

# Joint Position

## on the Recommendation on the collective cross-border management of copyright and related rights for legitimate online music services of the 18 October 2005

### *Introductory Remarks*

Along with many other collective rights managers (“collecting societies”), we greatly regret that the European Commission did not consult with relevant stakeholders – and notably the authors and composers and/or the managers of the smaller and medium-sized collecting societies – before issuing the abovementioned Recommendation of 18 October 2005.

The collecting societies signing this joint statement (the names and countries of establishment of which are mentioned below) are very concerned by the market developments that have followed the issuance of the Recommendation, notably:

- the (documented) announcements by the major publishers to virtually all collecting societies that they withdraw major segments of their most commercially successful repertoire from the reciprocal network established by the collecting societies; and,
- the creation of a new entity by two major collecting societies to handle exclusively the repertoire of one of these major publishers; and
- the creation of a new entity by three major collecting societies to handle exclusively their own (national) repertoires.

We believe that this trend will lead, once these intentions become reality, to an over-centralisation of market powers and repertoires at European level, i.e., an oligopoly, which will unduly restrict the choices available to users and rights-holders, and as a consequence, severely undermine cultural diversity in Europe.

In addition, such over-centralisation may create undesired competition to the detriment of less commercial or niche repertoire. We think that it is possible to create equal opportunities for all creators, big or small, commercial or niche.

Proper consultation would have helped avoid the negative outcomes that have been set in train by the Commission’s action and which now require urgent corrective action.

We note and applaud the fact that the European Parliament fully shares this point of view. We are grateful that the European Parliament has recognized the dangers of the Commission’s Recommendation, and has taken the initiative to issue a countersignal to the marketplace. Its Resolution of 13 March 2007 is firm, clear and reassuring.

### *Comments*

The previous remarks notwithstanding, we take the opportunity to comment now and urge the Commission to take full account of our concerns as a matter of urgency and to act rapidly to redress the situation it has been instrumental in creating.

A complex blend of cultures is what makes Europe unique. The Recommendation is deeply flawed because it does not take adequate account of the special situation and needs of cultural diversity in Europe.

The Recommendation adopts a free market approach to the adaptation of collective rights management in Europe to the Internet and digital age. In practice, the approach that has been adopted by the Commission is too simplistic to apply to the broad and complex arena of musical rights without disadvantaging and thereby severely undermining the local, specialized and minority repertoires which contribute to Europe's musical diversity. Under the guise of promoting free choice for rights-holders, the Recommendation will eventually restrict the choice of users and rights-holders.

The Recommendation also creates a multitude of practical problems and will affect the protection of the authors' rights involved, in particular in many medium sized and small markets:

- The fragmentation of repertoires, for instance, requires that societies prove title of each and every licensed song, instead of being able to do so under a blanket license including the world repertoire.
- Costly documentation systems – the backbone of collective administration – will have to be adapted to track in detail complex representation schemes generating in the process an enormous administrative burden.
- The anti-piracy effort will no longer be paid for by the popular commercial repertoire.

Music – indeed, culture in general – is not a good or a service to be traded like any other as the practice of the European Court of Justice has confirmed. In order to meet the demands of changing markets and technologies, a much more subtle balance needs to be achieved between cultural considerations and the economic interests of both users and rights-holders than is the case in the Recommendation today.

Let us highlight three key points that we feel are essential for the smooth functioning of the cross-border management of music copyrights in the 21<sup>st</sup> century that are endangered by the Commission Recommendation but that were convincingly taken up by the European Parliament in its Resolution of March 2007:

***1.) The reciprocal network for cross border collection of royalties***

The system of reciprocal collection of royalties by collecting societies has worked successfully for decades. While we understand that it is the Commission's perception that this system, in its present form, may not be ideally suited to the purely economic considerations of a single market in Europe and of the digital age, we are entirely convinced that it should not simply be set aside and replaced with entirely new constructions driven by purely commercial interests as proposed by the Recommendation.

Rather, the existing reciprocal system should be maintained (albeit with some improvements). It has effectively provided one-stop-shops for the world repertoire for decades and is fully capable of meeting the new challenges and requirements, while establishing the right balance between cultural diversity and the needs of the market for music. It will provide freedom of choice to users and rights-holders for multi-territorial and multi-repertoire licenses.

We remain convinced that a system of reciprocal agreements between collecting societies is the best way to provide equal treatment and opportunities to all rights-holders and the preferable “one-stop-shop” arrangement for all users.

**2.) *Availability of the entire world repertoire for all collecting societies***

Although the Commission and the European Court of Justice have in the past prohibited exclusivity in the reciprocal representation agreements between collecting societies, the Commission in its Recommendation has now started a trend towards agreement of exclusive mandates between major rights-holders and a limited number of collecting societies for the direct collection of royalties in all Member States.

It is to be expected in the logic of business that the process of selecting the societies will not be based on the relative efficiency of individual collective rights managers but on their size. This deprives the majority of collecting societies from having access to large segments of the most commercially successful repertoire.

The entire world repertoire should remain available for all collecting societies in order to create a level playing field, and to enable societies to provide a one-stop-shop, whether for their country of establishment (for traditional licensing) or for the entire European Economic Area (for on-line licensing).

**3.) *No exclusive mandates***

It follows from 2.), above, that the granting of exclusive mandates by major rights-holders in the context of collective management of online rights as suggested by the Commission is undesirable, and should be discouraged rather than stimulated. These exclusive mandates not only undermine the reciprocal system they will also:

- force users to make multiple deals with multiple collecting societies in order to cover:
  - the global repertoire that will no longer be available through a single society; and,
  - that part of the repertoire of the major rights holders where, for example, mechanical and performance rights of works are handled by different CRMs or where split publishing deals result in the different rights-holders involved (e.g. multiple composers and multiple authors of the same work) being represented by different CRMs;
- on account of the above, inevitably result in higher costs to users for the acquisition of licenses;
- make rights management, for the vast majority of rights-holders, more expensive;
- lead to a period of legal uncertainty accompanied or followed by unauthorized uses, vacuums in licensing, and finally to an over-centralisation of market powers and repertoires;
- undermine the existence of certain small collecting societies by removing a significant amount of their turnover; and,
- undermine the position of minority repertoires and cultural diversity in Europe.

The Commission should issue a strong countersignal that the actions initiated are anti-competitive, inappropriate and unacceptable and it should do so rapidly before irreversible damage has occurred.

We call upon the European Commission to take into full consideration the European Parliament Resolution of 13 March 2007 on this matter. We note that the margin by which the Parliament's Resolution was adopted was close to unanimous.

The above position is a joint statement of:

<b>Collecting Society</b>	<b>Country</b>
AEPI	Greece
AKKA-LAA	Latvia
AKM	Austria
Artisjus	Hungary
Austro Mechana	Austria
Buma/Stemra	Netherlands
EAU	Estonia
HDS	Croatia
IMRO	Ireland
KODA	Denmark
LATGA-A	Lithuania
Musicautor	Bulgaria
OSA	Czech Republic
SABAM	Belgium
SAZAS	Slovenia
SOZA	Slovakia
SPA	Portugal
STEF	Iceland
TONO	Norway
UCMR-ADA	Roumania
ZAIKS	Poland