



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2012)

Opinion

Title **DG MARKT - Impact Assessment on a proposal on collective rights management in the Single Market**
(draft version of 15 February 2012)

(A) Context

Intellectual property rights (IPRs) are frequently managed collectively by collecting societies. In the EU, collecting societies are established and regulated on a national basis. The resulting complexity is one of the obstacles impeding the development of a digital single market for copyright protected content and services. As announced in the May 2011 Communication “A single market for intellectual property rights”, the Commission is considering a legislative initiative on the functioning of collecting societies and on the specific difficulties in the collective licensing of musical works for online users.

(B) Overall assessment

The report needs to be improved in several important respects. First, it should provide a clearer and more comprehensive presentation of the problems affecting the digital single market for copyright protected content and services, showing the current relevance of the specific issues and drivers addressed and clarifying the linkages between the two targeted problem areas. The report should also improve the assessment of the need for and added value of EU action under the proposed legal basis on the basis of a strengthened evaluation of the shortfalls of present policies and of the prospects offered by on-going technological and market trends. The report should also clarify its presentation of the options and strengthen the analysis of their impacts, notably on different stakeholders and on current market structure. Stakeholders' views should also be better reflected throughout the main text.

Given the nature of these recommendations, the Board asks DG MARKT to submit a revised version of the report, on which it will issue a new opinion

(C) Main recommendations for improvements

(1) Clarify the nature of the problem and better justify the scope of the initiative.

The report should provide a clearer and more comprehensive presentation of the obstacles affecting the development of a digital single market for copyright protected content and services as well as of the problems, and underlying market and regulatory failures, concerning collective right management, on the one hand, and the licensing of music works for online users, on the other. In so doing the report should rely more extensively on illustrative examples, provide more information on the various types of collecting societies acting in different Member States, and explain differences in market structures. Against this background, the report should be more transparent on the exact scope of the initiative with regards to collecting societies. It should also better justify why only certain problems and drivers are addressed by providing greater evidence of their current relevance for stakeholders, including final consumers, and for an industry characterised by rapid technological change. Finally, the report should clarify the linkages between the two targeted problem areas.

(2) Improve the analysis of subsidiarity. The report should strengthen the assessment of the need for, the timing and added value of EU action under the proposed (single market and cultural diversity) legal basis. In order to do so, it should improve the analysis of the baseline, first by better presenting the shortcomings of self-regulatory approaches and the lack of improvement following the 2005 recommendations and then by assessing more transparently the prospects for industry-led, or technology-driven, solutions. On this basis, the report should discuss more extensively the single-market aspects justifying why action at the EU level should specifically, and jointly, target the transparency and governance of collecting societies and the supply of multi-territory licenses of musical works for online use.

(3) Clarify the design of options. The report should provide a clearer presentation of the various options, avoiding jargon and explaining the key provisions for the non-expert. In particular, the report should clarify the European Licensing Passport option, providing an illustration of its functioning and explaining how it would differ from the country-of-origin option. The report should also show how the options under analysis take into account the lessons emerging from different regulatory approaches in Member States and third countries as well as the different solutions reached by industry for other products. Finally, the report should consider (and compare) a more extensive set of combinations of options for the two identified problem areas.

(4) Strengthen the analysis of impacts. The report should systematically assess impacts on different stakeholders (including final consumers, SMEs and third countries) as well as on the degree of competition in relevant markets. The report should also strengthen its analysis of compliance costs and of indirect economic and social impacts, including on employment in the creative industries. In the case of the transparency and governance framework for collecting societies, the report should improve its assessment of the effectiveness and proportionality of the preferred option discussing at greater length the relevance of the drivers addressed and the ways to ensure effective enforcement. In the case of licensing for online uses, the report should explain who would be interested in a European Licensing Passport, why and at what costs and how this solution could also address non-licensing related cross-border distortions. It should also show how such an option would affect existing exclusive arrangements between collecting societies and why it would lead to a simplification of the current situation as well as to increased competition.

(5) Better present stakeholders' views. The main text of the report should illustrate more extensively stakeholders' views both in favour of and against the report's analysis of problems and assessment of the preferred options.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should be considerably shortened. Plain language should be used throughout and a further effort is needed to ensure readability for the non-expert. A glossary of terms should be added and the executive summary should include references to stakeholder consultations and views. The report should clarify whether an online public consultation for the specific issues under analysis was carried out or explain why this was not the case.

(E) IAB scrutiny process

Reference number	2010/MARKT/019
External expertise used	No
Date of Board Meeting	14 March 2012