

**THE INTERNATIONAL MUSIC PUBLISHERS
ASSOCIATION**

SUBMISSION TO THE EUROPEAN COMMISSION

Relating to the Communication on the management
of copyright and related rights in the Internal Market

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Executive Summary

The following is a ten point executive summary of the submission by the International Music Publishers Association (IMPA) to the Commission pursuant to the Communication on the management of copyright and related rights in the Internal Market:-

- 1 IMPA welcomes the Commission's Communication and agrees that soft law approaches are no longer appropriate to regulate the management of copyright.
- 2 IMPA considers that the value of copyright cannot be overstated and that the value of copyright should not be affected by the proposed measures.
- 3 IMPA considers that the non-profit role of collecting societies should be enshrined in the constitution of the collecting societies. Additional roles such as social functions (e.g. pensions funds) and cultural functions should be carried out by separate distinct organisations to which members can participate on a voluntary basis (Section B.1).
- 4 IMPA believes that music publishers as rightholders should have a role to play in the Boards of collecting societies and suggest that the voting rights of the members should reflect their economic contributions to the repertoire (Section B.2).
- 5 IMPA agrees that there should be greater transparency in the manner in which collecting societies operate. In particular, IMPA advocates greater transparency regarding the accounting procedures and service standards of collecting societies (Sections B.3 and B.4).
- 6 IMPA considers that where it is feasible, those costs which can be attributable to end users should be met by the end users and in principle rebates should not be granted by collecting societies without the consent of its members (Sections C.3 and C.4).
- 7 IMPA believes that collective management of copyright is in the interest of both Rightholders and users but that, in principle, Rightholders should be entitled to manage their rights individually (Section C.5).
- 8 IMPA welcomes the opportunity to establish EEA-wide licensing agreements but that while this should result in costs of management of collective rights being reduced, this should not lead to the value of copyright in the different territories in the Member States being diminished in a "race to the bottom" (Section D).
- 9 IMPA agrees with the Commission that an effective dispute resolution mechanism should be established in each Member State (Section E).
- 10 IMPA supports the Commission's proposal that the GEMA utilisation categories of rights should be revised to account for recent technological developments and in particular a category for on-line rights should be established (Section F).

Introduction

- [1.] The International Music Publishers' Association (IMPA) is a trade association open to international music publishing groups and which currently represents the five major music publishing companies namely, BMG, EMI, Sony, Universal and Warner/Chappell Music. IMPA is grateful for the opportunity presented in the "Communication on the management of copyright and related rights in the Internal Market" (the "Communication") to make submissions to the European Commission on its proposals in the field of management of copyright and related rights¹.
- [2.] Music publishers manage the promotion, licensing, royalty collection, distribution and protection of copyright in musical works written and composed by songwriters and composers (the "writers"). Music publishers generally pay writers advances against royalties following the signature of a publishing agreement in return for the rights being granted to them. Music publishers represented by IMPA are principally concerned with licensing all reproductions of musical works for example for mechanical reproduction, for the performance of musical rights (both live and recorded), for on-line use, in synchronisation with visual images in films, television programmes and commercials and for use as telephone ring tones. Music publishers are assigned or licensed (in whole or in part) the rights by the writers. In this regard, the music publishers should be regarded as rightholders and not commercial users as the Commission suggests in the Communication². Hereafter, music publishers and writers are referred to as the "Rightholders".
- [3.] IMPA commends the Commission's calls for transparency, accountability and representation in the field of management of copyright and related rights, all being principles which music publishers have sought to enhance in private agreements³. IMPA considers that it is now opportune to legislate in this field. A clear framework would benefit individual Rightholders and provide a clear legislative regime within which the music publishers can operate. IMPA agrees with the Commission that it is no longer appropriate to administer such matters through soft law, such as codes of conduct, and that it is now necessary to enshrine such principles into legislation

¹ "Communication on the management of copyright and related rights in the Internal Market", COM (2004) 261 final (the "Communication").

² Communication, Chapter 1.1.1

³ For example, the Cannes Agreement between the major publishers and the European mechanical rights collecting societies signed 13 November 1997 and the Cannes Extension Agreement between the same parties.

in order to ensure that the management of copyright is carried out to the highest standard in an enlarged European Union.

- [4.] IMPA outlines in this submission its initial comments and the manner in which it considers that the Commission's objectives as described in the Communication can be met.

