



European Commission Public Hearing on the governance of collective rights management in the EU

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I'd like to thank the European Commission and the chair for providing EDiMA the opportunity to speak here today.

The European Digital Media Association is an alliance of new media and Internet companies, whose members provide Internet and new media platforms offering European consumers a wide range of online services. This includes e-content, media, E-commerce, communications and information and search services. Our membership includes such companies as Amazon, Apple, eBay, Google, Microsoft, Nokia, Yahoo! Europe, Orange, and others. EDiMA and its members have been engaged on the issue of collective rights management in the EU for quite some time.

The Commission recently indicated, in its Reflection document on Creative Content in a European Digital Single Market, that *"the online distribution of creative content in the EU has the potential to create more choice and diversity for consumers, new business models for commercial users, and more sustainable growth for rightsholders."* EDiMA couldn't agree more.

Online content distribution has indeed created new important and growing revenue streams for rightsholders and is a means of strengthening cultural diversity across the EU. **A well-functioning and flexible market-based licensing regime is critical to the promotion of cultural diversity in Europe and to the development of a dynamic and successful Internet and new media sector.**

As the Commission has highlighted though, significant obstacles and challenges exist to the development of such a dynamic digital market. Recent developments in the market for securing licences for online audio and audiovisual use are changing the landscape and posing both new challenges and opportunities for online media providers. Intended to benefit both licensors and licensees, some of these changes have resulted in increased complexity, costs, and legal uncertainty. In particular, these issues are creating problems of legal clarity and certainty for online media providers and their resolution requires the collaboration of all parties. EDiMA welcomes, for example, the initial steps taken by the roundtable process sponsored by DG Competition and the common framework working group as one effective tool moving forward. Efforts to create a comprehensive database of global repertoire works should be accelerated.

The truth is that the simple cost of administering a license has challenged the viability of some online business models at a time when the industry must cut costs in order to remain competitive. The high administrative costs of licensing have caused some providers to exit the market, removing potential revenue for Europe's artists and creative industries. More change is necessary to encourage the market

to adjust to the realities of the online world, to respond to unmet consumer demand, and to deliver economies of scale.

Recommendations for improvement in rights clearance

EDiMA believes that the market needs to deliver pan-European solutions that enable the licensing of the full catalogue of repertoire, respecting individual business models and their own rights requirements. The licensing process must enable and accelerate bringing new business models to consumers and reward and encourage business investment and innovation.

As such, EDiMA would advocate the following changes in collective rights management and commercial licensing:

- 1) **Commercial licensing** - licenses must reflect the needs of the given business model and licensing terms must be commercial and market driven. Today's digital distribution markets require innovative and flexible licences for different business models, which reflect different approaches and services of different commercial users. If collecting societies are to unlock new sources of revenue from digital media, they must adapt licensing frameworks to new business models in order to meet these varied needs.
- 2) **Pan-European licensing** – licenses must be available which cover the whole of the European Union, the European Free Trade Area, and European Economic Area, or one country or a specific group of countries, in order to facilitate rollout and service availability and to ensure the realisation of a true Digital Single Market. This is essential if EU startups are to achieve the scale they need to thrive.
- 3) **Service licensing and coverage** - to the extent required, all repertoire should be offered in a license but with license terms and conditions that reflect the commercial user's requirements. Where multiple rights in a work co-exist in a single exploitation, the rights should be licensed as a bundle to the commercial user from the same source.
- 4) **Transparency and Clarity** – It is important to understand and be able to verify which rights in which works a commercial user is receiving as part of any given licence. Online digital media providers should not have the responsibility for such verification. Now that licences are moving from a territory-based system towards a repertoire or source-based system, it is important that societies prioritize improving the transparency of ownership of rights so that licensees are not put in the position of remunerating rights to a society with respect to rights which it does not own or manage, nor of managing disputes between potential rightsholders. This is particularly critical where more than one society or rights agent is either authorised to offer a license for the right, or is claiming the right in question. To this end, societies should have to provide access to the works and rights they are entitled to license, to an extent that enables commercial users to identify what repertoire is being made available by each society or agent. Similarly, it is important for the purpose of legal clarity that the entities granting licenses to digital service providers affirm and ensure that their licenses authorise all uses permitted by the digital services they license.
- 5) **Legal disputes** – EDiMA believes that commercial users should have access to impartial legal fora for recourse in the event of disputes with rightsholders or collecting societies, including with respect to disputes over rights and/or licence terms. These fora should attract the right expertise and be capable of delivering timely and balanced adjudications which meet the needs of a fast-moving digital market.
- 6) **Efficiency** – EDiMA supports current efforts by societies to move to a consistent and more efficient approach to reporting. Licences typically require bespoke reporting solutions which add costs for licensees which must then be recovered from their revenues. Efficiency savings should of course

allow for change by flexibility for individual licensees, and particularly with respect to their differing business models.

- 7) **Copyright Levies** – EDiMA believes the issue of private copy levies is a relevant problem in **urgent** need of review. The diverse territorial nature of private copy levies causes fragmentation in the Internal Market, creates barriers to trade and distortions of competition in products subject to levies. Copyright levy systems are a legacy from the analogue world, whereas the digital era - characterised by digital content formats, proliferation of digital devices and ubiquitous connectivity – has fundamentally changed the way digital services enable consumers to acquire, consume and enjoy digital files of content such as music and video. Levies should not be seen as a primary revenue stream for digital content. Rightsholders should be remunerated through direct licensing, not private copy levies. Direct licensing is more appropriate and fairer for all. Copyright should recognise and reflect the ability of market players to address most uses of digital content in direct licensing arrangements and avoid creating incentives for rightsholders to limit the scope of licences in order to keep levy claims intact.

To conclude, EDiMA believes that cultural diversity and a dynamic Digital Single Market are best secured by ensuring there is a licensing system that is responsive to the needs of consumers and commercial licensees. This will allow new business models to develop, ease the barriers to entry and ensure reward for rights holders and their agents.

Let's remember we should all have a common objective here: **A well-functioning and flexible market-based licensing regime is critical to the promotion of cultural diversity in Europe and to the development of a dynamic and successful Internet and new media sector.**

Thank you.