

## Buma/Stemra's contribution to the European Commission's stakeholder consultation on

### *Creative Content Online*

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Buma/Stemra, the Dutch music collecting society, welcomes the opportunity to comment on the Commission's Communication on Creative Content Online. In our response we focus on multi-territory rights licensing, because this touches the very core of our activities.

#### *Multi-territorial licensing should respect cultural diversity*

Buma/Stemra is in favour of multi-territorial rights licensing, albeit under conditions, which guarantee fair and controlled competition and do not harm cultural diversity. The European Parliament's Resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services skillfully highlights central issues in this respect and Buma/Stemra regrets that it has not been taken-up by DG Internal Market in a more serious manner until now. We hope that DG InfoSoc will take the Resolution fully into account and, with this in mind, we take the liberty of attaching a copy with this submission.

Furthermore, as the 2005 Recommendation has created serious problems, Buma/Stemra had hoped that the Commission would have done more with the contributions to the stakeholder consultation on the Recommendation than conclude that it will "follow further developments and repeat the monitoring, should a clear need to do so arise<sup>1</sup>".

Today, Collective Rights Managers (CRMs) generally grant music users licenses for their specific national territories covering the world repertoire. With the possibility of pan-European licenses in place, CRMs would compete to provide such licenses covering the world repertoire to users. The key question is how to ensure that such competition does not disadvantage rights-holders, all of whom should be treated equally. Buma/Stemra strongly believes that unrestricted competition would have distorting and undesirable effects – especially for unknown rights-holders or those active in minority repertoires (notably working in languages other than English). Therefore, Buma/Stemra advocates a form of competition which would lead to the survival of the fittest collecting societies, providing top quality services to both music users and to their members thereby preserving cultural diversity. Buma/Stemra does not favour competition crudely based on the survival of the largest collecting societies.

The Treaty of the European Communities states in its article 151 (4) 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 promote the diversity of its cultures." The European Union reinforced the importance it attaches to Cultural Diversity by adopting the UNESCO Convention on Cultural Diversity in

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<sup>1</sup> European Commission summary of stakeholder contributions: Monitoring of the 2005 Music Online Recommendation (07.02.2008), p. 8.

2005. Buma/Stemra urges the European Commission to take these commitments seriously and take full account of the effects its policies may have on cultural diversity when making decisions in the areas of Information Society, Internal Market, Competition, etc.

*We would like to restate here three conditions that need to be met in order for multi-territorial licensing to be a success. 21 Collective Rights Managers submitted these to the European Commission earlier as a response to the October 2005 Recommendation on the cross-border management of online music rights. Buma/Stemra feels that they are still as relevant as ever and of direct application to the process that has been launched by DG Infosoc on behalf of the Commission.*

**1.) *The reciprocal network for cross border collection of royalties***

The system of reciprocal collection of royalties by collecting societies has worked successfully for decades. While we understand that it is the Commission's perception that this system, in its present form, may not be ideally suited to the purely economic considerations of a single market in Europe and of the digital age, we are entirely convinced that it should not simply be set aside and replaced with entirely new constructions driven by purely commercial interests as proposed by the October 2005 Recommendation.

Rather, the existing reciprocal system should be maintained (albeit with some improvements). It has effectively provided one-stop-shops for the world repertoire for decades and is fully capable of meeting the new challenges and requirements, while establishing the right balance between cultural diversity and the needs of the market for music. It will provide freedom of choice to users and rights holders for multi-territorial and multi-repertoire licenses.

We remain convinced that a system of reciprocal agreements between collecting societies is the best way to provide equal treatment and opportunities to all rights holders and the preferable "one-stop-shop" arrangement for all users.

**2.) *Availability of the entire world repertoire for all collecting societies***

Although the Commission and the European Court of Justice have in the past prohibited exclusivity in the reciprocal representation agreements between collecting societies, the Commission in its Recommendation has now started a trend towards agreement of exclusive mandates between major rights holders and a limited number of collecting societies for the direct licensing of musical works, and collection of royalties in all Member States.

It is to be expected in the logic of business that the process of selecting the societies to be exclusively mandated will not be based on the relative efficiency of individual collective rights managers but on the size of their business. This logic would deprive the majority of collecting societies from having access to large segments of the most commercially successful repertoire.

The entire world repertoire should remain available for all collecting societies in order to create a level playing field, and to enable societies to provide a one-stop-shop, whether for their country of establishment or for the entire European Economic Area.

**3.) *No exclusive mandates***

It follows from 2.), above, that the granting of exclusive mandates by major rights holders in the context of collective management of online rights as suggested by the Commission is

undesirable, and should be discouraged rather than stimulated. These exclusive mandates not only undermine the reciprocal system they will also:

- force users to make multiple deals with multiple collecting societies in order to cover:
  - the global repertoire that will no longer be available through a single society; and,
  - that part of the repertoire of the major rights holders where, for example, mechanical and performance rights of works are handled by different CRMs or where split publishing deals result in the different rights holders involved (e.g. multiple composers and multiple authors of the same work) being represented by different CRMs;
- on account of the above, inevitably result in higher costs to users for the acquisition of licenses;
- make rights management, for the vast majority of rights holders, more expensive;
- lead to a period of legal uncertainty accompanied or followed by unauthorized uses, vacuums in licensing, and finally to an over-centralisation of market powers and repertoires;
- undermine the existence of certain small collecting societies by removing a significant amount of their turnover; and,
- undermine the position of minority repertoires and cultural diversity in Europe.

We trust that the Commission's DG Infosoc will take full account of these points and we look forward to an opportunity to discuss these matters in depth at an early opportunity.