A Role of Copyright and Collecting Societies

- [5.] The cultural and economic importance of copyright cannot be overstated. The cultural value attached to authorship and society's deep desire for artistic creativity provide for a great moral legitimacy for legal protection. The artistic work is the result of talent, creative skills and usually significant labour and investment. Without copyright it would be easy for others to exploit the work without providing remuneration for the writer's efforts. At the heart of copyright is, therefore, the need to guarantee the economic rewards for writers' efforts and, hence, encourage future cultural creativity and development of new material.

- [6.] The economic importance of copyright-based industries in the European Union is also significant. As noted by the Commission in its Communication and by the European Parliament in the "Echerer Report"⁴, more than 5% of the EU gross domestic product is earned by goods and services protected by copyright and neighbouring rights.

- [7.] IMPA therefore agrees with the Echerer Report's findings that the "management of copyright and neighbouring rights is, together with the recognised rights themselves and the provisions on their enforcement, the third and indispensable element in the sphere of copyright and neighbouring rights"⁵. The protection of copyright and the management of intellectual property rights are, moreover, two essential factors in stimulating cultural creativity and influencing the growth of cultural and linguistic diversity. For these reasons, IMPA welcomes the Commission's recognition of the territoriality of copyright, as enshrined in the Berne Convention⁶. IMPA believes that there is no need or legal basis for a Community copyright.

⁴ European Parliament Report on a Community framework for collecting societies for authors' rights, Final A5-0478/2003 (the "Echerer Report").

⁵ Echerer Report, para 3.

⁶ Communication, Chapter 1.2.1

[8.] IMPA supports the Commission's view that collective management of copyright is in the interest of both Rightholders and users⁷. It is the most practical and economic way of administering high volume, low value usage of rights and through collective management, individual Rightholders are able to negotiate with users from a position of relative equality resulting in the value of copyright being maintained at an appropriate level.

[9.] IMPA would like to stress that due to their important role as the trustees and protectors of the Rightholders' legitimate interests, the primary aim of the collective management societies ("collecting societies") must be to protect the value of copyright and prevent the cannibalisation of copyright through illegitimate use (such as copyright "piracy") or inadequate remuneration. The proposed legislation should recognise this role and that collecting societies should be run primarily for the benefit of their members. In the event that in the future additional fees are imposed on users, this should not allow or entitle users to participate in the management of the collecting societies as to do so would compromise the role of collecting societies⁸.

B Collective Management of rights and Corporate Governance

[10.] IMPA welcomes the Commission's proposal in the Communication to legislate on the corporate governance of collecting societies in a transparent, accountable and efficient manner. IMPA outlines its views on the manner in which this could be achieved.

B.1 Role of collecting societies

[11.] IMPA considers that there is no reason why in principle a collecting society should have a monopoly on a given territory or be limited to a particular territory. Barriers to entry for new entities to provide collective rights management or which prevent collecting societies from other member states from providing services within the Community should be removed. In principle, therefore, Rightholders should be able to set up collecting societies to manage their rights. Furthermore, there should be no obligation upon Rightholders to assign the management of all the rights to one collecting society in a given territory; Rightholders should have complete freedom to choose how each category of rights should be managed. Although there may be

⁷ Communication, p.4 and Chapter 3.

⁸ Submission, Section C.4, paragraph 30.

some specific areas of licensing where a national collecting society may be the most practical method of collection, the current model for the exclusive appointment of a collecting society or societies within one Member State to represent the rights in a work should be revised. There is also no reason why a collecting society should be limited in scope to a particular category of rights and such artificial barriers to the provision of services should be removed.

[12.] IMPA agrees with the Commission's Communication that the collecting societies act as trustees for Rightholders⁹. This principle that the collecting society has a fiduciary duty to the Rightholders whose repertoire it represents should be enshrined in the constitution of the collecting societies. Although most collecting societies are already non-profit organisations, IMPA considers that this characteristic should be made clear and that all collecting societies should be non-profit, non-commercial organisations. IMPA notes that according to the European Court of Justice, collecting societies do not perform a service of general economic interest¹⁰. The precise role, therefore, of collecting societies should also be made clear. IMPA considers that the definition of a collecting society in the Cable Directive as an "organisation which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes" is illustrative of the manner in which the role of collecting societies can be defined¹¹.

[13.] In order to clarify the role of collecting societies as protecting copyright and collecting royalties, commercial and profit making functions such as the marketing, organising and selling of tickets to performances, recording artists' works and selling the recorded works on CDs and phonograms should not fall within the scope of the roles of collecting societies or at least be strictly limited and be separate from the administrative function.

