



INTERNATIONAL
CONFEDERATION
OF MUSIC
PUBLISHERS

Questionnaire for representative bodies and umbrella associations of the music sector active at the EU level; Study “Collecting societies and cultural diversity in the music sector”

ICMP response on behalf of music publishers

ICMP welcomes the study on collecting societies and cultural diversity in the music sector. The preservation and promotion of cultural diversity are among the founding principles of the EU.

ICMP represents the music publishing business, a creative industry which supports composers, songwriters and lyricists. Music publishers find new music writers, support the writing process and promote the music. They get the music to the public and make sure that the public will continue to listen to it over time. The ultimate goal of music publishers is to foster and promote high quality music for different audiences in Europe and abroad.

At the crossroads of art and commerce, music publishing has developed in Europe as an integral part of Europe’s different cultures and plays a key role in sustaining and promoting cultural diversity. Indeed, it is the very purpose of music publishing to invest and support culturally diverse music in a way that is sustainable in the best interest of the diverse music writers who create the music and of the different publics who like the music and are willing to pay for it. Specifically, a music publisher will support and promote many different writers and songs over time, while only a fraction of these may ultimately become a success. The success of the music publisher is that of his/her songwriter.

At a time when Europe is confronted by many economic challenges, cultural diversity has been recognised as a catalyst for innovation and creativity which together constitute the main and most important assets for growth. Creative businesses such as music publishers who invest in creative content must therefore be able to source, develop and promote good quality music and to negotiate its use as its effective value. The recognition of this value is key to sustaining cultural diversity in music.

1. On the basis of the information you possess, please describe the basic characteristics and features of the music industry and the music market in the following European countries: Belgium, Germany, Greece, Italy, Spain and the UK.

The concept of European cultural diversity is built on two distinctive ideas which apply with full force to the music industry and market – on the one hand there is the presence of diverse cultural expressions and content, while on the other hand there is an assumption of shared history and common roots. These two ideas are reconciled in the EU motto of ‘unity in diversity’. This concept of cultural diversity is evidenced by the responses from the different European countries surveyed, whose markets simultaneously show similar and distinctive characteristics; cultural diversity within the individual countries is also present.

Belgium

Belgium lies at the crossroads of the Anglo-Saxon and Latin cultures and this is reflected in differences between the Flemish and French-speaking music markets. Local repertoire is more developed in the Flemish market, given the larger market share of ‘official’ radio (70%) and TV (40%). In contrast, figures in the French speaking part are more in favour of private stations, where French TF1 is market leader, followed by RTL. Local repertoire is underrepresented in airplay compared to its market share.

Germany

Cultural diversity in Germany in all its facets is reflected by the strong presence of German-speaking music alongside the formidable Anglo-American repertoire. As in the past, the consumption of music in Germany is rocketing and continues to grow. However, those creating the music are increasingly excluded from the way the music is used.

There is a distinct market in the area of light music for the Anglo-American repertoire. First, this can be attributed to the global success of pop and rock music, the proponents of which came from the USA or England. The 50s were synonymous with the name Elvis Presley, while the Beatles reigned in the 60s. On the other hand, it is also related to the political relations of Germany, which largely explain the popularity of this “rebellious music” in Germany. After the horror of the Nazi dictatorship and following the 2nd world war, times have been particularly hard for the German-speaking light music industry which has faced international competition since the 1960s.

In recent years, German produced works have re-established themselves with a vengeance in the light music domain. This revival is not limited to German hit songs and folk music, but extends to the entire pop and rock music scope. Here, the market share of German music shows continuous growth. The market share of German productions in the German charts is around 50 % for singles and 40 % for albums. The Internet and facilitated digital copying mean that although music is still enjoyed to the same extent as before, people no longer pay for it - for example, with peer II peer and business models such as You Tube that do not allow for the compensation of creators -.

It is important to emphasise that as well as the German market for light music, there is also a global market for classical as well as serious contemporary music, which is coming to the fore worldwide. This is evident, for example, in the domain of the orchestras in Germany, which seek out their global peers.

Moreover, Germany is home to a lively and multi-faceted concert scene covering all types of music, which started with gigs held in small clubs and moving all the way up to large-scale performances including concerts and major open air events.

Music also plays a major role in radio. This applies equally for broadcasting services offered under public laws as well as for private stations. In particular, for music broadcasts aired on public service TV, the overwhelming dominance of German-speaking music is in evidence, especially in the area of so-called popular music.

Greece

In Greece, the ratio of local repertoire to international repertoire is 70% - 30%. Physical product continues to have a significance, mostly with magazines & newspapers give-a-ways (premiums). Digital has not been notable until now and income mostly concerns mobile networks (ringtones/ring backs/downloads etc.). Everything else is non-existent. Piracy remains a huge problem.

Italy

There are almost 100 publishing houses in Italy, a relatively large number given its market size. However, eight major companies make up around 70% of the turnover of phono-mechanical rights, four of which are multinational and four of which are Italian. With regards to performing rights, the same eight companies cover nearly 60% of the total proceeds.

The "traditional" phonographic market continues to deteriorate. In 2007, the total amount of physical recordings' sell-in was € 196.815 which is 18% less than in 2006 and the digital market remains stagnant: € 14.524 in 2006 and €14.618 in 2007.

The Italian collecting Society SIAE collected € 426.415.851 for all music rights in 2007. It should be noted that SIAE has been beset by problems in recent years, reportedly losing substantial monies as a result of the collapse of Lehman Brothers. It has not yet been established whether any of this money relates to publishers.

