will have to decide whether or not the installation in hotel rooms of television sets constitutes an act of communication to the public, on the basis of the consideration of hotel rooms as public places instead of strictly domestic locations as stated by the latest rulings from the Spanish Supreme Court. On 13 July 2006 the Advocate General presented her conclusions leaving the case pending for decision in the ECJ.

- Create solidarity between well off and poorer artists and between larger and smaller companies. There is a stronger bargaining position if the society represents a sizeable repertoire including the most successful bands or companies. This solidarity exists also in the fact that some rights may cross-subsidise the costlier collection of other rights.

For public interest objectives

- Collective licensing bodies are a convenient way for governments to channel funds collected but sometimes not distributable (for example, where there is a lack of reciprocity with a given country, or where it is impossible to trace the beneficiary of the royalty collected) for cultural or general interest objectives (for instance funding pension funds for artists or advancing production money to new bands).
- These bodies constitute a tool to promote cultural diversity and a variety of offers to consumers. This is done via the representation of local repertoire through reciprocal representation agreements between societies. This enables the user to offer local as well as international artists to its consumers.
- Collecting societies provide incentives for new artists, publishers, performers and record companies to keep on producing and being creative. They participate in Europe's drive to competitiveness in the growing "content" sector.

In summary, collective management enables right owners and users to jointly access lower transaction costs. The more right owners join a collecting society the further potential of reducing costs exists given the scope for gains from economies of scale. However, it should be added that collective management also enhances the monopoly position of the management body whilst at the same time putting those bodies with less valuable repertoire at risk of becoming unviable.

Main disadvantages of collective licensing

The disadvantages of collective management are as follows:

- It creates a national monopoly which sits uncomfortably with EC rules on competition.
- Reduces price competition.
- In the absence of reciprocal representation agreements it fragments the internal market⁵⁷.
- It promotes territorial licensing as opposed to pan-European licensing.
- Unless there is an effective dedicated dispute resolution mechanism, there is a risk of protracted contractual negotiations; such specialised dispute resolution systems are effective only in the UK⁵⁸ and Germany.

⁵⁷ Reciprocal representation agreements exist in relation to authors/composers rights. They are less systematic between performers and producers' organisations.

⁵⁸ Even with such dispute mechanisms, delay remains an issue. Some right holders feel that users make a reference to the dispute mechanism as a negotiating tactic.

- The monopoly position of collecting societies renders the latter less inclined to understand or to adapt to market realities. It makes them prone to accusations of management inefficiencies.
- Collecting societies are assimilated to “taxman”⁵⁹ – they suffer from a poor image in some countries in particular with small businesses (catering, hairdressers, and discothèques).

Whilst nobody amongst the users’ groups interviewed⁶⁰ contests the benefits in efficiency gains from collective management, they request that regulators monitor the risk of excessive licence fees resulting from potential abuse of monopoly power or from management inefficiency. They request more transparency in particular in relation to cost allocation. They are concerned about productive inefficiency.

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

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.

However the request for more efficiency has also been made by members of the societies too. For example, Daft Punk in France⁶¹ and U2 in the UK have criticised (and, as regards U2⁶², lodged a legal complaint against PRS) the difficulty in self administering certain categories of rights independently of the societies. The challenge is to find a balance between the freedom of copyright owners to retain control over their works against the need for collecting societies to manage copyright effectively.

Large music publishers are requesting representative power at board level that is commensurate to their economic power and commercial weight. They enjoy a 50% representation in the board of the PRS/MCPS (UK). In general their representation is set at one third of board seats. However in some countries such as Portugal, Greece and Hungary, they are denied any representation.

Smaller record companies challenge the accuracy of distribution in particular when they do not have subsidiaries abroad to control the local producers’ society.

Performers’ societies have problems identifying and distributing money collected on behalf of foreign performers.

There is a general demand from both users and right holders for improved transparency on cost allocation, tariffs and income distribution.

In relation to users, the balance is to be found in the degree of pressure on costs and management, whilst not undermining the societies' role in fostering creativity at national level, as well as at European level.

⁵⁹ SIMIM the Belgian collecting society representing record producers uses local trade association in the trade sector to collect the royalties on its behalf. These trade associations receive a commission for their collection duties that enable them to fund their structure. The delegation of collection responsibilities to the trade body representing users is a clever way to dispel the “taxman” image.

⁶⁰ EBU (public broadcasters), ACT (commercial televisions), EDIMA (digital media), IFPI and IMPALA (phonographic industry), Hotrec (restaurants, bars, etc), ECCA (cable operators).

⁶¹ Comp/C2/37.219 Banghalter and Homem Christo v SACEM in 2002.

⁶² Performing Rights, UK Monopolies and Mergers Commission, HMSO Cm 3147 (1996).

CHAPTER 3

THE RIGHT MANAGEMENT BUSINESS IN MUSIC

This chapter considers the value of rights management: economic, trade, cultural and social.

SECTION 1 – The economic value

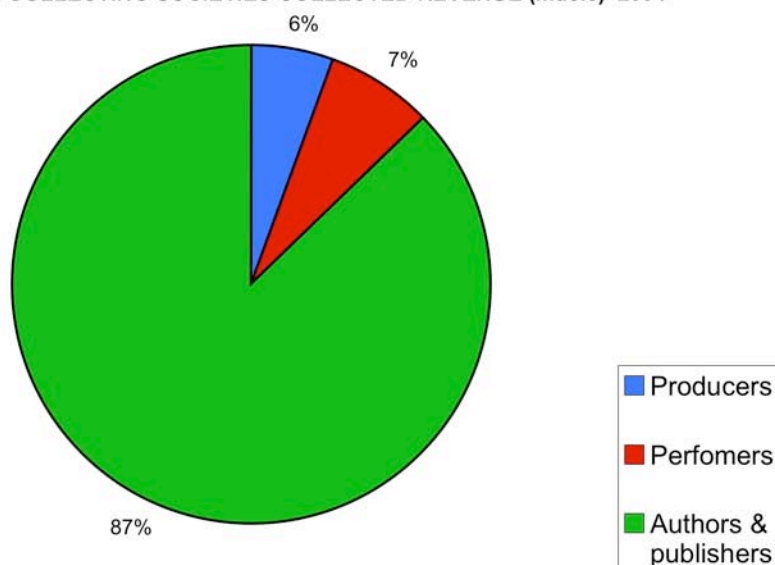
In the EU there are approximately 65 music licensing societies which collected almost € 5 billion in 2004 on behalf of authors, composers, publishers, performers and record companies.

There are different types of music collecting societies: some of them act on behalf of authors and publishers, others for performers and others for phonogram producers. In some countries there are joint collecting societies standing for performers and record producers at the same time. Authors' societies may also be mandated to collect some rights on behalf of record producers, in particular in relation to public performances.

Revenues collected for authors and publishers represent the greatest amount. In 2004 they collected € 4.35 billion (87 % of the music rights management market) compared with € 293 million for record producers and € 350 million for performers.

We estimate that the collecting societies (authors' societies) negotiate and collect licences with more than 2 million users in relation to 18 million musical works.

Fig 1: EU COLLECTING SOCIETIES COLLECTED REVENUE (music) 2004

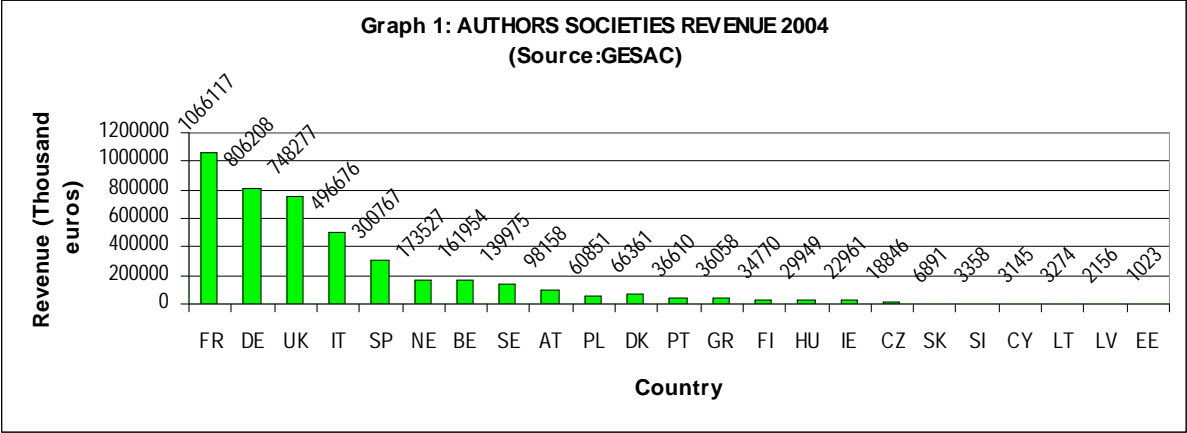


Category of right holders	Collected revenues (million euros) - 2004
Authors and publishers	4,318 (87%)
Producers	293 (6%)
Performers	351 (7%)
TOTAL	4,962 (100%)

Notes on Fig 1

Fig 1 represents revenues collected by collecting societies active in the field of **music** (works and sound recordings). However, in some cases it has not been possible to separate revenues derived from music rights from revenues derived from other rights (audiovisual, visual art, etc). This is notably the case for the following societies: SABAM (Belgium), SIAE (Italy), EAU (Estonia), AKAA/LAA (Latvia), ARTISJUS (Hungary), LATGA-A (Lithuania), ZAIKS (Poland), SPA (Portugal), SGAE (Spain), ADAMI & SPEDIDAM (France), URADEX (Belgium), AGATA (Lithuania), NORMA (Netherlands), STOART (Poland), INTERGRAM and OZIS (Slovakia) and SAMI (Sweden).

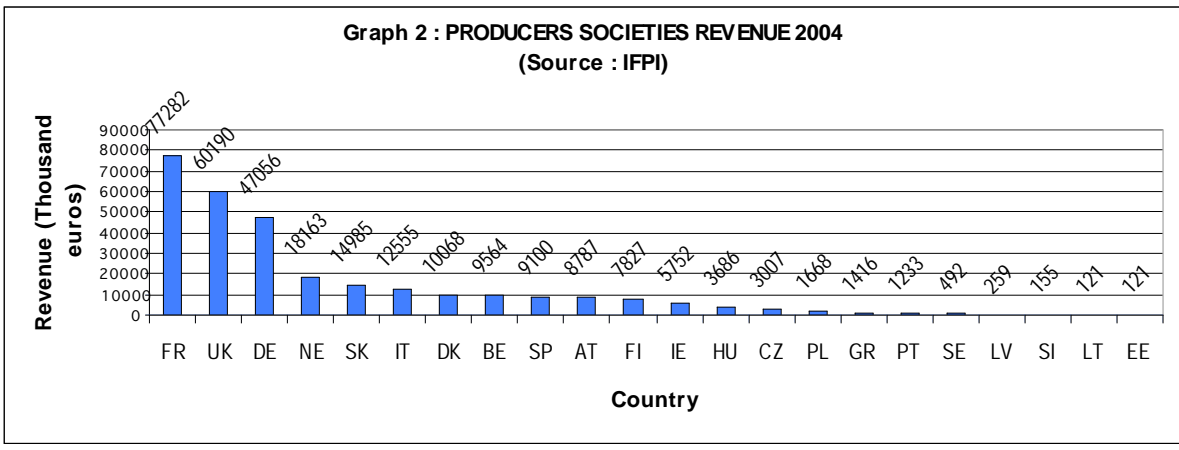
The revenues in Fig. 1 represent revenues collected in 2004 by author, composer and publisher collecting societies in their home territory, plus amounts received from other societies the same year on the basis of reciprocal representation agreements. Figures presented are gross revenues, before deductions for administrative fees and before transfer to foreign societies.



Notes on Graph. 1 Figures for Luxembourg are included in those presented for France (SACEM) and Figures for Malta are included in those presented for the UK (MCPS-PRS)

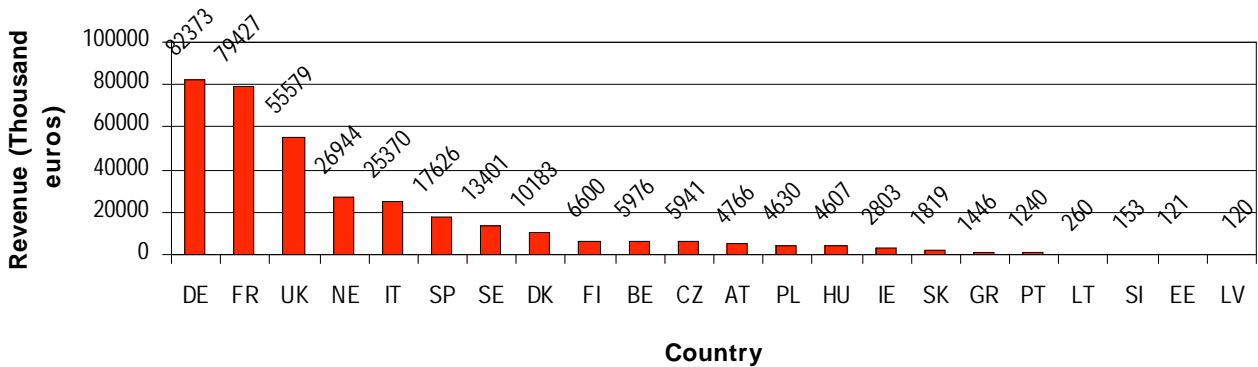
NB: Graph 1 represents revenues collected by authors' societies active in the field of **music**. However, in some cases it has not been possible to separate revenues derived from music rights from revenues derived from other rights (audiovisual, visual art, etc).

This is notably the case for the following societies: SABAM (Belgium), SIAE (Italy), EAU (Estonia), AKA/LAA (Latvia), ARTISJUS (Hungary), LATGA-A (Lithuania), ZAKS (Poland), SPA (Portugal) and SGAE (Spain).



Notes on Graph 2 All Member States are included except Malta, Luxembourg and Cyprus

GRAPH 3: PERFORMERS SOCIETIES REVENUE 2004
 (Source: AEPO-ARTIS, GIART & IFPI)



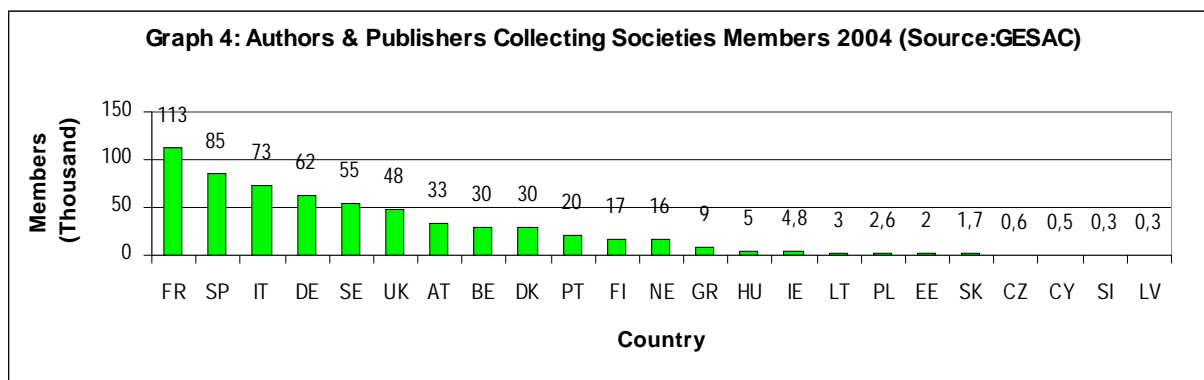
Notes on Graph 3

All Member States are included except Malta, Luxembourg and Cyprus.

NB: Graph 3 represents revenues collected by performers' societies active in the field of **music**. However, in some cases it has not been possible to separate revenues derived from music rights from revenues derived from other rights (audiovisual, drama, etc). This is notably the case for the following societies: ADAMI & SPEDIDAM (France), URADEX (Belgium), AGATA (Lithuania), NORMA (Netherlands), STOART (Poland), INTERGRAM and OZIS (Slovakia) and SAMI (Sweden).

SECTION 2 – THE SOCIAL VALUE

Authors societies report a total membership of more than 500,000 members (individual authors/composers and music publishers). Members necessarily include heirs and heiresses since the term of protection authors are granted is life plus 70 years.

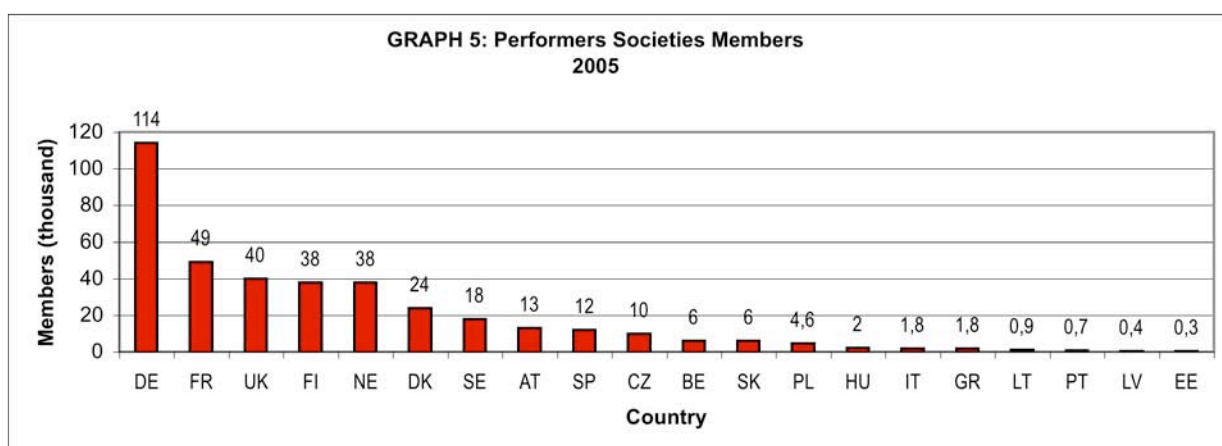


Notes on Graph 4 All Member States are included except for Malta and Luxembourg.

NB: Graph 4 represents members belonging to authors' societies active in the field of **music**. However, in some cases it has not been possible to separate members active in the field of music from member active in other fields (audiovisual, visual arts, etc). This is notably the case for the following societies: SABAM (Belgium), SIAE (Italy), EAU (Estonia), AKAALAA (Latvia), ARTISJUS (Hungary), LATGA-A (Lithuania), ZAIKS (Poland), SPA (Portugal) and SGAE (Spain).

It is estimated that there are around 7,000 record producer members of collecting societies in the European Union.

There are almost 380,000 performers/musicians members of collecting societies in the European Union:



Notes on Graph 5

All MS except Malta, Ireland, Slovenia, Luxembourg and Cyprus

NB: Graph 5 represents members belonging to performers' societies active in the field of **music**. However, in some cases it has not been possible to separate members active in the field of music from member active in other fields (audiovisual, drama, etc).

This is notably the case for the following societies: ADAMI & SPEDIDAM (France), URADEX (Belgium), AGATA (Lithuania), NORMA (Netherlands), STOART (Poland), INTERGRAM and OZIS (Slovakia) and SAMI (Sweden).

* Except Netherlands (SENA), Portugal (GDA), AIE (Spain) PPL (UK) and IMAIE (Italy) whose Figures correspond to the year 2004.

Authors' societies in the EU employ more than 7,000 people.

SECTION 3 – The trade value

Europe is a source of creative talent that generates important trade income. As there are no European statistics on the trade value of rights we are illustrating this point through examples taken from Britain and Sweden, countries known for a positive trade balance on rights trading.

The UK is the largest source of musical compositions in the world after the USA, with a net surplus of invisible exports over imports reaching close to GBP 160 million in 2000 (approx. € 321 million).

The UK has the fourth largest music publishing market in the world with a 9.8% share of international revenues⁶³.

The trade value of Swedish song writing amounted to 83 million Euro in 2004⁶⁴.

Indeed Swedish authors Christian Karlsson/Pontus Winnberg write songs for Madonna and Britney Spears. Max Martin is composing for the Backstreet Boys, Kelly Clarkson, Celine Dion or Pink.

Overall the Swedish authorities estimate that the export income in the form of royalties from rights management (for Swedish authors, producers, performers) was close to 1.3 billion SKR (€140 million) in 2004⁶⁵.

SECTION 4 – Cultural and social funds

11 Member States provide in their legislation that societies must manage social or cultural funds.

Independently of legislative obligations in all other EU territories, with the exception of Cyprus, societies have set up such funds on a voluntary basis.

We estimate that the total amount of such funds managed by the authors' societies represent more than €142 million.

In France alone all the collecting societies taken together spent € 95 million in 2004 in cultural activities⁶⁶

⁶³ UK Trade and Investment – Export service guide for the music industry – June 2005.

⁶⁴ Export Music Sweden 'Export performance of the Swedish music industry 2004'

⁶⁵ Export Music Sweden 'Export performance of the Swedish music industry 2004'

⁶⁶ Commission permanente de contrôle des sociétés de perception des droits – 3e rapport annuel – Mars 2006

TABLE 1: AUTHORS' SOCIETIES CULTURAL & SOCIAL FUNDS 2004

Source: GESAC			
Country	Society	Cultural Funds (million euros)	Social Funds (million euros)
AT	AKM	0.5	3.5
	Austro Mechana	1.5	1.7
BE	SABAM	0.2	4.8
CZ	OSA*		0.19
DE	GEMA*		25.1
DK	KODA	4.2	0.035
FI	TEOSTO	1.7	0
FR	SACEM	19.4	36.6
GR	AEPI		0.1
HU	ARTISJUS		2.8
IE	IMRO		0.1
IT	SIAE*	3.5	0
LV	AKKA/LAA	0.03	0
LT	LATGA-A		0.08
NE	BUMA-STEMRA*		9.4
PL	ZAIS	0.05	0.2
PT	SPA		1.2
SE	STIM	0.8	0
SP	SGAE	21	1.4
UK	MCPS-PRS	2.2	0.03
TOTAL			142.315

* Source: Cap Gemini - Music in Europe Sound or Silence? (2004) -
Total social and/or cultural deductions in 2002

Notes on Table 1 All EU collecting societies except: Cyprus, Estonia, Luxembourg, Malta, Slovakia and Slovenia.

Collecting societies acting on behalf of performers and musicians⁶⁷ in the European Union use also part of their revenues to fund cultural activities:

TABLE 2: PERFORMERS' SOCIETIES CULTURAL & SOCIAL FUNDS 2005

SOURCE: AEPO-ARTIS & GIART		
Country	Society	Cultural and social funds (million euros)
AT	LSG	0.53
CZ	INTERGRAM	0.17
DE	GVL	3.3
DK	GRAMEX	0.17
FR	ADAMI	7.2
	SPEDIDAM	3.8
HU*	MSZSZ-EJI	0.8
IT	IMAIE	1.6
NE	SENA	0.2
	NORMA	0.15
PL	STOART	0.6
PT	GDA	0.02
SE	SAMI	1.4
SP	AIE	1.4
TOTAL		19.14

*: 2004

⁶⁷ Note, no comprehensive breakdown of cultural/social contributions by producers' societies is available.

CHAPTER 4

EU INSTITUTIONS AND RIGHTS MANAGEMENT

This chapter considers the stance of the EU institutions on rights management. Their role ensure that copyright rules are meaningful and so that Europe continues to be a centre of excellence for creativity. Nevertheless, two issues arise with the exercise of copyright in relation to EC law:

- It is territorial or national – thus hindering the progress of the internal market concept by sustaining frontiers.
- It grants a monopoly right to the right holder – the monopoly concept being anathema to competition law.

SECTION 1 – The European Parliament

On 11 December 2003 the EP Committee on Legal Affairs and the Internal Market adopted a report calling for a community framework for collecting societies managing author's rights.

By unanimity a resolution was adopted by the Parliament on 15 January 2004⁶⁸.

In this resolution the European Parliament recognises the important role played by collecting societies to stimulate cultural diversity and innovation. It recognises their responsibility for cultural and social aspects (indents n°13, 23 and 26 of the resolution) – the resolution sees them as “vehicles of public authority” (N°27).

The resolution considers the specific features of copyright and its public interest objectives and calls for careful implementation of competition law (limited to abuses) in this area. It however strongly requests the introduction of transparency measures.

Indeed, the EP “urges the Commission to examine, three years following the adoption of this resolution, whether the desired harmonisation, democratisation and transparency in relation to the management of copyright and neighbouring rights by collective management societies has been achieved and, if not, to take additional measures” (indent N° 61).

⁶⁸ OJ 16.04.2004 C92E/425

SECTION 2 – The European Commission

Internal Market

The process of completing the internal market in services put the spotlight on collective management structures. How can Europe develop a competitive digital economy if new services (internet service providers, phone operators, music on demand services, VOD services) are obliged to negotiate on a national basis with such a wide variety of collecting societies throughout Europe?

The issue of rights management has been an important part of the consultation process carried out by the European Commission since the publication in 1995 of the Green Paper on Copyright in the Information Society⁶⁹.

In 1998 the European Commission commissioned a study to Deloitte and Touche mapping out the regulatory situation on collective management in the different 15 EU Member States. A two day hearing took place in November 2000 to gather the views of the stakeholders.

At the time the Commission concluded that the internal market could not function properly without common grounds on rights management.

Then the EC issued a communication on 16 April 2004 on “the management of copyright and related rights in the Internal market” (COM (2004), 261 final) to consider whether methods of right management are hindering the functioning of the internal market.

The Commission recognises that copyright protection besides its general economic aim also serves non economic objectives, in particular creativity, cultural diversity and identity.

It acknowledges that secondary legislation on the Internal Market promotes collective management:

- Rental and Lending right Directive provides that the equitable remuneration for the rental right may be exercise collectively only (Directive 92/100/EEC).
- Council Directive of 27 September 1993 on copyright applicable to satellite broadcasting and cable retransmission provides in its article 9 that the cable retransmission right may be exercised only through a collecting society (Directive 93/83/EEC).
- Article 6 of the Resale Right Directive provides for compulsory or optional collective management for the resale right (Directive 2001/84/EC).

EC directives and the principle of subsidiarity have left it to Member States to regulate the activities of collecting societies. However the directive on copyright and the information society (Directive 2001/29/EEC) and on resale rights (Directive 2001/84/EC) call for greater transparency and efficiency in relation to the activities of collecting societies.

Nevertheless national legislation still varies greatly on rights management, as Part II of this study will show. In this context DG MARKT was informally working on a draft directive aimed at regulating collecting societies. The Commission wished to consider common grounds in relation to the establishment and status of societies, their functioning and accountability, rules of good governance as well as control mechanisms including dispute settlement processes.

⁶⁹ European Commission Green Paper of 27 July 1995 on Copyright and Related Rights in the Information Society [COM(95) 382 final].

However senior management changes within the copyright unit of the European Commission – at the end of 2004 - led to a more radical approach concluding that the limited growth of legitimate online content services in the EU was due to "inefficient" copyright licensing which merited regulatory intervention. Indeed it was felt that the collective licensing process would act as a bottleneck in relation to online licensing.

This initial findings were part of a study published on 7 July 2005⁷⁰ by the European Commission. This study triggered a consultation process followed by an impact study conducted (too hastily in the eyes of some observers) by the EC internal market directorate in the summer of 2005⁷¹.

The impact study supported as a whole the observations of the European Digital Media Association (EDIMA) that if European online services were lagging behind – with the US market achieving revenues 8 times higher than the EU in 2004 - collecting societies were to be blamed for that⁷².

As a result the Commission took the view that unless the EU develops an EU wide copyright licensing system for online music services, the latter will not develop successfully.

The paper consulted the stakeholders on three possible options:

OPTION 1: do nothing

OPTION 2: improve cross border cooperation between national collecting societies by eliminating territorial restrictions and discriminatory provisions in the reciprocal representation agreements (in particular customer allocation).