[14.] IMPA does not consider that it is the function of collecting societies to engage in social and cultural activities. If collecting societies are to carry out such functions, IMPA considers that in order to preserve a transparent tariff regime for the services

⁹ Communication, p.4, "Collective rights management is the system, under which a collecting society as trustee jointly administers rights and monitors, collects and distributes the payment of royalties on behalf of several right holders". See also Chapter 3.1.2 and 3.4(i).

¹⁰ Case 127/73, *Belgische Radio en Televisie v SV SABAM* [1974] ECR 313, para 23.

¹¹ Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, (1993) OJ L 248/15 (the "Cable Directive").

provided by collecting societies, these functions should not be financed through the obligatory levies imposed upon all Rightholders but rather should be voluntary, self-financing and independent of the collecting societies' primary roles. The management function should therefore be separate from the cultural and social functions of collecting societies and further these two functions should also be separated as there is a clear distinction between cultural and social functions.

[15.] IMPA considers that cultural functions fall more properly within the competences of national governments. Those Rightholders who wish to participate in such cultural functions (such as funding cultural events) should be able to do so through an independent organisation but Rightholders should remain completely free to participate or opt out as they wish.

[16.] With respect to social functions, IMPA is opposed to the practice amongst some collecting societies which impose commissions on income attributable to international as well as local repertoire to fund social schemes such as pension funds and loans for the benefit of local members only. As above, IMPA believes that such schemes should be administered by entities entirely separate from the collecting societies and funded by voluntary contributions of the members.

[17.] This would lead to greater clarity as to the functions of collecting societies.

B.2 Corporate structure of collecting societies

[18.] At the moment the music publishers have little or no participation in the governance of most collecting societies and in the majority of collecting societies, music publishers only make up a third of the Board members. Further, in Greece, Portugal and Poland, music publishers have no representation whatsoever¹². IMPA welcomes the Commission's call for greater participation of Rightholders in the decision making processes in collecting societies¹³. IMPA considers that music publishers as Rightholders should form an integral part of the corporate structure of collecting societies at the members' level and at the Board level.

[19.] With respect to representation at members' level of the collecting society, IMPA is of the view that Rightholders should be granted voting rights in all general meetings in proportion to their economic contribution to the repertoire. Membership of a

¹² See Appendix 1, which shows that even within the music publisher groups, those which represent the majority of the repertoire have a minimal role in the Board of the collecting societies.

¹³ Communication, Chapter 3.5.1

collecting society should be non-discriminatory and not based on nationality or whether the member is an individual or a music publisher. Each Rightholder in the collecting society should be entitled to vote on the appointment of representatives to the Board and resolutions before the membership. It could be envisaged that the different categories of members of the collecting societies are represented in different voting colleges¹⁴.

[20.] The membership should have the right to be consulted and the Board should have a right to approve motions concerning (without limitation):-

- (i) Rules on terms of licensing agreements;
- (ii) Rules on grant of licenses;
- (iii) Rules on collection of royalties;
- (iv) Rules on distribution of royalties;
- (v) Annual accounts;
- (vi) Changes to the collecting society's constitutional documents (memorandum and articles of association) ;
- (vii) Budget for the forthcoming year;
- (viii) Any extraordinary expenses above a stated threshold;

¹⁴ For example, in the United States ASCAP is an unincorporated association with two categories of members: writers of music (including lyrics) and music publishers. ASCAP's affairs are overseen by a Board of Directors consisting of twelve writer and twelve publisher members. The writer members of the Board are elected by ASCAP's writer members only and publisher members of the Board are elected by publisher members only. Voting is on a weighted basis, based upon the member's contribution to the repertory as determined by a scientific survey of performance on which distributions of royalties are based. There is a cap on the weighting: no member may cast more than 100 votes, even if the member's distributions from the survey of performances would merit a greater number of votes. The formula for calculating the number of each member's votes is included in the Articles of Association.

Another example is the Dutch collecting society BUMA/STEMRA which although not fairly representative of the contribution from the music publishers, has a similar voting college system in place. BUMA is responsible for managing the performance rights and STEMRA the mechanical rights. The Board of BUMA consists of 12 members, six of them are composers, three authors and three publishers. Candidates are recommended by the societies of composers, authors and publishers but members are elected by composers, authors and publishers collectively. This is different in case of STEMRA. The Board consists of 12 members – seven are composers/authors, four publishers and one member is recommended by BUMA. The writer/composer members of the Board are elected by writer/composer members of BUMA/STEMRA and publisher members of the Board are elected by publisher members only. Voting is on a weighted basis, based upon the publisher's turnover and there is a cap of maximum 10 votes for a publisher.

