

**VPRT Comments on the Report on the Online Commerce Roundtable  
Online Retailing of Music  
[III 1 and IVA]**

The Association of Commercial Broadcasters and Audiovisual Services in Germany, VPRT, represents approximately 160 commercial radio and television broadcasters, as well as companies offering teledata services in Germany. Copyright is one of the Association's core issues, with annual payments of more than €100 million, broadcasters are amongst the largest users of copyright protected music content in Germany. At the same time broadcasters are copyright holders and right holders of related rights. They therefore have to rely on an effective prevention of piracy and unauthorised use of their programme signals in the European market.

VPRT welcomes the opportunity to comment on the online commerce Roundtable debates. As we have already commented the European Commission's issues paper in October 2008. Therefore we would like to briefly outline our main points and highlight specific elements of the report.

- 1) Distinction between online broadcasters and online sales →** VPRT welcomes the fact that the participants of the Roundtable see the need for multi-territory licensing in order to establish a competitive single market for online content and search for workable licensing solutions which would allow easy access to this content. [66a); 102]. However, we still miss the explicit distinction between online broadcasting and online sales. Even though the report focuses on the aspect on online retailing of music, we would like to stress, once more, the necessity of a clear differentiation of the business models. For our members it is of utmost importance that the differences regarding the clearance of rights is taken into account when developing a licensing system.
  
- 2) Retain one-stop-shop for worldwide music repertoires →** VPRT has always asked for retaining the one-stop-shop for the acquisition of rights for the worldwide repertoire. If the acquisition of right is fragmented, it would, in terms of economics and pragmatic administration, be impossible to put together millions of hours of programmes, also including niche repertoires and therewith guarantee cultural diversity. We are still seriously concerned by examples such as CELAS and PAECAL, where rights are being withdrawn by major music publishers. Any fragmentation must be avoided as it leads to a limitation of the repertoire. We would like to stress that this model is only in the interest of the major music publishers while copyright holders and users would not be able to benefit from it. Fragmentation of the worldwide repertoire leads not only to serious legal uncertainty, but also hinders the development of new offers and services within the online world. Even an improved CELAS model, as announced by EMI [60; 66 c)], would not change the fact that this model is not practical for broadcasters and seriously jeopardises their business model. Furthermore, PRS/MCPS, GEMA's partner in CELAS, announced already, in 2007, to extent this model to the broadcasting sector – our members' core area of activity.

In our view CELAS (or similar spin-offs)

- must be qualified as a collecting society (with the effect that the Copyright Administration Act (*Urheberrechtswahrnehmungsgesetz*) would apply, [e.g. tariff control, access to the board of arbitration]) or
- must be prohibited as it contradicts the trust basis collecting societies are acting on. GEMA in fact is in debt to the rights holder as a whole and is not permitted to act in the interest of certain members.

We request the adaptation of the European Administration law accordingly in order to avoid the described development at national level. We also would like to bring to the European Commission's attention the recent decision of a German Court (Munich District Court): this court has decided that CELAS cannot enforce the mechanical online rights because they cannot be separated from the all-encompassing making available right. The impact of the decision may be more significant than it seems at first glance since it would stop all publishers from withdrawing mechanical online rights from collecting societies' repertoires. The justification of the German court is in line with the Commission's decision from July 6, 1972 (72/268/EWG, AB1. 1972 L 166/22 GEMA II). The Commission found that "all economically dividable forms of exploitation of copyright under consideration of the differences of the national laws could be transferred separately".

- 3) One-Stop-Shop for single repertoires is not a workable solution** ➔ In our view, restricting the one-stop-shop model to single repertoires is not a workable solution [103]. A database may be a first step towards more transparency of information on rights' ownership but from the perspective of broadcasters it does not lead to a manageable system regarding the acquisition of rights. We therefore ask to clarify that the broadcasting industry is not in line with the above mentioned proposal.
- 4) Promoting competition between Collecting Societies** ➔ In principle, VPRT is in favour of maintaining the collecting society system. Binding legal provisions should however be established with regard to the reciprocal agreements. This would lead to transparency, efficiency and fair competition. Although we welcome SACEM's announcement that is willing to entrust other collecting societies with the pan-European licensing of its repertoire, [Nr. 66 b)] we believe that this can only be a first step. In order to establish an efficient competition, all collecting societies must be entrusted with the world repertoire. Transparency requirements (cost of rights usage, administration fees, licensing) would lead to more competition in administration and therefore would reasonably complement the one-stop-shop for the worldwide repertoires. Users as well as rightholders would benefit from this.
- 5) Retaining the principle of granting territorial right** ➔ The obligation for pan-European rights clearing has to be avoided. The services provided by most VPRT members are in German and used by national, regional or local audiences. Therefore it is crucial that the principle of a territorial right clearing is retained. This is also demanded by the fundamental principle of trading: the freedom of contract.

Berlin, 15. July 2009

---