OPTION 3: encourage the setting up of one stop shops that would licence usage on a pan-European basis by giving the right holder the choice to authorise one collecting society to administer his online rights across the EU.

On the basis of article 211 of the EC Treaty the European Commission decided to opt for a recommendation⁷³. The Commission felt that this intervention was justified by "the urgency and severity of the problem in compliance with the necessity test".

The Recommendation on collective cross-border management of copyright and related rights for legitimate online music services of 18 October 2005⁷⁴ went for option 3.

⁷⁰ Commission Staff Working Document – Study on a community initiative on the cross border collective management of copyright.

⁷¹ SEC (2005) 1254– Commission staff working document - Impact assessment on reforming cross border collective management of copyright and related rights for legitimate online music services.

⁷² The commission's focus on online in its impact assessment ignores the fact that mobile services are more developed in Europe than in the USA. For example, revenue from the licensing of ringtones is more important in Europe than in the USA. In addition, other sectors where revenues are greater in the USA than in Europe have not been investigated. For example, Pay TV revenue are 5 times bigger in the USA than in Europe yet this has not triggered EU regulatory intervention.

⁷³ A recommendation is not binding but its practical impact may be greater than a directive, particularly where its contents are far-reaching.

⁷⁴ OJ L 276 21.10.2005

Indeed the Recommendation requests that collecting societies:

- compete to attract artists and catalogue from other countries
- grant pan-European licences independently of the place of establishment of the users.

The Recommendation essentially proposes the elimination of territorial restrictions and customer allocation provisions. It also makes reference to transparency and good governance requirements.

Member States are also requested to provide for effective dispute resolution mechanisms and to report on a yearly basis to the European Commission on measures they have taken in relation to this recommendation.

The Commission wishes to ensure that collecting societies are authorised to administer rights on a Community wide basis with a view to achieving an integrated Community economy. Failure to achieve this would hinder the growth of new services in Europe.

The advantage according to the European Commission is that EU wide licensing reduces the management cost inherent in reciprocal representation agreements (each collecting society taking a management deduction)⁷⁵. This would also improve accuracy in royalty distribution. The Commission wants to encourage the societies to combine operational backroom functions or to outsource management services.

Critics highlight various features of the impact assessment. First, it focuses on specific economic interests⁷⁶. Second, it is short of views from the continental societies and individual authors/composers on multi territorial licensing. The latter's views are confined to the themes of culture diversity.

This is problematic. For the recommendation to work right holders need to switch to the most efficient collecting societies with a view to empower the societies to grant pan-European licences.

Is this migration likely?

The Commission is optimistic about this on the ground that a national right holder will want to switch to another more efficient collecting society for rights management so as to reduce the number of middlemen (and transaction costs).

Authors/composers argue that language and proximity will be determinant factors in the membership of a collecting society for the vast majority of right holders⁷⁷.

Therefore some consider that the migration of repertoire to a restricted few is likely to happen only in relation to Anglo-American repertoire controlled by the publishers. In addition there might be little incentives for societies to recruit lesser known authors by fear of increasing management costs. The system would be discriminatory against less successful or new talent.

⁷⁵ "The EU wide licensing through one rights manager would reduce the deductions inherent in reciprocal arrangements and in so doing increase the authors' revenues" (page 11; 1.2.6 of the impact assessment) – Commission staff working paper.

⁷⁶ pages 19 to 22 of the Impact assessment document from the European Commission.

⁷⁷ Would an individual entertain accounting reports in a foreign language and dealing with staff that do not know his work (a very popular star in one country might be completely unknown in another country)?

This leads critics to consider that the Commission is in effect commending a two tier licensing structure – one for Anglo-American music (international repertoire) and one for national music. The latter would be put at a disadvantage on the following counts:

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 may want to pay less for it.
4. Local authors and composers may not be paid on the same tariff than 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 proponents of such system estimate that service providers will always seek to license national repertoire because of its commercial attractiveness – but what about non-national European repertoire?

Will this make the acquisition of national repertoire more expensive as cost efficiency will be lost with less repertoire to administer (the more lucrative Anglo-American repertoire would no longer “subsidise” the management of the local repertoire)?

Opponents of the EC view argue that the EC is dogmatic in its vision and that it should take into consideration the nature of goods and services protected by IP. They argue that market partitioning is a de facto reality because of linguistic and cultural considerations.

They argue that the system promoted might make the life easier for international operators, the multinationals, which would be able to find a one stop shop for their international activities. But the future is less clear for the purely national operators which may find themselves at a competitive disadvantage in licensing terms. Indeed the latter would have to seek a licence for local repertoire and another licence or licences for international repertoire - two or more negotiations instead of one today.

However the multinationals (whether large record companies or users) themselves fear a system where the collecting society with the largest amount of right owners will be in a stronger position to abuse its monopoly position.

Indeed the “efficiency” of the proposed system has also been criticised by representatives of users’ groups. The latter sees the risk of having to negotiate with a larger monopolist or several of them (to license international repertoire) and with several societies to license national repertoire. The licensing process would not be made easier and would be detrimental to multi-territorial licensing deals, in particular in relation to local repertoire.

For this reason some argue that the Recommendation adds new layers of confusion and legal uncertainties.

Some query whether the scope of the Recommendation is appropriate. Indeed the regime for the Recommendation has a very narrow scope. It relates only to the management of authors’ rights (and only in the area of on-line), without giving consideration to the collective management of producers’ or performers’ rights.

Why should collective management bodies active in music be more transparent, for instance, than the those operating for audiovisual or literary works?

Should the licensing bodies dealing with music be the only ones to aim for efficiency and pan European services, or to compete on management costs?

In any event, every collecting society, whether active for film producers, film directors or book publishers or other right holders is following developments with great interest. They take the view that major principles adopted in the Recommendation are likely to influence the way collective management is going to be regulated in the future.

They express concern that the issue is considered in a piecemeal approach through the specifics of online music licensing, which represents less than 3% of the authors' societies' income.

The European Commission would create a legal environment that is no longer technology neutral (online licensing vs offline licensing), culturally neutral (international artists vs local artists) or genre neutral (music licensing vs other IP works licensing).

The central plank of the EC initiative is to increase management efficiency by addressing perceived market failures in relation to pan-European licensing. In this respect, it should be noted that collecting societies are not exempted from the scope of the revised Commission proposal for a directive on Services in the Internal Market.

Option 2 of the EC Recommendation is the one preferred by users such as on-line services, e.g. EDIMA and also some rights holders⁷⁸ whose rights have been licensed in this way.

This would be the system conducive to more competition amongst collecting societies to the detriment of right holders. Some users (EDIMA) would like to pick and choose the society they prefer to obtain a pan-European licence – thus enabling competition on royalty rates.

Some users in the commercial broadcasting field would however find it acceptable that the royalty rate depends on the country of usage. This means that competition would not take place on rate but on management costs⁷⁹. Pan-European broadcaster RTL is seeking one place to obtain a pan-European broadcast licence but would accept that in relation to the activities of one of its affiliates (M6 in France for instance) it would pay the rate in force in the country of this affiliate (in this example the French rate) whilst the licence had been obtained from a more "efficient" society.

This inability to obtain a central licence for all its European broadcasting activities led RTL to complain in November 2000 against the CISAC system of reciprocal representation agreements. This complaint is now subject to an EC investigation and statement of objections relating to the terms of the CISAC model contract preventing multi-territory licensing from any given collecting society.

Some societies (such as the SABAM and the BUMA/STERMA) also favoured an arranged option 2.

⁷⁸ For example, the IFPI simulcasting and webcasting agreements are also in line with Option 2 (they pre-date the Commission's review. See more below.

⁷⁹ This is how it works with record producer collecting societies for webcast and simulcast (see below at Section 2.1).

EC competition

The aim of the EC antitrust authorities is to create competition between management bodies for efficiency gains. They also want to avoid any territorial partitioning through exclusivity which has the effect of restricting competition unless it can be justified under art 81(3) of the EU Treaty.

Historically the Commission has defined relevant markets in the framework of traditional copyright licensing as being national, essentially because of the need to ensure local monitoring of usage⁸⁰.

It considers that this definition is no longer relevant in relation to the online world which allows remote monitoring. It therefore wants to permit collecting societies to entering the territory of other collecting societies.

The European Commission is also distinguishing between “national” and “international” authors. It believes that, for authors with an international appeal, the relevant geographic market should to be broader. In the eyes of the Commission, the new digital distribution platforms and the international appeal of some artists legitimise the establishment of a new paradigm promoting the emergence of a new kind of collecting society.

1. Simulcast and webcast decision⁸¹

This decision concerns the collective management of rights for the simulcasting and webcasting of recorded music via the Internet and the establishment of a one stop shop facility for Europe-wide licences based on a scheme of reciprocal agreements between the collecting societies managing the public performance right of record producers.

The decision aims at granting an international licence to radio and TV broadcasters who wish to simultaneously transmit sound recordings via the Internet as part of their normal over the air programme.

The deal enables each of the producers’ collecting societies in Europe to grant an international licence – the user has no need to seek a licence for each territory in which the internet radio programme is accessed.

The Commission accepted that, with a view for the reciprocal representation agreement to remain attractive, the tariff of the copyright licence could take into account the royalty levels applicable by the collecting societies in the country of destination of the service.

The Commission seemed to accept that there cannot be one single tariff for the internal market and that local consideration needs to be taken into account when setting the level of royalties. A certain form of partitioning of the market becomes acceptable.

As a concession to competition the parties agreed to distinguish, within the fees charged for a copyright licence, between the fees covering management costs and the fees related to the copyright licence.

⁸⁰ Case GVL IV/29.839 and case GEMA case IV/26.760

⁸¹ Commission decision 2003/300/EC – IFPI Simulcasting decision OJ L 107/58, of 30.4.2003 and IP/02/1436

This gives the user the opportunity to shop around to contract with the most “efficient” collecting society. The efficiency will be measured by the level of management fees.

The IFPI simulcast/webcasting agreement is hailed as a breakthrough by DG Competition as it illustrates that it is not technically necessary to set territorial restrictions to grant international licences.

In practice such types of licences are still few and marginal in term of income (less than 1% of collecting societies representing producers and performers). Some broadcasters also contest the ability of collecting societies to claim the tariff of the country of destination.

The IFPI simulcast/webcasting agreement is the only pan-European agreement cleared so far by the European Commission. The deal was negotiated by IFPI⁸² through its performance rights committee composed of all the collecting societies representing producers of phonograms.

Whilst EDIMA supports this development, independent music companies through IMPALA⁸³ have criticised the simulcast agreement essentially on the ground that efficiency should not be measured by the level of management fees alone.

IMPALA argues that this might represent efficiency for the user (as it lowers its tariff) but may represent inefficiency for the right holder as it punishes societies that put more emphasis on control, monitoring and proper allocation and distribution. It could also lead societies to discriminate against smaller catalogues that are more expensive to administer.

That could drive societies to provide poorer services for the right holders and may act as a disincentive to fight against unauthorised use or to collect royalties in remote places, affecting the level playing field amongst users.

2. The RTL complaint and the Santiago Agreement

In November 2000, RTL brought a complaint against GEMA, the German collecting society representing authors/composers and music publishers. GEMA had refused to grant a pan-European licence on the grounds that RTL should secure the rights on a territory by territory basis in relation to the respective usage in those territories.

In this context, it is worth mentioning that the Santiago agreement was proposed by the authors’ societies to grant a one stop shop for the online public performance of musical works on a worldwide basis.

However the European Commission rejected the proposal on the ground that it obliged users to obtain a licence from a particular society – the collecting society in the country where the service provider has his place of establishment or was operating its URL (Uniform Resource Allocator). For the Commission services, such agreement compounded the exclusivity enjoyed by the network of authors’ societies participating in the network.

⁸² IFPI represents major record companies and other labels with over 1450 members in 75 countries and affiliated industry associations in 48 countries. IMPALA, which was set up by the main independent record companies and national associations across Europe to represents the collective interests of the independents is not a member of this committee.

⁸³ IMPALA –the Independent Music Companies Association which represent throughout Europe 2500 music labels.

The Santiago agreement expired on 31st December 2004. As it has not been replaced or renewed, there is today no mechanism to grant a one stop shop licensing deal.

The European Commission opened formal proceedings on 7 February 2006 against CISAC – the international confederation of societies of authors and composers, 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' initial finding is that the CISAC contract model might restrict competition in two ways because:

- authors would be prevented to choose freely their collecting society;
- societies would be prevented to offer international licences to commercial users located outside their respective territories.

CISAC is now due to respond to the Commission's claims as part of the normal proceedings. A hearing on the case took place in early summer.

SECTION 3 – The European Court of Justice

The European Court of Justice has applied competition law and internal market rules to collecting societies for the last 30 years in essentially three respects:

- The relationship between the collecting societies and their members, the authors/composers and the music publishers
- The relationship between the collecting societies and the users
- The reciprocal relationship between the collecting societies.

The Court has accepted territorial restrictions when indispensable for the specific subject matter of the IP rights in question.

It has held that collecting societies do not undertake a service of a general economic interest⁸⁴. This leads the European Commission to consider that collecting societies operate like normal commercial undertakings. In this respect, collecting societies are not exempted from the scope of the revised Commission proposal for a directive on Services in the Internal Market.

The Court has also accepted the national monopolies in relation to enforcement and monitoring of rights and the lack of economic rationale for societies to compete on each others territories. In *Lucazeau v SACEM*, the Court accepted the validity of reciprocal representation agreements for efficiency sake⁸⁵.

The European Commission now seems to be attempting to limit the scope of the *Lucazeau* decision to the off line world because of the monitoring difficulties. It considers that monitoring would be more straightforward in the online world. The latter would therefore no longer justify territorial partitioning.

⁸⁴ Case 7/82 *GVL v Commission* [1983] ECR 483 para 32

⁸⁵ Case *Lucazeau vs SACEM* [1989] ECR 2811, cases 110/88,241/88, 242/88 and the *Tournier* case 395/87 in 1989 ECR 2521

CHAPTER 5

THE COMPLEXITY OF A REGULATORY APPROACH

This chapter intends to highlight the difficulties of a regulatory approach in this matter. They relate essentially to two issues – territoriality of copyright and the cultural nature of the goods and services subject to copyright protection.

SECTION 1 – Rights territoriality vs internal market

The specificities of collective rights licensing are well known:

- It creates national monopolies
- It corresponds to fragmented activities 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.

Some believe that the real motivation of the European Commission's Recommendation is to ultimately put into question the territoriality of rights in general in the pursuit of the internal market "holy grail".

Territoriality is indeed a strange notion in the days of Internet. In theory territoriality of rights management should be a thing of the past. However, it will need to remain for the following reasons:

- Territorial exploitation makes often economically more sense. A licensee does not want to pay the price of a pan-European licence whilst the exploitation will take place in only one territory.
- Right holders may want to licence or assign rights to different licensees in consideration of their relative commercial skill and muscle which may vary from one territory to another.
- Right holders may want to licence a service provider on an exclusive basis in one territory and licence others for other territories. They cannot be obliged to license internationally – this would affect the nature of their rights. Licensees would also expect exclusivity in return for their investment (e.g. in promoting an unknown artist).
- Tools exist to overcome this fragmentation such as the reciprocal representation agreements. There are other tools that can be developed to mitigate the impact of territoriality: for instance the Spanish society SGAE is suggesting the setting up of one pan-European collecting society with shareholding from all the national societies.
- Royalty tariffs are not harmonised at EU level reflecting the different market situations and bargaining positions of the local stakeholders. This lack of harmonisation comforts territoriality. So does the lack of pan-European arbitration mechanisms in case of dispute between users and right holders.

- Rights territoriality is the basis of the international legal regime⁸⁶ enshrined in the international conventions governing copyright and neighbouring rights as well as in the EU directives on copyright.

Moreover the European Court of Justice has defined the limits of territoriality in its numerous judgments. Its jurisprudence does not put it into question at all.

The concept of territoriality does, however, need to factor in new ways of dissemination. This envisages the setting up of structures to accommodate cross border usage.

The question is whether these changes are market-led or subject to the regulator's intervention?

SECTION 2 – Rights management and local culture

The debate on rights management is also a political discussion. The specificity of this type of collective structure should be recognised by the regulator. The characteristics of the European cultural market should be taken into account – it is linguistically fragmented and essentially composed by SMEs and individuals which operate in their national market.

The opponents to change highlight that the Recommendation risks favouring:

- Two or three major collecting societies (established in the larger countries) to the detriment of the societies in the smaller countries which will become mere agents.
- International artists to the detriment of national artists – the latter being neglected by the leading societies; the former benefiting from a better service.
- A handful of international services such as Apple, MTVE or Google, at the expense of smaller, local or genre-specific services.

Many Member States are also concerned about a situation where the collection ability of their local society is weakened thus impacting their national artists and music business, as well as their cultural policy which is partly funded by the activities of such bodies. 11 Member States provides in their legislation that collective management bodies should support cultural or social missions⁸⁷.

The most affected by the changes are likely to be local artists and music companies or local users seeking a local licence only, as well as other small users.

Artists are encouraged to switch to a better managed collecting society in Europe. Many believe that in practice few will be able to switch to another more "efficient" society because of language, proximity and tax or social security reasons.

⁸⁶ The Berne Convention of 9 September 1886, the Rome convention of 26 October 1961 for the protection of performers, producers of phonograms and broadcasting organisations, the WIPO copyright Treaty of 20 December 1996, the WIPO performances and phonograms Treaty of 20 December 1996 and the WTO TRIPS of 15 April 1994.

⁸⁷ Austria, Belgium, Czech Republic, Denmark, Luxembourg, France, Germany, Italy, Portugal, Slovakia and Spain. Societies in all other Member States provide such support on a voluntary basis (with the exception of Cyprus).

It seems that many authors are concerned that the more “efficient” societies might be those controlled by publishers. The authors fear that those societies would proffer less transparency and accountability than those societies which the authors control. They are also concerned about the impact on remuneration generally. Would for instance the system of repartition (1/3-2/3) be maintained in favour of authors?

They argue that the consequences of change for the remuneration to authors should be considered. For example, one song may involve 6 different right holders from different countries and in relation to different rights. The system of reciprocal representation agreement takes care of this complexity. Another system might lead to inefficiency because of the difficulty of determining who is responsible for the management of the rights for each of the right holder. Some predicts chaos.

There is also the risk of discrimination, depending whether an author is a member of one of the leading international collecting societies or a member of a local society.

For a UK society, collecting revenue in Finland (for instance) would become somewhat a different proposition than collecting revenues in the UK.

Whilst the UK society might be interested in developing an international business and would be the best positioned to do so – Finnish composers would still want that their revenues to be collected. The latter know that if their local society is undermined (because on-line turnover is diverted to another society) this will be reflected in the amount of money collected and ultimately distributed to them.

In addition to that, as a compensation for this lack of competitiveness, the society might be forced to cut back on policing and monitoring the market thus making it easier for unscrupulous users to avoid payments. The quality of allocation and distribution to members may also suffer. This is the reason why many right holders advance that cutting costs benefits the users not the right holders.

Likewise Finnish users would not necessarily gain from a situation where they would have to negotiate with one or more foreign societies for the use of international repertoire, and with the local society for the use of domestic repertoire. The local users will be at a disadvantage with their international competitors as their licensing costs would increase and/or they would have access to less repertoire.

Domestic repertoire also risks becoming more expensive if the Finnish collecting society loses its economies of scale by no longer representing international repertoire – the cost of each transaction would increase as less revenue would be flowing through the system. The society would have no choice but to charge more to users and/or members, or reduce the quality of its services.

The proponents of collective licensing take the view that licensing schemes should preserve solidarity between large and small right holders. Management costs should not discriminate according to the size of the repertoire or its origin as economic rationalisation may lead to higher management costs in relation to the licensing of smaller and less profitable repertoire.

They argue that commercial interests should not be the main driver of any impact assessment.

CHAPTER 6

RECENT MARKET DEVELOPMENTS

Two recent developments illustrate the impact of the Commission's Recommendation⁸⁸.

SECTION 1 – MCPS+PRS deals with GEMA, EMI music publishing and SGAE

On 23 January 2006 two of Europe's largest collecting societies, MCPS/PRS (UK) and GEMA (Germany) announced together with EMI, the largest music publisher in the world, the setting up of a one-stop shop to clear the rights of EMI's Anglo-American repertoire across Europe for online and mobile usage.

The press statement read as follows:

"The Commission's view, shared by the three parties, is that a pan-European approach will speed up the development of legitimate online services".

This deal is politically significant and has triggered a competitive race by authors' societies to attract authors, composers and music publishers.

Linked to this is the announcement that MCPS/PRS has agreed with the Spanish authors' society SGAE to establish an infrastructure for the licensing of music works to digital users. The project, eLOS, would facilitate the making available of Anglo-American and Spanish repertoire.

The MCPS-GEMA/EMI music publishing deal is expected to enter into force in July of this year. The full impact of such an arrangement is still unknown. Although the deal was in preparation before the announcement of the Recommendation, it responds to the Commission's position and illustrates its likely consequences. DG Markt hopes that it represents the premises for the creation of 2 to 3 larger societies becoming the source of most of the repertoire for pan-European licensing.

These developments could mean that the administration of repertoire through reciprocal agreements between societies will be replaced by a system in which a limited number of societies will be able to act as a substitute for the international network of representation.

For the critics this means that, if the other major international publishers (BMG music publishing, Sony Music, Universal and Warner Chappell⁸⁹ (with which EMI Music publishing collectively account for 75% of the market generally and nearly all significant Anglo-American repertoire) made similar deals, digital users would have less incentive to seek a licence for national repertoire – the latter becoming more difficult to access and to administer.

⁸⁸ As mentioned above, a recommendation might not be binding but its practical impact may be greater than a directive.

⁸⁹ Already, the world's second largest music publisher Warner Chappell has followed suite and announced on 2 June 2006 a pan-European digital licensing initiative in relation to Anglo-American repertoire. This seems to confirm the impact of the recommendation on the licensing activities of the large multinational music publishing houses.

Indeed, the world's second largest music publisher Warner Chappell has already followed suite announcing on 2 June 2006 a pan-European digital licensing initiative in relation to Anglo-American repertoire. This seems to confirm the impact of the recommendation on the licensing activities of the large multinational music publishing houses.

The risk is that national repertoire is condemned to remain distributed at local level with little prospect of licensing income from exploitation in other European countries. The cross border circulation of European music within the EU would be undermined.

The cultural lobby highlights that the emerging business model would create a one stop shop for digital users in relation to a limited repertoire, essentially the Anglo-American repertoire. EMI music publishing has announced that the deal would be implemented for repertoire from the "copyright" countries (USA, UK, Australia, Canada, South Africa, Ireland, New Zealand).

In effect the fate of local music will depend on the ability of the larger societies to facilitate licensing arrangements inclusive of the repertoire of smaller societies, and therefore local repertoire, on a pan-European basis.

Users also show some scepticism about the expected efficiency gains from such developments. They highlight that if EMI publishing mandates MCPS to administer its rights and Universal mandates for example SACEM (the French society), users would have to seek numerous licences to get the whole repertoire. What they are seeking is a one stop shop mechanism. They also resent the creation of more powerful monopolists. This prospect also concerns by DG Competition.

DG MARKT is now hoping that other joint ventures will emerge associating societies with local repertoire to show that option 3 does not only work for Anglo-American repertoire.

SECTION 2 – IMPALA – monetising online licensing for SMEs

Independent record companies are also developing their own one stop shop licensing schemes. They have openly supported option 3 through IMPALA⁹⁰ in so far as it legitimises a one stop shop infrastructure for pan-European licensing. The battle is important as a rapidly growing proportion of record companies' revenues will come from the use or performance of music rather than the sale of CDs.

Historically those public performance rights have been managed by producers' collecting societies but the major record companies⁹¹ – who control 80% of the market – have been unwilling to extend the mandate of collecting societies representing producers to cover interactive online and mobile licensing.

Because of their economic importance the majors intend to exercise their rights individually. They may aspire to clear the rights of all the creators in the value chain and to become the sole interlocutors of the users, like producers in the film business.

As a result there is currently no mechanism for European SMEs to collect their share of new revenues on an international basis. The majority of independents cannot afford the costs of licensing individually.

⁹⁰ IMPALA –the Independent Music Companies Association- was established in April 2000 at the initiative of prominent independent labels and national trade associations. It gathers over 2500 members throughout Europe.

⁹¹ Universal, Sony/BMG, Warner Music and EMI

This inability means that services would not pay for the independents' repertoire or that the latter will not be played on such new services.

Therefore independent record companies take the view that they have no choice but to establish a structure for licensing such services on a global level by reaching critical mass. Collective strength is the only way to obtain deals on par with majors and avoid being discriminated when accessing new services. Their negotiations with Apple and also MTV confirm this.

IMPALA set up in 2005 an informal network of independent associations gathering more than 20 countries throughout the world. The WIN network includes amongst others Brazil, Canada, Japan, Australia, the USA, and South-Africa.

Whilst setting up the new structure, independents requested the support of the European Commission to safeguard market access to new delivery platforms to comfort consumers' choice and diversity of offer.

CONCLUSION – PART I

Collecting societies are complex organisations. Their existence is essential for the subsistence and exercise of copyright. Because of their ability to collectivise representation and aggregate catalogues, they will offer a more efficient solution to users than individual licensing for many rights. Their future should in theory be prosperous with the development of new technologies and the increased demand for content to feed the new delivery platforms.

Will it be prosperous for all of them? For all categories of right holders?

Collecting societies operate as natural monopolies. They operate on a national basis. This set up is perceived as archaic in relation to international media activities. Changes are due to happen to adapt the structure to new developments. But this territorial division is also a reflection of a European market that is linguistically and culturally fragmented. This means the majority of licensing will necessarily take place at national level requiring national licences and usage of copyright will remain essentially local.

This system may hinder pan-European licensing and act as a bottleneck for the emergence of new services in the online world.

The European Commission decided that regulatory intervention was required (limited to the management of authors rights in music and with respect to cable, satellite and online delivery) – giving a “helping” hand. However, the messages are mixed (some would say contradictory).

DG MARKT takes the view that reciprocal representation agreements should be disposed of to be replaced by larger and fewer societies. DG Competition takes the view that reciprocal representation agreements are essential provided they are amended to prevent territorial partitioning and customer allocation.

The world of collecting societies is in turmoil as a result. There is a major question mark over the principle of territoriality of rights, one of the pillars of copyright protection.

One thing is certain: societies need each other in order to be in a position to provide international licences to users. In the absence of collaboration – through reciprocal representation agreement for instance – a single society is hindered in its ability to deliver rights for licensing as it can only provide the national repertoire it has been entrusted with.

Hence, the importance of the battle over the Santiago agreement which laid down rules for collaboration and “trust” amongst the societies.

With the abandonment of Santiago in 2004, combined with DG Competition's objections to the CISAC model of reciprocal representation agreement, the basis for trust no longer exists and the societies are all playing their own cards in order to survive.

Indeed it is fundamental to know that each society is entrusted with the rights of the local authors/composers and the economic rights of the publisher. If a society determines that another society is not defending the rights of its members properly (by offering too favourable terms to a user for instance) – it is in a position to withdraw the repertoire managed by this society. The latter is therefore no longer in a position to offer a blanket agreement for the entire repertoire. This puts at risk the ability to grant pan-European licences for the entire repertoire.

Adieu efficiency! Bonjour territoriality!

The European Commission is aware of that risk but is discounting it on the basis of the existence for 15 years of central licensing agreements between record companies and author societies. If record companies were able to negotiate separate central licensing deals in relation to mechanicals (and obtain different advantages from the societies) the same should happen in the field of online music for service providers.

