



EUROPEAN COMMISSION

Brussels, 07.02.2008

MONITORING OF THE 2005 MUSIC ONLINE RECOMMENDATION

The attached document summarises the results of the monitoring of the Commission Recommendation 2005/737/EC of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services.

Subsequent to a 'call for comments' issued on 17 January 2007, the Commission received 89 replies from a wide variety of stakeholders that have a direct or indirect interest in how music is licensed for online services that are accessible across the Community.

Non-confidential contributions are now available on the following page:

http://ec.europa.eu/internal_market/copyright/management/management_en.htm#contributions.

The monitoring reveals that, at this stage, there is a nascent market for EU-wide licensing of music for online services. A variety of licensing initiatives have been launched or announced and, on 26 January 2008, the first EU-wide licence that the Commission is aware of has been granted in respect of mobile uses. Further negotiations on EU-wide licensing arrangements appear to be still in process.

The Recommendation, therefore, seems to have produced an impact on the licensing marketplace and is endorsed by a number of collective rights managers, music publishers and users. The Commission will follow further developments and repeat the monitoring, should a clear need to do so arise.

TABLE OF CONTENTS

1.	NATURE OF THE RESPONSES.....	3
1.1.	Collecting societies.....	3
1.2.	Publishers	3
1.3.	Users	4
1.4.	Member States	4
2.	ANALYSIS OF THE RESPONSES	4
2.1.	Nature of the instrument.....	4
2.2.	EU-wide licensing	5
2.2.1.	EU-wide licensing initiatives	5
2.2.1.1.	Alliance Digital	5
2.2.1.2.	ARMONIA.....	6
2.2.1.3.	CELAS	6
2.2.1.4.	PEDL	6
2.2.1.5.	SACEM-UMPG	6
2.2.1.6.	Other.....	6
2.2.2.	EU-wide licences granted.....	7
2.2.3.	Obstacles.....	7
2.3.	Scope of the Recommendation.....	7
2.4.	Governance and transparency	8
3.	THE WAY FORWARD.....	8

1. NATURE OF THE RESPONSES

The 'call for comments' was issued on 17 January 2007 and invited stakeholders to submit contributions until 1 July 2007.¹ This rather long deadline was chosen in order to allow stakeholders sufficient time to respond. In addition, relevant developments that occurred after the close of the deadline are also taken into account.

The 'call for comments' yielded 89 replies. Out of 89 organisations and other stakeholders that submitted responses to the 'call for comments', 79 have authorised the publication of their contribution. Seven stakeholders supplied both a confidential and a non-confidential version of the reply, whereas ten submissions were received only in confidential form. The latter have also been included in the summary document, but their source remains undisclosed and the confidential documents have not been published on the webpage.

The replies may be grouped along four categories of stakeholders: (1) Collecting societies (38 responses); (2) Publishers (18 responses); (3) Users (25 responses), and (4) Member States (8 responses). The following section will analyse these submissions in further detail.

1.1. Collecting societies

The Commission received 38 replies from collecting societies, their umbrella organisations, individual right-holders and their representatives. All these replies are grouped under the category of 'collecting societies', in spite of the fact that not all of these organisations are engaged in the individual or collective management of copyright.

Amongst the respondent collecting societies, 20 represent authors, four represent performers and one represents record producers. Submissions were also received from umbrella organisations, representing all types of right-holders.

21 authors' societies also issued a so-called JP21 statement ('joint position 21'). The JP21 replies are, in this document, analysed as 14 separate submissions, as most of these societies grouped under the JP21 statement have, in parallel, also submitted a separate reply. These separate replies often varied in essential respects and sometimes the societies expressed diverging opinions.

1.2. Publishers

Publishers or their associations submitted 18 replies in total. All kinds of publishers, active in music, magazine, newspaper and book publishing, have submitted responses. Publishers not engaged in the music business were included in this category as their submissions relate to whether or not the music publishing licensing models should be extended to their respective sectors.

