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## **EU Hearing on Collective Management – 23 April 2010**

### **Panel:** **Relation between Collective Management Organisations**

Thank you very much for inviting AEPO-Artis to this hearing. Reading the invitation you can see, that our General Secretary Xavier Blanc has been invited to that Panel as well as myself as Representative of GVL, the German CMO for Neighbouring rights. Xavier asked me to speak on this behalf for AEPO-Artis and I am very grateful to be given this opportunity by the Commission. The thoughts I want to share with you reflect only the performers not the producers and are no GVL position.

The Association of European Performers' Organisations AEPO-ARTIS represents 29 European performers' collective management societies from 22 countries. They totalise some 350.000 performers as members.

Until recently everything was quite easy: CMOs had a territorial scope, they provided a One-Stop Shop for users by representing the Global repertoire in one member state: Foreign repertoire was either represented via direct membership of foreign rightholders – who can split their rights for each EU member state – or via Bilateral Agreements with Sister-CMOs. They allowed each CMO to represent the members of the Sister CMO in the respective country.

Problems occurred for multi-territorial uses, such as broadcasting via internet. Here the CMOs for phonogram producers – but also for performers – provide multi-territorial rights based on the model of the “IFPI-Simulcast agreement”, approved by DG Competition. Users can get a multi-territorial licence, but in order to avoid a race to the bottom of the tariff by a price competition, they have to pay the established tariffs of each recipient country. This is a complex model, but in the era of the computer manageable. The competition is limited to the admin. fees of the CMOs. The advantage is that no customer allocation clause is needed. This means any CMO can grant this licence also for users in a foreign country. The same model was extended to webcasting (broadcasting via internet) and also for Catch-up TV and Radio – the exclusive making available right.

Due to the fact that this is a voluntary agreement, some important rightholders decided not to give these rights to a CMO and to act separately. There are also complex requirements re. the ratio of phonograms in the program. And one huge difference from the traditional mandates to CMOs – at least in Germany – is the Non-Exclusivity. This means, that even if a CMO represents the rights and based on the bilateral agreements multi-territorial licenses can be granted for the repertoire, the phonogram-producer can license the use directly. This situation allows cherry-picking on both sites: Phonogram producers can make direct deals, if they are attractive or important users can get licenses from weak rightholders for free. Both has a negative impact on the collective bargaining power of CMOs, since they don't represent all rightholders jointly.

This situation is even more dangerous with regards to authors' rights, where – based on the EU Online music recommendation, the CMOs lost important repertoire and new entities grant

the multi-territorial licenses for different major rightholders. Even the direct licensing by publishers is possible.

Under these circumstances the CMOs do not only compete between each other but also with certain rightholders directly. This situation has to be considered when talking about a regulation of CMOs.

Let me briefly describe the situation in Germany. There CMOs are governed by a specific Copyright Administration Act. The Act obliges the CMO to administer the rights for all rightholders who wish to join, disregarding the economic value of their repertoire. The CMOs have to grant licenses to all users for the same published tariff and cannot refuse it. CMOs shall deduct a share for cultural and social support and activities. Tariffs applied for licensing activities shall take music users' religious, cultural and social issues into consideration. With respect to the rights owners CMOs are obliged to specially account for performances of high cultural value. These recordings, however, often are those less commercially successful in the marketplace. Those that execute those performances, however, shall receive more than others.

And another important principle: The original rightholder, the creator, has to get his fair share according to the distribution schemes approved by the board, elected by the members. In practice this means the established 50:50 Split between Performers and Producers. There is a rather clear intention behind the law to provide for a reallocation of remuneration. It does not reduce the collective rights management societies to the activities of 'pure' collecting agencies' which would allocate the exact remuneration to each performance directly.

Of course from the German Perspective a Harmonisation of the Regulation would contribute to the Competitiveness of German CMOs if others would have to face the same obligations. But if CMOs would be regulated in that way and have to compete with the direct licensing by other rightholders, they would finally only represent those rightholders, who cannot afford the direct licensing. For everyone else the economic answer would be obvious. The direct licensing or the licensing via "pure" collecting agencies would avoid any transfers to niche repertoire, would avoid the social and cultural deductions and the question how to participate the performers in the income would be much more flexible than under binding distribution schemes. The current one-stop shop for users we have with regard to broadcasting and public performance of phonograms would disappear. One-stop shops would only continue where a compulsory collective management is provided by law (e.g. Cable retransmission, Art. 9 Directive 93/83). For all other uses the fragmentation of the repertoire would increase, since publishers and producers would decide to act without the services of highly regulated and harmonised CMOs.

This has to be considered when talking about regulation.