However music publishers and authors do not like this form of central licensing which affect their royalty income. They are positioning themselves to limit the ability of smaller societies to offer competitive terms to users. This result will lead to more inefficiency from a user perspective, a prospect not liked by DG Competition. In addition, for central licensing deals, the record company obtains a licence for all repertoire.

The current upheaval in rights management may have the following consequences in the short term:

- The smaller societies are forced to consider their future existence. (to gather repertoire and create scale as well as share backroom functions)⁹². They may become mere agents of the larger European societies with less representation status for their members.
- Societies (in particular from the largest countries) will contest the ability of other societies (the smaller ones) to grant licences unless they establish some form of partnerships. However the Commission will not be able to force this even through competition law and the Recommendation is of little value in this respect.
- Publishers will extend their grip on the structure of rights management in Europe.
- For the user, legal uncertainties on who represents or manages what⁹³.

In the medium to long term:

- Monopolies will no longer be confined to a territory but to regions, or in relation to a given repertoire (international and local) in Europe (good for the internal market but not for competition).
- Anglo-American repertoire might be managed differently to local repertoire – with the risk that users might no longer seek to license local repertoire. Management of local repertoire would become more expensive and less competitive. Tracking usage of local or niche repertoire is indeed more costly whilst tracking or sampling methods for international repertoire are the norm.
- Local users would be disadvantaged as they may have to seek numerous licences to obtain international repertoire – the one-stop shop that currently exist within one territory might no longer exist.
- The separate management of Anglo-American repertoire will mean no solidarity with local repertoire. This will have a particular impact in countries where the market share of local music is below 30% and where Anglo-American repertoire is sometimes seen as “subsidising” local repertoire. Smaller publishers would no longer benefit from the tariffs negotiated with the support of the large catalogue owners. No longer would everybody be treated equally. However, foreign right holders (essentially Anglo-American) resent what they feel is a disproportionate contribution to local repertoire and in particular to pension or cultural funds⁹⁴.

⁹² This seems to happen already with the Scandinavian societies, for example.

⁹³ eMusic is a US based service is a music subscription service that makes available repertoire in a non encrypted DRM format. The service is launching this summer 2006 in Europe. Emusic struck a deal with Dutch society BUMA/STEMRA for the pan-European licensing of authors' rights. The Dutch society is not certain it will be able to deliver the licence because of pressures from the other societies to withdraw their repertoire.

⁹⁴ According to a British author: “this contribution remains acceptable in consideration of the fact that continental societies for a similar performance in the UK – Vive le droit d’auteur!”

The threat of compulsory licensing⁹⁵ (which nobody is calling for) is probably a powerful incentive to find market led solutions.

The other risk for right holders is that multinational entertainment companies may decide to act as aggregator and substitute the collecting societies in managing rights. This would not be to the liking of individual authors and composers and their statutes under the European authors' rights regime.

According to the European Commission the new digital distribution platforms and the international appeal of some artists legitimise the establishment of a new paradigm promoting the emergence of new kinds of collecting societies.

However some question whether the efficiency goal should serve only the international artists that are traded in the online world!

The consequence of such an approach on the societies that continue to deal with the off line world – which is still the most important source of income for the local artists – is unknown and was not considered in the Commission's impact assessment ahead of the Recommendation.

The impact assessment is also weak on the views from authors and composers, one of the main interested parties. Furthermore it fails to measure the cultural impact of the proposed measures.

Moreover in the absence of a unified cultural market and harmonised tariff, it is difficult to envisage a pan-European dispute resolution system. How can a German judge decide on the validity of a royalty fee established in the UK for instance? Therefore the dispute resolution will remain territorial – this is something which pleads again in favour of territoriality in rights licensing and of course effective national dispute settlement mechanisms⁹⁶.

The question is, can we dispose of territoriality in right management in relation to trans-border usage?

As far as culture is concerned local European content hardly circulates whether in music or in cinema. The challenge is to ensure that the push for pan-European licensing changes this and will not marginalise further European talent and the expression of local cultures.

This may imply the adoption of EU support policies to enable the emergence of collective licensing structure facilitating the international licensing of local language music and films as well as binding commitments from users that they would seek to license local music or movies at non discriminatory terms.

If not, the drive for efficiency could be at the expense of cultural diversity that the EU has successfully promoted internationally with the adoption of the UNESCO Universal Convention on the Protection and Promotion of the Diversity of Cultural Expressions⁹⁷.

⁹⁵ Compulsory licensing is used here to mean the obligation to grant the user a licence at a price that is set not through negotiation but through a third party – usually the government.

⁹⁶ Some rightsholders recommend more national dispute resolution mechanisms at national level.

⁹⁷ Adopted in Paris on the 20th of October 2005.

In any event, it is to be recommended that any action should be taken in light of article 151 of the EC Treaty which provides:

1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore...

....

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures...

Lastly, voluntary codes of conduct might be a useful tool to guide relationships between right holders and users. They would improve mutual understanding and establish clear rules for good faith negotiation and contractual implementation.

A directive might be useful to harmonise rules governing collective rights management on transparency, democracy, supervision and governance in light with the EP Resolution of 15 January 2004.

PART II

NATIONAL RULES GOVERNING COLLECTIVE MANAGEMENT OF RIGHTS

INTRODUCTION

Rules regulating collecting societies vary greatly from one Member State to another. In effect the structure of collecting societies is the reflection of their role in a given country⁹⁸. The report aims to list the main differences of approaches.

The practice of collective management is regulated by law in all EU Member States – the degree of prescription and details of national laws varies from one territory to another. All collecting societies also have their own statutes. When a particular issue is dealt with by a society's statutes (as opposed to national legislation), a specific reference is made to each case in part III of the study, description of national measures. (A detailed assessment of the statutes of each collecting society has not been within the scope of this study). Copies of national laws and statutes of collecting societies have not been annexed to the present report for convenience's sake – they are available on request.

This part of the study will therefore examine the national legislation of the 25 EU Member States with respect to collective management of rights. Five main themes will be examined through comparative analysis of legislative frameworks.

The five themes are considered in the following order:

1. The applicable law regulating collective management
2. The status of collecting societies and provisions on competition law
3. Provisions on governance, transparency, accountability and supervision
4. Rules on mediation and dispute settlements
5. Social and cultural functions of collecting societies

The analysis of legislative provisions and statutes is carried out with a view to highlighting legislative trends and comparing the different national legal frameworks. The analysis is descriptive, aiming at outlining the main characteristics of the regulatory framework for collective management across Europe.

⁹⁸ Dietz Adolf, Legal regulation of collective management of copyright (collecting societies law) in western and Eastern Europe, 2002.

Legal analysis is focused on national and European legislation covering collective management of rights. Relevant case law has been examined only at EU level in part I of the study. This is due to the following reasons:

- The vastness of the subject, which needs to be limited for the purposes of research. In the field of music only (the area investigated by this study) there are usually two or three or even more collecting societies per country, which takes the total number of societies EU-wide at more than 60. Detailed research on case law relative to each society would exceed the scope of the study.
- Case law at national level was absent from the scope of the original Deloitte report.
- As far as national case law was concerned, the aim of the research was to highlight significant changes brought by case law to national legislation. No such changes were signalled to the authors of this study by national experts contacted.
- National legislations examined are represented by the most recent pieces of legislation available. Developments induced by major case law intervened in the past have been integrated into the law through legislative amendments.

In contrast to part 1 of the study, legal analysis is not limited to management of music rights but covers all areas of collective management of rights as foreseen in the laws of the 25 EU countries.

For each chapter, a table sets out the relevant national legislative provisions.

The tables are included in part 3 of the study, following the same order as the chapters to which they refer.

CHAPTER 1

THE APPLICABLE LAW REGULATING COLLECTIVE MANAGEMENT

The first part of this chapter sets out an inventory of the laws regulating collective management of rights in the EU-25 countries. The second part of the chapter examines in depth the issue of which categories of rights are managed collectively on the basis of mandatory legislative measures.

A detailed inventory of national laws and a case-by-case analysis of mandatory rules on collective management is included in table 1 of part III of the study.

SECTION 1 – Laws applicable to collective rights management

In all the 25 EU countries, collective management of rights is covered by provisions included in national copyright law – all laws (apart from in the Netherlands) cover management of authors' rights (copyright strictu sensu) and related rights. The Netherlands provide two separate pieces of legislation for the two different categories of rights.

In the **EU-10**, and in particular the 8 Central and Eastern European Countries (CEEC), copyright laws are more recent with a view to implement the “acquis”. They have all been adopted after the 1989 fall of communist regimes.

Besides the provisions included in the copyright law, seven EU countries (Austria, Belgium, Germany, Malta, Portugal, Sweden and the Netherlands) have additional provisions on collective management laid down in laws and decrees specifically covering collective management of rights.

SECTION 2 – Rights covered by mandatory collective management

Collective management is implemented across Europe for various categories of rights. In some cases, collective management is made compulsory by law. The situation as regards the different categories of rights subject to mandatory collective management is as follows:

- a. Collective management of the right to remuneration for public lending is mandatory in 9 out 25 Member States:

Austria, Belgium, Germany, Hungary (excluding cinematographic works, sound recordings and software), Latvia (excluding software, databases and works of art), Lithuania (only books and other publications), Luxembourg (although the Regulation laying down rules for the administration of remuneration for lending rights has still to be adopted), Slovakia and the Netherlands.

Public lending is subject to EU harmonisation through Directive 92/100/EEC (Rental and Lending right directive). The directive provides for exclusive rights to authorise or prohibit the rental and lending of works subject to copyright and neighbouring rights. As regards the exclusive public lending right, Member States can derogate from it, provided that at least authors obtain remuneration for such lending.

b. Collective management of the right to remuneration for rental is mandatory in 11 out of 25 Member States:

Czech Republic, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Luxembourg (although the Regulation laying down rules for the administration of remuneration for rental rights has still to be adopted), Poland (only in the case of audiovisual works, with respect to the right to remuneration for directors, cameramen, authors of screenplay, authors of literary or musical works used or created for the audiovisual work and performers), Slovakia and Spain.

Together with public lending, the rental right is harmonised across the EU by directive 92/100/EEC. Art. 4 of the directive provides for an unwaivable right to equitable remuneration – where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer retains the right to obtain an equitable remuneration for the rental of the work. The directive also addresses collective management as a model for the management of the equitable remuneration right, but does not make collective management a requirement.

c. Collective management of the resale right ("droit de suite") is mandatory in 13 out of 25 Member States:

Belgium, Czech Republic, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg (although the Regulation laying down rules for the administration of the resale right has still to be adopted), Poland, Slovakia, Slovenia and Sweden.

The resale right allows an artist or his/her heirs to receive a percentage of the selling price of a work of art when it is resold by an art-market professional such as an auctioneer, a gallery or any other art dealer. The aim is to allow artists and their beneficiaries to share in the seller's profit on the increased value of their works. Resale right is subject to EU harmonisation under directive 2001/84/CE. According to the directive, resale rights apply to any sale where the price exceeds €3000. The directive gives artists the benefit of the resale right, regardless of where in the EU their works are sold. Although the directive was approved in 2001, Member States only had to implement it into national legislations by 1 January 2006, with a further transitional period until 2012.

d. Collective management of the right to remuneration for private copying and reprography is mandatory in 19 out 25 Member States:

Austria (including the reproduction, distribution and making available of artistic/literary works for the benefit of disabled persons, for educational uses and for the church), Belgium (including the reproduction of artistic/literary works for educational purposes), Czech Republic, Denmark (including acts of reproduction by educational institutions, businesses, libraries, archives, for the benefit of disabled people and for critical or scientific public presentations of artistic works), Estonia, Finland (including reproductions by educational institutions), France (mandatory collective management is limited to reprography), Germany (including reproduction, distribution and making available of works for disabled people and for educational and research uses and reproduction and distribution of broadcast commentaries and individual articles from newspapers), Greece, Hungary, Italy, Latvia, Lithuania, Poland, Slovakia, Slovenia, Spain, Sweden (including reproductions made by public authorities, businesses, educational institutions, libraries and archives) and the Netherlands.

The list of exceptions and the optional compensation due to right holders as an equitable remuneration in exchange of private copying and reprography are established at EU level under the EU Copyright Directive (2001/29/EC) – Article 5(2)(b)(private copying) and Article 5(2)(a)(reprography). The directive leaves Member States free to recognise exceptions and implement corresponding remuneration schemes by applying levies on electronic devices and blank equipment.

Member states that do not apply the private copy exception and levy scheme are Cyprus, Ireland, Luxembourg and the UK

All the other Member States provide for mandatory collective management of the collection and redistribution of the fair compensation due to authors and related rights holders for private copying and reprography. In Malta and Portugal, collective management is not compulsory by law but implemented in practice.

Some legislations lay down detailed provisions covering the redistribution of the money collected through copyright levies amongst the different categories of rights holders (authors - performers - record or audiovisual producers). In several cases, the law provides for part of the money collected through levies to be used by collecting societies for social, cultural or educational purposes (see Part II, Chapter 5 below).

e. Collective management of the right to remuneration for communication to the public (broadcasting and communication in public places) for holders of related rights is mandatory in 19 out of 25 Member States:

Austria, Belgium, Czech Republic, Denmark (the administration of remuneration rights in respect of the broadcasting and public performance of phonograms can only be carried out by a joint collecting society representing performers and producers), Estonia, Greece, Hungary, Ireland, Italy (collective administration for performers' rights is exclusively entrusted to IMAIE), Latvia, Lithuania, Luxembourg (although the Regulation laying down rules for the administration of remuneration for broadcasting and communication to the public has still to be adopted), Poland (although right holders may waive the intermediation of collecting societies by written request), Portugal, Slovakia, Slovenia, Spain, Sweden (the remuneration for the broadcasting and public performance of phonograms must be administered jointly by performers and producers) and the Netherlands.

The terms for the right to equitable remuneration to holders of related rights (performers and producers) for the communication to the public of their works has been harmonised across the EU by Article 8 of the Rental and Lending rights Directive (92/100/EEC). Almost all EU Member States provide for a mandatory collective management in this field – in those cases where collective management is indicated as facultative (Finland) or not mentioned as compulsory (France, Germany), collecting societies are however in practice in charge of administering the right to remuneration for performers and producers .

It should be noted that even though collective management of the right to remuneration for communication to the public is mandatory only for holders of related rights, administration of this right for authors, composers and publishers is also managed collectively due to the practical obstacles to individual management

- f. Collective management of the right to remuneration for (simultaneous and unabridged) cable retransmission is mandatory in all EU countries

This obligation is imposed by virtue of the implementation of the cable and satellite directive (93/83/EEC).

In addition to the introduction of mandatory collective management, the directive promotes negotiations between cable operators and collecting societies by requesting the intervention of neutral mediators - for the description of mediation practices in the field of collective management see Chapter 4.

In general, it is possible to draw the following conclusions with regard to legislative requirements for collective management of rights in the EU:

- The fields where collective management is more developed are cable retransmission (implementation of directive 93/83/EEC), remuneration to right holders for broadcasting and public performances of their works (mandatory in most EU countries for holders of related rights) and remuneration to right holders for private copying and reprography exceptions.
- In the Nordic countries (Denmark, Sweden, Finland), the areas where collective management is mandated by law often coincide with the areas covered by extended collective licensing – a scheme whereby any right holder belonging to a given category may be subject to the terms negotiated with users by a society representing interests in the same category.

CHAPTER 2

THE STATUS OF COLLECTING SOCIETIES AND PROVISIONS ON COMPETITION LAW

The first part of Chapter 2 examines legislative provisions dealing with the legal form that societies undertaking collective management of rights must take according to national laws. The second part of the chapter explores the issue of the monopolistic position that collecting societies enjoy as a result of either a legislative provision or as a de facto rule.

Table 2 of part III of the study contains details about national provisions on the legal status of collecting societies and on the monopolistic position of collecting societies in a national context.

SECTION 1 – Legal status of collecting societies

Collecting societies can be constituted under different legal forms, such as associations, public organisations or private companies. In many EU countries they cannot have any lucrative purpose.

Most of the EU countries state in their national copyright law the legal form that a collecting society must adopt in order to be constituted as such.

However the national copyright laws of Cyprus and Germany do not specifically regulate the form that a collecting society must adopt or whether they can or cannot have a lucrative purpose.

The national copyright legislation of 13 countries - Austria, Czech Republic, Estonia, France, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia and Spain provide that collecting societies must be not for profit organisation. The legal status of collecting societies varies in these different countries:

- In Austria, Hungary, Portugal, Slovenia and Spain collecting societies must be not for profit legal entities.
- The society must be an association in the Czech Republic, Estonia, Latvia, Lithuania, Poland and Slovakia. In France collecting societies are civil law associations, which cannot have any lucrative purpose.
- In Italy the collecting society representing authors, composers and music publishers (SIAE) is a public body. The Italian legislation has no provisions on the legal status of other collecting societies.

In Belgium, Denmark, Finland, Greece, Ireland, Italy (as far as societies other than SIAE are concerned), Malta, the Netherlands and UK, national legislation does not require collecting societies to be not for profit organisations. They can be commercial organisations or legal entities of any kind.

SECTION 2 – Situation of legal monopolies

Collecting societies can benefit from legislation providing for a *de iure* monopoly in certain countries.

In eight Member States (Austria, Belgium, Czech Republic, Denmark, Hungary, Italy, Latvia and the Netherlands) collecting societies are legal monopolies designated by the State for the management of the same category of rights and the same group of right holders.

Amongst these countries there are two special cases:

- Italy, as the SIAE is the only society explicitly designated by the law as being capable of managing the rights of any type of author – visual, musical or audiovisual.
- Latvia, as the law states there can be several collecting societies with respect to those rights, which may be managed individually. Yet there cannot be competition for the management of those rights, which may be managed only collectively.

In nine Member States (Cyprus, Estonia, Greece, Lithuania, Malta, Poland, Slovenia, Slovakia and Spain) the law foresees that there can be **competition** between collecting societies working in the same area and for the management of the same rights.

In eight Member States (Finland, France, Germany, Ireland, Luxembourg, Portugal, Sweden and the UK) the law does neither specifically state whether collecting societies are legal monopolies nor provides whether there can or cannot be competition between collecting societies managing the same type of rights.

In practice, competition is more common between societies managing performers' and producers' rights as is the case in France (ADAMI & SPEDIDAM for performers, SCPP & SPFF for producers), the Netherlands (NORMA & SENA for performers), Poland (STOART & SWAP for performers) and Slovakia (SLOVGRAM and OZIS for performers). Yet, authors societies in practice are as well subject to competition as is the case in Spain where there are two collecting societies managing the rights for audiovisual authors – SGAE and DAMA.

In practice, in all other EU countries apart from Spain, authors' societies generally benefit from a *de facto* monopoly on the national territory irrespective of the monopolistic status granted by the legislation.

In this context, it is worth mentioning the Commission's proposal for a Directive on Services in the Internal Market. As proposed, the Services Directive does not exclude collecting societies from its scope of application; consequently any society from any Member State should be capable of offering its services in any EU country. Therefore, those countries providing the privilege of a monopolistic status for their collecting societies might be obliged to change their legislation when the Directive enters into force, opening the possibility of establishment to any EU society for the collective management of rights.

It should also be noted that collecting societies are subject in all EU countries to the jurisdiction of the competent **antitrust authority** as regards the possible infringement of competition rules, in particular for cases of abuse of dominant position.

CHAPTER 3

PROVISIONS ON GOVERNANCE, TRANSPARENCY, ACCOUNTABILITY AND SUPERVISION

The first section deals with legislative measures covering basic rules on governance, transparency and accountability of collecting societies. It examines the relationship between collecting societies vis-à-vis right holders as well as users. The second section deals with the relationship between collecting societies and supervisory authorities.

Details of national legislative rules on governance, transparency, accountability and supervision of collecting societies are included in table 3 of part III of the study.

SECTION 1 – Governance, transparency and accountability

Collecting societies are usually subject to a series of rules concerning relations with their members and other right holders, with users of rights and with public authorities. Specific rules are also in place to guarantee an adequate level of transparency at different levels of the operation of collecting societies, in particular financial and accounting aspects of the societies' activities.

In general, regulations governing accountability and transparency in the functioning of collecting societies are laid down by law or legislative decree. When this is not the case, specific requirements are often included in the societies' statutes which must be approved by public authorities or publicly appointed bodies.

Tariff levels and redistribution rules are in most cases established at the level of the society's statutes. In some cases legislative provisions are in place, with regard to tariffs for certain categories of rights (resale right, private copying) and with regard to redistribution of money collected as compensation for the private copy and reprography exception. It should be noted that in the field of private copying, national legislations are often quite prescriptive. They tend to lay down detailed rules which determine for example: the level of compensation collected (the size of levies); the redistribution schemes amongst different categories of right holders; the destination of the money raised (in most cases, remuneration for private copying – or at least part of it – is used to finance social and cultural activities).

In detail, national legislations provide for the following requirements on collecting societies:

1. Accountability vis-à-vis right holders

a. Assignment and administration of rights

Collecting societies are under the obligation to administer rights where a right holder has made a request and where the rights to be administered fall within the scope of the societies' activity in the following countries:

Belgium, Germany, Greece, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia and Spain (in Spain only the obligation is limited to the case where collective management is compulsory, i.e. cable retransmission).

The laws of some Central and Eastern European Countries (Czech Republic, Hungary, Poland and Slovakia) provide for non-discriminatory clauses amongst members of collecting societies and between members and non-members in the administration of their rights.

Rights are assigned by right holders to collecting societies by contract, mandate, assignment or transfer of rights.

Contracts are required by law in: Austria, Estonia, France (except where collective administration is compulsory in which case there is an automatic transfer of rights), Germany (contracts are considered as a *sui generis* authors' exploitation right), Greece (contracts may not exceed a period of three years, except in the case of cable retransmission where a form of extended collective licence applies), Ireland, Slovenia (contracts may not exceed a period of five years) and Spain (the contract may not impose on the member the obligation to allow for the administration of all forms of exploitation nor the global administration of all future works or productions).

b. Redistribution of collected revenues to right holders

Redistribution rules applied by collecting societies must be transparent and equitable – this is a common requirement which is applied to varying degrees across national frameworks through provisions in national legislation or in a society's statutes..

In some territories, there is a distinction between different categories of music. In Austria for example, "culturally valuable works" are entitled to receive a higher remuneration – this is an indirect way to promote less popular genres of music (classical, jazz, folk).

Other rules regarding distribution exist, for example, in Luxembourg, where the law provides for a fixed term of maximum 1 year for the redistribution of collected revenues.

The determination of schemes for redistribution of collected revenues to right holders is mandated by law in the following countries:

- Belgium (private copying + distribution of sums which have not been allocated)
- Czech Republic (private copying)
- France (private copying + public performance and broadcasting of phonograms)
- Greece (public performance and broadcasting of phonograms)
- Italy (all schemes)
- Lithuania (private copying)
- Luxembourg (private copying + public performance and broadcasting)
- Slovenia (private copying)

In other cases, redistribution schemes are either set up through the society's statutes (Germany), approved by the society's general assembly (Cyprus, Denmark, Estonia, Finland, Sweden) or by external supervisory bodies (Netherlands).

c. Transparency

In all EU Member States specific provisions in national legislation and/or in a society's statutes ensure that members of collecting societies enjoy access to certain information on the activities and operations of societies. A basic requirement is the publication of an annual report and of annual audited accounts. Details on the items subject to mandatory disclosure vary across different Member States' legislations and collecting societies' statutes. Information considered as pertinent for publication to the benefit of members and in some cases of the general public and interested third parties usually include:

- operations of collecting societies
- organisational rules
- authorisations to operate
- distribution rules
- tariffs
- repertoire
- list and details of the administrators
- public reports and resolutions

In France, the law states that a group of members representing at least one tenth of the membership as well as the public prosecutor and the works council may take legal action for the designation of one or more experts to prepare a report on certain administrative operations of the society.

The **duty of information** of collecting societies is prescribed by law in 18 countries:

Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Spain and the Netherlands.

2. Accountability vis-à-vis users

a. Obligation to license rights

In several EU Member States, collecting societies are mandated by law to **license** their repertoire to users if the latter so request, under reasonable conditions. In some cases, the law also include a specific non-discriminatory clause to avoid different treatment of users.

Legislation provides for an obligation for collecting societies to license their rights in the following countries:

Austria, Czech Republic, Germany, Greece, Hungary (legislation include a non-discriminatory clause and the obligation to regularly update the repertoire), Latvia (including a non-discriminatory clause), Malta, Poland, Slovakia, Slovenia and Spain (11 out of 25 Member States).

In all countries, collecting societies are subject to competition law provisions with regard to possible abuses of dominant position (see also Chapter 2) – users may file a complaint to the relevant supervisory authority, competition authority or to court if they believe competition rules are being violated, for example, if they feel they are being denied access to repertoire without good reasons, or in case they are victim of unjustified discrimination.

In most countries, collecting societies are entitled to conclude framework contracts with users groups.

b. Transparency of tariffs for users

Besides the duty of transparency that collecting societies have vis-à-vis their members and with respect to supervisory authorities (see below), users are also entitled to receive pertinent information from collecting societies. In particular, a number of EU countries require by law that tariffs and licensing fees are published and made available to interested parties.

In a limited number of cases (mainly resale right and private copying levies), the level of tariffs is established by law.

Collecting societies are under the obligation to publish relevant tariffs in the following countries:

Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Spain (16 out of 25 Member States).

In the following countries, tariffs are set by law for certain categories of rights:

Belgium (private copying), Denmark (tariffs are set by law for resale and private copying royalties), Finland (tariffs are set by law for resale and private copying royalties), France (resale royalty is fixed by law; the rate for private copying remuneration is determined by a Committee chaired by the State and consisting of representatives of right holders and users), Greece (rates for private copying are fixed by law), Italy (resale right is fixed by law), Luxembourg (private copying levies and remuneration for public performance), Spain (tariffs are fixed by law for resale right, private copying and remuneration for communication to the public of phonograms and videograms) and Sweden (tariffs are set by law for resale and private copying royalties).

SECTION 2 – Supervision

1. Authorisation

In order to start functioning, collecting societies sometimes need to obtain an authorisation from a national public authority, usually a ministry.

There is a regime of prior authorisation to exercise operations in 16 out of 25 Member States.

In the remaining 9 countries, i.e. Cyprus, Czech Republic, Estonia, Germany, Greece, Lithuania, Slovakia, Sweden and the UK there is no special procedure of authorization foreseen by the legislation for the establishment of collecting societies.

Amongst the Member States where a regime of prior authorisation is in force, a supervisory authority is in charge of issuing the necessary authorization for every society to start functioning in the following countries (followed by the competent authority):

- Hungary, Latvia, Poland and Spain (Ministry of Culture)
- Belgium and Luxembourg (Ministry of economy)
- Austria (the Communication Authority)
- Malta (the Copyright Board –a body appointed by the Minister for Competitiveness and Communications)
- Slovenia (National Office of Intellectual Property)

In the Netherlands collecting societies must be designated by the Minister of Justice in agreement with the Minister of Education, Culture and Science, subject to certain exceptions. In the area of broadcasting and public performance of phonograms for example, designation by the Minister of Justice is sufficient. In the area of simultaneous and unabridged cable retransmission rights, no designation at all is required.

Ireland and Portugal operate a system whereby collecting societies must enter into a Register. In Ireland the Register of Copyright Licensing Bodies is kept by the Controller of Patents Designs and Trademarks. Failure to register is an offence and punishable with a fine and/or imprisonment up to 5 years. In Portugal the Register is under the aegis of the General Inspection of Cultural Activities (IGAC).

In Italy the statutes of SIAE require the approval of the President of the Council of Ministers upon a proposal from the Ministry of Culture in consultation with the Ministry of Finance. No authorisation procedure is provided for other collecting societies.