- (ix) Financial investment or liquidity;
- (x) Society suspense accounts.

B.3 Accounting Procedures

[21.] As well as being audited by an independent qualified auditor on an annual basis (i.e. the statutory audit), IMPA considers that a detailed audit of costs, efficiencies and adherence to tariffs should also be provided. Individual members or groupings of members should have the ability to request an audit of the collecting society. There should be a clear account for administration costs incurred. There should be full disclosure regarding the results of the accounts and the annual audited report should be presented before an annual general meeting and made available to all Rightholders upon written request. The accounts should be approved by the membership at the annual general meeting. Such a provision would ensure that the collecting society and the Board are accountable to the Rightholders.

B.4 Service Standards

[22.] IMPA welcomes the Commission's calls for greater transparency. In this respect, IMPA proposes that collecting societies should adopt Service Standards to members. These Service Standards should include, amongst other matters, the timely transfer of royalties to Rightholders, a customer service team to deal with Rightholders' queries, a complaints department and the provision of a clear, comprehensive guide to internal procedures. The membership should also have the right to pass a resolution compelling the collecting society to carry out an independent audit into the service standards of the collecting society. In any event, the Board should provide as part of its annual report to the members a report on the collecting society's compliance with its Service Standards.

C Relationship between Collecting Societies and Rightholders

[23.] IMPA applauds the Commission's aspiration for transparency, accountability and efficiency with respect to the calculation and determination of fees and royalties.

C.1 Transparency relating to fees

[24.] IMPA welcomes the Commission's and the European Parliament's call for greater transparency relating to collecting societies' fees¹⁵. Although IMPA appreciates the collecting societies' difficulty in allocating costs on high volume, low value

¹⁵ Communication, Chapter 3.3, Echerer Report, para 54

transactions, at present Rightholders, with respect to some collecting societies, have little or no indication of the costs associated with administration of the rights.

[25.] IMPA considers that information regarding the collecting societies' fees is essential to ensure that collecting societies operate in a transparent, non-discriminatory and accountable manner. IMPA considers that there should be a legal duty upon the collecting societies to show the source for the royalty payout (perhaps by categorisation such as radio, television, discotheques etc.) and to provide details of the actual costs incurred in collecting each category of income. Such a transparent system would also allay the concerns expressed by the European Court of Justice that the collecting societies could be abusing their dominant position by charging unjustifiably high tariffs¹⁶.

C.2 Method of calculation of fees

[26.] In order to guarantee that the commission rates are fair and equitable, IMPA considers that it is necessary to set out a framework for the calculation of the costs arising from the collective management of the rights. The role of the independent auditor could be expanded to determine a cost allocation method to identify the actual costs inherent in the collective management of the rights. The collecting society should use this methodology to determine the total costs associated with the management of the rights and calculate the tariff accordingly. This costs methodology should be available to all Rightholders.

C.3 Rebates

[27.] The primary role of collecting societies and the essence for their establishment is to administer the rights of the members of the collecting society. As collecting societies are non-profit making organisations serving the interests of Rightholders and not their own interest, all the monies collected belong to the members of the collecting societies. The only deductions from Rightholders' money that can be allowed are for the reasonable and properly calculated costs of the collecting society's administration. Such is the transparent manner in which Rightholders expect royalties and fees to be managed. On the basis of the above, the granting of rebates by a collecting society without its members' consent is contradictory to its very *raison d'être*. Therefore, IMPA is of the view that collecting societies should not be entitled to grant a rebate save with the consent of their membership and

¹⁶ Case C-395/87, *Ministère public v Jean Tournier*, [1989] ECR 2811.

such a principle should be enshrined in the their articles of association or constitution and in the membership agreements with their members.

C.4 Costs to be paid by end users

[28.] Without question, users obtain advantages from the multi-territorial, multi-repertoire licensing provided by collecting societies. It is only fair that they should contribute to the costs and expenses incurred by collecting societies in making this service possible¹⁷. To the degree to which such expenses can be determined, IMPA agrees with the Commission that such expenses should be paid for by the end users and should not be met by the Rightholders themselves – although, as noted above, this should not give rise to rights to users in the running of collecting societies¹⁸. The utilisation of an independent auditor with an expanded role, as described in Section C.2 above, may be useful in establishing which costs arise as a result of a service provided to the end user and should therefore be borne by them. Alternatively, to the extent that the determination of these costs is unfeasible, collecting societies should be entitled to charge users with a fair fee over and above the license fee in order to assist with the costs. So far the collecting societies have not done this.

