The Commission proposed in July 2012 a Directive which contains general provisions on collective rights management for all sectors, and specific provisions for multi-territorial licensing of online music.

Looking at the current state of the digital music market, although it is growing steadily, consumers still generally do not have broad access to different repertoires. There is still only one service provider active in all EU Member States (MS). And prospective new multi-territorial service providers continue to face a maze of licences and collecting societies in each MS. At the same time, there is a lack of transparency and of timely and appropriate remuneration schemes for rightholders.

EU institutions have tried to tackle these issues in recent years, in particular in the Commission's 2005 communication and the 2008 CISAC decision which dealt with multi-territorial licensing.

The appropriate level or kind of competition amongst collecting societies which would maintain cultural diversity while providing fair and reasonable conditions for rightholders and users remains much disputed.

While not foreseeing a single entity, the proposal aims to foster competition amongst different entities for multi-territorial licensing.

Several stakeholders have expressed support for the proposal, but it has also been criticised.

Context

The digital music market in the EU is growing but the sector still faces a number of challenges. As a result, there is currently only one online music service available in all 27 EU MS, and only 13 other services target multiple European markets. In comparison, there are 21 music services in the USA.

Market entry for new services

For service providers, one major problem is that fragmentation of rights raises the costs of selling to EU markets. This is due to the large number of organisations which administer different rights on behalf of their holders.

The KEA consultancy estimated in a 2012 study that an online music platform which wants to provide multi-territorial services in Europe would have to invest at least €230 000 in ex ante transaction costs to obtain the licences to market a catalogue of more than one million titles. In addition, ex post transaction costs are increased by the maze of licences, with collecting societies (CS) unable to identify works licensed and by delays in payment and invoicing.

Transparency and remuneration for (foreign) authors

According to the impact assessment produced by the Commission for its July
2012 proposal, CS generate a significant share of revenues from non-domestic works, although only approximately 10% of direct members of CS are foreign rightholders. Such foreign revenue is handled and distributed with different levels of transparency and governance in each MS. The Commission also observes that many royalties which are collected by the CS on behalf of rightholders accumulate in the CS, and that transparent and efficient distribution is missing in several cases.

Access for end users to "their" repertoires
According to a 2009 EP study, the market had not by itself ensured broad access for European citizens to a variety of repertoires. In 2011, approximately 13 million EU citizens lived outside their MS of origin. This estimate does not include people living close to a border or only temporarily abroad. Whilst such people have an interest in accessing the repertoire of their home country and using familiar services, many more citizens want to access repertoires from outside their home MS.

EU action to date
In recent years, the Commission and the EP have called on several occasions for better conditions for rightholders and users.

2005 Commission recommendation
The recommendation on the management of online rights in musical works stated that authors should be free to choose the CS managing their rights, independent from nationality or residence. It also challenged reciprocal representation by CS.

CISAC decision
The Commission decided in 2008 that 24 CS and CISAC (International Confederation of Societies of Authors and Composers) had infringed competition law. One of the main purposes of CISAC is the promotion of mutual representation amongst CS in their respective territories via model contracts. These reciprocal representation agreements meant in practice that, for example, a provider who wanted to offer services on German territory would obtain from GEMA, the German CS, a blanket licence covering all repertoires around the world for which GEMA had a representation agreement.

According to the Commission, certain clauses in these agreements restricted authors in their choice of CS and prevented CS from offering licences to commercial users outside a given territory.

The Commission also found a mutual limitation of the mandate of each CS to the territory of the other societies with the result that de facto only one CS per territory could grant multi-territorial licences for the use of music in that country. CISAC and 22 CS have challenged the Commission's decision, and the case is currently pending at the General Court of the EU.

After holding a public hearing on the Governance of Collective Rights Management in the EU in 2010, the Commission concluded that governance and transparency standards of CS still needed to be improved and that a framework to facilitate online licensing of musical works needed to be created.