In three countries only certain collecting societies need an authorization linked to the nature of the rights administered:

- Denmark (Ministry of Culture) and Finland (Ministry of Education) in relation to the management of the rights for works of art, private copying or broadcasting and public performance of phonograms
- France (Ministry of Culture) for those cases where collective administration is compulsory, notably for reprography and cable retransmission

In summary, in 9 countries – Cyprus, Czech Republic, Estonia, Germany, Greece, Lithuania, Slovakia, Sweden and the UK – collecting societies are not subject to any special procedure. In 3 countries – Denmark, Finland and France – special procedures apply only to societies which manage certain rights – private copy, resale right, broadcasting and cable retransmission.

2. Supervision of management

In most EU countries, collecting societies are subject to supervision from public authorities or publicly appointed bodies with regard to the management of their operations. The scale of powers of the supervisory authority varies across different Member States. The basic obligations of collecting societies vis-à-vis public authorities usually include:

- the need to obtain an approval for their establishment (see above)
- the need to submit an annual report and audited annual accounts
- the need to conform to requirements of good conduct set out in legislation and/or in the society's statutes
- the possibility for the supervisory authority of withdrawing the licence granted to the society to conduct its activities.

The public authorities responsible for supervision over collecting societies' activities across EU countries at government level may be grouped as follows:

- Minister of Economy: Belgium, Luxembourg
- Minister of Culture: Czech Republic, France, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Spain
- Minister for Informatics and Telecommunications: Hungary (authority responsible for on-demand tariffs)

- Minister of Finance: Italy (submission of annual accounts and financial aspects), Latvia (submission of annual accounts and financial aspects)

In Italy, SIAE is also subject to direct supervision from the Prime Minister's Office.

In Member States where they are subject to government control (except Denmark and Finland – see below) and in Slovenia, collecting societies have to provide the supervisory authority with an annual report and with audited accounts.

Where control over collecting societies is not exercised by authorities at ministerial level, other bodies are entrusted with the task of supervising the societies' operations. It is notably the case in:

- Austria: collecting societies are subject to the supervision of *KommAustria*, the independent body in charge of controlling communication policy, and to the Copyright Senate, a specific directorate within the Ministry of Justice in charge of receiving the appeals against decision of the supervisory authority
- Germany: supervision is carried out by the German Patent and Trademark Office (DPMA) in collaboration with the Federal Cartel Office (*Bundeskartellamt*)
- Ireland: supervision is carried out by the Controller of Patents Designs and Trademarks
- Malta: collecting societies are subject to supervision from the Copyright Board, appointed by the Minister for Communications
- Slovenia: the National Office for Intellectual Property, established under the aegis of the Ministry of Economy, is responsible for supervision on collecting societies' operations
- The Netherlands: supervision is carried out by a Supervisory Commission and by the Competitive Trade Authority
- UK: supervision is entrusted to the Copyright Tribunal and by the Competition Commission (formerly Monopolies and Merger Commission)

In France the law establishes a permanent committee in charge of controlling the collecting societies. This committee is composed of high level civil servant, essentially from the *Cour des comptes*. It submits a yearly report on collecting societies' accounts to the French Parliament, the Government and the general assemblies of the societies⁹⁹.

In Denmark and Finland, the supervision of the competent authority is limited to specific categories of rights:

- Denmark: Minister of Culture (supervision limited to administration of private copying)
- Finland: Minister of Education (supervision limited to administration of resale right and private copying)

No specific provisions as regards supervision from an external authority are laid down by legislation in Cyprus, Estonia and Sweden.

In Austria and Belgium the law requests collecting societies to participate in the funding of their supervision by the external authority.

In Czech Republic, Greece and Slovakia the supervisory authority has the power to impose fines on collecting societies if they do not comply with their duties set out in the law.

⁹⁹ 3^e rapport annuel – Mars 2006 – Commission permanente de contrôle des sociétés de perception et de répartition des droits.

In all cases where a supervisory authority is established at ministerial level, it has the power to revoke the authorisation granted to a collecting society for the performing of its operations. This is also the case in Austria, Germany, Malta and Slovenia (where other bodies carry out the supervision – see above).

Besides the monitoring exercised by governmental or independent authorities on the functioning of collecting societies, it should be noted that the management of collecting societies is subject in all EU countries to competition law, in particular with regard to possible abuses of a monopoly or dominant position.

Accountability and supervision in the activity of collecting societies may be summarised as follows:

- Across Europe, collective administration of rights is subject to a series of controls, set out in national legislation and in the society's statutes, covering aspects such as governance, accountability, transparency, monitoring and supervision of collecting societies' activity. The level of requirements imposed on collecting societies for their operations varies across Member States but most societies are at least subject to basic transparency rules with regard to the need to make public their annual report and accounts.
- In general, collecting societies are subject to less stringent legislative rules in Northern Europe (Scandinavian countries, Finland, Ireland, UK) both in respect of transparency requirements and of supervision by external authorities. In these countries, accountability of collecting societies is usually a matter for the society's own statutes, control exercised by members and users as well as common practice.
- Central eastern European countries and southern European countries are characterised by more detailed legislative provisions covering many aspects of the functioning of collecting societies. In these countries, supervision and monitoring are usually entrusted to public authorities.
- Collecting societies are subject in all EU countries to the jurisdiction of the competent competition authorities as regards the possible infringement of competition rules.

CHAPTER 4

RULES ON MEDIATION AND DISPUTE SETTLEMENTS

This chapter examines the legal basis for the settling of disputes arising between collecting societies and their members or between collecting societies and users of rights, across the EU-25 Member States.

In most countries only specific rights are subject to a mediation procedure whereas in others any dispute between users and collecting societies may be solved by specific mechanism. Under the Cable & Satellite Directive 93/98/EEC all Member States are obliged to ensure there is a mediation procedure for solving conflicts regarding the authorization for the cable retransmission of broadcasts.

Details on provisions covering mediation and arbitration procedures are included in table 4 of part III of the study.

SECTION 1

Conflicts between members and collecting societies

Only national legislation in three countries - Hungary, Portugal and Slovakia – provides solutions for conflicts between members and the collecting society. In Hungary a supervision board is in charge of solving such conflicts. In Portugal they are solved in a mediation procedure. In Slovakia they are solved under distribution rules.

SECTION 2

Conflicts between users and collecting societies

A. Cable retransmission right

Article 11 of the Cable & Satellite Directive 93/98/EEC provides that if “no agreement is concluded regarding authorization of the cable retransmission of a broadcast, Member States shall ensure that either party may call upon assistance of one or more mediators”. Therefore, in compliance with the Cable & Satellite Directive, every EU Member State must provide users and right holders with a mediation procedure to agree on the remuneration due for cable retransmission.

The legislation of six Member States provides for mediation procedures only in the case of disputes concerning cable retransmission rights: in Belgium, Latvia and the Netherlands the parties have recourse to a neutral mediator; in Malta, Poland and Spain an ad hoc body is established to solve disputes arising in the field of cable retransmission (the Copyright Board in Malta, the Copyright Commission in Poland and the Intellectual Property Mediation and Arbitration Commission in Spain).

Slovakia is the only country where disputes between users and collecting societies must be solved exclusively in court. It appears that the Slovak legislation should be amended in order to comply with those provisions of the Cable & Satellite directive aimed at establishing a mediation procedure for solving conflicts concerning the cable retransmission of broadcasts.

B. Other rights

In all the other EU countries, national legislation provides for mediation procedures covering other categories of rights besides the cable retransmission right. These countries may be further divided into two groups:

- a. Countries where the legislation provides for mediation procedures covering any rights.
- b. Countries where the legislation provides for mediation procedures covering only certain rights.
 - a. Mediation procedure for any rights:
 - Cyprus (Competent Authority appointed by the Minister of Commerce and Industry)
 - Czech Republic (Institute of Mediators)
 - Estonia (Committee of experts under the aegis of the Ministry of Culture)
 - Germany (Arbitration Board at the German Patent and Trademarks Office),
 - Greece (general arbitration procedure)
 - Hungary (Mediation or the Body of Experts in Copyright)
 - Ireland (Controller of Patents Designs and Trademarks)
 - Lithuania (Council of Copyright and Related Rights)
 - Luxembourg (general arbitration procedure)
 - Portugal (general arbitration procedure)
 - Slovenia (general arbitration procedure)
 - United Kingdom (Copyright Tribunal)
 - b. Mediation procedure for certain rights only:
 - Austria, where the Supervision Authority can act as a mediator for:
 - framework contracts
 - disputes regarding remuneration for cable retransmission rights.
 - Denmark, where the Copyright Licensing Tribunal is competent for solving disputes concerning:
 - the remuneration due to the application of a copyright exception (disabled and educational uses).
 - remuneration for broadcasting
 - remuneration for public performance of phonograms
 - permission for the cable retransmission and satellite broadcasts
 - Finland, where arbitration is established in the following cases:
 - remuneration for broadcasting and public performance of phonograms
 - remuneration for cable retransmission
 - remuneration for the application of copyright exceptions (educational uses) and public lending of works.
 - France, where:
 - cable retransmission disputes are solved by a mediation procedure
 - the remuneration for the broadcasting and public performance of phonograms is solved by a special Committee in case of disagreement

- Italy, where:
 - mediation is provided for disputes between authors and broadcasters regarding the right of communication to the public through broadcast
 - mediation is open to any right holders (author, performer, producer and cable operator) for cable retransmission rights
- Sweden, where a mediator intervenes for conflicts affecting:
 - agreements to be concluded under extended collective licence scheme
 - cable retransmission rights

The situation across Europe as regards legal provisions for dispute settlement mechanisms may therefore be summarized as follows:

- In 6 countries – Belgium, Latvia, Malta, Poland, Spain and the Netherlands – the legislation provides an arbitration procedure exclusively for solving conflicts concerning remuneration for cable retransmission.
- In 12 countries – Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Portugal, Slovenia and the UK - the copyright legislation provides for mediation/arbitration measures to solve conflicts between users and collecting societies affecting any types of right.
- In 6 countries – Denmark, Sweden, France, Austria, Italy, Poland and Finland – the law lays down measures on mediation for certain categories of rights only.
- Slovakia is the only country where no ad hoc or general mediation procedure is provided to solve disputes between users and right holders, the recourse to court being the only way available for them in case of disagreements.

SECTION 3

Follow-up to mediation and arbitration procedures

Among those countries providing means for solving disputes between users and collecting societies, only a few of them have provisions on what the parties may do after the first procedure.

In Austria, when the parties first try to solve their problem with the supervisory authority (which also acts as the mediator – see above) recourse to the courts is barred.

In Spain and in Italy, recourse to the courts is not possible until the arbitration procedure has been concluded.

In Estonia, Finland, Lithuania and the UK, the law provides that if one of the parties disagrees with a decision made by the previous mediation authority, this party has the right to recourse to the courts concerning the same dispute.

The rest of the countries do not make any reference to the possibilities open to the parties after the ruling of the mediator. Yet as a general rule, however, it would seem that they are nonetheless able to solve their further conflicts in the courts.

CHAPTER 5

SOCIAL AND CULTURAL FUNCTIONS OF COLLECTING SOCIETIES

This chapter examines national legislations with respect to provisions entrusting collecting societies with social and/or cultural functions.

Detailed references to legal measures regulating the allocation of funds to cultural and/or social purposes are included in table 5 of part III of the study.

The majority of EU countries (15 out of 25 Member States) lay down in their copyright legislation provisions regarding collecting rights societies allocating sums for social and/or cultural activities. It is a recommendation in Estonia, Latvia, Malta and Finland. It is an obligation in Austria, Czech Republic, Belgium, Denmark, Germany, France, Italy, Luxembourg, Portugal, Slovakia and Spain.

In some countries – Portugal, France, Spain, Austria and Belgium – the regulator goes so far as to stipulate the percentage of revenues that shall be allocated to cultural and social activities.

Countries with no provisions on social or cultural funds are:

Cyprus, Greece, Hungary, Ireland, Lithuania, Poland, Slovenia, Sweden, the Netherlands and the United Kingdom.

Yet, among these countries only the authors' society in Cyprus does not allocate any money for these purposes. The rest of the national collecting societies dedicate a percentage of their collections for the benefit of their members and/or the promotion of national artists.

Social and cultural activities are funded from proceeds collected by the collecting societies. Some countries provide for a general obligation to allocate part of their funds to cultural and social purposes. In other countries, there are special rules set up by Member States' legislation in relation to private copying remuneration schemes.

a. Legal provisions on general allocation of funds

Collecting societies in the following countries have the duty to allocate funds for specific social and/or cultural purposes:

- Czech Republic: obligation to create a reserve fund from the collected remuneration and eventual distributable revenues (principle of protecting against unjust enrichment).
- Italy: sums which are unclaimed after three years from collection must be allocated to the National Social Security Agency for Painters, Sculptors, Musicians, Writers and Playwrights.
- Luxembourg: obligation to allocate a part of the income to the promotion of culture in the Grand-Duchy.
- Portugal: at least 5% of the total collected revenues must be allocated to social and cultural purposes.
- Slovakia: obligation to retain a certain sum of the total collected revenues for cultural purposes.
- France: 50% of non-distributable sums must be used for cultural purposes.

In Germany, the legislation states that collecting societies *should* provide welfare institutions for their members, such as pension funds.

In Estonia, Malta and Latvia, the law states that it is necessary for the collecting society to obtain the authorisation from the members to make any deductions from the collected revenues.

b. Legal provisions in relation to private copying royalties

In several countries a percentage varying from 10 to 50% of the royalties collected from the private copying royalties is used for the benefit of the societies' members, for the creation of new works and for other cultural purposes.

Compulsory allocation provisions are set out by law in the following countries:

- Austria: societies must establish social welfare and cultural institutions for their members and 50% from the income for private copying must be allocated to such institutions.
- Belgium: 30% of the private copying royalties may be allocated to the promotion of the creation of new works.
- Denmark: one third of the remuneration for private copying must be set aside to support common purposes of the members of the organization.
- France: 25% of the sums collected on the basis of private copy must be used for cultural purposes.
- Spain: collecting societies are obliged to provide 20% of the remuneration for private copying for welfare activities and services for the benefit of their members, they must do this either themselves or through non-profit-making entities.

In Finland, the approval of the allocation from the collecting society of a part of the income from private copying to common purposes of the members is dependent on the commitment by the society.

c. Summary

The situation be summarised as follows:

i) Estonia, Latvia, Malta and Finland recommend social/cultural deductions. In these countries, the authorisation of the society's members is needed before the society might allocate any sum to social and cultural purposes (4 out of 25 Member States).

ii) Austria, Belgium, Denmark, Germany, Spain, France, the Czech Republic, Portugal, Slovakia, Italy and Luxembourg legally oblige their national collecting societies to allocate sums for social and/or cultural activities (11 out of 25 Member States).

iii) In the remaining countries there are no specific provisions on social and cultural funds: Cyprus, Greece, Hungary, Ireland, Lithuania, Poland, Slovenia, Sweden, The Netherlands and the United Kingdom (10 Member States out of 25).

iv) In practice in all Member States except Cyprus, collecting societies make social/cultural deductions (24 Member States out of 25).

PART III

DETAILS OF NATIONAL LEGISLATIVE FRAMEWORKS

The third part of the study presents a detailed overview of national legislations from the 25 EU member states.

Legislative provisions are organised by themes which correspond to the chapters in the study's part II. The themes are grouped in the five following tables:

1. The applicable law regulating collective management
2. The status of collecting societies and provisions on competition law
3. Provisions on governance, transparency, accountability and supervision
4. Rules on mediation and dispute settlements
5. Social and cultural functions of collecting societies

TABLE 1 THE APPLICABLE LAW REGULATING COLLECTIVE MANAGEMENT

This table contains a detailed view of national legislative frameworks for the following issues:

- a. *Laws applicable to collective management of rights*
- b. *Rights covered by mandatory collective management*

The countries are listed in alphabetical order according to their English name.

List of countries	Issues
Austria	<p>a)</p> <p>Law on Authors' Right and Related Rights (BGBl. 1936/111) as amended last by the Authors' Rights Revision Law 2006 ("UrhG") Until 30 June 2006: Law No. 112/1936 on Collecting Societies (the "1936 Law") From 1 July 2006: Law on Collecting Societies 2006 (the "2006 Law")</p>
	<p>b)</p> <p>The Copyright Law provides for compulsory collective administration in the following cases:</p> <ul style="list-style-type: none"> - Remuneration for lending (§ 16a (2) UrhG) - Remuneration for simultaneous and unabridged cable retransmission (§§ 38(1)(a), 59a(1) UrhG) - Remuneration for private copying (§ 42b (5) UrhG) - Remuneration for the reproduction and distribution of works for the benefit of disabled persons (§ 42d (2) UrhG) - Remuneration for the reproduction, distribution and making available to the public of literary works for church, school or educational uses and for school broadcasts (§§ 45(3) UrhG, 59c) - Remuneration for reproduction, distribution and making available to the public of a musical work in schools (§§ 51(2), 59c UrhG) - Remuneration for reproduction, distribution and making available to the public of an artistic work in schools (§§ 54(2), 59c UrhG) - Remuneration for public performance of sound and video recordings by libraries § 56b (1) UrhG) - Remuneration for public performance of films and musical works recorded therein in schools (§ 56c (2) UrhG) - Remuneration for public performance of films in hotels (§ 56d (2) UrhG) - Remuneration for public performance of radio broadcasts including literary and musical works (§ 59(1) UrhG) - Remuneration for broadcasting and public performance of phonograms (§ 76(3) UrhG)
Belgium	<p>a)</p> <p>Law on Copyright and Related Rights of 30 June 1994 as amended last by Law of 22 May 2005 (Articles 65-78) and related Ministerial decisions and Royal Decrees Law of 20 May 1997 on financing the control of collecting societies Royal Decree of 6 April 1995 on the authorisation of collecting societies</p>
	<p>b)</p> <p>Collective administration is compulsory in a number of cases:</p> <ul style="list-style-type: none"> - for non-distributable sums from resale of works of art (Art. 13(2)); - remuneration for the broadcasting and public performance of phonograms (Art. 42(2)); - cable retransmission (Art. 53(1)); - private copying (Art. 55);

	<ul style="list-style-type: none"> - equitable remuneration for public lending (Art. 62); - reproductions of literary works or works of art as well as of performances, phonograms and audiovisual fixations for private study or for the purposes of teaching (Art. 59, 61 <i>bis</i> with 61 <i>quater</i>)
Cyprus	a) Copyright law 1976, law 59/1976, amended in 2002
	b) No mention is made in the law concerning mandatory collective administration of rights
Czech Republic	a) Law No. 121/2000 Coll. of 7 April 2000 on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act)
	<p>b) The Copyright Act provides (article 96) that rights subject to mandatory collective administration are the following:</p> <p>a) the right to remuneration for</p> <ol style="list-style-type: none"> 1. the use of an artistic performance fixed on a phonogram published for commercial purposes by broadcasting or by re-broadcasting and by retransmission of the broadcast 2. the use of a phonogram published for commercial purposes by broadcasting or by re-broadcasting and by retransmission of the broadcast 3. the making of a reproduction for personal use on the basis of a sound or audiovisual fixation by the transfer of its content by means of a technical device to an empty carrier of such fixation (private copy) 4. the making of a reproduction for personal use on the basis of a graphic expression by its transfer by means of a technical device for making printed reproductions to another material support, and that also through the facilitation of a third party (reprography) 5. resale of the original of a work of art <p>b) the right to appropriate remuneration for the rental of the original or a copy of the work, or of a performance by a performer fixed in an audio or audiovisual fixation</p> <p>c) the right to use by cable retransmission of works, the live performances and performances fixed on phonogram, with the exception of such performances whose phonogram has been published for commercial purposes and, further, the right to the use by cable retransmission of audiovisual fixations and phonograms other than those published for commercial purposes</p>
Denmark	a) Consolidated Copyright Act 2003 (last amendment No. 710 of 30 June 2004) - Sections 38, 39, 47 - 51, 58a, 68 Provisions on collective administration are scattered in the Copyright Act and may be found mainly in the context of extended collective licensing, resale royalty, private copying, and the use of phonograms for broadcasting and public performance
	<p>b) Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - Resale rights for artistic works (Sec. 38(5)) - Remuneration for private use (Sec. 39(1)) - Unwaivable right to remuneration for rental of films or sound recordings (Sec. 58a) - In the context of extended collective licensing (Sec. 50), that is for acts of reproduction by educational institutions and business enterprises (Sec. 13 and 14), libraries and archives (Sec. 16(2)), for the benefit of the disabled (Sec. 17(5)), for critical or scientific public presentations of works of fine art (Sec. 23(2)), certain acts of broadcasting of works (Sec. 30, 30a) and simultaneous and unabridged cable retransmission (Sec. 35)

	The administration of remuneration rights in respect of the broadcasting and public performance of phonograms can only be carried out by a joint collecting society representing performers and producers.
Estonia	a) Copyright Act (in Estonian: <i>Autoriõiguse seadus</i>), adopted on 11 November 1992, in force since 12 December 1992. Specifically, Sections 76 to 79 and 87 apply to collective management of rights
	b) The Copyright Act (§76(3)) provides for compulsory collective management in the following rights categories: <ul style="list-style-type: none"> - Communication to the public of musical, literary and artistic works by radio, television, cable network, satellite or by means of other technical devices; - collection and distribution of remuneration for the resale of works of visual art; - collection of remuneration prescribed for the private use of audiovisual works and sound recordings (private copy); - cable retransmission of radio and television broadcasts and programmes (including works contained therein); - collection and payment of remuneration to authors and performers for the use (including rental) of phonograms and audiovisual works
Finland	a) Copyright Act No. 404/1961 of 8 July 1961 as subsequently amended (last amendment of 2005 implements the EC Copyright Directive) - The provisions dealing with collective administration have hitherto been scattered around the Act, but since the latest amendment they are regrouped in a new Section 26. The new version of the provisions will come into force on 1 January 2007. Copyright Decree No. 574/1995 of 21 April 1995
	b) Collective administration is compulsory in the following cases: <ul style="list-style-type: none"> - where the extended collective licensing scheme applies (Sec. 26), i.e. reprography (Sec. 13), reproductions by educational institutions (Sec. 14(1)), certain radio and television broadcasts (Sec. 25f or h); - remuneration for private copying (Sec. 26a (1)); - resale royalty (Sec. 26j (1)); - remuneration for the simultaneous and unabridged cable retransmission of works and phonograms (Sec. 25i, 47a). <p>As of 1 January 2007, new fields will be subject to extended collective licensing such as the digital use of material for education or the retransmission of a television programme stored in the archives of a transmitting organisation. Collective administration is facultative for the broadcasting and public performance of phonograms (<i>arg.e.</i> Sec. 47).</p>
France	a.) <i>Code de la Propriété Intellectuelle</i> as codified by Law No. 92-957 of 1 July 1992 and amended last by Law No. 842-2005 of 26 July 2005 (Arts. L.321-1 - L.321-12). Regulatory Part, codified by Decree No. 95-385 of 10 April 1995 as amended last by Decree No. 1756-2005 of 30 December 2005 (Arts. R.321-1 - R.321-9)
	b) Collective administration is compulsory in the following cases: <ul style="list-style-type: none"> - Reprography (Art. L.122-12 CPI) - Cable retransmission (Art. L.132-20-1 CPI) <p>In the case of remuneration for private copying, the law does not expressly mention mandatory collective management, even though it states that collection has to be implemented by one or more collecting societies (Art. L. 311-6 CPI).</p>

	Similarly, Art. L. 214-5 CPI states that remuneration for legal license (including cable retransmission) is collected and redistributed by collecting societies, but it does not clearly exclude any other form of collection.
Germany	<p>a) The Law on Authors' Rights of 9 September 1965 as amended last by the Law governing Authors' Right in the Information Society of 10 September 2003 ("UrhG") Law on the Administration of Authors' Rights and Related Rights of 9 September 1965 as amended last by the Law governing authors' rights in the information society of 10 September 2003 (Urheberrechtswahrnehmungsgesetz - "UrhWG")</p> <p>b) Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - Remuneration for cable retransmission (§ 20b UrhG); - Resale right for artistic works (§ 26(5) UrhG); - Remuneration for rental and lending of works (§ 27(3) UrhG); - Remuneration for the reproduction and distribution of works for the benefit of disabled persons (§ 45a(2) UrhG); - Remuneration for the reproduction and distribution of broadcast commentaries and individual articles from newspapers (§ 49(1) UrhG); - Remuneration for the making available to the public of works for the purpose of teaching and research (§ 52a (4) UrhG); - Remuneration for private copying (Sec. 54h UrhG).
Greece	<p>a) Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters of 4 March 1993, as amended by Article 8 of Law. No. 2557/1997 and by Article 81 of Law No. 3057/2002 - Articles 54-58, 70 and 74.</p> <p>b) Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - remuneration for private copying (Art. 18(3) Copyright Law); - equitable remuneration for broadcasting and communication to the public of phonograms (Art. 49 Copyright Law); - unaltered and unabridged cable retransmissions of works (Art. 54(2) and 57(8) Copyright Law).
Hungary	<p>a) Act No. LXXVI of 1999 (Copyright Act), in particular art 85-93 therein</p> <p>b) The Copyright Act provides for mandatory collective management of rights in following cases:</p> <ul style="list-style-type: none"> - Fair and equitable remuneration for private copy (art. 20§7) - Remuneration for reprography (art. 21§7) - Remuneration for lending to the public of works other than cinematographic creations, sound recordings or software (art. 23§7) - Communication to the public by cable retransmission of broadcast programmes (art. 28§3) - Communication to the public through broadcast for holders of related rights (producers of sound recordings and performers) (art. 77§3)
Ireland	<p>a) Copyright and Related Rights Act 2000 as last amended by Statutory Instrument No. 18 of 2004 - Sec. 149 et seq.</p> <p>b) Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - right to equitable remuneration of the author for rental (Sec. 125(2)); - the cable retransmission right of authors (Sec. 174);

	<ul style="list-style-type: none"> - performers' right to equitable remuneration for playing in public or including in a broadcast or cable programme service of a sound recording (Sec. 208(2)); - performers' right to equitable remuneration of rental (Sec. 298).
Italy	<p>a)</p> <p>Articles 180 -184 of Law no. 633/41 of 22 April 1941 as amended last with effect from 29 April 2003 together with the Regulations on the Application of Law no. 633/41. Legislative Decree no. 419 of 29 October 1999 as amended by Decree-Law No. 63 of 26 April 2005.</p>
	<p>b)</p> <p>Authors retain their ability to administer their rights individually (Art. 180 <i>bis</i>), <u>except</u> in the following cases, where administration by SIAE is compulsory:</p> <ul style="list-style-type: none"> - remuneration for reprography (Art. 181-<i>ter</i> with 68(4) and (5) Law); - remuneration for cable retransmission (Art. 180-<i>bis</i> Law); - private copying remuneration (Art. 71 <i>septies</i> and <i>octies</i> of the Law and Art. 3 of Law No. 93 of 5 February 1992); - resale right for works of art (Art. 154 Law). <p>Remuneration to performers for public performance of phonograms (radio and TV broadcast, satellite broadcast, any other communication to the public) as well as for private copying is administered exclusively by IMAIE, the collecting society for performers' rights (Art. 5 of Law No. 93 of 5 February 1992).</p>
Latvia	<p>a)</p> <p>Copyright Law (in Latvian: <i>Autorties bu likums</i>), adopted on 6 April 2000, in force since 11 May 2000. Specifically, articles 63 to 67 apply</p>
	<p>b)</p> <p>Copyright Law provides in section 63(5) that:</p> <p>The economic rights of the right holders shall be administered only on a collective basis in respect of:</p> <ol style="list-style-type: none"> 1) a public performance, if it occurs in locations, cafes, shops, hotels and other similar places; 2) lease, rental and public lending (except for computer programmes, databases and works of art); 3) retransmission by cable (except for the rights of broadcasting organisations, irrespective of whether it is their own broadcasting organisation rights or those which the broadcasting organisation has transferred to right holders); 4) reproduction for personal use (private copy); 5) reprographic production for personal or official use; 6) resale of original works of visual art; and 7) use of phonograms published for commercial purposes
Lithuania	<p>a)</p> <p>Collective management of rights is governed by Articles 65 – 72 of the Law on Copyright and Related Rights (in Lithuanian: <i>Autori Teisi ir Gretutini Teisi statymas</i>), adopted on 18 May 1999, in force since 09 June 1999, last amendments in force since 21 March 2003. Currently a package of amendments to the existing law is being discussed in the Parliament.</p>
	<p>b)</p> <p>The Law on Copyright and Related Rights (article 65, §§2 and 3) provides for mandatory collective management in the following rights categories:</p> <ol style="list-style-type: none"> 1) cable retransmission of works and objects of related rights, except where they constitute a cable retransmission operator's own programmes; 2) broadcasting, retransmission or other communication to the public of phonograms published for commercial advantage (including background music); 3) collecting of remuneration, specified in paragraph 4 of Article 11 (remuneration

