

Outline of ECSA Submission to Public Hearing on the Governance of Collective Rights Management in the EU 23rd April 2010

1. Introduction:

The European Composer & Songwriter Alliance represents writers of music of all genres across Europe. Our comments will be confined to the music industry.

Authors' Societies have been around for almost 100 years. At their best they provide efficient, cost effective and transparent service to authors, users and society as a whole.

Model work very well offline – blanket licences.

Start with statement of the obvious – but a very important one – without creators there is no creative content to fill the digital pipes provided by ISPs, MSPs or broadcasters. All rights flow from creators (and in many EU jurisdictions are inalienable from them) and although they may licence or assign those rights to publishers or the collecting societies themselves only writers can speak for writers. Whatever they may say representatives of Authors' Societies and publishers can only speak for themselves and their views should not necessarily be taken as those of the creators who underpin the music industry.

Authors' have by far the biggest investment in how their rights used – main financial (as well as moral) beneficiaries from Authors' Societies .

2. Dangers of Legislation – A blunt tool:

History of EU interfering with Authors' Societies is not totally happy – the implementation of the 2005 Commission Recommendation led to the apparently

unforeseen consequence of fragmenting repertoire and making online licensing more complicated. The voice of writers was not listened to.

Legislation is a blunt tool and so any proposed legislative solution must be subject to the most rigorous consultation and impact assessments. Danger of over legislation – trying to fix things that are not broken – CISAC Case, contrast this with:

“There is a priority for reform: grounded on sound economics, not just legal concepts and concentrating on solutions that foster innovation in real life.”

Charlie McCreevy

Recent engagement by the Commission with Author’s Societies do not give the impression of joined-up thinking with, on the one hand, calls for one-stop shops for pan-European licensing and on the other claims of monopolistic collusion when attempts are made to aggregate repertoire.

3. Importance of Authors’ Societies to Creators

For writers of music Authors’ Societies are vital. Authors are the main interested parties in this debate and any system must accommodate their requirements as they are the originators of the works which are the heart of the digital revolution. Authors’ Societies provide:

- i) Transparency – should be run on not for profit, non conflicted basis so all income, less necessary costs, can be distributed according to rules which are open to all, equal and non-discriminatory.
- ii) Certainty of repertoire – can encourage licensing of new services through comprehensive licences
- iii) Protection of Copyright/Authors’ Rights – hard for the individual to do.
- iv) Encourage Investment in copyright databases – leads to efficiency of licensing and distribution.

All of the above advantages are underpinned by the fact that, in Europe, writers assign their performing right (and in many countries their mechanical right as well) exclusively to the Authors' Society of their choice.

It is impossible to over-estimate the importance of this exclusive assignment to writers.

Recently major publishers, who speak for themselves on this issue not for writers, have attacked the exclusivity of this assignment. They must not succeed.

If they do:

- i) Lack of Transparency
- ii) Lack of control and choice
- iii) Rights grab
- iv) Reduction of cultural diversity – increased domination of Anglo-US repertoire – Art 151 (4) of treaty “the community shall take cultural aspects into account in its action under other provisions of the treaty, in particular to respect and promote the diversity of its cultures”
- v) Decline of collective management of rights

4. What Writers Want from the Commission:

Whilst Europe's writers support the idea of collective management of rights as the best way forward, we appreciate that not all Authors Societies, even within the EU, are paragons of transparency, fairness and efficiency.

The Commission can play a useful role in:

- i) Setting minimum standards for constitution and governance of Authors' Societies – including writer/publisher representation and conflicts of interest so that all societies are brought the standards of the best.
- ii) Establish minimum standards to qualify as a CMO
- iii) Harmonise and simplify rules relating to the oversight of Authors' Societies – including rate setting tribunals

iv) Encourage major right holders to engage in re-aggregation of rights

5. Users have legitimate expectation that licensing will be efficient and fair – but do those expectations mean must have one stop shop – “regional hubs” – balance twixt efficiency and cultural diversity – have to accept co-opertaion not always anti-competitive.