



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

(resubmitted draft version of 26 April 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 has been improved along the lines of some of the recommendations issued by the Board in its first opinion but various aspects still remain to be strengthened. Greater evidence of the relevance of the specific issues proposed for EU action should be provided. The content of the options should also be clarified and a more extensive assessment of some impacts developed, especially in the case of the European Licensing Passport. Different stakeholders' views should be transparently and systematically presented across the whole report.

(C) Main recommendations for improvements

(1) Further clarify the justification for and value added of the proposed EU initiative. The revised report more clearly presents the reasons for and scope of the proposed EU initiative. It should, however, more extensively discuss the relevance of the specific drivers addressed for both targeted areas. In particular, in the case of the licensing of music works for online users, the report should provide greater evidence of the fact that the cost of clearing authors' rights and weak governance and transparency arrangements are major causes for the relatively limited availability of online services across the EU, as opposed to, for instance, limited cross-border demand for certain repertoires or cross-border distortions introduced by collecting societies (discriminatory pricing etc.). Finally, the need for and value-added of EU level action to enhance the technical capability of private licensors in the online environment should be better demonstrated.

(2) Further clarify the design of options. Although the revised report considers a more extensive set of combinations of options for the two identified problem areas, it should provide a clearer presentation of individual options, better explaining key provisions in simpler language. It should, in particular, clarify how the European Licensing Passport would differ from the country-of-origin option; how would requirements for data handling and invoicing capability be enforced given the absence of ex ante authorization and why licensors who already provide multi-territory licences would be interested in obtaining a passport given the obligations this imposes in terms of standards and other collecting societies "tagging on". Finally, the report should discuss how proposed options relate to the different regulatory approaches taken in Member States and third countries.

(4) Better analyze impacts. The revised report more systematically assesses impacts on different stakeholders and compliance costs. However, the analysis should be further improved in various respects, including impacts on the degree of competition. While extended, the analysis of the impact on SMEs and micro-entities should be strengthened, clarifying whether a special regime would apply, to whom and in which respects. Apparently contradictory text about the existence of micro-entities among collecting societies (p.36 and 45) should be redrafted to avoid any misunderstanding by the non-expert reader. Finally, the analysis of the impacts of the European Licensing Passport needs to be improved with regard to the costs of the envisaged technical requirements, the implications for existing exclusive arrangements between collecting societies and for licensors already providing multi-territory licenses, and the prospects for a simplification of the current situation.

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

(D) Procedure and presentation.

While the revised report is clearer and slightly shorter, its readability for the non-expert should be further improved. References to stakeholder consultations and views should be included in the executive summary and a clarification of whether an online public consultation for the specific issues under analysis was carried out should be provided (along with an explanation giving the reasons why this possibly was not the case).

(E) IAB scrutiny process

Reference number	2010/MARKT/019
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 16 March 2012