

**EU and Nordic perspectives on copyright
management – focus on music, tv and film**

The 2005 Commission Recommendation and
the CISAC case - the perspective of



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The effects of the 2005 Commission Recommendation

- ▼ PRS has in practice supported rightholder choice and pan-European licensing long before 2005
- ▼ Changes lead by Anglo-American mechanical rightsholders
 - ▼ EMI has appointed CELAS
 - ▼ WarnerChappell has appointed BUMA, GEMA, PRS, SGAE, SACEM, and STIM
 - ▼ Universal has appointed SACEM
 - ▼ Sony has appointed GEMA
- ▼ Matching performing rights are licensed by rightsholders
- ▼ Licensing of online music is in transition from blanket licensing of global repertoire to multi-territorial licensing of specific repertoire



The CISAC case – the Commission procedure

- ▼ The scope of the CISAC Decision is limited to:
 - ▼ Performing rights
 - ▼ The limitation of mandates to each respective society's domestic territory by all the European societies
- ▼ With:
 - ▼ No fines
 - ▼ Aborted commitments



The CISAC case – implementation (1)

- ▼ Compliance level clarified by Orders of the President of the Court of First Instance
 - ▼ Obligation on all European collecting societies to undertake a bilateral review of the territorial delineation of their mandates
 - ▼ The review is limited to the mandates for satellite, cable retransmission and internet use in each reciprocal representation agreement
 - ▼ It is for each society to decide how to carry out the review of its reciprocal representation agreements



The CISAC case – Implementation (2)

- ▼ Compliance level clarified (continued)
 - ▼ As such, mandates limited to the national territory of a particular Member State do not infringe Article 81
 - ▼ There are several legal ways to end the infringement which could, for example, include the total abandonment or partial modification of existing reciprocal representation agreements but also other ways



The CISAC case – Implementation (3)

- ▼ Compliance level clarified (continued)
 - ▼ It is not necessary to modify all reciprocal representation agreements to end the infringement
 - ▼ It is for each society to decide whether any modifications should be significant or insignificant
 - ▼ Direct licensing without the use of an intermediary is always permitted



The CISAC case – Implementation (4)

- ▼ What has PRS done to comply?
 - ▼ Questionnaire on capabilities to other societies from Q3 to Q4 2008
 - ▼ Amendment Agreement
 - ▼ Framework for possible multi-territorial grants based on transparency, efficiency and effectiveness
 - ▼ Not necessarily reciprocal
 - ▼ Aimed at improving current service levels
 - ▼ Setting criteria for multi-territorial mandates
 - ▼ Cable Restrtransmission and Satellite Broadcasting: extension of mandate on case-by-case basis
 - ▼ Online: consent required
 - ▼ Bilateral negotiations



The CISAC case – Implementation (5)

- ▼ The outcome of review process:
 - ▼ A majority of societies have entered into the new Amendment Agreement
 - ▼ Several societies have granted an EEA wide mandate for licensing of online rights to PRS
- ▼ Has PRS complied with the CISAC Decision?



The CISAC case – Appeal (1)

- ▼ PRS appealed the CISAC Decision on 29 September 2008 (territorial delineation only)
- ▼ PRS did not seek interim measures
- ▼ The Commission lodged its defence on 24 February 2009
- ▼ RTL, CLT-UFA, Music Choice, ProSiebenSat.1, Modern Times Group, Viasat, VPRT and IFPI have requested leave to intervene in support of the Commission



The CISAC case – Appeal (2)

- ▼ PRS' main arguments
 - ▼ Many important exceptions to national territories
 - ▼ The Nordic and Baltic cooperation model
 - ▼ Direct licensing
 - ▼ The many pan-European licensing initiatives
 - ▼ PRS' consistently independent market behaviour
 - ▼ Santiago pull-out
 - ▼ SABAM agreement
 - ▼ JOL, CELAS, P.E.D.L. and other bids
 - ▼ Infringement of the right to be heard in relation to the aborted commitments



The CISAC case – Appeal (3)

- ▼ What's next?
 - ▼ Reply & Rejoinder
 - ▼ Interventions
 - ▼ Oral Hearing
 - ▼ Joining of 23 cases in 8 languages?
 - ▼ Judgement probably not before 2010



Thank you

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