	<p>to co-authors of audiovisual works for rental rights), paragraph 4 of Article 15 (remuneration to authors in respect of phonogram fixations for rental rights), and paragraphs 4 and 5 of Article 53 of the Law (remuneration to performers in respect of audiovisual works and phonogram fixations for rental rights), for the transfer of the exclusive right to rent a work or an object of related rights, or their copies;</p> <p>4) reproduction on paper of works by means of reprography (effected by the use of any kind of photographic technique or by some other process having similar effects);</p> <p>5) lending of books and other publications in libraries;</p> <p>6) reproduction for private use of audiovisual works or works fixed in phonograms</p>
Luxembourg	<p>a)</p> <p>Law of 18 April 2001 on copyright, related rights and databases as amended last by Law of 18 April 2004</p> <p>Regulation of 30 June 2004 governing collecting societies and the distribution of copyright and related rights income</p>
	<p>b)</p> <p>Collective administration is compulsory in the case of cable retransmission rights (Art. 61(1) Law).</p> <p>The administration of the author's resale right, the rights in respect of rental and lending as well as the rights on remuneration for broadcasting and communication to the public of phonograms have still to be determined by Regulations of the Grand-Duchy.</p>
Malta	<p>a)</p> <p>Copyright Act - Chapter 415 of the Laws of Malta. Act XIII of 2000 last amended in 2003</p> <p>Subsidiary Legislation 415.01 - Legal Notice 425 of 2003 on the control of the establishment and operations of societies for the collective administration of copyright regulations.</p> <p>The Legal Notice came into force on 1 January 2004</p>
	<p>b)</p> <p>According to the Copyright Act, collective administration is mandatory only in relation to the right to authorise or prohibit cable retransmission of broadcasting (Art. 7(3))</p>
Poland	<p>a)</p> <p>Act of 4 February 1994 on Copyright and Related Rights as successively amended in 1997/2001/2003/2005, in particular articles 104 to 110 therein</p>
	<p>b)</p> <p>According to the Copyright Act the following categories of rights are subject to mandatory collective administration:</p> <ol style="list-style-type: none"> 1) Remuneration to authors for resale of their works, including manuscripts of literary and musical works (art. 19§1) 2) Remuneration for private copy (art. 20) 3) Remuneration for reprography (art. 20-1) 4) Broadcasting, retransmission or other communication to the public of published musical and dramatic works - however authors may waive the intermediation of collecting societies by written request (art. 21) 5) Cable retransmission (art. 21-1) 6) Remuneration to research and documentation centres for the dissemination of their works (art. 30) 7) In the case of audiovisual works, remuneration to directors, cameramen, authors of screenplay, authors of literary or musical works used or created for the audiovisual work and performers for the following uses of the work: (art. 70) <ul style="list-style-type: none"> - screening in cinemas - rental and public performance - broadcast on TV or other media reproduction on a copy intended for private use

Portugal	<p>a) Law No. 83/2001 of 3 August 2001 on collecting societies. Code on Copyright and Related Rights of 1985 as amended last in 2005</p>
	<p>b) Collective administration is compulsory for the performer's right flowing from the making available of his work and the fixation of his performance by a film producer or broadcaster for broadcasting purposes. In such a case, the broadcasting and communication to the public rights are presumed to be transferred subject to an unwaivable right to equitable remuneration which must be administered by a collecting society (Art. 178(4) Copyright Code).</p> <p>Art. 7 of Law-decree of 27 November 1997, although not included in the reviewed Copyright Code, also provides for mandatory collective management of cable retransmission rights.</p>
Slovakia	<p>a) Copyright Act No. 618/2003 of 4th December 2003</p>
	<p>b) The Copyright Act provides for mandatory collective administration of rights in the following fields (section 78(4)):</p> <ul style="list-style-type: none"> - the public performance of a work, - the communication to the public through any technical means a work, - the broadcasting of a work, - the cable retransmission of a work, - the distribution of the original of a work or copies thereof to the public by rental and lending, - the copying of a work for private use, - the copying of a work by means of reprographic device or other technical device, - the resale of an original work of visual art.
Slovenia	<p>a) Copyright and Related Rights Act of 30 March 1995, as amended on 26 January 2001, 10 April 2001 and 9 April 2004 (as in force from 11 May 2004)</p>
	<p>b) Article 147 of the Copyright and Related Rights Act provides that collective management of rights is mandatory in the following cases:</p> <ol style="list-style-type: none"> 1) communication to the public of non-theatrical musical works and literary works (minor rights); 2) transfer for valuable consideration of ownership of originals works of fine art (droit de suite); 3) reproduction of works for private or other internal use and its photocopying beyond the scope of Article 50 (Article 50 sets out rules and exceptions for private copying and reprography); 4) cable retransmission of works, except broadcasters' own transmissions, irrespective of whether the rights concerned are their own rights or have been assigned to them by other right holders
Spain	<p>a) Law on Intellectual Property of 12 April 1996 as amended last by Law 1/2000 of 7 January 2000 - Articles 147 – 159</p>
	<p>b) Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - cable retransmission rights (Art. 20(4)); - private copying remuneration (Art. 25(7)); - remuneration authors in connection with the production of a film where the exclusive rights are presumed transferred to the producer as well as the unwaivable right to remuneration for rental of phonograms and audiovisual fixations (Art. 90(7));

	<ul style="list-style-type: none"> - equitable remuneration for the communication to the public of phonograms and audiovisual fixations (Art. 108(4), 116(3) and 122(3)); - the performer's unwaivable right to remuneration for rental of phonograms and audiovisual fixations
Sweden	<p><i>a)</i> Act on Copyright in Literary and Artistic Works (Act 1960:729 of 30 December 1960, as amended up to 1 July 2005) Act on Mediation in Certain Copyright Disputes (Act 1980:612 as amended up to 1 July 1995)</p> <p><i>b)</i> Collective administration is compulsory in the following cases:</p> <ul style="list-style-type: none"> - remuneration for private copying (Sec. 26m with Sec. 26k and l); - the resale royalty for works of art (Sec. 26j) - in the field of extended collective licensing, i.e. the cases covered by Sec. 42a-f: reproductions by public authorities and enterprises, educational institutions and libraries and archives, for sound, radio or television broadcasts and for retransmissions of works contained in sound and radio broadcasts; - remuneration for the simultaneous and unabridged cable retransmission of phonograms (Sec. 47) <p>The remuneration for the broadcasting and public performance of phonograms must be administered jointly by performers and producers (Sec. 47)</p>
The Netherlands	<p><i>a)</i> Law on Authors' Rights of 1912 as amended last with effect from 1 September 2004 Related Rights Act of 1993 as amended last with effect from 1 September 2004 Act on the Supervision of Collective Management Organisations for Copyright and Related Rights of 2003</p> <p><i>b)</i> Collecting societies are exclusively entrusted with the collection, distribution and exercise of the following rights :</p> <ul style="list-style-type: none"> - lending right for authors (Art. 15f Law on Authors' Rights); - private copying remuneration (Art. 16d Law on Authors' Rights); - remuneration for reprography (Art. 16l Law on Authors' Rights); - remuneration for the broadcasting and communication to the public of phonograms (Art. 7 with 15 Related Rights Act); - remuneration for lending of phonograms and videograms (Art. 2(3), 6(3), 7a(3) and 8(3) with Art. 15a Related Rights Act) - cable retransmission (Art. 26a Law on Authors' Rights; Art. 14a Related Rights Act)
United Kingdom	<p><i>a)</i> Copyright Designs and Patents Act 1988 as amended last by S.I. 2003 No. 2498 (The Copyright and Related Rights Regulations 2003) - Sec. 116 et seq.</p> <p><i>b)</i> Collective administration is compulsory in the case of cable retransmission rights of authors (Sec. 144A (2) CDPA). Legislation provides that the following rights:</p> <ul style="list-style-type: none"> - right to equitable remuneration of authors for the rental of sound recordings and films (Sec. 93B CDPA) - performers' right to equitable remuneration for the use of sounds recordings for playing in public and communication to the public except for electronic transmission (Sec. 182D CDPA) - right to equitable remuneration of performers for the rental of sound recordings and films (Sec. 191G CDPA) <p>may not be assigned by the author (performer) except to a collecting society for the purpose of enabling it to enforce the right on his behalf.</p>

TABLE 2 THE STATUS OF COLLECTING SOCIETIES AND PROVISIONS ON COMPETITION LAW

This table contains a detailed view of national legislative frameworks for the following issues:

- a. *Legal status of collecting societies*
- b. *Situation of legal monopolies*

The countries are listed in alphabetical order according to their English name.

List of countries	Issues
Austria	<p>a) Collecting societies must be either co-operatives or companies which must be “not-for-profit”; hitherto, a collecting society merely had to be a legal entity (see Sec. 3(1) 2006 Law and 1936 Law). An authorization by the Supervisory Authority is necessary: up to now this has been the Ministry of Education (Sec. 1(1), 1936 Law), but in future the authorization will be granted by “KommAustria”, the new communications authority (Sec. 2(1) with 28(1), 2006 Law).</p>
	<p>b) The authorization may only be granted to a single society in a particular field. If several societies apply for an authorization, the society deemed to be the best to carry out properly the tasks will obtain the authorization. Existing societies are presumed more efficient than newly established ones (Sec. 3, 2006 Law). Therefore one can assume that collecting societies are monopolies established by the State.</p>
Belgium	<p>a) Collective administration must be carried out by companies lawfully established in a EU Member State (Art. 65(2)). In order to carry out their activities in the national territory, the societies require a Ministerial authorization which has to be published in the “<i>Moniteur Belge</i>” (Art. 67).</p>
	<p>b) The King names the collecting societies competent for the administration of certain rights (see for instance private copying (Art. 55, 56) and other exceptions (Art. 61 bis et 61 quarter)). The competent collecting society for collecting and distributing remuneration for broadcasting and public performance of phonograms is determined by a Ministerial decision (Art. 42). Hence, collecting societies are granted a monopoly by the State.</p>
Cyprus	<p>a) Cyprus law does not specifically regulate the way collecting societies are established.</p>
	<p>b) Cypriot legislation does not restrict the rights of any collecting societies to issue licences in Cyprus. The legislation thus allows for competing collecting societies. The Cyprus competition law does not specifically exclude collecting societies’ activities. However, Art. 7(1)(b) of the 1989 Protection of Competition Law (Law 207/89) excludes all activities that are specifically regulated by the provisions of other laws. Although this particular article has not been interpreted with respect to collecting societies yet, this particular provision may exclude disputes between collecting societies and users from the scope of the Competition Law for them to be resolved under the Copyright Act.</p>

Czech Republic	a) The collective administrator shall execute administration on a not-for-profit basis (Sec.100 (3)) Copyright Act) under the form of an association .
	b) The natural monopoly existing in the area of collective administration is made a statutory rule in the legislation (§.98(6)(c)). Collecting societies seem to be subject to competition rules (not as competitors but, according to the Office for Protection of Economic Competition, as entities affecting competition; this issue has not been ruled on by a court), except for mutual relations.
Denmark	a) Collecting societies can be organizations of any kind (Sec. 50, 68 of Copyright Act). Collecting societies must be approved by the Minister of Culture when they deal with extended collective licensing or rights administration related to resale royalties for works of art, private copying or broadcasting and public performance of phonograms.
	b) In the field of extended collective licensing , there can be only one society for each type of works. The Minister can also decide that an approved association should be a joint association comprising several organizations (Sec. 50(2)). The administration of remuneration rights flowing from the broadcasting and public performance of phonograms can only be carried out by a joint collecting society representing performers and producers.
Estonia	a) Copyright societies are established under the form of a non-profit association in accordance with the Non-profit Associations Act (in Estonian: <i>Mittetulundusühingute seadus</i>) adopted on 6 June 1996, in force since 1 October 1996.
	b) The Estonian legislation allows competing collecting societies and it is even possible to have competing collecting societies in the same area (e.g. producers' societies). In Estonia, collecting societies are subject to the Estonian Competition Act (in Estonian <i>Konkurentsiseadus</i>).
Finland	a) Collecting societies can be organizations of any kind (Sec. 26 Copyright Act). They must be approved by the Ministry of Education, at the very least for the administration of private copying royalties, rebroadcasts and other retransmissions and in the case of the resale royalty for works of art (Sec. 25h, 25i, 26b, 26j).
	b) There is no reference to competition in the copyright law; however it seems, in the light of both the European Commission's practice and the ECJ' s rulings that Articles 81 and 82 of the EC Treaty apply to collecting societies.
France	a) Collecting societies must be established as civil law societies (" <i>société civile</i> ") of which the authors, performers or producers are members (" <i>associés</i> ") (Art. L.321-1 CPI). In principle, collecting societies need no administrative approval, but there can be a judicial review . However, collecting societies must send their draft statutes and general regulations to the Minister of Culture who can call upon the Tribunal de Grande Instance in the event of substantial and serious concerns about the constitution of the society (Art. L. 321-3 CPI). Furthermore, an approval by the Minister of Culture is necessary in cases where collective administration is compulsory, notably reprography (Art. L.122-12 CPI) and cable retransmission (Art. L.132-20-1 CPI).

	<p>b)</p> <p>Collecting societies are governed by the legislation dealing with competition as contained in the 1 December 1986 “<i>Ordonnance</i>”. This has been confirmed by the Cour de Cassation (Cass. com. of 5 November 1991, Dalloz 1993, p. 63).</p>
Germany	<p>a)</p> <p>The Law (Sec. 1 UrhWG) allows both natural and legal persons to establish a collecting society subject to an authorization by the German Patent and Trademarks Office (“DPMA”). There are no legal obligations as to the legal form of collecting societies. Nonetheless, all 11 collecting societies in Germany have chosen the form of a legal entity, such as an Association in the sense of § 22 BGB (Civil Code) in the case of GEMA, VG Wort, VG Bild-Kunst and VG Musikedition or a Limited Liability Company (“GmbH”) in the case of GVL and the four collecting societies in the film field.</p>
	<p>b)</p> <p>Collecting societies are factual monopolies which were, until recently, exempted from the anti-monopoly provisions of the German Law on Monopolies (former Sec. 30 GWB). In order to comply with EC law, this provision was repealed in July 2005. Exemptions are now only possible on the basis of Sec. 2 GWB in application of Article 81(3) of the EC Treaty.</p>
Greece	<p>a)</p> <p>A collecting society may have any form of company structure, for instance an incorporated company or an urban cooperative (Art. 54(1) Copyright Law). This suggests that only a legal entity can be a collecting society.</p>
	<p>b)</p> <p>There are no explicit rules in the law as to competition issues; however it should be noted that under the Greek legal position, several collecting societies may exist in the same field.</p>
Hungary	<p>a)</p> <p>Only societies (pursuant to Arts. 61 to 64 of the Civil Code) may be registered as organizations performing collective management of rights (Art. 86 (1) Copyright Act). “Society” in this context means an autonomous non-profit organization established voluntarily by their members for an objective defined in the statutes (“civil law society”). Under Article 89 of the Copyright Act the Ministry commences prior authorization procedure on application only. The application for prior authorization consists of a form including the details of the society and the economic rights exercised by the under the Copyright Act, the group of right holders affected by the collective administration and the activities carried out for the right holders.</p>
	<p>b)</p> <p>Societies benefit from a legal monopoly for the management of the rights of a specific group of right holders (Art. 86 (3)). Collecting societies are not specifically excluded from the scope of application of competition law. As a preventive control, public authorities (e.g. the ministerial approval of tariffs) supervise collecting societies in relation to possible monopoly abuses.</p>
Ireland	<p>a)</p> <p>Collecting societies, which fall under the category of licensing bodies, are societies or other organizations which deal mainly with the negotiation and/or the grant of copyright licences for more than one copyright owner (Sec. 149(1) Copyright Act). Collecting societies are hence private sector organizations. Collecting societies must be entered into the Register of Copyright Licensing Bodies which is kept by the Controller of Patents Designs and Trademarks (Sec. 181(1) with 175). A collecting society must remain registered as long as it continues to operate as such. Failure to register is an offence and punishable with a fine and/or imprisonment up to 5 years (Sec. 181(2) and (3)).</p>

	<p><i>b)</i> There is no explicit mention of competition on the Irish copyright law. However, in a 1992 case involving PRS and IMRO, the Irish Competition Authority held a standard form agreement to be incompatible with the Irish Competition Act. One can thus assume that Irish collecting societies are subject to competition law.</p>
Italy	<p><i>a)</i> SIAE - the only authors' society - is a public entity with a membership basis (Art. 7.1 Legislative Decree). The Statutes of SIAE require the approval of the President of the Council of Ministers upon proposal by the Ministry for Cultural Goods and Activities and in consultation with the Ministry of Finance and Economics (Art. 7.5 Legislative Decree as amended in 2005). No mention is made in the law of the legal status of other collecting societies.</p>
	<p><i>b)</i> The Copyright Law names SIAE as the sole organism entitled to act as a collecting society for copyright works (Art. 180(1) Law) whereas performers' remuneration rights are administered by IMAIE. SIAE is granted a legal monopoly. However, SIAE is subject to competition law on abuses of dominant position issues.</p>
Latvia	<p><i>a)</i> The copyright societies are established as not-for profit associations, in accordance with the Law on Associations and Foundation, adopted on 30 October 2003, in force since 1 April 2004. Collective management organizations may start operating only after obtaining a permit, issued by the Ministry of culture after an evaluation procedure.</p>
	<p><i>b)</i> There may be several collecting societies only in the case of individually managed rights. In the case of collectively managed rights (Article 63, part 5 of the Copyright Law), no competition is possible. According to Article 63 part 6 of the Copyright Law the collective management of these rights may only be carried out by one collective management society. The collecting societies are not specifically excluded from the scope of the Competition Law. According to Article 1 of the Competition Law a necessary feature of the market participant is that it pursues an economic activity or its activities affect the competition. Therefore only when collecting societies do pursue an economic activity, can they be subject to Competition Law as any market actor.</p>
Lithuania	<p><i>a)</i> Collecting societies are established as associations with non profit purposes, under Article 66 of the Law on Copyright and Related Rights and the Law on Associations, adopted on 22 January 2004, in force since 14 February 2004.</p>
	<p><i>b)</i> The Law does not contain provisions limiting the number of collecting societies and/or prohibiting competition among collecting societies and/or providing any exclusive competence. Thus the establishment of further collecting societies in addition to the two existing collecting societies is possible. Furthermore, attempts were made to establish a third collecting society in Lithuania in 1999 (ELATA). However, this attempt failed. Competition law applies to collecting societies. The definition of an undertaking found in the Law on Competition largely follows the broad concept found in EC law, including associations irrespective of whether they engage in economical activities.</p>

Luxembourg	<p>a) The "organization" administering copyright or related rights needs an authorization by the Minister of Economy. Since the Law refers to "organizations", one can assume that natural persons cannot act as collecting societies. "Organizations" established outside Luxembourg must have a representative in Luxembourg approved by the Minister of Economics (Art. 66(1) Law; the conditions for the application are listed in Art.2 and 3 of the Regulation).</p> <p>b) Art. 90 of the Law provides that where a party abuses its negotiation power, the Competition Commission may be called upon under the 17 June 1970 law on restrictive practices. Thus the Competition Authority can have some control over collecting societies.</p>
Malta	<p>a) To operate in Malta, a company or organization (Sec.7.3 Subsidiary Legislation dealing with Societies for the Collective Administration of Copyright Regulations) must submit a request to the Copyright Board to operate as a collecting society in accordance with the provisions of the Act (Sec. 4.1 Subsidiary Legislation)</p> <p>b) Under section 4.3.d. of the Subsidiary Legislation, provided that it is shown competition in a specific field of administration would not be beneficial to the interest of copyright owners and users, only one collecting society can operate in this specific field. There is no reference to competition in the copyright law; however it seems in the light of both the European Commission's practice and the ECJ' s rulings that Articles 81 and 82 of the EC Treaty apply to collecting societies.</p>
Poland	<p>a) Under article 104 of the Polish Copyright Act, organizations for collective management of copyright or related rights must be associations. The Minister of Culture and National Heritage grants the permit to organizations able to guarantee an appropriate management of the entrusted rights.</p> <p>b) There can be several collecting societies operating in a same given field of exploitation (Article 107 Copyright Act). Collecting societies are not specifically excluded from the competition law.</p>
Portugal	<p>a) Collecting societies must be non-profit legal entities established by the holders of authors' and related rights. They must have at least 10 members (Art. 2 Law on collecting societies). Collecting societies must be entered into the Register kept with the General Inspection of Cultural Activities (IGAC) (Art. 6). Once registered, the society becomes a collective entity of public use (Art. 8). Operations carried out by unregistered societies are null and void and the society incurs an administrative fine (Art. 10).</p> <p>b) Competition law applies to collecting societies with consideration for specificities in the field of intellectual property (Art. 16).</p>
Slovakia	<p>a) Collective management societies are established under the Act No.83/1990 as public associations and with a form of public non-profit partnership. As a result, they are performing the collective administration on a non-profit basis. However, collective administration organizations are entitled to claim deductions to cover expenditures.</p>

	<p>b) Collecting societies are subject to competition law. There are five collecting societies in the Slovak republic. Two collecting societies -SLOVGRAM and OZIS- represent performers, and co-operate rather intensively, although they are competitors.</p>
	<p>b) The Copyright and Related Rights Act regulates the constitution of collective societies and the permission to operate. The Copyright Act doesn't limit the number of collective societies, but it determines terms to set up and operate which are equal to everybody. It is thus possible to set up competing collective societies. Competition law does not expressly refer to collective societies.</p>
Spain	<p>a) A collecting society must be a legally constituted entity with no gainful intent. The authorisation of the Ministry of Culture is required to operate and granted under certain conditions.</p>
	<p>b) There can be competition between collecting societies; one example is the creation of DAMA, a collecting society created for the interest of film directors, which is competing with SGAE for the management of audiovisual authors' rights. Competition Law applies to collecting societies.</p>
Sweden	<p>a) Collecting societies can be organizations of any kind (Sec. 26m and 42 Copyright Act)</p>
	<p>b) There is no reference in the copyright law regarding competition; however it seems in the light of both the European Commission's practice and the case law of the ECJ that Articles 81 and 82 of the EC Treaty apply to collecting societies. Therefore collecting societies seem to be subject to competition law.</p>
The Netherlands	<p>a) Collecting societies must be legal entities named by the Minister of Justice in agreement with the Minister of Education, Culture and Science, except in the area of broadcasting and public performance of phonograms where the designation by the Minister of Justice is sufficient and in the area of simultaneous and unabridged cable retransmission rights where no designation at all is required.</p>
	<p>b) Collecting societies are monopolies designated by the State; they are governed by the Competitive Trading Act (Art. 4 Act on Supervision of Collecting Societies).</p>
United Kingdom	<p>a) For the purposes of UK Law, a collecting society is a private sector organisation: a society or any other organisational form established and controlled by the rights owners (Sec. 116(2) CDPA).</p>
	<p>b) Collecting societies are de facto monopolies and as such subject to control by the Monopolies and Mergers Commission and the Copyright Tribunal.</p>

TABLE 3 PROVISIONS ON GOVERNANCE, TRANSPARENCY, ACCOUNTABILITY AND SUPERVISION

This table contains a detailed view of national legislative frameworks for the following issues:

- a. Governance, transparency and accountability of collecting societies
- b. Supervision

The countries are listed in alphabetical order according to their English name.