Impact of EU developments on CS
The 2005 recommendation and the CISAC decision challenged reciprocal representation by the traditional CS. As a result, new
entities representing repertoires emerged, repertoires were consolidated and standard setting initiatives were initiated.

It should be noted that besides CS handling rights for authors and/or their publishers (usually one society per MS), there are also CS for performers and record labels, (one or two per MS). In practice, many record labels administer performers' rights themselves, together with their own rights, or through aggregators (which provide technical copies and act as online distributors).

New entities
After 2005, the Anglo-American repertoire was withdrawn from the traditional CS and new rights-management entities were created to deal with multi-territorial use. Many of them are managed by traditional CS (e.g. CELAS, created for EMI in 2006, managed and owned jointly by GEMA and PRS, and DEAL, created in 2007 for Universal and owned by SACEM).

For deals with large online platforms, aggregators use MERLIN, a joint licensing entity for independent record producers, which provides blanket licences for multi-territorial use.

Consolidation of repertoires
Besides such single repertoire initiatives, CS have also consolidated their repertoires for multi-territorial use:

Armonia provides for the licensing in a single bundle for online and mobile exploitation of the national repertoires of the French, Italian and Spanish CS (SGAE, SACEM, SIAE), together with the Anglo-American repertoire of Universal Music Publishing, and Latin works of Sony/ATV and Peer Music.

The idea for a Global Repertoire Database was initiated at the Commission's Online Commerce Roundtable in 2008. The database should provide information on ownership or control of the global repertoire of musical works and be openly available to songwriters, publishers, licensors and licensees. Participants include the four major publishing groups, several CS as well as other organisations. The database is expected to be operational in mid 2014.

CISAC's international Common Information System (CIS) aims to standardise information exchange between collecting societies in order to improve their efficiency.

The Claim Confirmation & Invoice Details (CCID) standard provides a common format for files accompanying invoices. Participants are GEMA, SACEM and PRS for Music (CS), the licensing hub Armonia and the CELAS, PAECOL and DEAL agencies.

All these initiatives aim to facilitate rights management. However, repertoires remain fragmented and there is no common standard in which all entities participate.
Views on competition and licensing

Competition amongst CS

CS in the EU are usually legal or de facto monopolies providing services covering one specific group of rights and rightholders per MS.

A monopolistic position implies that there is no choice for users and rightholders, and not necessarily any motivation "to do better" since there is no other service provider.

However, monopolistic CS may also reduce transaction costs for users and rightholders by providing a large repertoire with blanket licences. They also constitute trade unions for smaller artists, and may spend part of their budget on cultural purposes and supporting niche repertoires.

Scholars therefore dispute which model is healthy in order to maintain cultural diversity while providing fair and reasonable conditions for rightholders and users.

One proposal is a competition policy for CS based on "creative competition", promoting creativity in the sense of dynamic competition, rather than merely based on price and quantity (allocative efficiency) of existing markets. It is suggested that competition purely based on the pricing of licences leads to a race to the bottom and erodes the value of copyrights. The IFPI simulcasting agreement is used as an example of this alternative approach.³

Others advocate a coherent licensing framework, including binding rules on good governance to allow CS to compete on a level playing field.

Others observe that the Commission’s recommendation and CISAC decision will lead to the fragmentation of repertoires and that recent pan-European mono-repertoire licensing models of the major multinational music groups could affect the economic sustainability of national CS.

Alternative licensing models

In the US, two licensing models are in place for some online uses. Statutory licences are provided by SoundExchange for streaming sound recordings (performance rights). As a one-stop shop with fixed rates, the licensing process is speeded up but the pricing of licence fees is questioned.

For download and on-demand streaming (where files are saved on a hard drive, in contrast to live streaming), only mechanical rights are necessary in the US. The US Copyrights Act provides for a compulsory mechanical licence with fixed rates agreed by industry participants. However, this does not cover record producers' rights and these rights must still be negotiated individually.

