

**INTERNATIONAL MUSIC PUBLISHERS ASSOCIATION**

**PUBLIC CONSULTATION ON CREATIVE CONTENT ONLINE IN THE**

**SINGLE MARKET**

Brussels, February 2008

## **Submission by IMPA on Creative Content Online in the Internal Market**

I am writing on behalf of IMPA (International Music Publishers Association), a trade association open to international music publishing groups and which currently represents EMI, Sony, Universal (including BMG) and Warner/Chappell Music.

IMPA is grateful for the opportunity to comment on the Commission's Communication on "Creative Content Online in the Single Market" as published on 3<sup>rd</sup> January 2008. Our reply to the questionnaire will focus on some of the issues raised which appear to be of more direct relevance to us and on which we have experience to share with you.

### **Digital Rights Management**

**1) Do you agree that fostering the adoption of interoperable DRM systems should support the development of online creative content services in the Internal Market?  
What are the main obstacles to fully interoperable DRM systems? Which commendable practices do you identify as regards DRM interoperability?**

Music publishers are not technology companies, they do not develop DRMs and they are not the ones that apply them to content, devices or services. While the music industry is currently experimenting with DRM free distribution models to assess their sustainability and limits, there is no question that Digital Rights Management can be a very helpful tool in assisting legitimate business models and licensing (it is clear for example that subscription services require some form of DRM). Their protection is recognized under international, European and national law and their use as protective and/or content tracking tools is and should remain a choice for rightholders within the limits of applicable law.

### **Multi-territory rights licensing**

**6) Do you agree that the issue of multi-territory rights licensing must be addressed by means of a Recommendation of the European Parliament and the Council?**

IMPA agrees that making it easier to clear copyright and to secure Europe-wide licenses while preserving the value of copyright play an essential role in developing legitimate online services and promoting European cultural diversity. We would like to take this opportunity to once again express our support for the 2005 Commission Recommendation on collective cross border management of copyright and related rights for legitimate online music services which was adopted with the above objectives in mind. No further Recommendation is required in the area of multi-territorial online licensing of music as implementation of the 2005 Commission initiative is well under way.

The Recommendation is a flexible instrument which does not prescribe a particular model of EU licensing but rather it squarely stems from the principle that rightholders should have the right to entrust the management of any of their online rights on a territorial scope of their choice to collective rights managers of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the rightholder. It aims at ensuring that online income for rightholders is generated and the value of their works is fully safeguarded.

IMPA members have devoted time and resources and have made a significant contribution to the implementation of the Recommendation by entering a series of agreements to date. Various

models are emerging, ranging from centralized systems to non-exclusive agreements with a number or potentially all collection societies that comply with certain mutually agreeable while effective conditions. The core principles governing such models aim at providing users an effective and cost efficient licensing model for the territory/ies they wish to operate in, providing rightsowners with transparent and appropriate compensation models; and reinforcing the accountability of collection societies to their membership, the rightsowners.

Below is a list and brief recollection of such agreements entered into by IMPA members so far in chronological order:

**CELAS** is an initiative of the MCPS-PRS Alliance and GEMA to facilitate pan-European licensing of digital rights. CELAS was launched by MCPS-PRS and GEMA in January 2007 and offers the licensing of key rights in designated EMI MP repertoire, and in repertoire from other music publishers that decide to use CELAS's services in the future, in a single licence across Europe for digital uses.<sup>1</sup>

The appointment of CELAS allows rights users to obtain a single unified licence in relation to the designated repertoire for the entirety of Europe, encompassing the key rights necessary to enable rights users to undertake their services without the need to contract on a territory-by-territory and society-by-society basis.

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**PEDL:** Warner Chappell Music announced its pan European digital licensing initiative in January 2007. Under the initiative, Warner Chappell Music is granting non-exclusive rights in its catalogue to those collection societies, which comply with a set of common standards intended to ensure the efficient, transparent management of rights as well as appropriate and accurate compensation for songwriters. As of January 2008 GEMA, the MCPS-PRS Alliance and STIM have joined Warner Chappell Music and are now authorized to offer pan-European digital licenses in Warner/Chappell's Anglo-American repertoire. The initiative will remain open for other collection societies to join when they are ready

**Universal Music Publishing Group** and SACEM announced, on 28 January 2008, their agreement to set up a joint framework for the licensing and administration on a non-exclusive basis of rights for multi territorial online and mobile exploitation in Europe. SACEM and Universal Music Publishing Group are committed to make this new framework operational during the second quarter of 2008.

Through this agreement SACEM and SDRM (Society for the administration of mechanical rights of authors, composers and publishers) will license and administer on a non-exclusive basis the online rights owned and/or controlled by UMPG together with those works from SACEM's repertoire published by UMPG for the above uses. SACEM and UMPG are ready to cooperate with all the stakeholders, notably other collecting societies and publishers who share this objective.

IMPA also understands that: Alliance Digital, the MCPS/PRS' digital arm, has entered into agreements with many British independent publishers again seeking to achieve similar aims. SGAE, SIAE & SACEM have also announced a joint venture representing French, Hispanic and Italian repertoires.

On 7<sup>th</sup> February 2008, the Commission recorded the positive impact of the Recommendation on the licensing market and the endorsement of the Recommendation by collective rights managers, music publishers and users as a result of its monitoring exercise initiated on 17<sup>th</sup> January 2007.

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<sup>1</sup> References in the Response to "digital" rights or uses means online and/or mobile rights or uses.

The Commission notes how a series of EU wide licensing platforms have been announced or formed covering “a large share of the world-wide repertoire and involve collecting societies from France, Germany, Italy, Spain, the UK and Sweden”.