A large majority of submissions (14) in this category is related to music publishing. Most of the respondents are national music publishers, some of them are umbrella associations.

¹ http://ec.europa.eu/internal_market/copyright/management/management_en.htm#monitoring

1.3. Users

Users submitted 25 replies and they represent a heterogeneous group. The largest number of replies was provided by broadcasters (six broadcasting organisations and four umbrella organisations). Other users in this group comprise mobile phone operators, video games producers, digital media associations, retailers and libraries.

1.4. Member States

Eight Member States responded to the 'call for comments'. Some of these replies address all issues raised in the call for comments while others consist only of a short opinion on the whole Recommendation, without addressing the specific questions raised in the 'call for comments'.

2. ANALYSIS OF THE RESPONSES

In light of the heterogeneous nature of the responses, it is impossible to group the responses into more detailed categories defending a particular view, by each question asked. In fact, some stakeholders replied to all the issues raised in the 'call for comments', while others limited their responses to general remarks not linked to the specific issues raised in the consultation.

2.1. Nature of the instrument

This section of the 'call for comments' is concerned with the issue of whether legally binding rules on a variety of topics, such as (1) licensing; (2) transparency and governance; (3) assignment of online rights ; and (4) withdrawal of online rights, would appear preferable.

(a) Collecting societies

Collecting societies are not unanimous on these issues. Most state that binding rules are not preferable. Amongst those that differentiate possible areas for legislation, a number of societies are in favour of legislation that covers the issue of licensing but a majority of societies appears to be against legislation in the areas of transparency and governance. Amongst the societies that adhere to the JP21, most are opposed to legislation in general, while a smaller number are nevertheless in favour of legislation on all or at least some of the above-mentioned issues.

Some societies state that a Recommendation appears to be the most appropriate instrument to shape the future of collective management of online rights. They believe that the non-legislative approach would foster the development of legitimate online music services.

(b) Publishers

Music publishers are unanimous in their position that legislation at this stage is not desirable and that a non-legislative approach provides enough guidance. The market should be given the appropriate time to develop EU-wide licensing models.

(c) Users

Users, with some exceptions, are in favour of legislation, preferably with respect to all of the above-mentioned topics. They do not, however, necessarily agree on the subject matter of the legislation; most call for extended collective licences and one-stop-shop where the world-wide repertoire can be licensed. Users complain both about the new EU-wide licences granted by music publishers and the current practices of collecting societies.

(d) Member States

Most Member States appear to be concerned that a non-legislative approach "circumvents the democratic process". In their replies, however, the UK and France clearly state that legislation at this point would not be welcome, since legislation would be unable to keep pace with rapidly changing markets.

2.2. EU-wide licensing

This section was intended to provide the Commission with evidence on actual market developments. The 'call for comments' covers planned and existing EU-wide licensing arrangements, types of online services that may benefit from such initiatives, such as music service providers and online services that may be interested in obtaining an EU-wide licence.

The replies revealed that a series of EU-wide licensing platforms have been announced or formed. The initiatives set-out below cover a large share of the world-wide repertoire and involve collecting societies from France, Germany, Italy, Spain, the UK and Sweden.

On 26 January 2008, the first EU-wide end-user licensing contract was signed. This licensing arrangement covers the EMI repertoire that will be available for download in an EU-wide mobile service. More licensing end-user arrangements are expected in the forthcoming months.

2.2.1. EU-wide licensing initiatives

The list below reflects EU-wide licensing initiatives brought to the Commission's attention in the monitoring process. It also contains initiatives announced or implemented after the close of deadline for the replies. The initiatives are listed in the alphabetical order.

2.2.1.1. Alliance Digital

'Alliance Digital' is the UK collecting society MCPS-PRS's new platform that offers EU-wide licences for the repertoire administered by small and medium sized publishers. According to the Alliance, the 'Alliance Digital' will offer a competitive rights-management services that comprise quarterly distributions, low administration charges, access to online databases of the repertoire, licence databases and audit results, distribution in accordance with high standards and full transparency. The Alliance states that any right-holder is welcome to entrust their online rights to the platform. To date, over 800 small and medium publishers have mandated their online rights to 'Alliance Digital'.