List of countries	Issues
Austria	<p>a)</p> <p>Collecting societies acquire rights on the basis of an administration contract (§ 11(1), 2006 Law).</p> <p>Collecting societies must offer licences at reasonable conditions (§ 17(1), 2006 Law) and enact transparent distribution rules. “Culturally valuable” works may receive a higher remuneration than others (§ 14, 2006 Law).</p> <p>Collecting societies should conclude framework contracts with users (§ 20 et seq., 2006 Law). This was the case under the 1936 Law whereby tariffs should be determined either in a framework contract or in an order made by the arbitration commission.</p> <p>When this is not the case, a tariff can be fixed and applied by the collecting society if it is published in the <i>Wiener Zeitung</i> one week before its application (§ 25, 1936 Law).</p> <p>The collecting society must publish pertinent information regarding its operations, such as the authorisation to operate, organisational rules, distribution rules, rules for contracts, rules for social institutions and reports on activities (§ 16, 2006 Law).</p> <p>Collecting societies must further ensure that members can participate in the decision-making process (§ 15(1), 2006 Law). There were no such provisions in the 1936 Law.</p> <p>b)</p> <p>The Supervisory Authority, i.e. “KommAustria”, has a far-reaching right to information and participation in meetings of the general assembly, the supervisory board and other committees of the society (§ 7, 2006 Law).</p> <p>Collecting societies have a duty to inform (§ 8, 2006 Law).</p> <p>KommAustria can give orders to the society and if they are not respected the authorisation to operate as a collecting society can be revoked (§ 9, 2006).</p> <p>The Law also provides for the establishment of a “Copyright Senate” (“Urheberrechtssenat”) in the Federal Ministry of Justice which would deal with appeals against decisions of the Supervisory Authority and disputes arising from framework contracts (§ 30, 2006).</p> <p>So far, the supervision has been ensured by the Ministry of Education which appointed a commissioner for each collecting society (§ 5, 1936 Law).</p> <p>Collecting societies must fund the Supervisory Authority (§ 7(5), 2006 Law, § 5(1), 1936 Law).</p> <p>The transitional provisions of the 2006 Law provide that existing authorisations, framework agreements and other orders made under the 1936 Law remain effective (§ 42(1), 2006 Law). Old provisions still apply to procedures pending before the Supervisory Authority at the time the new Law came into force (§ 44, 2006 Law).</p>

Belgium	<p>a)</p> <p>A collecting society is under an obligation to administer rights where a right holder has made a request and the administration falls within the purpose and statutes of the society (Art. 66(1) Copyright Law).</p> <p>The determination of the remuneration as well as its collection and distribution is fixed by the King in a number of cases: private copying (Art. 55, 56, 58) and certain exceptions (Arts. 61 <i>bis</i> and 61 <i>quater</i>). Sums which cannot be allocated in a particular way shall be distributed to the members of the same category and the use made of such sums must figure in a specific report (Art. 69). In other cases the rules with regard to collection and distribution will be determined by the society.</p> <p>Collecting societies are entitled to conclude framework contracts and have standing in court (Arts. 71 and 73).</p> <p>A collecting society must allow on the spot consultation of the repertoire it administers (Art. 66(5)).</p> <p>Members have the right to obtain documents and information relating to the activities of the society such as annual accounts, updated lists of administrators, tariffs, resolutions, reports, income and costs information as well as un-distributable sums (Art. 70).</p> <p>Collecting societies must communicate their annual accounts to the Minister charge of Copyright issues (the Minister for Economy) (Art. 75).</p>
Cyprus	<p>b)</p> <p>Supervision is carried out by a delegate appointed to each society by the relevant Minister (Art. 76). Where the society violates seriously or repeatedly the law, the Minister may withdraw the authorisation to operate.</p> <p>In addition, societies are supervised by a commissioner chosen from the members of the Institute of Company Auditors and appointed the way it is done with limited liability companies.</p> <p>The supervisor bears the title of auditor-commissioner and exercises his duties in accordance with the Coordinated Laws on Commercial Companies (Art. 68).</p> <p>Collecting societies must finance their supervision (Law of 20 May 1997 on financing the control of collecting societies).</p>
	<p>a)</p> <p>Cyprus' Copyright Law does not contain any special provision regarding the governance and transparency of collecting societies.</p> <p>Both PRS and MCPS publish their annual account to their members. They have a joint relations manager who is in charge of dealing with members' complaints.</p> <p>Revenue repartition rules are approved by members in the General Assembly and distributed to the members by the Board.</p> <p>Cyprus' Copyright Act does not specifically oblige collecting societies to license their repertoire. However, under article 15(1) of the law, any user who believes that a collecting society has unreasonably refused to grant a licence for the use of any work, may challenge this decision before the competent authority.</p> <p>Collecting societies are not mandated by law to publish standard contract and agreements nor to regularly update their repertoire and put it at the disposal of users.</p>
	<p>b)</p> <p>Collecting societies are subject to control or supervision from public authorities only relating to the resolution of disputes between collecting societies and users. These disputes are resolved by a tribunal appointed by the Minister of Commerce and Industry under section 15 of the Copyright Law. See also chapter 4 - Mediation and dispute settlement mechanisms.</p>

Czech Republic	<p>a)</p> <p>Provisions regulating the relations between collecting societies and their members and between collecting societies and users are set out under art. 100 of the Copyright Law.</p> <p>Collecting societies are bound to:</p> <ul style="list-style-type: none"> - assume representation on equal terms of any right holder in the execution of his/her rights if so requested by the right holder - license users on reasonable and equal terms - create a reserve fund - publish an annual report and make it available to members - publish annual audited accounts - publish remuneration and tariffs rates <p>Users are also requested to collaborate with collecting societies in the performing of their duties.</p> <p>Art. 104 of the law sets out detailed provisions for the distribution of remunerations collected as compensation for private copying</p> <p>b)</p> <p>Collective management societies are subject to supervision by the Ministry of Culture. The Ministry shall withdraw the authorisation from the collective management society if it finds that the law has been violated, that the qualifications for granting the authorisation has not been complied with or that the collective management society has breached its obligations, and if the situation is not remedied in a reasonable delay set by the Ministry or cannot be remedied at all.</p> <p>When supervising collective management societies, the Ministry may ask them to provide any information or material necessary to check whether the legal duties are complied with. If not, fines can go up to CZK 500,000 and be repeated.</p> <p>It is a statutory duty for collective management societies to give the Ministry notice of all changes in the data upon which its request for execution of collective administration was accepted, as well as any decisions taken by courts or other competent bodies in proceedings to which the protecting organisation is a party and that are of material importance for its activities.</p> <p>Collective management societies are further subject to control and supervision by the Office for the Protection of Competition under the Act No. 143/2001 Coll. on the Protection of Competition. The Office will especially look for elements of abuses flowing from monopoly or dominant position.</p>
Denmark	<p>a)</p> <p>Tariffs are set in the Law for:</p> <ul style="list-style-type: none"> - Resale royalty (Sec. 38(1)) - 5% of sales price excluding VAT - the Minister of Culture may stipulate further conditions concerning the calculation - Private copying royalties (Sec. 40) which are adjusted every year in accordance with the Act on Rate Adjustment Percentage. <p>In other cases, the collecting society will determine the tariff.</p> <p>Distribution to the beneficiaries is made in accordance with the rules fixed by the organisation (Sec. 38(5), 39(4)).</p> <p>b)</p> <p>In the case of administration of private copying royalties, the Minister of Culture has a right to be given any information about the collection, administration and distribution of the remuneration (Sec. 39(3)).</p> <p>The Ministry may lay down guidelines for the administration of private copying remuneration (Sec. 42, 43)).</p>

Estonia	<p>a)</p> <p>According to Section 77 (2) of the Copyright Law, collecting societies shall exercise and protect the economic and non-economic rights of their members according to the procedure described in their association and membership contracts and including the determining of author's remuneration, licence fees, performer's fees or any other remuneration, through negotiations if necessary.</p> <p>According to Section 221 of the Estonian Penal Code, the resale of an original work of visual art or private use of audiovisual works or sound recordings without payment of the legal fee is punishable by fine or up to one year of imprisonment.</p> <p>Section 78 provides that, in order to prevent unlawful and unjustified limitations to copyright and related rights, a general meeting of the collecting society's members or legitimate representatives (the central administration or appointed members) is necessary for any decision on remuneration, the share deducted to cover administrative expenses, methods of collection, distribution and payment of fees, as well as the use of collected fees for social or cultural purposes or to fund a foundation or other purposes relating to members' common interest.</p> <p>In addition, remuneration collected by collecting societies shall be distributed among authors and holders of related rights as proportionately as possible according to the actual use of the works.</p> <p>According to Section 36 of the Non-profit Associations Act, annual reports of collecting societies must be presented to members and approved at the general meeting.</p> <p>According to Section 16 6) of the Estonian Competition Act it is not allowed for a company enjoying a dominant position to refuse (without good cause) to sell or buy goods (including to license a repertoire).</p>
	<p>b)</p> <p>Collecting Societies are not under any specific control or supervision from any public authority. The Ministry of Culture's department of media and copyright coordinates the legislative initiatives and foreign relations regarding media and copyright.</p> <p>However collecting societies do not have any legal obligation to provide it with information. As non-profit organisations, collecting societies are subject to the Commercial Register's control on company law issues.</p>
Finland	<p>a)</p> <p>Tariffs are set either by Law (resale royalty 5% of sale price - Sec. 26i), the Ministry of Education (private copying - Sec. 26a) or the collecting society itself through negotiations with users in any other case.</p> <p>The Ministry of Education sets the conditions for the collection, administration and use of private copying and the resale royalties (Sec. 26b und c, Sec. 26j).</p> <p>Where the collecting society does not respect the procedure, the authorization of the society can be withdrawn (Sec. 26c).</p> <p>In all other cases, the society can establish its own distribution plan.</p>
	<p>b)</p> <p>The Ministry of Education has the right to demand information on the administration of income from the resale of works of art and private copying (Sec. 26c and j; Sec. 35 Copyright Decree).</p>
France	<p>a)</p> <p>The collecting society is entitled to administer the members' rights by a contract, either a mandate or a transfer of rights. In the two cases of compulsory collective administration, the transfer of rights to the collecting society is automatic.</p> <p>The contracts concluded between the society and users are civil law contracts too (Art. L. 321-2 CPI). The society has a duty to make its complete repertoire available to users (Art. L.321-7 CPI).</p>

	<p>The tariff for the licence granted by the collecting society to the user is in general freely negotiated between the parties. However, as far as remuneration for private copying is concerned, a Committee chaired by a State representative and made of members appointed equally by rights holders and users sets the remuneration. In the field of resale rights, the royalty is fixed as 3% by Law (Art. L. 122-8 CPI).</p> <p>The revenues distribution is made according to a scheme set by the society. This being said, in the field of private copying, the shares of distribution are fixed by law: for the copying of audio recordings, the shares are 50% - authors and performers and producers each get 25%. For the copying of video recordings authors, performers and producers each get a 33.33% share. The remuneration for public performance and broadcasting of phonograms is equally shared between performers and producers of phonograms (Art. L.214-1 CPI). In the related rights field, collecting societies are entitled to conclude general framework contracts with users in order to facilitate the use of phonograms and videograms (Art. L.321-10 CPI).</p> <p>Members of the society are entitled to obtain information such as a copy of the annual statement of accounts and of the list of administrators, the reports of the administrative council and the auditors, the text of resolutions as well as the overall amount of the remuneration paid to the most highly remunerated persons (Art. L. 321-5 CPI). In addition, a group of members representing at least one tenth of the membership as well as the public prosecutor and the labour council may take legal action to appoint one or more experts to report on certain administrative operations of the society (Art. L.321-6 CPI).</p>
	<p>b)</p> <p>The control of collecting societies is two-fold and consists in a judicial and an administrative control: The Minister of Culture exercises the administrative control and receives the annual accounts as well as any amendments to the statutes or changes to the rules on the collection and distribution of royalties. The Minister of Culture has the right to demand information or to investigate the premises (Art. L. 321-12 CPI). The judicial control is carried out by the court following a request by the Minister of Culture for dissolution of the society. In the event of a violation of the law, the court may order a collecting society to cease exercising its collection activities in one sector of activity or for one mode of exploitation (Art. L.312-11 CPI). The collecting society must also appoint at least one auditor and one alternate from the list referred to in the Law on Commercial Companies.</p>
Germany	<p>a)</p> <p>Acquisition of rights: A collecting society acquires the rights to be administered through an administration contract ("<i>Wahrnehmungsvertrag</i>") which the Supreme Court (BGH) considered a <i>sui generis</i> authors' rights exploitation contract. Where collective administration of a certain right is imposed by Law, as it is the case for cable retransmission or rental and lending rights, mere notification of the works is sufficient. Under German law, the collecting society is under an obligation to administer the rights for which it is competent for every author ("<i>Wahrnehmungszwang</i>" - § 6 UrhWG). Hence a collecting society is cannot refuse the administration of rights for a certain work or author.</p> <p>Exploitation of rights: The collecting society is under an obligation to grant a licence to every user under adequate conditions ("<i>Abschlußzwang</i>" - § 11 UrhWG). The collecting society sets tariffs which become binding with their publication in the Official Gazette. The society also concludes framework contracts with user groups. The distribution of income must be made according to a distribution plan included in collecting society's statutes.</p>

	<p>Transparency: Collecting societies must publish their accounts and the annual report in the Official Gazette (§ 9 UrhWG). The collecting society is obliged to give information on the rights and works it administers to any interested party (§ 10 UrhWG). The collecting society is also obliged to make available to the Supervisory Authority its statutes, tariffs, framework contracts, reciprocal agreements, general meetings' resolutions and all committees, annual accounts and annual report as well as any court decisions on cases in which the society was a party and all changes relating to aforementioned documents (§ 20 UrhWG).</p> <p><i>b)</i> The supervision of collecting societies is generally carried out by the German Patent and Trademarks Office (DPMA - § 18(1) UrhWG). The DPMA acts in co-operation with the Federal Cartel Office in relation to the grant or revocation of the authorisation to operate as a collecting society (Bundeskartellamt - § 18(3) UrhWG). The supervision consists in controlling that the collecting societies comply with their legal obligation. In cases of mismanagement, the DPMA can issue warnings and/or revoke the authorisation to operate as a collecting society.</p>
Greece	<p><i>a)</i> Acquisition of rights: The rights are administered on the basis of a contract with the author who either transfers the right to the society or grants a power of attorney. The contract must be in writing and for a period not exceeding three years. If there is any ambiguity, the presumption is that the contract embraces all works which the author has created or will create during the contract's run (Art. 54(3) Copyright Law). A collecting society may not refuse the administration of the rights of an author without good reason (Article 57(1) Copyright Law). In the case of cable retransmission rights, there is a form of extended collective licence: where the author has not transferred the administration of his right to a society, the collecting society who manages this category of rights is mandated to manage his cable retransmission right (Art. 57(8) Copyright Law). Collecting societies set an administration charge consisting in a share deducted from the collected sums which must be determined when concluding the contract with the author (Art. 57(6) Copyright Law). There is also a presumption that the collecting society is competent to administer rights in relating to all works and authors on which a declaration of transfer of rights or power of attorney has been made. The presumption may be rebutted by the author (Art. 55(2) and (4) Copyright Law).</p> <p>Exploitation of rights: A collecting society may not refuse to conclude a contract with a user without good reason (Art. 56(1) Copyright Law). The remuneration to be payable is negotiated for the right owners by the collecting society with the users (Art. 55(1) with Art. 32(1) and Art. 49(1) Copyright Law). Where there is a dispute on the fee, the user can nonetheless use the work provided he pays the "regular" licence fee. The final fee payable will then be determined by the court (§ 56(2) Copyright Law). In the case of private copying, the rates are fixed in the Law (Art. 18(3) Copyright Law). The distribution of the revenues is made according to rules drawn up by the collecting society. Distribution must be made at least once annually and be proportionate to the actual use (Art. 57(4) Copyright Law). As far as the remuneration for broadcasting and public performance of phonograms and videograms is concerned, the shares are fixed by law (performers and producers each get 50%- Art. 49 Copyright Law).</p> <p>Transparency: Collecting societies must consult with their members who also have a right to information against the society (Art. 57 (2) - (4) Copyright Law). Collecting societies must submit their accounts to the Ministry of Culture upon request (Art. 54(5) Copyright Law).</p>

	<p>b) A collecting society requires approval from the Ministry of Culture for its operations as well as any subsequent changes to its rules (Art. 54(4) Copyright Law).</p> <p>The Ministry of Culture monitors the collecting societies' operations (Art. 54(5) Copyright Law). In cases of serious violations of the Law or of the society's rules the Ministry of Culture may apply an administrative fine (Art. 54(6) Copyright Law) or revoke (provisionally or finally) the authorization of the collecting society (Art. 54(9) Copyright Law).</p>
Hungary	<p>a) According to the Copyright Act (art. 88), collecting societies must respect the following rules:</p> <ul style="list-style-type: none"> - endeavour to collectively manage and protect rights holders' rights and interests, especially through the exercise and enforcement of economic rights in their own name before courts and other authorities, - keep database of the collectively managed Hungarian and foreign works, neighbouring rights' related performances, as well as right holders, - perform their tasks not for profit and use revenues from complementary activities, if any, only for the reduction of their expenditures, - cover the expenses flowing from their activities through deductions them from the collected royalties and – if so provided by the statutes – through membership fees, - distribute the revenues from collective management (minus the administration costs) among the right holders according to the distribution rules they set, irrespective of whether they are members or not. <p>Collecting societies also have to comply with a series of obligations towards users of their repertoire:</p> <ul style="list-style-type: none"> - Obligation to license the repertoire (Art. 90-91 of CA) - Obligation to publish standard contracts and agreements (Art. 90. par (3) of CA) - Obligation to publish tariffs and royalties (Art. 90 par (3) of CA) - Obligation to regularly update the repertoire and put it at the disposal of users (Art 88. par (1) (f) 2 of CA) - Non-discrimination clauses amongst users (Art. 90. par. (1) and (4) of CA) <p>Relating to methods of collection and distribution, according to art. 92 of the law:</p> <ul style="list-style-type: none"> - The collecting societies enforce claims as their own claims and in their own name. - The royalty claims enforced through the collecting society shall be at the society's disposal until distribution among right holders. - In the case of collective management of rights – with the exception of the authorization of mechanical reproduction (Article 19) – it is presumed, unless proved otherwise, that the works or performances of neighbouring rights to be used are protected. <p>Art. 88 par. 1 point f)5 of the Copyright Act contains a principle of non-discrimination between societies members and non-members in the redistribution of collected revenues.</p> <p>b) The power for the authorization and supervision of the collective administration societies is vested with the Ministry of National Cultural Heritage. The administrative tasks must be carried out in accordance with Articles 86-89 (prior authorization) and Article 93 (supervision) of the Copyright Act. An implementation regulation provides for the details of the administrative procedure surrounding the authorization and cancellation of collecting societies [Regulation No 16/1999 (XI.18.) NKÖM of the Minister of National Cultural Heritage].</p> <p>Under Article 93 (2) of the law, collecting societies are obliged to provide the Ministry with their:</p> <ul style="list-style-type: none"> - statutes, - bylaws, (organizational and operation rules) - distribution rules,

	<ul style="list-style-type: none"> - members' lists (subject to the latter's consent) - administrative and representative bodies' members' lists - annual reports, - reciprocal representation contracts. <p>Within the Ministry, the Department for Coordination is in charge of the authorization and supervision.</p> <p>According to civil law, collecting societies, also fall as civil law societies under the public prosecutors' judicial supervision.</p> <p>Other authorities supervising collecting societies include:</p> <ul style="list-style-type: none"> - The Hungarian Patent Office (the consulting authority on tariffs; receives information on their activities) - The Ministry of Informatics and Telecommunications (the consulting authority on on-demand tariffs) - The Hungarian National Competition Authority (on abuse of dominant position issues)
Ireland	<p><i>a)</i> Collecting societies administer rights on the basis of a contract with the right owner. They can be entrusted either as copyright owner, exclusive licensee or mandated as a copyright owner's agent (Sec. 149(1)). A collecting society can set standard conditions in a licensing scheme which sets out the different categories of cases in which the operator will grant copyright licences and the terms of the granting (Sec. 149(1)). In certain cases, licensing schemes can be certified by the Minister for Enterprises, Trade and Employment (Sec. 173). An Order of the Minister may extend a licensing scheme to works similar to those covered by the licensing scheme where exclusion from the scheme is deemed unreasonable (Sec. 168). Appeal is possible before the High Court (Sec. 170).</p> <p><i>b)</i> The Controller of Patents Designs and Trademarks supervises collecting societies. The Controller reviews licensing schemes (Sec. 150 - 153), licences outside licensing schemes (Sec. 157 -161) and deals with collecting societies refusing to license works (Sec. 154). Orders made by the Controller in the latter case are subject to review yet again by the Controller.</p>
Italy	<p><i>a)</i> SIAE grants licences to use copyright works as well as collecting and distributing revenues for such use (Art. 180(2) Law). SIAE may exercise other activities such as ascertaining and collecting taxes, fees and contributions (Art. 181 Law). The tariffs for the use are either set by Law (for instance Art. 152 Law for resale right or Art. 3 of the Law No. 93 of 5 February 1992) or negotiated by SIAE and users. The distribution of revenues is made according to a scheme set in Regulations (Art. 180(5) Law). The Legislative Decree No. 419 (Art. 7.7) requires the highest degree of transparency on rights administration, especially distribution of revenues. The accounts must be approved by the General Assembly and the Supervisory Body (Art. 19 Statutes of SIAE).</p> <p><i>b)</i> The Ministry for Cultural Goods and Activities and the President of the Council of Ministers supervise jointly the SIAE. The supervision is also carried out by the Ministry of Finance on issues relevant to its competence (Art. 7.8 of Legislative Decree No. 419 of 29 October 1999 as amended by Decree-Law No. 63 of 26 April 2005).</p>

Latvia	<p>a)</p> <p>Legal obligations imposed on collecting societies by the Copyright Law are as follows:</p> <ul style="list-style-type: none"> - Collecting societies publish the licence fee rate for rights which can only be administered collectively in the official journal <i>Latvijas Vēstnesis</i> (the official Gazette of the Government of Latvia) (Article 63, par. 5) - Collecting societies publish their annual report in the official journal <i>Latvijas Vēstnesis</i> (Article 66, par. 5) - Account to the authors on the use of their works (Article 66, part 1, para.1) - Obligation to license the repertoire (license may not be denied without a just reason) (Article 67, part 3, paragraph 2) - Non-discrimination clauses amongst users (for the same category of users the same rules shall be applied) (Article 67, part 3, par. 1) - The rules on the collection of fees must be just (Article 67, part 3, par. 4) - The licence fee must be fair (Article 65, part 1, para.3) - Revenues collected must be distributed among the copyright and/or neighbouring rights holders proportionally to the use of their works. The distribution shall be done on a regular basis. (Article 66, part 1, para.2) <p>b)</p> <p>The activities of collecting societies are supervised by the Ministry of Culture. The financial aspects (the submission of annual accounts, etc.) are supervised also by the State Revenue Service.</p> <p>There is no need for a special permit before the establishment of the collecting society. However, after the establishment, collecting societies have to apply for a licence at the Ministry of Culture, if they wish to carry out the collective management of rights (Article 67, parts 1 and 2 of the Copyright Law).</p> <p>The Ministry of Culture may revoke the licence if collecting societies do not provide requested information or do not comply with the law and the deficiencies are not remedied.</p>
Lithuania	<p>a)</p> <p>According to art. 68 of the Copyright Law, members of collecting societies have the right to receive regular exhaustive information on all of the society's activities, the use of their works and other objects of related rights, the collection, distribution and payment of the remuneration, as well as other information related to the enforcement of their rights. They also have the right to participate in the government of the association.</p> <p>According to Article 70 of the Law, the users of works or objects of related rights have the right to receive information from collecting societies on the authors or owners of related rights and on the agreements concluded between collective administration associations and foreign associations.</p> <p>The principles of revenues redistribution are embodied in Article 68 of the Law which provides that the Conference of collecting societies (General Assembly of members) decides on methods and rules for collection and distribution of the remuneration and on the rate of deductions from the remuneration. The "Order of distribution of fees collected for the reproduction for private use of audiovisual and phonogram works" adopted by the Lithuanian Government on 26 November 2003 establishes the procedure for collection and redistribution of the aforementioned revenues.</p> <p>b)</p> <p>In accordance with Article 71 of the Copyright Law, "the state policy in the sphere of copyright and related rights shall be exercised and the protection of the said rights shall, within its competence, be co-ordinated by an institution authorised by the Government".</p> <p>The Ministry of Culture of Lithuania is nominated as the competent institution, it:</p> <ul style="list-style-type: none"> - implements the provisions of international multilateral conventions and treaties for the protection of copyright and related rights; - supervises associations of collective administration of copyright and related rights;

	<ul style="list-style-type: none"> - mediates in negotiations, upon the request of collective administration associations and/or users of works and objects of related rights; - protects the moral rights of authors and performers when provided by Law; - provide legal consultations and methodological assistance to collective administration associations, associations of users of works and objects of related rights and institutions protecting and enforcing copyright and related rights.
Luxembourg	<p>a)</p> <p>Collecting societies are under the obligation to administer rights upon request where such administration comes within their remit as defined by their statutes (Art. 7 Regulation). The societies must maintain updated lists of repertoire administered by them which they must make available to users (Art. 66(4) Law).</p> <p>Tariffs must be negotiated between collecting societies and users. Where an agreement cannot be reached, collecting societies must set a tariff on the basis of objective and non-discriminatory criteria. Nonetheless, preferential terms must be offered to users which are charitable institutions (Art. 9 Regulation). For private copying levies and the remuneration right of performers and phonograms producers for broadcasting and public performance of their performances and phonograms, the tariffs and the collection and distribution procedures are set in a Ministerial Decision ("Arrêté") (Art. 46 and 47 Law).</p> <p>Distribution of revenues must be objective and non-discriminatory and occur within 1 year from collection (Art. 8 Regulation).</p> <p>Members have the right to request any pertinent information and documents such as annual accounts, the list of administrators, reports, tariffs, resolutions and information on costs and income (Art. 11 Regulation).</p> <p>b)</p> <p>The supervision of collecting societies is carried out by:</p> <ul style="list-style-type: none"> - the Minister of Economy (Art. 66(6) Law) who can withdraw the authorisation in cases of serious or repeated violations of duties; - a Commissioner for Copyright and Related Rights, a member of the Copyright Commission (Art. 92 Law) who acts upon request by the Minister or any other interested party (Art. 66(8) and (9) Law) - one or two accountants (Art. 10 Regulation)
Malta	<p>a)</p> <p>Collecting societies are subject to specific rules on governance and transparency. These rules are laid down in detail by the Legal Notice 425 of 2003 – they cover the following aspects of collective rights management:</p> <ul style="list-style-type: none"> - the submission of a preliminary request to the Copyright Board (see below) to operate in Malta. The request must include the collecting company's statute, the company's regulations on the collection and distribution system and equitable remuneration, a proposed tariff for all the royalties collected by the collecting society; a declaration stating the number of persons who have entrusted or undertaken to entrust the collecting society with the administration of their economic rights at the time of the said declaration and a list of contracts with other foreign or local collecting societies on the administration of rights. - authors and other owners of copyright and neighbouring rights whose rights are administered by a particular Collecting Society have the right to obtain full and detailed information about the activities of that particular Collecting Society. - a Collecting Society is compelled to answer the public's requests on the following matters, within a reasonable time: <ol style="list-style-type: none"> 1. its repertoire of works, performer's performances and sound recordings; 2. its fees collection and distribution system and equitable remuneration; and 3. its tariff for all royalties to be collected by the Collecting Society that are currently used.