In our view, this confirms that calls for legislation are at this stage premature; as the market is certainly responding to the challenge and should be allowed time to reach its full potential.

## **Legal offers and piracy**

### **9) How can increased, effective stakeholder cooperation improve respect of copyright in the online environment?**

Piracy suffered by the sound recording industry equally and inevitably means piracy in the underlying musical compositions. Coupled with the increasing disrespect of many vis-à-vis intellectual property rights, piracy constitutes the single most important obstacle to the further development of content online. The industry cannot possibly compete with the “get it for free culture” and this clearly should not be an acceptable, continuing state of affairs. In this context, the question posed by the Commission on how rightholders and ISPs can collaborate to address the current situation is a crucial one.

There is no single bullet-proof solution to mass online copyright infringement, but several tools and remedies which should be applied cumulatively to address in a meaningful way mass copyright violations on the internet. Europe should help sustain and develop a knowledge based society which can only be based on a clear policy direction against copyright theft, thus maintaining incentives for further investment in one of Europe’s most valuable assets: diverse and rich culture and innovation. ISPs can and should assist rightholders in fostering a legitimate online market place by deploying, in cooperation with rightholders preventive measures and systems such as, for example, filtering and the graduated response. EU policy makers should pave the way and make ISPs cooperation a reality rather than just an aspiration possibly by way of legislation. Long awaited voluntary solutions and codes of conduct have failed to materialize in any meaningful way in Europe despite clear incentives to develop such voluntary codes in the law.

ISP cooperation should not be left to commercial negotiation and merely voluntary arrangements. Cooperation in curbing out illegal activities should not be subject to private arrangements and patchy, diverging contractual commitments or “financial” contributions. Ideally, ISPs should all be subject to the same set of rules as they claim that cooperating on a voluntary basis with content owners may make their customers migrate to their competitors.

The EU could and should take stock of the recent experience and developments in several of its Member States (Belgium, Denmark, France, Sweden, the UK to mention some) and give an EU-wide policy direction to this thorny debate. Below is a brief account of some recent developments:

**In France:** The Olivennes Agreement has provided a leading example on how content providers and ISPs can and should work together, supported by an appropriate legal framework. The agreement crucially recognizes the link between fighting copyright infringement and fostering legal offers.

**In Sweden**, a study commissioned by the Government (the so called Renfors report) acknowledges lack of voluntary cooperation and calls, among other things, for the adoption of provisions formalizing ISPs right and obligation to terminate subscriptions used for copyright infringement.

**In the UK**, the Gowers report recommended that Government give the music and film industries a year to come to a voluntary agreement with ISPs over how to tackle illegal file-sharing, but that timeframe expired at the end of 2007. Since no meaningful agreement is yet in sight, on 22 February the UK Government published a series of commitments for a “Creative Britain”. Among other things, the Government undertakes to consult with interested parties on legislation that would require internet service providers and rightholders to cooperate in taking action against illegal file sharing on the internet with a view to implementing legislation by April 2009.

Case law has also been developing which supports the approach of filtering, blocking of websites and cutting off of internet connections in order to address copyright infringements. Some examples are provided below:

**In Belgium** :On 24 June 2004, Belgian authors’ collecting society SABAM brought a case against Internet access provider TISCALI (Now SCARLET) before the president of the Brussels tribunal of first instance. The court ordered Scarlet to prevent any form of unauthorized transmission or reception of electronic files containing a musical work (through peer-to-peer software) by its subscribers. It ordered Scarlet to adopt technically feasible measures to best prevent the infringements of copyright, i.e. by installing the filtering software recommended by the court expert. The case is under appeal.

**In Denmark**: On 10 February 2006, the Danish Supreme Court confirmed that Internet Service Providers can be obliged to cut off the internet connections of customers who infringe copyright. Rightholders can ask the courts for an injunction against ISPs requiring them to stop providing internet services to customers that use those services to distribute copyrighted content over peer-to-peer networks.

On 25th October 2006, the Copenhagen City Court ordered the Internet service provider Tele2 to block its subscribers' access to the alleged illegal Russian music service AllofMP3.com.

Most recently, in January 2008 a Danish court has forced Tele2 Denmark to stop internet users from accessing the Swedish file sharing site Pirate Bay.

All of the above examples of, case law or debates and developments point out the need as perceived at national level to achieve meaningful cooperation among stakeholders in the fight against illegal activities on the internet.

**10) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to be followed?**

IMPA welcomes and strongly supports the Agreement’s specific proposals aimed at curbing out piracy while fostering legitimate services and calls on the Commission to work towards expanding the significance of the Agreement beyond France. The above referred developments all point at the need to achieve stakeholders’ cooperation with some urgency.

**11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?**

The application of Content Recognition Technologies would constitute one important element in an overall strategy against online piracy as it helps prevent copyright infringement at source. Currently, similar technologies are being effectively applied by ISPs for the purpose of filtering out spam, viruses, and other forms of illegal content. In this vein, ISPs could also implement commercially reasonable and technically feasible Content Recognition Technologies in cooperation with rightholders.

While technology in general can never be 100% accurate, Content Recognition Technologies are constantly improving and are reportedly increasingly effective in preventing infringements at source.

Questions may arise at national level in relation to the operation of such technology and its compatibility with existing communications and other applicable law as well as on the way to deal with possibly wrong content blockage. We are following these issues and believe that equitable solutions can be found that address all legitimate concerns. EU wide approaches and guidance would be extremely helpful to stakeholders but possibly also to Member States. Piracy is an international phenomenon and “solutions” should at least aspire to be internationally “compatible”.

We remain at your disposal for any further clarification or question you may have.

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On behalf of IMPA