Commission proposal

In July 2012, the Commission proposed a Directive on collective management of copyrights and related rights⁴ and multi-territorial licensing of rights in musical works for online uses in the internal market. It is the first EU framework for collecting societies.

The Directive contains two layers. The first, general layer addresses all CS established in the EU, requiring:

- improved management of repertoires,
- quicker payments to members,
- better indications of the revenue resulting from the exploitation of rights, and
- more information provided directly to rightholders and business partners (e.g. other CS) and an annual transparency report.

The second layer deals specifically with multi-territorial licensing of online music rights and requires that:

- CS demonstrate the capacity to process and monitor the data in a sufficient and transparent manner,
- the information on the multi-territorial repertoire is transparent, up-to-date and accurate,
• the actual use of online works is monitored by CS and that online service providers can report the actual use by electronic means, 
• rightholders are paid accurately and in a timely manner, and
• CS which grant only national licences should request representation by CS providing multi-territorial services. If no representation takes place, rightholders with contracts with a national CS can grant multi-territorial licences themselves.

Concerning the last point, the Commission expects that this structure will lead to multi-territorial licensing by a number of EU CS with the capacity to fulfil the minimum standards to provide multi-territorial licenses required in the Directive. Therefore, the Directive does not foresee a monopolistic EU-wide one-stop shop for online music licensing but intends to foster competition amongst CS. As a result, it is expected that the standards of governance and transparency of CS will be improved and that multi-territorial licensing in the music sector will be facilitated.

Stakeholder's views on the proposal

GESAC, which represents EU authors’ CS welcomes the proposal and underlines the need to improve the cross-border management of digital music rights. CISAC also welcomes the proposal, underlining that members have already adopted voluntary standards which meet or exceed the Commission’s criteria.

The Featured Artists Coalition (FAC), criticises the possible retention of revenues for the exploitation of works (with the exception of online music) by CS for up to 24 months, and the possibility for CS to keep non-allocated royalties if not claimed within five years. In an open letter, Pink Floyd, Radiohead and other artists raised the issue that EU CS today keep “substantial amounts of money” on their books, pending distribution. KEA sees difficulties in enforcing the rules on repertoire identification and data processing in a meaningful manner.

Further reading/Main references


Licensing music works and transaction costs in Europe / KEA, September 2012, 71 p.

Disclaimer and Copyright

This briefing is a summary of published information and does not necessarily represent the views of the author or the EP. The document is exclusively addressed to the Members and staff of the EP for their parliamentary work. Links to information sources within this document may be inaccessible from locations outside the EP network. © European Union, 2013. All rights reserved.
Annex: Licensing for a service accessible in multiple territories

Publishers’ and authors’ rights

Record producers’ Rights

Authors

Major publishers

Performers

PRS

GEMA

SIAE

SGAE

STIM

SACEM

MERLIN

Major record producers

Independent record producers

Aggregators

Digital warehouse

Music service provider

Smaller local Collecting societies Territory 1

NCB*

Armonia**

Captions:

Usual practice

Service often used

Service seldom used

Data Source: KEA "Licensing music works and transaction costs in Europe", 2012

Endnotes

1 A rightholder is any natural person or legal entity other than a CS that holds a copyright or related right or who is entitled to a share of the rights revenue from any of the rights managed by the CS.

2 EP Resolutions: On 15 January 2004, the EP called for a Community framework for CS in the field of copyright and neighbouring rights; on 13 March 2007, the EP raised concerns that the Commission’s recommendation may impact cultural diversity and local repertoires; on 25 September 2008, the EP criticised the Commission’s refusal to legislate and underlined the need for legal certainty.


4 While copyrights are vested in authors, related rights are vested in performers, phonogram (i.e. record) and film producers.

* For Baltic and Nordic repertoires (making available and reproduction rights).

** For French, Italian and Spanish repertoires (making available and reproduction rights).