

This document follows on from conversations in early June 2003 with Mercedes Echerer MEP and various representatives of stakeholders concerned with the collective management of rights in the European Union.

Music Managers, as the fiduciary representatives of their creator-clients in all aspects of the commercial exploitation of their creations, have an important outlook on the collective management of rights; in the music industry we are the only group of professionals who interact with all areas of collective management of rights involving music on a day-to-day basis.

In light of our experience, and at the suggestion of Frau Echerer MEP, we have prepared this document to outline from our unique perspective how we believe the collective management of rights should work at a macro level. It is our hope that we can then work with the various stakeholders in the processes discussed below as follows:

1. To agree the macro-level characteristics of a healthy collective management system for the EU, and;
2. Where the present situation differs from that identified in (1), outline what is required, and of what stakeholder or stakeholders, to reach the desired situation, and estimate how long it would require to make the changes;
3. Agree a process of implementation of which would result in a collective management and rights-administration landscape which would be more efficient for both users, and rights-holders, throughout the EU, based upon what is identified in (1) above.

This is our contribution in respect of step 1.

Characteristics of Healthy Collective Management

1. Collection Societies

1. Governance

- a. Societies should feel the same level of obligation and responsibility to all rights owners, holders, and creators regardless of nationality, within the European Economic Area:
 - i. Societies should be owned and governed directly by, and for the benefit of, the creators and/or owners of the rights that they administer;
 - ii. Where societies decide to allocate revenues to non-administrative and/or non-capital expenses – for example, for cultural subsidies in the country they are headquartered – foreign rights-owners' royalties should be excluded from withholding for these purposes¹;

2. Management of Rights – Systems Issues

- a. Rights-Management systems should use ISO-standards for works identification, acquiring license to use rights, and usage tracking;

¹ Obviously, capital expenses which benefit all rights-holders – systems improvements, etc. – should be borne by all. This point is meant to exclude international rights-holders from subsidising purely national benefits like social subsidies, and/or cultural subsidies which are spent exclusively on the domestic market where the royalty was generated, since rights-holders will likely end up paying these kinds of subsidies when the royalty reaches their 'home' society. Without this type of exclusion "double dipping" could consume large proportions of the entire royalty.

- b. Systems should allow for standardised interfaces to connect to other societies systems so that works usage can automatically pass between societies as works are used worldwide;
 - c. Rights-holders and/or their representatives should be able to interactively, and securely, see all information in respect of use of the rights managed by the society on their behalf;
3. Management of Rights – Licensees
- a. Licensees should be able to acquire licenses from the society in the country where they are headquartered for all other territories in which they wish to exploit the rights they license;
 - b. Licensees should be able to make payment to that one society for all rights they have licenses for – preferably in an automated fashion, via a standard interface.
 1. Collection societies should be in a position to require all licensees wishing to use a work they administer to receive ISO-standard works identification numbers *from the society* when licensees seek permission for commercial exploitation of the work.²
 - i. Each registered work, and all the rights-holders associated with the work and the underlying work(s), should be embedded in all copies of a work which are distributed (for example, in respect of a sound recording, the composition’s works identifier would be imbedded, as well as the works identification code for the sound recording itself) in a way that allows technological systems used to allow works to be perceived to read and report to relevant societies in an automated fashion all usage of protected works.
 - c. Collection Societies should be in a position to compel major licensees to report usage of rights using automated systems and standard interfaces in real or near-real time³. For example:
 - i. Broadcasters should be required, in order to get a broadcasting licence, to implement equipment which reports works broadcast to the relevant collection societies upon each broadcast of each work;
 - ii. Phonogram producers should be obligated to embed rights-management information which can be read by equipment referred to in 3(c)(i) and 3(c)(ii);
4. Relations with Rights-Holders / Owners / Creators

² For example, when a sound recording embodying a composers’ work has been completed, it should be impossible for the physical manufacture to begin before: (1) the use of the underlying work, and the rights-holders of all neighbouring rights, have been identified to the relevant societies, and; (2) the sound recording issued an ISO-standard works identification by the society which administers such works, and; (3) relevant licenses have been issued by the societies administering the various rights in the works.

³ Indeed, as technology improves, smaller users of rights – bars, clubs, etc. – should ultimately also be able to have their usage reports submitted automatically by the devices which are used in such establishments to perform protected works.

