

# The CISAC case & The 2005 Recommendation

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## Overview: when and who

### **CISAC case**

1. Competition case handled by DG COMP of the European Commission
2. Complaints filed by broadcasters RTL and Music Choice Europe
3. Against EEA authors collective management societies and their global umbrella organisation CISAC
4. Case started in 2000  
Decision issued on 16 July 2008

### **2005 Recommendation**

1. EU recommendation issued by DG MARKT of the European Commission
2. Addresses “*the Member States and all economic operators which are involved in the management of copyright and related rights within the Community*”
3. Issued on 15 October 2005  
Call for comments in 2007



## Overview: why and what

### CISAC case

5. Concerns restrictions on “*competition by limiting their ability to offer their services to authors and commercial users outside their domestic territory*”
6. Only to rights concerning satellite, cable and online
7. Identified three aspects
  - a. Membership restriction
  - b. Exclusivity provision
  - c. Territorial delineation

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### 2005 Recommendation

4. Addresses “*collective cross-border management of copyright and related rights for legitimate online music services*”
5. Main impact on “*the relationship between right holders, collective rights managers and commercial users*”
6. Concerns the right for rights holders “*to withdraw any of the online rights and transfer the multi territorial management of those rights to another collective rights manager*”



## Overview: impact

### CISAC case

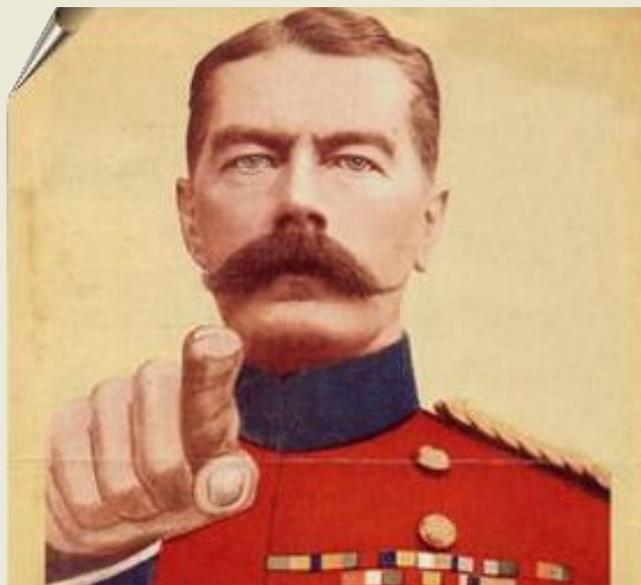
8. Renegotiate reciprocal representation agreements between all 25 collective management societies.
9. Remains to be seen whether new cross-border licensing schemes will be developed
10. Almost all societies have appealed the decision

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### 2005 Recommendation

7. Several multi-national music publishers have withdrawn online rights from collective management.
8. The flow of rights has changed – all authors’ rights are no longer evidently available from collective management societies.
9. Collecting societies need to prove to music publishers that they are the best alternative for national licensing.

## Why is this relevant to you?



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2009 KODA

## Why is this relevant to you?



- Is the CISAC decision and the 2005 Recommendation really only relevant for music authors' rights?  
[artists, film producers, etc.]
- Are other types of collective management in danger?  
[GRAMEX, COPY-DAN, etc.]
- Could other types of geographically delineated licensing agreements be in danger?  
[film producers, tv-broadcasters, etc.]

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2009 KODA

# Timeline



2000

2001

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2005

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2007

2008

**30 November 2000**

RTL files complaint about German collective management society (CMS), GEMA

*RTL had requested a pan-European multi-repertoire license from GEMA. GEMA rejected because it only holds multi-repertoire for Germany*

**4 April 2003**

Music Choice Europe (MCE) files complaint about the CMS umbrella organisation, CISAC

*MCE claimed that the CISAC standard contract was part of a concerted practice to avoid competition between CMS*

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2009 KODA

# Timeline



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**11 March 2005**

Commission sends information request to KODA and other societies

*The Commission gathers information about the factual background of the case*

**7 July 2005**

Impact assessment on a community initiative on the cross-border collective management of copyright.

