



## EUROPEAN COMMISSION

Brussels, 28.5.2013  
C(2013) 3090 final

Dear President,

*The Commission would like to thank the Senato della Repubblica for its Opinion on the proposal for a directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market {COM(2012) 372 final}, welcomes the favourable opinion of the Senate and apologises for the long delay in replying.*

*Notwithstanding its overall positive evaluation of the proposal, the Senato della Repubblica mentions some potentially problematic elements, such as the risk of a dual system and a potentially distorting effect on competition if independent agencies and intermediaries, whose membership is not composed of rightholders, are not included in the scope of the Directive. In this regard, the Commission would like to note that it took the approach of limiting the scope of the proposed directive to collecting societies which are owned or controlled by their members as these are in general in a dominant position (or in several Member States even monopoly position) on the market. While for independent agents and intermediaries, rightholders mostly can select one of many according to their preferences, this is in general not the case for "classical" collecting societies, where rightholders are often faced with no possibility of choice. Therefore, the Commission has chosen to propose a common framework of governance and transparency based in particular on the key role of rightholders having the means to control the management of their royalties and the improvement of exercising membership rights, which is adapted to those collecting societies which are owned or controlled by their members.*

*Further, the Senato della Repubblica expresses concerns as regards Article 28 of the proposed directive, which states that representation agreements between collecting societies for the granting of multi-territorial licenses for the online rights in musical works have to be non-exclusive. The Senato della Repubblica is of the opinion that this favours users and service providers – who can make a choice which collecting society offers the best conditions - instead of rightholders. In relation to this concern of the Senato della Repubblica, the Commission would like to clarify first that the obligatory non-exclusivity of agreements under Article 28 does not mean that a collecting society has to conclude representation agreements with more than one other collecting society.*

Mr Pietro GRASSO  
President of the  
Senato della Repubblica  
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*The non-exclusivity rather ensures that the collecting societies have the choice whether to conclude representation agreements with only one or more than one other society. In this regard, they would have to act according to the best interests of their members as laid down in Article 4 of the proposal. Further, as the proposal ensures the key role of rightholders in the governance of the collecting societies, they would have an influence on decisions such as conclusions of representation agreements. Moreover, the inclusion that agreements should be non-exclusive was warranted for reasons of anti-trust law, under which exclusive cooperation contracts between collecting societies are critical.<sup>1</sup>*

*The Senato della Repubblica further states that it would be appropriate to address the problem of distribution of musical works via social networks in this directive. The Commission would like to mention that social networks and similar platforms like Youtube certainly also have the possibility to obtain licenses from collecting societies. Therefore, the provisions of Title III would also foster the granting of multi-territorial licenses for rights in musical works for their online usage.*

*Finally, the Senato della Repubblica expresses a concern that the proposed text is partly too detailed to fit the legal form of a directive. In this regard, the Commission takes the view that the legal form of a directive is warranted as it allows for the necessary flexibility to take into account the fact that Member States have different approaches as regards the legal form of collecting societies and the way such societies are supervised. Moreover, the Commission notes that the legal basis chosen, which the Senato della Repubblica expressly welcomed in its opinion, provides for the form of a directive only and not for a regulation.*

*The Commission hopes that these clarifications address the concerns expressed by the Senato della Repubblica and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>1</sup> See Commission Decision C(2008) 3435 final of 16.07.2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 – CISAC).