	<p>- a Collecting Society may not (without sufficient good reason):</p> <ol style="list-style-type: none"> 1. refuse to authorize the use of works where such use lies within the scope of its administration; and/or 2. refuse to manage the economic rights of authors and other owners of copyright and of neighbouring rights. <p>Collecting Societies have a duty to provide the Copyright Board with the following documents:</p> <ol style="list-style-type: none"> 1. any amendment to their statutes or regulations; 2. any new or additional bilateral or multilateral contract on the administration of rights of foreign authors and other foreign owners of copyright and of neighbouring rights and any amendments thereto; 3. any new or additional contract with another local collecting society; 4. the yearly balance sheet, annual report and auditor's report 5. any change in the physical persons representing the Collecting Society. <p>b)</p> <p>Collecting societies are subject to supervision from the Copyright Board, which is appointed by the competent Minister (the Minister for Competitiveness and Communications) according to the rules laid down in art. 45 of the Copyright Act. Decisions taken by the Board may be appealed before the Court of Appeal.</p> <p>The Copyright Board is in charge of the approval of the establishment of collecting societies and the monitoring of their compliance to provisions laid down in Legal Notice 425.</p>
Poland	<p>a)</p> <p>According to the Copyright Law (art. 106):</p> <p>Collecting societies have a duty to provide equal treatment of their members' rights and other persons they represent when managing or enforcing these rights.</p> <p>Collecting societies may not, (without good reasons):</p> <ul style="list-style-type: none"> - refuse to grant their consent for the use of works or performances - refuse to undertake the management of copyright or related rights. <p>Such management is to be exercised in accordance with their statute.</p> <p>Art. 108 states that contractual provisions which are less beneficial to the authors than they would be according to the remuneration tables approved by the Copyright Commission are invalid and must be replaced by provisions implied by these tables.</p> <p>Art. 110 states that the remuneration claimed by a collecting society for collective management must take into account the revenues received from the use of works and performances and the nature and scope of this use.</p> <p>b)</p> <p>The Minister of Culture and National Heritage grants the permit to organizations guaranteeing a proper management of the entrusted rights. (Art. 104.3 of the Copyright Law).</p> <p>If the scope of the granted permit is exceeded, the Minister of Culture summons the organization to stop the infringement within a certain delay. The permit may be revoked if the organization:</p> <ul style="list-style-type: none"> - fails to duly perform its duties within the scope of the management of copyright or related rights entrusted to it and their protection - infringes the law within the scope of the granted permit. <p>Decisions of the Minister of Culture to grant or to revoke the permit for the exercise of the powers by collective management organizations are published in the official gazette "Dziennik Urz dowy Rzeczypospolitej Polskiej Monitor Polski".</p>

Portugal	<p>a)</p> <p>Article 4 of the Law contains a whole catalogue of governance principles such as transparency, democratic organisation and administration, fairness in the distribution of revenues, equality, reasonableness and proportionality of tariffs, efficient and economic administration, no discrimination between national and foreign right holders, financial control, conclusion of reciprocal agreements, information duties, publication of documents on the institutional life.</p> <p>Collecting societies are autonomous institutions which carry out their operations in accordance with the statutes and the law (Art. 5). They have a duty to administer the rights which they are granted on the basis of a contract with the right holder (Art. 11, 12) The Law further provides that collecting societies must have the following bodies: a general assembly, an administration organ and a tax counsellor (Art.19).</p> <p>Collecting societies have a duty of information towards any interested person (Art. 14).</p>
Slovakia	<p>b)</p> <p>The supervision of collecting societies is carried out by the Ministry of Culture through the IGAC (General Inspectorate of Cultural Activities). Collecting societies must provide any requested information, especially: their bodies' members, a copy of the statutes and any modifications thereof, accounts and business plans, lists of tariffs, of contracts with foreign societies and of contracts with users (Art. 24). The IGAC carries out inspections and controls any illegal operation (Art. 25). Where members of the administrative body act unlawfully, the body may be dissolved (Art. 26). According to Art. 27, the entire collecting society will be dissolved where</p> <ul style="list-style-type: none"> - a serious or repeated violation of law occurs; - a society carries out an activity outside of the statutes' scope; - a society uses illicit means for its operations; - a society retains without good reason remuneration which belongs to the right owners. <p>a)</p> <p>According to the Copyright Act (section 81), collecting societies have a duty:</p> <ul style="list-style-type: none"> - to represent any right holder in the exercise of his/her right - to accept on usual terms the representation of any right holder in the exercise of his/her rights provided he/she so requests, - to represent right holders on equal terms, - to inform any person submitting a written request on whether it represents a particular right holder and, on the request and expense of such person, to issue a written confirmation, - to conclude a licensing contract with users based on equitable and equal terms - to keep the records of collected remunerations and compensations of remuneration and to allow a right holder to check upon request the accuracy of the remuneration paid to him, - to create a reserve fund out of collected remunerations, compensations of remuneration and potential gains from unjustified enrichment, - to keep accounting books, - to prepare the annual report for the 30th June of each year on the activities and economic management covering the previous calendar year; the annual report must contain an exhaustive description of any decisive fact and has to be made available to all the right holders, - to publish a suitable list of tariff rates <p>b)</p> <p>Collecting societies are subject to control and supervision from the Ministry of Culture (section 80 of Copyright Act). The Ministry has the power to grant the authorization to exercise the collective administration of rights. It publishes its decision in its bulletin and on its web site (http://www.culture.gov.sk/index/). The Ministry keeps a register of the collective management societies which have been authorized.</p>

	<p>Collective administration organizations have a duty to carry out, with due professional diligence and within the authorization's scope, the following tasks:</p> <ul style="list-style-type: none"> a) to prepare the annual report for the 30th June of each year on the activities and economic management covering the previous calendar year with a statement of finances and to submit it to the Ministry on time; b) to inform the Ministry on any changes to any data presented in the application for the authorization, especially changes to its statutory body or of a member of such body, and to present all documents proving such change within 15 days after the change took place; c) to inform the Ministry on any Court or public authority decision in any procedure in which the collective administration organization was a party and with great importance for its activities. <p>To carry out its supervising role, the Ministry is entitled to</p> <ul style="list-style-type: none"> a) request any necessary information and document from a collective administration organization, b) investigate any violation of duties embodied in the Copyright Act, <p>In case obstruction and failure to comply with the duties stipulated by the Copyright Act, the Ministry is entitled to punish the collective administration organization by a monetary fine up to SKK 50 000. When determining the amount of fine, gravity and consequences of the failure must be taken into account.</p> <p>The Ministry of Interior supervises the establishments of collecting societies.</p>
Slovenia	<p>a)</p> <p>Collecting societies manage authors' rights on a contractual basis. The contract must include the author's authorisation for management of his rights, the type of works and rights to be managed and the duration of the contract, which may not exceed five years, after which it can be extended for another five years. The author cannot individually manage his rights while they are being transferred to the collecting society, either by law (mandatory collective management) or by contract (art. 151 Copyright Act).</p> <p>A collecting society may not refuse to manage authors' rights if he is Slovenian, from an EU member state or has his residence or seat in the Republic of Slovenia (art. 152).</p> <p>A collecting society must distribute remunerations according to the rules of distribution set in the collecting society's statute which must exclude any possible arbitrariness (art. 153). Art. 154 sets out clear repartition clauses for private copying remuneration.</p> <p>Collecting societies are obliged, upon written request of any person, to provide information as to whether they manage rights on behalf of an author, and under what conditions (art. 155).</p> <p>Collecting societies must publish their tariffs in the Official Gazette of the Republic of Slovenia (art. 157).</p> <p>Users may request the conclusion of a contract for the non-exclusive assignment of rights in accordance with the valid tariff. Collecting societies may only refuse such a request insofar as they have an objective reason to do so, such as a history of non-payment on the side of the user. Should parties fail to conclude a contract for the non-exclusive assignment of rights, the right shall be deemed to have been assigned if the user deposits the amount demanded by the collecting society according to the valid tariff on its bank account (art. 158).</p> <p>Users are also obliged to provide relevant information on rights exploitation (art. 159)</p>

	<p><i>b)</i> According to the provisions of Copyright and Related Rights Act (art. 146, 149, 150), the National Office of Intellectual Property (part of the Ministry of Economy) is entrusted to supervise collecting societies' operations.</p> <p>The Office might not issue the necessary authorization if:</p> <ul style="list-style-type: none"> - the statute of the collecting society does not comply with the provisions of the Copyright Act; or - the collecting society's available resources do not ensure an efficient management of authors' rights. <p>The Office may revoke authorisation for collective management of authors' rights if anything happens which would have been a cause for refusal in the first place, or if the collecting society seriously or repeatedly violates the provisions of the Copyright Act. Prior to revocation, the Office must notify the reasons to the collecting society and give it at least 30 days to make the necessary changes. The revocation becomes effective on the 30th day following its publication in the Official Gazette of the Republic of Slovenia.</p> <p>Collecting societies must inform the Office of any change concerning the persons entitled by law or statutes to represent them. Collecting societies must submit to the competent authority:</p> <ol style="list-style-type: none"> 1. any amendment to the statute; 2. inclusive agreements with associations of users; 3. tariffs and any alterations thereof; 4. agreements with foreign collecting societies; 5. assembly resolutions; 6. annual reports and auditors' report. <p>At least ten members of the society may ask for one or more independent experts to review its operations (art. 160)</p>
Spain	<p><i>a)</i> Members entrust the collecting society with the administration of their rights through a contract (Art. 153 of the Copyright Law). The contract cannot impose a duty for the member to allow for the administration of all forms of exploitation nor the global administration of all future works or productions. Collecting societies have a duty to administer the rights entrusted to them in accordance with their objectives or aims (Art. 152). Collecting societies also have a duty to administer the rights to equitable remuneration for permitted uses and for cable distribution (Art. 157(4)). The tariffs for the use of works are either set by law (resale royalty (Art. 24(2)), private copying (Art. 25(5)), remuneration for the communication to the public of a phonogram or videogram (Art. 108(4); 116(3); 122(2)) or by the society. The distribution of sums collected must be equitable and members must receive a share which is proportionate to the use of their works (Art. 154). Collecting societies are obliged to conclude contracts with any user, lay down tariffs for the determination of remuneration for the use of its repertoire and to conclude framework contracts with associations of users (Art. 157).</p> <p>The collecting society must publish accounts (Art. 156) and submit information on their administrators' appointment and termination of office, their general tariffs, general contracts and their annual accounts to the Ministry of Culture (Art. 159).</p> <p><i>b)</i> The supervision of collecting societies is carried out by the Ministry of Culture (Art. 159). The Ministry has a right to demand information, order inspections and audits and appoint a representative to participate in the General Assembly, administrative boards and other bodies.</p>

Sweden	<p>a) Tariffs are set in the Law (resale royalty 5% of sale price - Sec. 26j; private copying - 26l) or by an agreement (Sec. 42a). The distribution of revenues is made according to the collecting society's distribution plan.</p> <p>b) The Copyright Act contains no specific rule on supervision of collecting societies. STIM, the authors' societies, appoints each year two auditors to examine the board's management and the annual accounts. There is no permanent public control.</p>
The Netherlands	<p>a) Collecting societies are mandated by Law (Arts. 15f, 16d, 16l Law on Authors' Rights; Arts. 15, 15a Related Rights Act) or, in the area of simultaneous and unabridged cable retransmission rights, entrusted by right holders or on the basis of extended collective licensing (Art. 26a Law on Authors' Rights). The remuneration rate is set either by a foundation (Arts. 15d, 16e Law on Authors' Rights; Article 15a Related Rights Act), the government (Art. 16i Law on Authors' Rights) or the Parties (Art. 26b Law on Authors' Rights, Arts. 7, 15 Related Rights Act). Collection and distribution is made according to Regulations in the related rights field and according to a scheme approved by the Supervisory Commission in the authors' rights field. There is a duty of information for collecting societies only towards the Supervisory Commission, not towards individual member right holders (Art. 5 Act on the Supervision of Collecting Societies).</p> <p>b) Supervision is carried out by a Supervisory Commission under the 2003 Act which contains a detailed description of rights and obligations as well as the composition of the Commission. In addition, supervision is further carried out by the Competitive Trading Authority under the Competitive Trading Act (Art. 4 Act of 2003). Commercial agents for copyright in musical works also have to request a permission to the Ministry of Justice. Contracts concluded by agents who have not obtained permission are null and void. Such commercial agents are also under the supervision of the Supervisory Commission (Art. 30a Law on Authors' Rights).</p>
United Kingdom	<p>a) A collecting society administers the rights of its members either under a mandate or as the owner of the rights. This means that the society is entrusted with the administration of the rights on a contractual basis. A collecting society can set standard conditions in a licensing scheme which sets out the classes of case in which the operator of the scheme is willing to grant copyright licences and the terms of this licensing (Sec. 116(1) CDPA). In certain cases, such as rental of sound recordings, films and computer programs or educational recording of broadcasts or cable programmes, licensing schemes can be certified by the Secretary of State (Sec. 143 CDPA). The purpose of certification is to give publicity to the scheme. In other cases, the collecting society grants licences in application of its set tariffs. The members control the society in accordance with the articles of association statutes of the various societies. In cases of complaint, members must rely on general law if they intend to take action.</p> <p>b) The supervision of collecting societies is two-fold: Firstly, terms of licences and licensing schemes may be referred to the Copyright Tribunal for review, confirmation or modification. The competence of the Copyright Tribunal is wide and is set forth in more detail in Sec. 149 CDPA. For instance, the Tribunal is competent for the review of licensing schemes in the field of copying, rental and lending, public performance, broadcasting and inclusion of works in cable programme services. It also reviews cases where a user is refused a licence. In general, the Copyright Tribunal is not competent for disputes between the collecting society and its members; they must rely on general law to find a cause of action. Secondly, the Competition Commission (formerly Monopolies and Merger Commission (MMC) can be called upon by the Government to consider the general effect of operations by collecting societies on the public interest. These powers had been exercised by the Government in respect of both the PRS and PPL which were reviewed by the former MMC.</p>

TABLE 4 RULES ON MEDIATION AND DISPUTE SETTLEMENTS

This table contains a detailed view of national legislative frameworks with for mediation and arbitration procedures in the field of collective management of rights.

The countries are listed in alphabetical order according to their English name.

List of countries	Issues
Austria	<p>The Supervisory Authority can act as a mediator (Sec. 7(4), 2006 Law) for framework contracts. Otherwise, disputes are dealt with by the Copyright Senate. Alternatively, in the latter case, a mediation committee may be called upon (Sec. 36, 2006 Law). Mediation is also provided for in the Copyright Law (Sec. 59b) for disputes on remuneration for cable retransmission rights.</p> <p>Under the 1936 Law, an arbitration commission decides over disputes with certain users as well as over disputes regarding framework contracts. In such a case, the recourse to the courts is barred (Sec. 14, 1936 Law).</p>
Belgium	<p>A mediation procedure is provided for only in the case of the administration of cable retransmission rights (Art. 54(1)).</p> <p>The mediators must be designated according to the respective provisions in the Judicial Code and must be independent and impartial. Their task consists in assisting the negotiations. They may also formulate proposals after having heard the parties. The proposals must be notified by registered mail with acknowledgment of receipt. The parties are deemed to have accepted the proposals made to them if none of them has opposed the proposals three months after notification, by a similar notification to the other parties.</p>
Cyprus	<p>a)</p> <p>Cyprus Copyright Law provides for the appointment of a competent authority to resolve disputes between users and collecting societies relating to the refusal of the collecting society to grant a license, or the imposition of unreasonable terms.</p>
Czech Republic	<p>The Institute of mediators (article 101 Copyright Act) provides assistance with the negotiation of collective and cumulative agreements (article 102).</p> <p>Another alternative for settlement of the disputes is offered by the Czech Act No. 216/1994 Coll. on Arbitration Proceedings and Enforcement of Arbitration Awards.</p> <p>Pursuant to its Sec. 2(3)(b), protecting organisations or users can insert an arbitration clause in the agreement and, pursuant to Sec. 7 of the same Act, appoint an arbitrator. Such arbitrator would only act on property disputes, e.g. for instance the fee for the use of musical works.</p> <p>In the application the party must indicate the current state of the negotiations and attach its own proposal and the statement of the other party to the agreement.</p> <p>The parties to the agreement are obliged to coordinate their steps during the negotiation. Unless any of the parties submits, within 30 days from the submission of the proposal from the mediator, an objection to the proposal, it is deemed to be accepted.</p>
Denmark	<p>The Copyright Licensing Tribunal is competent in the following cases:</p> <ul style="list-style-type: none"> - according to Sec. 47 of the Copyright Act, for disputes on remuneration in the fields of reproduction for the disabled (Sec. 17(4)), educational uses (Sec. 18(1)), individual remunerations of unrepresented authors under extended licensing scheme (Sec. 51(2)) and the remuneration for broadcasting and public performance of phonograms (Sec. 68)). - Granting permission for the cable retransmission and satellite broadcasts in certain cases and the reproduction of broadcasts under certain conditions (Sec. 48(1)).

	<p>Where negotiations fail in the field of extended collective licensing, each party may request mediation to the Ministry of Culture (Sec. 52). The mediator will be appointed by the Ministry of Culture and the negotiations shall be based upon the parties' proposal for a solution, if there is any. He may formulate a proposal and submit it to the parties for approval or rejection. The mediator may also offer to settle the dispute by arbitration and may participate in the appointment of arbitrators. The mediator must notify the Ministry about the outcome of the mediation.</p>
Estonia	<p>According to section 87 of the Copyright Act, the Committee at the Ministry of Culture, which acts as an expert committee, may solve legal disputes arising from the administration and negotiation of the use of rights.</p> <p>The Committee resolves, at the request of the parties, disputes related to copyright and related rights by way of conciliation of the parties. The Committee resolves a dispute by a decision making specific proposals to the parties.</p> <p>The decision has to be delivered to and signed by both parties. If no written objection is filed to the committee's decision within three months following the receipt of the decision, it shall be presumed that they have accepted the proposals. If one of the parties disagrees with a decision made by the Committee then this party is entitled to appeal to the courts.</p>
Finland	<p>Pursuant to Section 54 of the Copyright Act, arbitration is provided for in order to:</p> <ul style="list-style-type: none"> - deal with disputes on remuneration under Sec. 25i, 47 and 47a (broadcasting and public performance of phonograms and cable retransmission of works and phonograms) as well as remuneration for educational uses and public lending of works (Sec. 18(2) and 19(4)). - grant certain authorisations (reproductions for educational uses or rebroadcasts - Sec. 13, 14, 25h or 48) <p>The parties can also agree that the arbitration is to be carried out in accordance with the Arbitration Act.</p> <p>Where a party does not agree with arbitration, the matter can be referred to the County Court of Helsinki (Sec. 54(4)).</p>
France	<p>Specific rules for dispute resolution are provided for:</p> <p>In the field of simultaneous and unabridged cable retransmission, Art. L. 132-20-2 CPI provides for mediation. As far as the remuneration for the broadcasting and public performance of phonograms is concerned, if no agreement can be reached, a Committee will determine the tariff and the conditions for the remuneration (Art. L.214-4 CPI).</p> <p>The Committee is chaired by a judge and is composed by a member from the State Council, a member designated by the Minister of Culture and members appointed equally by right holders and users.</p>
Germany	<p>Disputes between users and collecting societies on tariffs and framework contracts are dealt with by the Arbitration Board at the German Patent and Trademarks Office (14 UrhWG). Court proceedings are in principle not admissible in such cases until the arbitration procedure has been terminated (Sec. 16(1) UrhWG). The Arbitration Board will make a recommendation for conciliation. If a party does not want to accept the recommendation, opposition must be made within a month. A recommendation which was accepted by the parties is enforceable (Sec. 14a (4) UrhWG).</p>
Greece	<p>Disputes between collecting societies and users may be referred to arbitration. The arbitrators are appointed from a list established every two years by the Copyright Organisation after consultation with both collecting societies and users (Art. 54(3) and (5) Copyright Law).</p>
Hungary	<p>There is a dispute settlement mechanism or a Supervision Board functioning as a supervision body for internal disputes.</p> <p>The objective of the dispute settlement mechanism (MSZSZ-EJI and MAHASZ) is to solve disputes amongst right holders about royalty repartition, where the collecting society acts as a mediator between the disputing parties. If, as a result, no agreement can be achieved between the parties, a court has to make a decision.</p>

	<p>The Supervisory Board (ARTIS JUS) may demand reports from the President, the Director General and the Heads of Sections. The Supervisory Board is obliged to examine the annual report, the budget, the balance sheet and the income and expenditure account, before the decision of the Administrative Council or the General Assembly.</p> <p>For conflicts between collecting societies and users, the parties can turn either to the Mediation Board (article 102 Copyright Act) or the Body of Experts in Copyright (article 101 (3) Copyright Act). The Mediation Board may not force the parties to get involved in the proceedings and carry out acts of proceedings unless the parties have agreed thereto (Art. 105. par. (1) of CA).</p>
Ireland	Disputes arising from licensing schemes and licences are referred to the Controller of Patents Designs and Trademarks . The Controller deals with refusals to license by (Sec. 154). Orders made by the Controller in this case are subject to review yet again by the Controller.
Italy	Disputes on tariffs are either resolved by the courts (for instance in the case of broadcasting of works - Art. 56(1) Law) or the tariff is set by the President of the Council of Ministers (for instance in the case of public performance of soundtracks - Art. 46 Law). In the case of broadcasting , the parties must have had recourse to a mediation procedure before the court procedure can be initiated (Art. 56(2) Law). In the case of cable retransmission , the parties must have had recourse to a third party mediator before the court procedure (Art. 110-bis(2) Law).
Latvia	The Copyright law foresees the use of mediators when broadcasting organisations cannot agree on the retransmission conditions (Section 67).
Lithuania	In accordance with the Article 72(4), point 3 of the Copyright Act, the disputes between the Association and the users are settled by the Council of Copyright and Related Rights . Also, the dispute can be resolved in court . The mediator is appointed by the parties to the dispute. The mediation mechanism is voluntary and both parties have to agree to adhere to the conditions of the mediation process. The settlement solution reached with the help of the mediation procedure is not compulsory. The parties may submit the dispute to the court after the mediation. There is no mechanism for settlement of internal disputes between right holders.
Luxembourg	Not specifically mentioned in the part on collective administration of the Law on Copyright. However, a general meditation procedure is available where the parties fail to find an agreement on the conditions for licences (Art. 88/89 Law).
Malta	The Copyright Board deals with conflicts arising from a collecting society's unreasonable refusal license cable retransmission or the imposition of unreasonable terms or conditions for licensing(Section 51).
Poland	The Copyright Commission –appointed by the Minister of Culture and National Heritage- approves or refuses the remuneration tables presented by the collective management organizations for the use of works or performances covered by collective management. The Commission is composed of forty arbiters appointed proportionally to candidates proposed by the collective management organizations, associations of authors, performers and producers, organizations grouping entities whose professional activity is based on the use of works, as well as radio and television broadcasting organizations, within a delay set by the minister responsible for the matters of culture and protection of national heritage. This mechanism covers disputes on the use of the remuneration tables and the conclusion of the agreement between the cable radio or television organization and the collective rights management association (Article 21 paragraph 1 of the Copyright Act)
Portugal	Disputes between the society and its members or users may be subject to arbitration . An arbitration and mediation committee is established by the Ministry of Culture (Art. 28). The members are appointed by the Prime Minister upon proposal by the Minister of Culture (Art. 30).

Slovakia	<p>Disputes between right holders about royalty repartition are solved by distribution rules. Each represented right holder is entitled to submit a claim against the income statement of the collected revenue, within the term pursuant to the Distribution rules of the respective collecting society. This action is detailed in the Claim regulation. These disputes are taken before collecting societies' bodies. These bodies' final valid decision can be subject to civil-court action.</p> <p>When a collective administration organization fails to agree with a user on the conclusion of the licensing contract, the user may require a court to determine the terms of such a contract or agreement.</p>
Slovenia	<p>The amendment to the Law that was recently (2004) adopted provides for arbitrage when users or representative organizations and collective organizations did not reach an agreement on the conditions of licensing and remuneration fees six months after the negotiations started.</p> <p>Both the ministry of economy and the ministry of culture appoint a number of arbitrators out of which the involved parties can select the arbitrator that will represent them.</p> <p>The mediation mechanism is voluntary and the outcome of this mechanism is compelling for the parties when signed by all parties.</p>
Spain	<p>An Intellectual Property Mediation and Arbitration Commission is created at the Ministry of Culture (Art. 158). The mediation functions of the Commission are the following:</p> <ul style="list-style-type: none"> - to collaborate in negotiations where the parties (owners of intellectual property rights and cable distribution companies) have failed in concluding a contract, in order to authorize the cable distribution of a broadcast - to submit proposals to the parties, when appropriate. <p>The procedure is determined by a Regulation in both cases. The arbitration procedure does not prejudice any later court action, but the courts cannot be called upon until the arbitral award has been rendered.</p>
Sweden	<p>Section 52.a of the Copyright Act provides for a specific negotiation procedure where an agreement on cable retransmission of a wireless sound or television broadcast has been denied.</p> <p>The Act on mediation in certain copyright disputes provides for a mediation procedure in the case of agreements concluded under the extended collective license scheme or cable retransmission and corresponding disputes. Mediation shall be requested through a petition to the Government within two weeks from the failure of the negotiations. The Government appoints the mediator. If a mediation proposal is impossible or rejected and the parties do not agree to bring the matter before arbitrators, the mediator must notify the Government.</p>
The Netherlands	<p>Disputes arising from remuneration are generally resolved by the courts (Arts. 15e, 16g Law on Authors' Rights; Arts. 7 and 15a Related Rights Act);</p> <p>According to Article 26b of the Dutch Law on Authors' Rights of 1912 as amended, parties are obliged to conduct negotiations on consent for the simultaneous, unaltered and unabridged cable retransmission in good faith and shall not hinder or prevent negotiations without valid justification. If, however, an agreement cannot be reached, each party may call upon the assistance of one or more mediators (Article 26c). The mediators must be impartial and independent. Mediators may make proposals which are deemed accepted if none of the parties has served a notice within three month. Notice and objections subject to the provisions in the Dutch Code of Civil Procedure (Article 26c).</p>
United Kingdom	<p>Disputes relating to operations of collecting societies in relation with users are dealt with by the Copyright Tribunal (Sec. 149 CDPA). Appeals against a decision of the Copyright Tribunal on points of law may be made to the High Court (Sec. 152 CDPA). Disputes between members and the collecting society will be heard in general by the ordinary courts.</p>

	<p>The Copyright Tribunal, which operates on a panel basis, consists of a legally qualified Chairman and two legally qualified Deputy Chairmen appointed by the Lord Chancellor after consultation with the Scottish Minister, and not less than two, but no more than eight ordinary members appointed by the Secretary of State for Trade and Industry.</p> <p>The main function of the Tribunal is to decide the terms and conditions of licences offered by, or licensing schemes operated by collective licensing bodies in the copyright and related rights field when the parties cannot reach an agreement. It establishes the facts of a case and finds the appropriate decision.</p> <p>The Tribunal also has the power to decide certain matters referred to it by the Secretary of State. The decision which the Copyright Tribunal renders after the hearing may be appealed by any party on points of law to the High Court or, in Scotland, to the Court of Session.</p>
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TABLE 5
SOCIAL AND CULTURAL FUNCTIONS OF COLLECTING SOCIETIES

This table contains a detailed view of national legislative provisions entrusting collecting societies with social and/or cultural tasks. Examples of the social and cultural role played by collecting societies are also provided. The two issues examined are organised as follows:

- a. *Legislative and/or statutory provisions underpinning social and/or cultural functions of collecting societies*
- b. *Examples of practices and activities carried out by collecting societies in this context*

The countries are listed in alphabetical order according to their English name.

List of countries	Issues
Austria	<p>a)</p> <p>Collecting societies must provide their members with social welfare and promote cultural institutions and 50% from the income for private copying must be allocated to such institutions (Sec 13(2), 2006 Law).</p>
	<p>b)</p> <p>Besides the state cultural subsidies, AKM - authors' society - provides subsidise cultural projects. Most projects, especially concerts and music competitions, are beneficial to AKM members (these are Austrians as well as composers and lyricists from other countries), and for foreign music authors and performers.</p>
Belgium	<p>a)</p> <p>According to the Belgian Copyright Law 30% of the private copying royalties may be allocated to the promotion of the creation of new works (Art. 58(2)).</p>
	<p>b)</p> <p>SABAM – authors' society - promotes cultural activities through its not-for-profit association «Promotion Artistiques Belge de la SABAM». This association provides financial support for artistic events in Belgium using the national repertoire.</p>
Cyprus	<p>a)</p> <p>No provisions in Copyright Law</p>
	<p>b)</p> <p>The collecting societies do not deduce any sums of the revenues collected in Cyprus for social or cultural purposes.</p>
Czech Republic	<p>a)</p> <p>The obligation to create a reserve fund from the collected remuneration and possible revenues from unjust enrichment, is imposed on collective management societies by the Copyright Act as in force, Sec. 100(1)(l).</p>
	<p>b)</p> <p>According to its Statutes, OSA - authors' society - creates a Cultural and Social Fund based on deductions arising from reciprocal contracts concluded with foreign affiliate societies. The purpose of this fund is to provide assistance for the creation and production of works made by Czech authors and to support the represented members on the basis of sympathetic fellowship. This fund aims to provide financial assistance to OSA members who have social or personal issues (Social Fund + Elderly Members Fund), financial compensation for inaccuracies in the distribution of royalties (Membership Fund),</p>

	and finally, support to non-commercial musical works of Czech authors via contributions to OSA Music Foundation.
Denmark	a) One third of the remuneration for private copying must be set aside to support “common purposes” of the members of the organization (Sec. 39(4) Copyright Act).
	b) KODA's – authors' society - national funds for cultural purposes support upcoming authors and underground artists who would not be able to create their music in market conditions. This way the national cultural funds help secure and promote cultural diversity. Also, the national cultural funds are spent on copyright campaigns, which help both users and the Danish society in general to understand and value copyright.
Estonia	a) The Copyright Act mentions the existence of social and cultural funds , and states that any decision concerning such funds or the foundations relating to members' common interests shall be adopted by the general meeting of the collective management organization or by authorized members (meeting of representatives or of the central administration) (Sec. 18 (1)). However according to section 27 (10) of the Copyright Act collecting societies can give up to 10% of the total remuneration – private copying - collected from the manufacturers, importers or sellers of recording devices and blank audiovisual recording media for the development of music and film culture, financing training and research or for some other similar purpose
	b) In Estonia, a copyright committee in the Ministry of Culture, has given EAU - authors' society - the right to collect the remuneration from the manufacturers, importers or sellers of recording devices and blank audiovisual recording media. The Committee the decides these 10% of the collected revenues will be used for (developing music and film culture, financing training and research).
Finland	a) The approval of the collecting society for the administration of remuneration from private copying depends on the commitment by the society to allocate a part of the income to the members' common purposes (Sec. 26a and b Copyright Act).
	b) The Finnish Music information Centre FIMIC is part of Teosto – authors and composers' society -. The task of Fimic is to promote all creative Finnish music both abroad and in Finland. The Finnish Composers and Lyric Writers ELVIS Association, representing popular music authors, the Society of Finnish Composers, representing contemporary music authors, and the Finnish Music Publisher's Association are member organizations of Teosto. Teosto subsidizes these member organizations through so-called national funds. All the associations are active in their own fields in promoting cultural diversity and copyright.
France	a) Non-distributable sums are used for cultural purposes : since remuneration for private copying (Art. L.311-1 CPI) and remuneration for the public performance and broadcasting of phonograms (Art. L.214-1 CPI) is only distributed to right owners of repertoire first fixed in France, subject to the stipulations of international conventions, 50% of the non-distributable sums collected on the basis of Art. L.214-1 CPI and 25% of the sums collected on the basis of Art. L.311-1 CPI must be used for activities promoting creation, live entertainment and training activities for performers (Art. 321-9 CPI).
	b) The SACEM – authors and composers' society - contributes to financing audiovisual, musical and writing production; public performances (festivals, concerts) in France and in other EU countries by collaborating with other European collecting societies (GEMA, AKM, SABAM). This fund is known as FESAM (<i>Fonds Européen des Sociétés d'auteur pour la musique</i>) and provides subsidies for cross-border music projects of “FESAM-countries”. SACEM also finances educational programs for artists.