*The Commission considers to (1) do nothing, (2) support cross-border cooperation or (3) support rights holder's choice.*

*Concludes that rights holder's choice is the best way to encourage cross-border licensing.*

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2009 KODA



## Timeline

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**15 July 2005**

KODA and other societies sends comments on impact assessment

*It is pointed out that the Impact Assessment is based on flawed information and that the Commission ignores the fact that cultural diversity is a driving force in the music business throughout Europe*



**18 October 2005**

Commission DG MARKT issues 2005 Recommendation on "collective cross-border management of copyright and related rights for legitimate online music services"

*The Commission supports rights holder's choice, i.e. the ability for a rights holder to withdraw online repertoire from a collective management society*

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## Timeline

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**31 October 2005**

Denmark's Broadcasting Organisation, GRAMEX and KODA sends joint letter to the Ministry of Culture

*Points out that the fragmentation of repertoire that could result from the 2005 Recommendation would bring the well functioning Danish Extended Collective Licensing schemes in danger.*



**23 January 2006**

CELAS initiative is announced for pan-European licensing of EMI repertoire

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# Timeline

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**2 February 2006**

Based on the two pending cases (RTL and MCE), the Commission issues a Statement of Objections against KODA and all other EEA societies for infringement of competition rules.

*The Commission inter alia argues that the societies have divided the European market into national markets and that such delineation is unjustified*



**11 April 2006**

KODA sends its reply to the Statement of Objections.

*Points out that*

- (1) *the geographical delineation of the reciprocal mandates is based on a assessment of how KODA's repertoire best is handled abroad, and*
- (2) *that KODA has decided to focus on the Danish market and thus, only has obtained mandates for Denmark*
- (3) *that societies will loose repertoire entirely if we are forced to compete on all markets*

# Timeline

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**2 June 2006**

Warner/Chappell's PEDL initiative for pan-European licensing of its repertoire is announced

**14-16 June 2006**

Oral Hearing in the CISAC case

As part of the process, complainants, societies and interested third parties were invited to express their views during an oral hearing



**21 September 2006**

The Commission issues another information request

# Timeline

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**21 November 2006**

The Nordic societies sends a commitment proposal to the Commission.

*The societies aim to find an amicable solution with the Commission and have described a solution that makes Nordic/Baltic cross-border licensing possible. The Commission does not find the proposal interesting.*



**7 January 2007**

Most of the CISAC societies involved in the case sends a commitment proposal to the Commission.

# Timeline

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**9 June 2007**

The Commission decides to put the CISAC commitments in market test

*The purpose of the market test is to receive feed back from the complainants and other interested third parties.*



**July 2007**

The Commission receives many replies during the market test:

- DR stresses its need for a one-stop-shop [like e.g. KODA]
- RTL wants a solution that ensures that essential repertoire is not withdrawn from the system, that all societies could license multi-repertoire multi-territorially and that societies should compete on their administrative costs

# Timeline

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**28 January 2008**

Universal/SACEM announces collaboration for pan-European online licensing of Universal's repertoire

**16 June 2008**

Sony/ATV and GEMA announces collaboration for pan-European online licensing of SONY/ATV's repertoire

**2 July 2008**

Joint letter from Danish public and commercial broadcasters TV 2, SBS, Talpa, Radioerne and Danish Broadcasting Corporation to the Ministry of Culture

*The broadcasters urge the Minister to look into the fragmentation of music rights and the risk of losing the national one-stop-shops for rights clearance*



# Timeline

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**16 July 2008**

The Commission issues its decision in the CISAC case

*The decision is not as bad as expected; in particular the societies are not fined and CISAC is not covered by the decision at all. Also, the decision does not deem territorial delineations illegal but only requires that the societies renegotiate our mandate agreements and thus, reconsider any territorial delineation of the mandates.*

**30 September 2008**

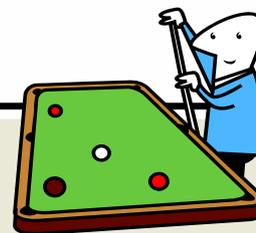
KODA and most of the other societies appeal the Decision to the Court of First Instance.

*The entire Decision is based on circumstantial evidence.*

**21 October 2008**

KODA requests interim measures  
*[which the Court of First Instance rejects on 6 December 2008]*





## State of play

### CISAC case

1. The Decision must be upheld regardless of the appeal process
2. The societies had until 15 March 2009 to implement the decision
3. The Commission is currently reviewing all correspondence and new agreement made by the societies

### 2005 Recommendation

1. Alternative routes for licensing of repertoire from multinational music publishers have been established
2. KODA is negotiating conditions for how to continue to license these rights in Denmark
3. By collaborating with the music publishers KODA aims to re-establish a blanket license which covers all repertoire for licensing in Denmark



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