GEMA

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DG Markt

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Public Hearing on The Governance of Collective Rights Management in the EU
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Panel 3 – Relationship between Collective Rights Managers and Commercial Users
Intervention Mr. Urban Pappi

Ladies and Gentlemen,

GEMA expresses its gratitude to the European Commission for the opportunity to present its position at today`s Public Hearing. To introduce myself: My name is Urban Pappi and I am in charge of GEMA`s broadcasting and online licensing department.

If I was asked what really changed in the past years in my business I would name the increasing complexity in the relationship between rightholders, rightsmanagers and users. And if I was asked what to do I would say that this complexity has to be tamed because otherwise the fragile flow of rights could easily dry up to the detriment of both rightsholders and users.

Complex systems are only as good as their weakest part. A commonplace, I admit. But one that is also true for the system of copyright. What is its weakest part, you may ask?

Is it the lack of a European wide regulation of the Governance of Collective Rights Management? This blind spot in legislation can be identified as a weak part, certainly. But if we are honest we have to admit: The weakest part of copyright always was and especially today is enforcement. Here we should start with our endeavors to improve the system.

[Piracy]

During today`s discussion we should not forget the greatest challenge to copyright in our time: the disregard of copyright alltogether – „piracy“ if you want to name it. The most sophisticated system of copyright management runs idle if large parts of society tolerate and even exercise the illegal acquisition of our intellectual property.

Piracy affects us all. Foremost, the content industry is affected whose business models have to compete with the for-free expectations of the end-consumers. Consequently, revenues are low and so are the shares of the creative community.

The royalty that ends up in the pocket of a musician is dramatically low. A new US study throws light on how many downloads or streams are needed for a musician to earn the US minimum wage of $ 1.160,- a month: According to the study his or her song has to be sold more than 12.000 times via I-Tunes or played 1.5 million times at Last.FM or – hold on tight – 4.5 million times via Spotify. In the following month the same performance is needed. One year minimum wage equals 54 million Spotify streams. I am shure Robbie Williams will earn his minimum wage this way.

To be honest: The content industry does not stick to low prices in order to harm the rightholders. Endconsumers are simply not willing to pay more for legal services when the same content can be downloaded illegally round the corner.

It will be to the benefit of all stakeholders if the European Commission did its best to enable effective measures against piracy. In this regard it should be analysed thoroughly what contribution the access providers are really able to deliver. Even if the political discussion is controverse, we say: there is no way around the access providers coming on board. They play a key role in the fight against piracy.

[European directive on collective rights management]

Beside anti-piracy measures we think the issue of a strong and efficient system of collective rights management in Europe is well worth to come into focus now.

Effective rightsclearing is not sinonymous with effectivly decreasing the fair remuneration for rightholders. Who still proposes to introduce competition between collecting societies about licensing deals (and secretly hopes to cut his costs) merely repeats the arguments of yesterday. Whereas the discussion of today is about win-win solutions for all involved stakeholders.

GEMA shares the view of DG Markt that it is time now to issue a European directive on collective rights management. This directive should set the framework for the collective rights management in the modern borderless environment.

During the last ten years we have learned that competition law alone does not provide for solutions. Trans-sectoral competition law simply is not interlocked enough with the specifics of collecting societies operations. The decision of the Commission in the CISAC case brought great uncertainty about how the collecting societies shall deal among themselves. And if we want to license a repertoire as blanket as possible we have to deal with our sister societies and other rights managers. The bundling of repertoire was made more difficult than before.

When it comes to a regulation of collective rights management, GEMA proposes a broad approach: A mere sectoral directive for the online market would not be sufficient in our view. We need a horizontal framework directive that covers all of the activities of collecting societies.

At the moment, a rights manager is confronted with great uncertainty when he dares to license on a European wide scale. One of the legal challenges is caused by the Services Directive: According to the "freedom to provide services" clause a rights manager may not be bound by the national requirements of his target countries. What does this mean in practice? For example: what dispute resolution mechanisms are in place in case of a dispute about tariffs on a European scale? The application of different dispute resolution venues may soon lead to different ta-

riffs for the same license in one territory. This directly comes into conflict with the equal treatment principle. And then maybe the lowest tariff has to be applied. And then it is understandable that rightholders will not entrust their assets willingly to such a system.

In our view a framework directive would be the best instrument to eliminate existing barriers, by way of example:

- It could clarify what kind of rights manager qualifies as a collecting society and the conditions for the founding of one;
- It could clarify further the conditions under which users are able to acquire licenses on a European scale and what tariffs are applicable;

- It could set up an efficient and fast dispute resolution mechanism for disputes around cross border licenses.

[Access to rights]

Of course, another central topic is access to rights and – in many cases – to a large catalogue of rights.
I want to share our position when it comes to music rights where many users are dependent on clearing the world repertoire:

It makes sense – from our perspective – to distinguish two different business models:

- Music centric business models on the one hand side where musical works themselves are dealt with, like Apple I-Tunes, Amazon or VEVO, should be differentiated from
- business models around editorial audio or audio-visual works on the other side where music contributes but does not represent the only creative input. Podcasts or Online Video Distribution Services may be examples.

Both categories of business models are confronted with an increasing fragmentation of repertoire in Europe.
First attempts to create one-stop-shop solutions for the online field by the collecting societies themselves sticked to traditional concepts and had to be abandoned due to possible conflicts with competition law.
Then in 2005 the Recommendation of the European Commission brought a new concept into play: efficiency gains by competition about repertoire. It`s one of the insights of the last decade that even a system of collective rights management needs some aspect of competition in order to push innovation and to reduce costs.

Our challenge today is to effectivly combine the traditional one-stop-shop principle with the modern competition component without initiating a race to the bottom regarding royalties.

It is our experience that music centric business models get access to the world repertoire of music even without an existing one-stop-shop. They may clear the necessary rights on a catalogue-by-catalogue way on a European scale. Or they may ask for the traditional approach and clear the world-repertoire on a country-by-country basis. Of course, the last approach requires the licensing society to somehow recollect the world repertoire on the basis of individual mandates and it is not sure that it will succeed. But then the gaps will be few.

Many problems in day-to-day business remain to be solved. Under the eyes of the European Commission CISAC is working on solutions.

From an overall view and regarding music centric business models we think we should continue on the way the Commission recommended in 2005. A framework directive could help significantly to solve the remaining problems.

When it comes to business models around audio-visual works the challenges are different and greater. Access to repertoire is not always granted by the involved rightholders. And of course there are a great many more rightholders involved when it comes to movies. Doubt continues to exist if the access to the world repertoire of rights including the world repertoire of music can be delivered by the rightholder`s community without any help. The European Commission has to carefully balance the individual interest of the involved rightholders with the interest of the public to get legal access to our intellectual property.

The European Legislator could come to the assessment that in the case of audio-visual and related services a strengthening of the system of collective rights management is neccessary. In our opinion the newly published EBU White Paper on „Modern Copyright for Digital Media“ displays a good summary of the problems involved. An implementation of the solutions proposed by the EBU into a framework directive on collective rights management should be carefully analysed and discussed.

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