- a. Rights-holders should receive distributions monthly, or at most quarterly;
- b. Interest income generated on royalties between receipt and disbursement should be passed on to the rights-owner;
- c. Distributions should provide either summary, or detail, information, at the option of the rights-owner for royalties generated;
- d. Annual summaries of rights usage information should be available as an option to rights-owners that request it.
- e. Online real-time access to works management systems should be available to the rights-holder, owner(s), and creator(s), and/or their representative(s), showing current and prior activity⁴, with minimum available detail as follows:
 - i. Country of exploitation;
 - ii. Type of exploitation⁵;
 - iii. Date of the transaction (when the activity was first reported / licensed);
 - iv. Licensee (if known)
 - v. Royalties undistributed as at the time of the query;
 - vi. Royalties generated for search time period;
 - vii. All information about the registration of the work
- f. Rights-owners should have options as to the conditions under which societies are given rights to manage – for example:
 - i. it should always be possible for a rights-owner to licence on ‘first call’ – or the first call that is made by a potential licensor if it is received directly by the rights-owner or his or her representative;
 - ii. Where a rights-owners’ representative, or the rights-owner themselves, generates licence activity completely without the interaction of the society, the society should not have the right to take administration fees from the royalty generated.
- g. Rights-Holders should be free to direct the payment of their royalties as they wish without arbitrary restrictions.

5. Management of Rights – International Issues

⁴This is particularly important as the information supplied by collection societies is a valuable tool for creators to use in auditing the royalty statements of other users of rights which must account to them, and online access to works registrations is very important to allow for correction of registration errors.

⁵ For example: If a composition is used on a sound recording, played on the radio, television, internet radio, it should be possible to see these flagged differently; performers on sound recordings should be able to see all the recordings on which they’ve performed, and all products or exploitation of that recording which generates royalties, etc.

- a. All societies should be obligated to have reciprocal arrangements with all other societies which administer the same right (or rights) for other territories;
 - b. There should be a maximum total percentage of any royalty which can be consumed by administration fees related to collective management of the right which generated the royalty. This maximum should be set separately for domestic-source royalties and international-source royalties; in the latter case the maximum should apply to the total administration fees charged in aggregate by all societies through which a royalty passes before reaching the rights-holder.
 - c. There should be a maximum amount of time between generation of a royalty and the payment to the rights-holder or holders. As in 5(b), this maximum should be defined for both domestic and international-sourced royalties.
 - d. It should be possible for back-claims for royalties to be made at any time during the life of the particular copyright or neighbouring right, subject to an effective 'statute of limitations' except in cases where there has been systematic irregularities, fraud, etc; in those instances there should be no limitation except life of copyright.
6. Transparency
- a. Information about the activities of all societies should be readily available both on the internet and via more traditional means of communication to those whose rights the society administers. At a minimum, this should include the following
 - i. Administration costs (in currency, as a percentage of royalties received, broken down by types of income);
 - ii. Budgets;
 - iii. information on extraordinary capital costs;
 - iv. average time to distribute for domestic and foreign royalties;
 - v. Percentage of total royalties received which are not directly attributable;
 - vi. Breakdown of the source of non-attributable royalties by amount and generation source;
 - vii. Breakdown of foreign royalties which are non-attributable, and/or non-distributable, and/or returned – by percentage of total non-attributable, clearly showing country of origin;
 - viii. Average time from granting of licence to receipt for payment (for non-blanket licences), broken down by class of licence and by non-attributable and/or non-distributable income;

- ix. contact points for the various departments which rights-owners, or licensees, might need to reach;
- x. Contact points for disputes arising in relation to licensees or licensors' interaction with the society;
- xi. Rules for the handling of disputes nationally and internationally should be clearly stated and enforced by the management of the societies;
- xii. The use, and the principles of, allocation of various types of non-distributable, non-attributable, and returned monies (in other words, 'Black Box' revenues).

All financial information should be available by quarter and by year for the current year and the previous several years. In addition, variance from previous years for the various categories of financial information should be shown, along with explanations, where relevant, for material change in each area.

Current year information and up-to-date contact details as referenced should be transmitted with all distributions to all rights-owners.

2. Legal Environment

- a. Provisions affecting the rights of rights-holders should be harmonised, especially in respect of:
 - i. National Treatment;
 - ii. Scope of Rights;
 - iii. Beneficiaries of Rights;
 - iv. Exceptions to exclusive rights;
 - v. Remedies for violations;
 - vi. 'Blank Tape Levy' and similar charges (the rules of distribution for which should be standardised, and subject to national treatment; distribution should be to both foreign and domestic rights-holders where the methodology for calculation would include both.⁶
- b. Collection Societies should be able to obligate the use of rights-management information incorporating ISO standards on major users of rights, such that blanket licenses can be reduced and royalties calculated

⁶ For example, if mechanical usage of compositions of music is used for CDs and Tapes, all mechanical usage should be used as the calculation basis. In addition, it should be easy to find out which countries have these types of charges, what their basis is, how they are collected, and distributed.

based upon actual rights usage. Major users of rights should include, at a minimum:

- i. Broadcasters, Webcasters, and other electronic distributors – see (3)(d) above for an example;
- ii. Organisations with assigned rights of reproduction (phonogram producers are a good example), especially where the reproductions form the basis for ancillary uses which should, themselves, generate royalties (use of sound recordings by broadcasters being a good example).