The 'Alliance Digital' also represent 'Peermusic's Anglo-American catalogue for online and mobile licensing across Europe. SGAE of Spain, a strategic partner society of the 'Alliance Digital', will represent 'Peermusic's Latin-American repertoire.

2.2.1.2. ARMONIA

The French society SACEM, the Spanish society SGAE and the Italian society SIAE, in January 2007, announced the creation of a one-stop-shop licensing platform for the online and mobile uses of their joint repertoires. The societies refer to this joint venture as ARMONIA or the 'Joint Venture Alliance' (JVA). The repertoire to be licensed includes the musical works managed by the three societies. Participating societies will grant the JVA an exclusive mandate to manage their online rights. The project appears to be open to other European collecting societies and right-holders.

2.2.1.3. CELAS

CELAS (Central European Licensing and Administration Services) was created by GEMA and the MCPS-PRS Alliance. It is a legal entity set up to represent EMI Music Publishing's Anglo-American and German repertoire for online and mobile uses in 40 European countries. CELAS now operates as a one-stop-shop in these countries which include the Community and the entire EEA. CELAS aims to expand its coverage beyond the EMI Anglo-American and German repertoire. On 26 January 2008 CELAS signed the first EU-wide licensing end-user arrangement with mobile operator Omnifone.

2.2.1.4. PEDL

Warner/Chappell Music ('WCM'), the publishing arm of Warner Music Group, has signed agreements with three collecting societies that participate in its 'Pan-European Digital Licensing' (PEDL) initiative. The societies are the German society GEMA, the UK society MCPS-PRS Alliance and the Swedish society STIM. All three societies will now be authorised to offer EU-wide digital licences covering Warner/Chappell's Anglo-American repertoire. Under the PEDL initiative, WCM is granting non-exclusive rights in its catalogue to those collecting societies which comply with a set of common standards intended to ensure efficient and transparent management of rights. The PEDL initiative will remain open for other collecting societies to join at a later date.

2.2.1.5. SACEM-UMPG

The French society SACEM and Universal Music Publishing Group (UMPG) signed an agreement covering online and mobile uses. SACEM will administer EU-wide licences covering the repertoire of UMPG and the repertoire of SACEM that is published by UMPG. The platform should be operational by mid 2008. SACEM and UMPG state that they are willing to cooperate with other collecting societies and other music publishers.

2.2.1.6. Other

Stakeholders have also briefly mentioned in their submissions the following initiatives: the Nordic model², ELOS (the Alliance and SGAE), ICE (Alliance and STIM), Santiago plus (GESAC), SMS model (CISAC), GVL, Buma-Stemra and E-Music, Sabam and

² The Baltic and Nordic societies grant cross-border licences for traditional uses of works in the Nordic/Baltic region. These societies have also been exploring the possibility of extended cooperation for online licensing (the Nordic model), covering online and mobile multi-territorial downloads within eight countries (Sweden, Norway, Denmark, Finland, Iceland, Lithuania, Latvia and Estonia). Users can freely choose which society they wish to get the licence from. The tariffs applied are the tariffs of the country of destination. This system has been in use since 2001 and has constantly developed.

Buma-Stemra, although some of these initiatives are controversial among collecting societies. Further details on these initiatives may be found in stakeholders' submissions.

2.2.2. EU-wide licences granted

On 26 January 2008 CELAS signed the first EU-wide licensing arrangement with mobile operator Omnipone covering the 'MusicStation' download service operated by the latter. MusicStation will now be able to provide access to EMI music repertoire for digital exploitation in Europe.

MusicStation is the all-you-can-eat (AYCE) mobile music service allowing mobile phone users to gain unlimited access to full music tracks on industry-standard mobiles for a small weekly fee or bundled into price plans for no extra cost.