C.5 Individual Management of Rights

[29.] IMPA welcomes the Commission's proposal that Rightholders should have in principle the possibility to manage their rights individually¹⁹. Although still at an early stage, digital rights management may in the future make it possible for Rightholders to be able to manage their rights individually. However, IMPA considers that digital rights management systems are not at the present time or for the foreseeable future sufficiently technically proficient or secure to be able to carry out this role.

[30.] IMPA considers that the sensible approach is the one taken in the *Daft Punk* decision which enabled Rightholders to apply to a collecting society to manage particular rights but to retain the right to manage other rights upon the agreement of

¹⁷ Case Comp/C2/38.014 IFPI Simulcasting, decision of 8 October 2002, (2003) OJ L 107/58, para. 101 ("Simulcasting").

¹⁸ Submission, Section A, Paragraph 9.

¹⁹ Communication, Chapters 1.3, 3.3 and 3.5.3.

the collecting society²⁰. Rightholders should have the freedom to choose whether to manage their rights individually or collectively and on an exclusive or non-exclusive basis.

[31.] To facilitate the principle of individual rights management IMPA proposes that Rightholders should have the unfettered right to withdraw individual rights or resign from collecting societies subject only to a reasonable period of notice (to be not more than one year) but without penalty and in particular free of any condition that the Rightholder enters into a subsequent membership agreement with another collecting society which is party to reciprocal agreements with other societies (including the society from which the Rightholder wishes to resign).

[32.] IMPA proposes that as part of the improved flexibility in the relationship between the Rightholders and societies, Rightholders should also be entitled to request that certain copyrights be withdrawn from licensing schemes operated by the societies. In terms of the on-line environment this would amount to a right to have copyrights "taken down" if uses occur which the Rightholders object to. In this way IMPA seeks to achieve a balance between the needs of a Rightholder to be able to object to certain uses of its work and the needs of societies to administer licensing schemes efficiently free from prior approval obligations.

[33.] IMPA also proposes that Rightholders should have the right to license their rights directly to a particular user in addition to having the collecting societies manage the rights in the same category to all other users provided that the Rightholder informs the collecting society in question within a reasonable timeframe. This would enable, for example, a Rightholder to grant a direct licence for the use of a work to one particular user (e.g. to a film producer) while leaving the collecting society to manage the same category of rights in the work for all other users in that category.

[34.] Collecting societies should not be entitled to refuse a Rightholder's request to manage rights individually or impose terms on which right holders may do so (eg that they are managed by another collecting society).

²⁰ Case Comp/C2/37.219, *Banghalter et Homen Christo v Sacem* (so called "Daft Punk Decision"), decision of 06 August 2002.

D European Economic Area licensing agreements

- [35.] IMPA agrees with the Commission Communication that there is a need for EEA-wide licensing agreements²¹. IMPA considers that Rightholders should have complete freedom of choice in determining which collecting society they choose to carry out the EEA-wide collection of royalties as espoused in the *Simulcasting* decision²². In particular, as recognised by the Commission, the absence of territorial boundaries in the on-line environment induced by distribution via the internet enables users to choose any collecting society in the EEA which is a member of the one stop shop mechanism for the delivery of the licence.
- [36.] EEA-wide licensing agreements would enable the collecting societies to become more efficient and to reduce the costs involved in the management of the rights. Fees for the provision of such a service should not be calculated by merely adding up the individual fees of each of the different national collecting societies. Rather, the fee for EEA-wide collective management of rights should reflect the efficiencies to be gained from a one-stop shop principle.
- [37.] It is important to stress that EEA-wide licensing should not lead to the value of copyright in the national territories being eroded in a "race to the bottom" in terms of the value of copyright. Therefore, although such EEA-wide licensing should give rise to efficiencies regarding the costs associated with managing the rights and collecting the royalties, it should not affect the value of the copyright or detract from the collecting societies' primary function of maximising the remuneration paid for a writer's effort. Therefore, the value of copyright should be set in accordance with the principle of "country of destination" and should not be set in the so-called "country of origin" where the EEA-wide licensing agreement is entered into. Competition between collecting societies should be based on efficiency and not price in this regard²³.
- [38.] Finally, in relation to this point, it should be clear in the recitals of any legislation on collective rights management that reciprocal agreements between collecting societies to offer the Rightholders a one-stop shop forum for EEA-wide agreements are in principle pro-competitive as they give rise to efficiencies, increased

²¹ Communication, Chapter 1.2.4

²² Case Comp/C2/38.014 IFPI Simulcasting, decision of 8 October 2002, (2003) OJ L 107/58.