Germany	<p>a) Section 8 Copyright Act provides that collecting societies should provide welfare institutions for their members, such as pension funds. There is much debate in legal doctrine whether the "should" is to be interpreted as "must" or as "can". It has also been questioned from a constitutional point of view whether the use of a part of collected revenues (in practice up to 10%, in some cases even up to 30%) is justified. This is particularly critical with foreign authors who would not benefit from the social funds.</p>
	<p>b) GEMA - authors' society - provides support for cultural purposes by way of appropriate rulings in the distribution plan. The pursuit of such interests takes place largely through the GEMA Welfare Fund, which grants benefits to GEMA members in case of illness, old age and emergencies.</p>
Greece	<p>a) Not expressly mentioned in the Law.</p>
	<p>b) PI - authors' society - has created the Hellenic Music Organization (OEM), a non-profit cultural organization aiming at the support of Greek music and Greek authors and composers, both in Greece and abroad. The Hellenic Music Organization is the sole organization in Greece active in the music area covering a huge lack of state intervention in this field. All OEM activities are funded by AEPI.</p>
Hungary	<p>a) No provisions in Copyright Law</p>
	<p>b) ARTISJUS – authors' society - deducts a maximum of 10% for social and cultural purposes from the royalties collected (except mechanical royalties). This right of deduction is based on the membership agreements (domestic right holders) and on the reciprocal representation agreements (foreign right holders). The sum deducted from musical royalties is transferred to ARTISJUS Music Foundation and the sum deducted from literary royalties to ARTISJUS Literary Foundation (from 2006). ARTISJUS Music Foundation uses its budget to finance prizes for performing artists, support Hungarian musical projects on individual requests (concert tours, studio works, phonogram publication, sheet music publication, etc.) and provide social aid to the heirs (widows and orphans) of composers and lyricists.</p>
Ireland	<p>a) No reference to cultural and social activities in the Law.</p>
	<p>b) IMRO –authors- contributes to the development of grants, songwriting workshops, attendance by members at events like MIDEM, South by South West etc.</p>
Italy	<p>a) Sums which are unclaimed after three years from collection will be allocated to the National Social Security Agency for Painters, Sculptors, Musicians, Writers and Playwrights (<i>Ente Nazionale di Previdenza ed Assistenza per i Pittori e Scultori, Musicisti, Scrittori ed Autori Drammatici</i>) (Art. 180(7) Law).</p>
	<p>b) SIAE also has a solidarity fund to which 4% of the income from authors and 2% of the income from publishers and producers is attributed (Art. 20 Statutes of SIAE). In the case of performers' rights, non distributable sums are allocated to IMAIE for study and research activities and for the purposes of promotion, training and professional assistance for the benefit of performers (Art. 7 Law No. 93 of 5 February 1992).</p>

Latvia	a) The Law states that collective management organizations may develop special funds in the interest of right holders, by deducting from the collected remuneration amounts in accordance with the goals and tasks of the organization.
	b) One of the purposes of AKKA/LAA - authors' society - according to Clause 6.1 of the Statutes is to contribute to cultural diversity in Latvia by ensuring the possibility of legal use of foreign authors' works, as well as promotion of the accessibility to Latvian culture and works of Latvian authors abroad. Moreover, according to mutual agreements with the collecting societies representing foreign authors, 10% of the revenues collected on behalf of foreign authors are used for cultural and educational purposes with the Culture and Education Fund.
Lithuania	a) No reference to cultural and social activities in the Law.
	b) Each year LATGA-A - authors' society - contributes to the organization of various cultural public events in relation with the WIPO day (concerts for children and adults, poetry readings, seminars, conferences, dance evenings, etc.). In addition, LATGA-A organizes awards for the most popular authors, it promotes the works of poetry during the major poetry event in Lithuania "Spring of Poetry", it contributes to the awards of best composer's work, supports the organization of seminars on rock music and takes part in other similar cultural initiatives.
Luxembourg	a) Art. 66(5) Law obliges the collecting society to allocate a part of its income to the promotion of culture in the Grand-Duchy.
	b) SACEM Luxembourg –authors- contributes to the creation and promotion of Luxembourg music by supporting young artists, financing CD recordings, live festivals and radio programs.
Malta	a) Section 8 of the Subsidiary Legislation on control of the establishments and operation of societies for the collective administration of copyright regulations states that collecting societies need the authorization of the authors and owners of copyright to use any money for cultural and social purposes .
	b) The collecting societies that are active in Malta do not retain any sums of the total collected revenues for social or cultural purposes.
Poland	a) No reference to cultural and social activities in the Law.
	b) Sec. 4 of STOART- performers & producers' society - statute states that STOART's objective is also the promotion of artistic activities of performing artists and ensuring the material assistance to them when necessary. STOART is implementing its objectives in particular through activities propagating and promoting artists, giving loans, awarding grants and other forms of assistance to members of STOART.

Portugal	<p>a) One of the objectives of collecting societies is to carry out activities of social and cultural nature which benefit all members, collectively (article 2 Copyright Law). At least 5% of the total revenues must be allocated to social and cultural purposes.</p>
	<p>b) SPA - authors' society - carries out several cultural events in its two auditoria, including book presentations, exhibition, symposia, poetry recitals and concerts, film exhibitions and conferences. SPA regularly publishes theatre books, authors' biographies; it also publishes the magazine 'Autores', which has a strong cultural component.</p>
Slovakia	<p>a) Pursuant to the Act on Art Funds (Act No. 13/1993 Coll.), collective administration organizations (in the name of recipients of royalties and fees of executive artists) have to retain certain sum of the collected revenues for cultural purposes.</p>
	<p>b) The Music Fund was established especially for projects relating to creative classical music, popular music, performers, the science of music and criticism. The Fund is a national cultural institution. Its main task is to support creative literary, scientific and artistic activity relevant Slovakia's national and cultural interests. Recipients of royalties and fees of performers will return 2 % of their gross income to the Fund. The collecting society deducts this contribution.</p>
Slovenia	<p>a) No reference to cultural and social activities in the Law. This field is regulated by a statutory act Regulations on Fund for promotion of cultural activities of SAZAS -authors' society (Pravilnik sklada za promocijo kulturnih dejavnosti ZDRU ENJA SAZAS). This Fund is intended to promote Slovenian music creators, organizations and institutions that contribute to development of Slovenian music creation, member's education, enlighten users and public on the work of SAZAS and award prizes and recognitions of SAZAS.</p>
	<p>b) A certain amount of the collected fees is saved in a promotional fund dedicated to developing and promoting the phonographic industry and musical activities at large (SPF - performers & phonogram producers).</p>
Spain	<p>a) Collecting societies are under the obligation to provide their members with welfare activities and services. They must do this either themselves or through non-profit entities. They shall also arrange activities for the training and promotion of authors and performers. These services are partly financed with remuneration from private copying (Art. 155 Law). Article 39 of Decree 1434/1992 indicates that 20% of the remuneration for private copying must be allocated for this purpose.</p>
	<p>b) Author Fund ('Fundación Autor') was founded by SGAE - authors' society - in 1997. Among the activities developed by this entity is the promotion of the SGAE repertoire in Spain and abroad (festivals, international fairs, etc.), courses and seminars, research on the cultural sector and the publication of books and CDs. Moreover, in 2005 SGAE founded the Spanish Coalition for the Cultural Diversity, and organized the 4th International Meeting of the Cultural Organizations for the Cultural Diversity in Madrid.</p>

Sweden	<p>a) No specific rules in the Law.</p>
	<p>b) Most of the funds set by STIM's- authors' society - have been channelled into the Swedish Music Information Centre. The centre contributes to the production of new works; publishing subsidies are provided for the printing of sheet music and the release of CDs of high-quality (non-commercial) music. The Centre is also involved in a digitization process of the sheet music archive by scanning manuscripts. Edition Suecia was established in 1930 by FST (the Society of Swedish Composers) as a way of encouraging the publishing of contemporary Swedish music.</p>
The Netherlands	<p>a) Not expressly mentioned in the Law</p>
	<p>b) BUMA - authors' society - takes up to 10% of the annual income on performing rights for social and cultural purposes and for the benefits of its affiliated composers, songwriters and publishers. One part of the money is spent on social affairs like pension schemes and the financing of social needs, and the other part to subsidize the promotion of local Dutch repertoire through projects and a special promotion organisation for Dutch light music.</p>
United Kingdom	<p>a) Not provided for in the Law.</p>
	<p>b) At the PRS – performing rights collecting society - Board's discretion, up to 1% of the total of amounts allocated to Members and affiliated societies can be donated to a number of different purposes including nurturing grass roots music creation. Currently, the amount donated is less than half the maximum permitted under the constitution (i.e. 0.5%, which is approximately £1.25 million) and this is given entirely to support new music via its charitable Foundation. PRS is completely transparent in its support for new music in this way: the funding comes from royalties earned on PRS repertoire only and applications for funding is open to all, including non-members and members of other societies.</p>

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ANNEX B – INTERVIEWS

Persons contacted

(Telephone interviews or face to face meetings)

I. TRADE ASSOCIATIONS

EDIMA – European Digital Media Association

Lucy Cronin –Executive Director

GESAC – European Grouping of societies of authors and composers

Veronique Desbrosses –Secretary General

IFPI – International federation of the Phonographic Industry

Lauri Rechartt - Deputy General Counsel & Director of Licensing & Litigation

Raili Maripuu - Regional Adviser for Eastern Europe

IMPALA – Independent music companies

Michel Lambot - chairman

HOTREC - Hotels, Restaurants & Cafés in Europe

Marguerite Sequais -Chef Executive

Jonatan Henriksson - Policy Adviser

EBU – European Broadcasters Union

Moira Burnett - Legal Advisor

Nicola Frank - Deputy Head of Brussels

Jacques Briquemont - Head of Public Affairs

EVA –European Visual Artists Association

Carola Streul - Secretary General

AEPO-ARTIS – Association for European Artists Organization

Xavier Blanc - Secretary General

Guenaëlle Collet - Head of Office

MPA – Motion Picture Association

Ted Shapiro - Deputy Managing Director and Vice President & General Counsel –Europe

Jane Sanders – Legal Counsel

ECCA – European Cable Operators Association

Caroline van Weede - Managing Director

Gilone d’Udekem – Regulatory Affairs

Olivier Linnenbron – Member (DE) Deutscher Kabelverband

Liberty Global – Member (Pan-European)

Ad van Loon – Member (NE) VECAI

ICMP – International Council of Music Publishers

Jenny Vacher - Chief Executive

MPA - Music publishers association (UK)

Stephen Navin

II. COLLECTING SOCIETIES

SACEM – French authors collecting society

Bernard Miyet - Chairman

SABAM – Authors Belgian collecting society

Jaques Lion - General Director

Carine Libert - Secretary General

SACD – Society of Dramatic Composers

Cécile Despringre - Deputy Director -European Affairs and Multilateral Negotiations

BUMA-STEMRA – Dutch authors collecting society

Cees Vervoord - Chief Executive Officer

AKKA/LA – Latvian authors collecting society

Anita Sosnovska – Deputy Director

MCPS-PRS – British music authors collecting society

Crispin Evans –General Counsel

SGAE – Spanish authors collecting society

Pablo Hernandez – Head of the Legal Department

EGEDA – Spanish audiovisual producers collecting society

Miguel Angel Nenzal Medina – General Director

ARTIS JUS – Hungarian Authors Collecting society

Gabor Faludi – Legal Adviser

LITA – Slovak Authors Collecting Society

L'ubomir Fifik – General Director

VPL/PPL – UK record producers and performers collecting society

Fran Nevrkla – Chief Executive Officer

III. MUSIC PUBLISHERS

Strictly confidential – Music Publisher - Belgium

Pierre Mossiat – President & independent publisher

Beggars Group – Music publisher - UK

Andy Heath

COBRA – Swedish music publisher

Johan Ekelund – Publisher & composer

IV. COMPOSERS' REPRESENTATIVES

British Academy of Composers

David Ferguson - Chairman

Chris Green – Chief executive

DKV Germany composers association

Joerg Evers - Chairman

Latvian Composers' Union Ugis Praulins - Chairman

SNAC – National Authors and Composers Syndicate

Emmanuel de Rengervé – Chief Executive Officer

Swedish Composers Association

Roger Wallis – Chairman

Finnish composer

Otto Donner – composer and chairman of the European Music Office

V. OTHERS

RTL Group

Estelle Laval - Head of European Affairs

Christian Hauptmann - Deputy General Counsel

eMusic

Ray Farrell - Vice President Content Acquisition

David Pakman – Chief Executive Officer

Joel Schoenfeld

Lagardère

Ann Becker - Head of European Affairs

Universal Music

Richard Constant - General Counsel

Presentation of the study to **ICRT –International Communications Round Table:**

Amazon Europe, Liberty Global Europe, Sony Entertainment , British Telecom.

Persons contacted but not interviewed

ACT - Association of Commercial Televisions

Ross Biggam – Director General

Apple

Elena Segal – Legal Counsel

ANNEX C – GLOSSARY

Audiovisual works are works consisting in moving images with or without of music and/or sounds.

Authors are the creators of original works, i.e. songwriters, music composers, film directors, etc.

Authors' rights (*Droit d'auteur*): area of law protecting authors of original works, providing them with economic – commercial use - and moral – authors' personality – rights; concept used in civil law systems.

Blanket licence is a license allowing the use of the whole catalogue of a collecting society in exchange for the payment of a flat fee.

Cable retransmission means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public.

Central licensing deals when a collecting society grants a licence to users for multi territorial exploitation, usually pan- European.

Communication to the public right is the right to authorise or prohibit any communication to the public of a protected work, by wire or wireless means.

Computer-generated work: work which is created by computer without any human intervention.

Copyright:

(1) In its broadest sense, the area of law or the right dealing with the protection of authors' works and of productions of modern technology incorporating such works, such as sound recordings, films and broadcasts.

(2) As descriptive of the system of law applying in the common law countries (UK, Commonwealth, Ireland, US, etc) for the protection of authors' works (and in some cases other material), as opposed to the 'author's right system' applying in civil law countries (France, Germany...).

Downloading is the process of taking a copy of a digital file and keeping it on your local hard drive.

DRM: Digital Rights Management technology used to enforce usage rules on content.

ISP: Internet Service Provider is a company that provides access to the Internet and other related services such as Web site building and hosting.

Literary works means any work, other than dramatic or musical work, which is written.

Making available right (online exploitation) or the on-demand right is the right to communicate to the public a work, by wire or wireless means, in a way that allows access at any time and from any place (interactivity).

Mandatory collective management: when right holders are legally bound to assign or transfer their rights to a collecting society.

Mechanical right is the right to mechanically reproduce an authors' work on a sound recording (CD, Vinyl, tapes).

Mobile services are those facilities accessible through mobile phones, mostly music and ringtones downloads.

MP3 files: part of the MPEG audio compression standard (layer 3) which enables the storing of near CD quality music in digital form on a computer taking typically only a tenth of the memory space.

Musical works are works consisting of music composed by lyrics and music notation.

Neighbouring rights are those rights which depend on a previous work from an author, they include the rights of performers, broadcasters and phonograms producers.

Peer-to-peer (P2P) file sharing is the online transfer between individual users, without any intermediary, of files (usually of sound recordings or film) stored on the users' computer and made accessible world-wide through the Internet.

Performers are actors, singers, musicians, dancers or other persons who act, sing, or otherwise perform literary or artistic works.

Producers: the person or legal entity who/which fixes the sounds of a performance or other sounds.

Publishers are companies responsible for the commercial exploitation of authors/composers work. They hold a copyright on the work by virtue of the transfer or assignment of the authors' rights

Reciprocal representation agreement is a contract between two collecting societies whereby the societies give each other the right to grant licences for any public performance of copyrighted musical works of their respective members.

Reproduction right: right to authorise the direct or indirect copy and fixation of a work.

Repertoire is the collection of musical works available for commercial exploitation.

Ringtones: a ringtone is the sound made by a telephone to indicate an incoming call. Now users can choose from many musical ringtones but also program their own personalized ringtone or download.

Royalty: the remuneration paid to a right holder for the exploitation of one of his/her works, performances or object protected by copyright.

Simulcast: simultaneous transmission by radio and TV stations via the Internet of sound or audiovisual works included in their broadcasts of radio and/or TV signals.

Webcasting: the use of streaming technology to create the internet equivalent to broadcasting.

ANNEX D – QUESTIONNAIRE FROM THE CONTRACT NOTICE

1. Are national monopolies acceptable within the internal market or would it be preferable to create competition between collecting societies within the European Union?

National monopolies are inherent to the functioning of collecting societies managing authors and neighbouring rights. Indeed the intellectual property rights granted by national legislation to artists and cultural industries are territorial by nature. The European Court of Justice has never put into question the existence of national monopolies in the implementation of EC Law to collecting societies. It accepts that monopolies are required for cost efficiency. Moreover 6 countries in the European Union¹⁰⁰ provide in their legislation that the societies are legal monopolies designated by the State.

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. Facilitating trade is the key function of collective management bodies as transaction costs will often be a deterrent (in particular for individuals and small businesses) with the result that no trade occurs. The more right owners join a collecting society the further potential of fallen costs exists given the scope for gains from economies of scale. However it should be added that collective management also enhances the monopoly position of the management body whilst at the same time putting those bodies with less valuable repertoire at risk of becoming unviable.

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 do not have to track down the individual rights holders for licensing purposes.

Historically the European Commission has defined relevant markets in the framework of traditional copyright licensing as being national because of the need to ensure local monitoring of usage¹⁰¹.

It is now asserted that some rights could well be managed outside the territory of usage (such as mechanical rights or possibly some online rights) but in general monitoring and the need to ensure that users pay their dues for copyright usage, requires a local presence. In addition language reporting, proximity, taxation issues and piracy monitoring support organisation on a territorial basis. However the European commission is questioning the territoriality principle in relation to online rights and takes the view that competition should exist in relation to the management of such rights to enable societies to grant pan-European licences for the worldwide repertoire, which societies would manage by virtue of reciprocal representation agreements.

For cultural and linguistic reasons the market for rights trading is also essentially national – the market is more international in relation to the Anglo American repertoire (for example, pop, rock, rap) which circulates more easily. The European commission believes that this repertoire deserves a different market definition.

¹⁰⁰ Italy, Belgium, Hungary, The Netherlands, Czech Republic and Malta.

¹⁰¹ Case GVL IV/29.839 and case GEMA case IV/26.760

There is a risk of establishing a two tier licensing structure distinguishing between international artists and national artists, thus affecting the principles of equity and solidarity amongst the artistic community. Users group are also concerned that they would have to negotiate with different entities to access the entire repertoire. The issue is about access to music and facilitating licensing.

In any event, remedying the territorial fragmentation of licensing cannot be made without considering the impact that such remedy may have on the production and distribution of local cultural creation or the different categories of right holders and their size (95 % of the music sector is composed of SMEs, micro businesses and individuals).

Some argue that competition cannot apply to rights management as there cannot be competition between the repertoires managed by different societies. Competition would make it impossible for societies to maintain reciprocal representation agreements enabling a society to offer the world wide repertoire.

National monopolies do not seem to be the issue for either the right holders or the users. The issue is the way those monopolies behave. The main question resides in the ability of a society to grant a pan-European licence for repertoire it is managing on behalf of other societies (notably through reciprocal representation agreement) and the possibility for a user to choose the society he wants to trade with to obtain such licence at the lowest cost.

The main external incentive to ensure that administration and management costs are productively efficient comes from pressure of the members on the society, notably to ensure that net distributable revenues collected from users is as high as possible.

Other ways to motivate efficiency are:

- Improving internal governance (see below)
- Creating a mechanism of arbitration in case of dispute with users
- Encouraging collecting societies to collaborate to reduce overheads

In the absence of harmonised tariffs in Europe fair competition is rendered difficult. Competition on management costs – promoted by DG competition – may penalise societies that are efficient in controlling and exercising their members' rights. But cheaper management does not necessarily means more efficient management of rights.

DG Market would like societies to compete to attract members and catalogue from other countries thus encouraging the setting up of fewer monopolies, with the risk of forcing users to negotiate with different licensing bodies. This has triggered large international music publishers to set up one stop shops via collecting societies, but limited to their Anglo American repertoire. The independent music companies are also considering setting up such a one stop shop in relation to independent recorded music, whether national or international, as there is currently no collective mechanism to collect interactive rights. Independents cannot afford the costs of individual licensing (as opposed to the major record companies).

DG Comp would like societies to compete on management fees and require that societies distinguish in their tariff between management fees and the royalty tariff.

The views within the European Commission on the extent of competition are still confusing.

2. Under prevailing conditions; collecting bodies with exclusive national rights are allowed under market and competition conditions. How could an efficient fee system be guaranteed, with comparable fees collected in a more transparent manner and in the interests of copyright holders and consumers?

The fee system is established by the collecting societies with a view to be acceptable by the users. The role of the collecting society is to license artistic works to users and collect revenues for its members. The users may negotiate the tariff. If users take the view that the societies are abusing their monopoly position they can call on the national regulator or legal system. In relation to a pan-European dispute, the European commission could assess the dispute on competition grounds.

It is very difficult to compare fees from one country to another. They all reflect local market conditions, local ability to pay and legal traditions. The market for cultural goods and services is not harmonised at European level. It remains very fragmented for cultural and linguistic reasons.

In new Member States poor enforcement and difficult economic circumstances often make the payment of copyright difficult. Some users are not always willing licensees, whatever the territory in the EU.

3. What transparency measures could be introduced in the European Union legislation and what kind of overheads could be allowed?

A strong disclosure requirement would promote real transparency. It is central to the members' ability to exercise control as well as to maintain the confidence of users.

Disclosure helps improve the public understanding of the structure and activities of societies. The disclosure requirement should not, however, place unreasonable burdens on societies.

Transparency requirements could be introduced at European level in relation to:

1. the financial and operating results of society
2. major share ownership and voting rights
3. company mandate and objectives
4. governance structure and policies
5. remuneration policy for members of the board and key executives
as well as their professional qualifications
6. extent of activities in the social and cultural field
7. distribution policy to the right holders in relation to the different rights (including management fees)
8. exact scope of repertoire and applicable terms and tariffs.

Financial information should be prepared and disclosed in accordance with high quality standards of accounting. The financial information should distinguish the different rights subject to management and the related management costs.

Annual audits should be conducted to provide an external and objective assurance to the members as well as to the users, that the financial statement fairly represents the financial position and performance of the society.

The external auditor should be accountable to the members.

Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.

The societies should ensure a formal and transparent board nomination and election process.

They should manage and monitor potential conflicts of interest of management, board members and members, including misuse of assets, the appointment of non-executive board members capable of exercising independent judgment and are also important where there is a potential conflict of interest.

It is also suggested that a charter could be negotiated between users and right holders to promote better understanding and limit conflicts between users and right holders in the exercise of copyright and neighbouring rights.

4. How could the one-stop-shop principle inherent in the Santiago Agreement on digital rights management (DRM) be made compatible with EC law?

The matter is currently being examined by DG competition in the framework of the CISAC case.

In this context, it is worth mentioning that the Santiago agreement was proposed by the authors' societies to grant a one stop shop for the online public performance of musical works on a worldwide basis.

However the European Commission rejected the proposal on the ground that it obliged users to obtain a licence from a particular society – the collecting society in the country where the service provider has his place of establishment or was operating its URL (Uniform Resource Allocator). For the Commission services, such agreement crystallises the exclusivity enjoyed by the network of author's societies participating in the network.

CISAC is now due to respond to the Commission's claims as part of the normal proceedings. A hearing on the case took place on 14 to 16 June 2006.

It may well be that ultimately the European Court of Justice will decide what is compatible with EC law.

The leading international music publishers such as EMI music publishing and Warner Chappel are now proposing one stop shops but limited to the Anglo American repertoire they control. Those one stop shops would be administered by collecting societies.

5. How could an efficient one-stop shop principle be established for cross-border users of copyright in the Internal Market?

A one stop shop mechanism can only be established by the right holders on a voluntary basis as it relates to the exploitation of their intellectual property. They should be able to offer this one stop shop in two ways:

- a. through a network of reciprocal representation agreement or
- b. by setting up a one stop shop to deliver pan European licences

The system needs to be accompanied by a strong system of dispute resolution to enable users to contest the operation of either scheme. An independent arbitration mechanism should be offered by right holders to users as part of the licensing agreement. The EU could offer assistance in setting up such a body in relation to pan European licensing disputes. There would be difficulties in setting up a pan European arbitration or dispute settlement mechanisms because of the need to take into consideration the local circumstances (including level of tariffs and structure of the industries as well as legal traditions). Anti trust rules should also ensure that no abuse takes place in the exercise of the rights.

6. Could there be competition through a system based on the above-mentioned one-stop shop principle?

There could be competition in relation to the scheme (a) in the sense that any society part of the network could attract a user and offer terms to such user. Competition would however be limited as the other societies could withdraw repertoire if they feel that terms are not adequate. Such withdrawal of repertoire would be subject to the control of the judge and competition authorities to prevent anti-competitive behaviours. Scheme (b) would create a one stop shop with no alternative to obtain a licence. Competition law control would take place "a posteriori" in case of abusive dominant position.

7. How could collection fees be regulated by EC law, with a view to protecting small users against extensive collecting fees imposed by large collecting societies?

EC law should encourage Member States to set up efficient and cheap arbitration mechanism to resolve dispute between users (whether large or small) and rights management bodies (whether large or small). A process that would result in a code of conduct negotiated by users and societies could also be initiated to set the basis for improved collaboration between the stakeholders

8. Is digital rights management a realistic substitute for existing collective collecting systems?

Digital right management is not a realistic substitute in the medium term.

DRM will be a tool enabling better processing of information and reducing management costs. It is being developed with the assistance of collecting societies.

DRM may work for very important and very successful international right holders that would want to invest in the process of managing rights themselves without using a collecting society.

Some large record companies or in the future other media companies that wants to enter the rights management business may provide such services to their artists.

Collective licensing will remain the cheapest form of right administration for the large majority of artists and companies which would not be able to license rights without them.

DRM still requires wide scale acceptance and a degree of interoperability to allow monitoring of usage on different platforms. It will also have to respect consumers' privacy.



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