



Brussels, January 2010

**ICMP Submission in response to European Commission
Reflection Document “Creative Content in a European Digital Single
Market: Challenges for the Future”**

I am writing on behalf of ICMP (International Confederation of Music Publishers), the international umbrella trade association representing the interests of the music publishing community globally. The constituent members of ICMP are national, regional and international classical and popular music publishers' associations from Europe, North and South America and Asia-Pacific. Included are the leading independent international, regional and national music publishers, as well as the four multinational music publishing companies.

ICMP is grateful for the opportunity to respond to the Commission's Reflection document on "Creative Content in a Digital Single Market: Challenges for the Future".

COPYRIGHT IS THE BASIS FOR CREATIVITY

ICMP agrees with the assertion in the Reflection Document that "Copyright is the basis for creativity". In this respect, we believe that the existing substantive legal framework established at EU level over the last couple of decades is a robust and flexible one. It provides for the needed balance with the public interest, it recognizes the different creative sectors and the roles played by the various participants in the creative chain; it provides for incentives to invest in creativity and to further develop a rich cultural environment we can all be proud of.

CURRENT CHALLENGES

We do not think that territoriality of copyright is an obstacle to the Single Market or that a Copyright Code is an essential objective to be pursued in order to reconcile copyright and internal market objectives. A copyright Code would of course be a noble and useful objective, but it will require much time and commitment. Whether the EU decides to pursue such an ambitious idea or not, we think steps could be taken already to facilitate voluntary cross-border licensing. What matters is the practical opportunity for cross-border licensing and an on-going effort in removing any additional obstacles so that voluntary cross-border licensing can take place as smoothly as possible.

As far as availability of copyrighted works across borders is concerned, we feel that tremendous progress has been made at EU level in terms of fostering multi-territorial and pan-European licensing of musical compositions thanks to the 2005 Recommendation on *'collective cross-border management of copyright and related rights for legitimate online music services'*. Since the adoption of the 2005 Recommendation, new innovative multi-territorial licensing schemes were successfully launched which would not have seen the light of day otherwise.

More can now be done. We particularly commend the results of the *Online Commerce Roundtable* set up by Commissioner Neelie Kroes and the agreed '*General Principles for the online distribution of music*' published on 19th October 2009. Such principles include commitments to further explore ways in which efficient, fair, open and transparent licensing processes can offer music across borders to European consumers while respecting rights owners' choice and guarantee adequate royalties to rightholders. The Principles also refer to the need to consolidate and make available data aimed at identifying rightholders (see below under B)

ICMP members have worked with collecting societies for a very long time and fully recognize the value and importance of their role. ICMP continues to fully support collective management in so far as it is fair, transparent and accountable. We believe that additional hurdles exist in the way of efficient, transparent and accountable collective licensing of music. For the purpose of this consultation we would point at remaining difficulties in relation to **Collective Management (below under A)**; and the merits of fostering the B) **Availability of Information allowing the identification of Rightholders (below under B)**.

Last but not least, **IP Theft (below under C)** needs to be recognized as the single most important challenge facing the content sector today. A more convincing enforcement policy is urgently needed to foster a legitimate on-line environment for content in Europe.

A) COLLECTIVE MANAGEMENT

The work to achieve the objectives set out in the 2005 Recommendation is only half done. To complete the work we believe it is pragmatic commercial and logical to recognize that rights owners (composers and publishers) should have the flexibility and right to decide how their rights (both reproduction and performance) are made available to one or more or no collection societies, whether by way of assignment or otherwise.

Additionally, ICMP would favor a general review of collective management to ensure efficiency, transparency and accountability, objectives identified by the General Principles for the On-line Distribution of Music as key to the healthy development of on line music services in Europe.

B) AVAILABILITY OF INFORMATION ALLOWING IDENTIFICATION OF Rightholders

The General Principles following the Online Commerce Roundtable crucially point out the need for a central Global Database in order to consolidate information relating to existing rights ownership and the need for it to be updated and maintained. Such an

effort would benefit all stakeholders and clearly ease users' efforts in seeking licences. As this is clearly a project that will take some time, the principles also reflect the agreement by which users would benefit from near-term solution(s) which would facilitate interconnection between the existing rights ownership information systems.

C) ADDRESSING IP THEFT

Massive illegal downloads are mentioned in the reflection document as a phenomenon that can jeopardize a single digital market. We know that it already does jeopardize it. We also know that massive illegal downloading while a crucial part of the problem, is not the only issue that needs addressing. Commercially driven platforms that aim at facilitating IP theft on line on a large scale are often based in Europe.

It is our view that the current challenges in the European Single Digital Market are mainly due to the lack of an updated Pan-European on-line enforcement policy backed by adequate resources to tackle this growing problem. IP protection needs to be recognized as a key engine to our economy, a job creator and a necessary driver to innovation. As distribution of creative content undergoes profound and continuous transformation thanks to technological developments and consumer demand, so should policies aimed at dealing with the dark side of development, illegal trade. This way, we will help unleash the full potential of the information society.

I remain at your disposal for any further information or clarification.

Alessandra Silvestro
On Behalf of ICMP