²³ As was noted in the keynote address at the Conference organised by the Commission on Copyright for Creativity in the Enlarged European Union by Feargal Sharkey, Chairman of UK Live Music Forum.

competition, consumer benefits and are important in attaining a EEA-wide one-stop-shop service. Such guidance would offer great clarity to collecting societies, Rightholders and users alike that such agreements comply with EC competition law.

E Effective Dispute Resolution Mechanism

[39.] IMPA agrees with the Commission that it is essential for users, Rightholders and collecting societies to be in a position to settle the disputes over the licensing conditions through an effective dispute resolution mechanism²⁴. IMPA does not believe that a pan-European body is necessary to pursue this task. Instead, a specific copyright related dispute resolution body should be available in all Member States. The Commission is right to say that establishing common ground on the competencies of such dispute resolution bodies is desirable, as well as on their composition and on the binding or non-binding nature of their decisions²⁵.

[40.] IMPA believes that the effective means of dispute resolution undoubtedly will contribute to increased accountability by the collecting societies towards Rightholders and users, which is the laudable aim expressed by the Commission in its Communication.

[41.] IMPA would welcome the requirement in any proposed legislation that a special tribunal, open to Rightholders, collecting societies and users, is established in every Member State. Such a tribunal should decide upon disputes relating to the level of tariffs or other terms of a license and possibly also in cases of refusal to grant a license. The tribunal should also be empowered to grant equitable interim measures and decide on the substance of the case in a timely fashion. IMPA would advocate that the handling of payments during the dispute should not harm the interests of Rightholders.

[42.] Members of the tribunal should be selected according to transparent criteria and they should be fully independent. IMPA would also like to suggest that the panel members should be legally qualified persons with broad experience in dealing with the copyright licensing issues or even industry experts one nominated by each side of the dispute selected from a panel. Decisions of the tribunal should be subject to judicial review, at least on points of law.

²⁴ Communication, Chapter 3.3

²⁵ Communication, Chapter 3.5.2 and 3.5.4

[43.] IMPA would also see as desirable the encouragement by the Commission of the alternative dispute resolution methods.

[44.] IMPA would welcome the opportunity to participate in a separate consultation process on this issue. IMPA would then be able to provide the Commission with detailed comments and solutions for an effective dispute resolution mechanism; and in particular, should prevent users from using the system to gain leverage in negotiations – it should be clear that this would constitute an abuse of process. IMPA would advocate that the handling of payments during the dispute should not harm the interests of Rightholders.

F New categories of rights

[45.] IMPA agrees with the Commission that the so-called "GEMA utilisation rights categories"²⁶ of utilisation forms of copyrighted works should be reconsidered. The categories were established in the 1970s and IMPA is convinced that there is a great need to update them, in particular in the light of recent technological developments.

[46.] IMPA is concerned that the "GEMA utilisation rights categories" were drafted primarily with the users' needs in mind. IMPA would welcome the reconsideration of the categories with the aim of enabling Rightholders to choose the best method of management for each type of right.

[47.] IMPA considers that in addition to unbundling the traditional utilisation rights categories or rights, new categories should be introduced. Given the growing importance of the internet in the transmission of music and visual images, on-line utilisation categories should be established.

[48.] Such reforms would foster competition and would better reflect the commercial realities of the market place.

Concluding Remarks

[49.] IMPA welcomes the opportunity provided by the Commission to present its views on the management of copyright and related rights and in particular considers that:-

²⁶ Established by the Commission in the three GEMA decisions: GEMA I, Decision of 20.06.1971, OJ L 134/15, GEMA II, Decision of 06.07.1972, OJ L 166/22, GEMA III, Decision of 04.12.1981, OJ L 94/12

- Soft law is no longer able to regulate the operation of collecting societies and therefore a Community instrument is required;
- The value of copyright should not be devalued or cannibalised;
- Collecting societies should become more transparent and representative. Music publishers should play a greater role on Boards and the voting power of members should reflect their economic contribution to the repertoire;
- Although collecting societies play an important role in the management of copyright and related rights, Rightholders should be allowed to manage rights individually and the GEMA utilisation categories of rights should be revisited and should include on-line rights.
- Effective dispute mechanisms are necessary and should be put in place in each Member State.

[50.] IMPA is happy to provide further detailed submissions to and meet with the Commission upon request.