

Public Hearing on the Governance of CRM in the EU (Brussels, 23.4.2010)
MPA Presentation

GENERAL POINTS:

- MPA member companies have a long experience with collective management through their membership in Agicoa and numerous national societies across around the world. MPA assists its member companies in their relationships with societies where collective management/licensing is required by law.
- MPA supports the collective management of rights on a voluntary basis. It is very useful tool which can benefit both right holders and users. Not only do collective management organisations provide crucial services to their members, but they also support cultural initiatives that promote and protect the creative sector.
- **Collective management is not a one size fits all model for rights management.** Moreover, there is a distinction to be made between collective management of remuneration rights and collective exercise of exclusive rights (cf. CabSat Directive). And of course one needs to consider the type of content at issue.
- The digital environment has created the potential for many new modes of licensing content. Right holders must maintain flexibility to license their content on different platforms and across different territories.
- For the effective functioning of the AV sector, it is vital to recognise the importance of exclusive rights. **Copyright is more than just a mere right to be paid.** Legal frameworks must remain flexible and must accommodate/distinguish between different types of copyright works and right holders.
- For example, collective management/licensing plays a less prominent role in the audiovisual sector where the rights are centralised in the producer who is responsible for assuring the most effective exploitation of the film in order to maximise return for all involved and to invest new works.
- No right holder should be forced into collective management/licensing except in cases where rights are subject to mandatory collective administration for reasons of practicability under relevant international and EU law. Such cases are the exception not the rule. To provide otherwise is to limit or even expropriate rights without legal justification and thereby remove the incentive to invest in creative works.
- We support the Commission's current focus on improving the standards of governance and transparency which should greatly contribute to the goals set forth in the European Digital Agenda by assisting in the development of European digital content markets, reducing market fragmentation, and encouraging the production and distribution of high-quality content.
- While rights management itself presents different issues depending on the content involved, a horizontal approach to governance and transparency is more straightforward and should permit a meaningful contribution to advancing the above mentioned goals.

Panel 1 – Relationship Between Collective Rights Managers and Their Members:

(1) The types of mandates that right-holders may grant to collective rights managers;

- In the AV sector, producers will generally only grant mandates to collecting societies where required by law (and the scope for imposing collective management is limited by international and EU norms).
- Some producers may also grant mandates for certain forms of retransmission not specifically covered by the CabSat Directive. Certain other secondary or ancillary uses of copyright works may be facilitated via extended collective licensing schemes or commercial blanket licensing schemes but these tend to be voluntary.

(2) The substantive scope of such mandates;

- In the AV sector, content is licensed directly to various users: cinemas, non-theatrical venues (trains, planes, hotels, etc), digital platforms (VOD/EST), DVD distributors/retailers/rentailors, pay-TV, TV etc.
- Collective management is necessary only in limited cases: cable retransmission, rental, private copy levies – where it is set by law.
- The exploitation rights are centralized in the producer – only in certain cases in certain countries will remuneration rights for authors or performers be subject to mandatory collective administration. However, such schemes create problems where residuals or royalties are already being paid directly pursuant to collective bargaining arrangements. Creating more mandatory collective administration will not facilitate more multi-territorial licensing.

(3) Their territorial reach;

- Again, collective licensing in the AV sector is quite limited in comparison to other copyright sectors. In cases where it is required by law, it tends to arise under national law and thus be limited territorially.
- Producers can provide multi-territorial licenses where they have rights for more than one country and where there is demand for such licenses.

(4) Mandates and Performance Standards for Collection Societies:

a. Functioning of Collection Societies

- EU-wide standards for tariff setting; interaction with right holders; dispute resolution complaint redress; and, reporting of collections, distributions, administration charges and other deductions would be important steps towards a harmonized and balanced environment for licensing in the Digital Single Market.
- Differing methodologies exist throughout the EU for the calculation of tariff and fees, resolution of rights disputes, distributions of royalties collected, allocations or set-asides for purposes other than to remunerate rights holders, and control of accounts.

b. Relations to Users

- Collecting societies should be required to publish their tariffs and licensing conditions. Tariffs and licensing practices obviously should take account of the extent to which repertoire in a given field can be licensed (i.e., is subject to administration) by the relevant society.

- Finally, users should have recourse to a fair and reasonable process, judicial or mediated by a 3rd party, in the event they dispute licensing terms and/or tariff amounts.
- Consistent, transparent standards in the setting conditions under which collecting societies interact with right holders and users would benefit both groups and would likely result in the setting of tariffs that were not unduly burdensome on the marketplace but fairly compensated right holders for the uses of their works.

c. Relations to Right holders

- EU-wide standards of transparency should be put into place.
- Collecting societies should publish the basis for fees to be charged to members and a complete schedule of all fees to be charged or otherwise deducted against amounts collected, in every category or level of collection. The publication of all fees and deductions could be made in the distribution plan, which itself should be published and made available to every member.
- This report should detail collections, investments and other uses of collections not remitted to right holders or used to defray administration costs.
- Conditions of membership and access to internal financial documents and reports, including annual distribution reporting documents, should be available to all right holders in a timely way.
- Unlimited mandates, in terms of extent and time, should be forbidden, and conditions of termination of mandate should be clear and public. Such parameters give right holders more options and flexibility.
- Collecting societies should publish and distribute to right holders, including reciprocal right holders, annual audited financial records detailing distributions and revenue collections (as well as related deductions).
- Disputes involving accounting for collections and/or distributions should be subject to judicial or mediator intervention so that right holder concerns can be resolved in a fair and transparent manner without undue burden or cost.
- Such disputes can often lead to blockages in, collections and/or distributions, and as a result right holders can become the unintended victims.
- This underscores the need for clear, effective and unequivocal governmental supervision of collecting societies based on level playing field rules within the Internal Market. Such rules do not exist today and, without them, fundamental protections for right holders are lost. This also hinders the development of the Digital Single Market to the detriment of all stakeholders.
- Collecting societies should be accountable to right holders (indeed this is the case in many instances) as well as to some supervisory authority, either at EU level or national level, subject to community-wide standards. Only a few Member States give real supervisory powers to a collecting society monitoring authority. Such supervision could include audit rights that could be exercised by an independent auditor upon request by a majority of right holders of a given society.