The deal provides Omnipone with access to the EMI Music Publishing English language repertoire. The arrangements cover MusicStation's services currently available in Sweden and the UK, but in line with the planned roll-out of the MusicStation service throughout Europe other territories will follow soon.

2.2.3. Obstacles

Stakeholders have reported various obstacles in setting-up EU-wide licensing arrangements:

- Litigation: Collecting societies are heavily engaged in litigation against each-other, thus impeding progress on the above-mentioned initiatives. Collecting societies are not unanimous about the preferred licensing model and, in some instances, question other societies' mandate to license their repertoire on an EU-wide basis.
- Withholding tax: Each Member State applies a withholding tax, which appears to inhibit the free cross-border and multi-territorial trade of online music rights in the Internal Market. This issue seems to arise in all licensing arrangements involving parties based in more than two territories.
- Identification of works: Some collecting societies have pointed that identification of works to be licensed is one of the main obstacles.

2.3. Scope of the Recommendation

This section of the 'call for comments' enquired whether the Recommendation correctly sets out the online rights of the various right-holders involved in the licensing process. The section also enquired whether 'online' rights should be further segmented according to the commercial form of exploitation. Moreover, one question asked whether it should be mandatory to include 'niche repertoire' in EU-wide licences.

The responses to all of the questions in this section diverge. With respect to the first question, collecting societies argue that the rights are not correctly set out and should be redefined. However, some societies do not share this view and state that the rights are correctly defined. Music publishers, on the other hand, do not see the need to further segment the 'online' rights as this commercial segmentation is already achieved in the ICMP/CIEM and GESAC Common Declaration (see next section). Overall, users also called for clearer definitions of 'online' rights.

No consensus was reached in relation to the mandatory inclusion of the niche repertoire. Most stakeholders engaged in a discussion of how the concept of 'niche repertoire' itself should be defined. Nevertheless, the majority of stakeholders were of the opinion that it would not be appropriate to force EU-wide licensors, or licensors in general, to include any form of repertoire in their licence arrangements.

2.4. Governance and transparency

The questions pertaining to 'governance and transparency' enquired whether the Recommendation provided right-holders and users with sufficient safeguards or whether the rules should be strengthened. Stakeholders mostly replied to these questions in general terms.

Collecting societies almost unanimously stated that there are no problems whatsoever with transparency and governance. They argue that rules in this respect need not be strengthened. Music publishers were of a somewhat different opinion. Even though they acknowledge several problems in this area, they prefer to improve transparency and governance by way of cooperative agreements with collecting societies.

For example, ICMP/CIEM and GESAC have agreed on harmonised minimum standards in a 'Common Declaration'. This Declaration is seen as a first step towards implementing the Recommendation. The Declaration focuses on online licensing and defines two new segments (interactive and non-interactive) of online exploitations. In addition, collecting societies may define further 'sub-categories' within the standard categories, if this is required for efficient licensing or by national law.

The Declaration also focuses on governance, confirming that music publishers are eligible to become members of collective rights management organisations as right-holders. It provides a minimum standard for the fair and balanced representation of music publishers in the decision-making process of collecting societies. The Declaration also provides that collective rights management organisations must hold a general meeting of members at least once a year.

Finally, the Declaration restates the Recommendation's requirements pertaining to reporting and transparency towards right-holders.

Although the Common Declaration is deemed to be a step in the right direction, GESAC and ICMP/CIEM state that many collecting societies are still not in compliance with the principles of the Declaration (see relevant submissions).

Users do not voice strong feelings about transparency and governance per se. However, they embrace the call for strengthened rules on dispute resolution. Other stakeholders, including Member States, are of the opinion that existing dispute settlement procedures are sufficient.

3. THE WAY FORWARD

The Recommendation seems to have produced an impact on the licensing marketplace and is endorsed by a number of collective rights managers, music publishers and users. The Commission will follow further developments and repeat the monitoring, should a clear need to do so arise.