UK

Statistical information on the music industry can be gathered from a variety of UK government publications and from trade association websites including the MPA (www.mpaonline.org.uk) and the BPI, British Recorded Music Industry (www.bpi.co.uk). The BPI publishes an annual statistical handbook which gives detailed data on the recorded music market.

The music industry is a vibrant contributor to the wider creative industries in the UK. The UK music market is the third largest in the world after the United States and Japan. The UK is also in the unique

position of being a substantial exporter of its music and indeed the UK is the world's second largest source of music, again after the United States. The industry employs approximately 120.000 people engaged in a variety of aspects of our industry – retailing, production, publishing etc.

2. Please describe the role of the collecting societies established in the above mentioned countries as regards the administering of the rights of authors and other rights holders. How would you assess the services they provide?

The role of collecting societies in administering rights of authors and other rights holders is acknowledged as necessary and important. It must however be noted that from the perspective of the rights owner, one of the primary purposes of collective licensing is to carry out functions that would not be practical (either for the publisher or for the licensee itself) for the publisher to carry out, for example the specific licensing of rights for broadcasting or the licensing of venues where music is performed or played. In this regard therefore the collecting society is a virtual extension of the publisher's back office and it is therefore critical that collecting societies do not incur costs and incur expenses that are disproportionate or not connected to the revenues that they generate on behalf of their members. There are upwards of 27 different collecting societies in the EU/EEA which all to a greater or lesser extent carry out the same data management, licensing and distribution function. For example the annual overhead for PRS for Music (UK collecting society) is in the region of £70 million per year. This type of overhead will be replicated in other European territories (where the cost to earnings ratio can vary from 11% to 25%). What is clear is that there is a substantial duplication of costs, for example IT and systems costs which needs to be streamlined going forward.

Every Euro saved in bureaucracy, administration and multilateral territorial rights negotiation puts another Euro back into the creative pot for the benefit of creators.

We do not underestimate the difficulties in rationalising the existing collection society structure across Europe. Nonetheless problems do persist which need to be tackled. These include the wasting of IT expenses and other overheads due to lack of agreement, lack of transparency/ governance and inflexible and outdated membership agreements. The management of cost to earnings revenue by collecting societies is also a serious issue. Disparities between the different countries are starting to emerge, as outlined by the responses below. Also see Appendix 2.

Belgium

Contacts between the publishing community and SABAM, the Belgian collecting society, have improved over the past few years with meetings organised on a regular basis to find solutions to all kinds of problems. This does not mean agreement on everything, far from it, but there is a more open attitude now which did not exist before. The market situation is likely to encourage further improvement of relations and give a greater weight to the publishers. For the moment publishers represent 4 seats on the board, which is 1/ 3rd of the music seats. However, as there are also 4 non-music members, in total the publishers only have 4 out of 16 seats. As far as administration is concerned, in general there are no major complaints. There is easy access to staff, mails are followed up quite rapidly and much of the work is done electronically.

Germany

Collecting societies have been present in Germany for already well over a century. Intellectual property can only be protected via the medium of a strong collecting society, since individual rights management would not be practical under such circumstances. The existence of collecting societies in recent decades is evidence of the fact that their establishment was not only a sensible move, but one that was urgently needed. Concerns were also raised in the same way by lawmakers in Germany, who, in the mid 1960s, introduced the law regarding collecting societies, which was a world first, and has applied increasingly stringent legislation for the protection of copyright, especially in recent years, so that specific rights and claims for remuneration could only be exercised by collecting societies.

GEMA is managed by the general assembly, which is the medium via which it regulates its own internal affairs. Members include music authors (composers and songwriters) and music publishers. The function of GEMA is based on many principles. One is the merit principle, according to which each entitled individual shall be remunerated based on the consumption of goods for which he or she was responsible and based on their contribution to the same. GEMA also upholds the principle of cultural sponsorship, as well as that of solidarity. These principles help ensure that consideration is given to the entire scope of achievements of the author and that no author, however small, is excluded which ultimately also encourages and supports cultural diversity.

The presence of such collecting societies is also advantageous for users, who can access a one-stop service encompassing a specific tariff structure, without having to individually negotiate with different authors and music publishers. This has the added advantage for users of ensuring most musical works are sold at a uniform price, and thus remain equal, whether or not the musical titles in question relate to particularly successful hits.

Music publishers are predominantly satisfied with the service provided by GEMA. However, a number of issues still require improvement. These include

- Board representation (only one major is allowed to sit on the Board at any given time),
- transparency (we do not get complete transparency into various funds that they hold),
- member relations (we do not get consulted but told),
- commercial approach (despite signing up to PEDL, they are inconsistent as to the reasons they are not licensing)

Greece

The Collecting Society in Greece collects all kinds of rights (Mechanical/Performance/Digital). In most cases it collects digital income even without having an agreement for digital with the local publishers. While it does a good job with regards to collecting, there is no transparency and no mechanism for control. Publishers are not accepted on the society board. They are not involved in the negotiations that the collecting society has with the users or even informed about these and therefore have no way to protect the right-holders' interests.

Italy

The law governing authors' rights in Italy is the 1941 law (with several amendments). This law identifies the collecting society SIAE as the only and dominating public and economic agency charged with collecting authors' rights. SIAE manages the collection and division of almost all types of rights and is divided into the following five areas:

- Music: repertoires of all types of music, except for opera
- Lyrics: opera repertoire
- DOR: theatre and television shows
- OLAF: literary works and visual arts
- Cinema: scripts, films, television series, etc.

When it comes to collecting rights, SIAE is responsible for music, including lyrics and operas. It is also responsible for drama, writings and books, pictures, photos and art.

Music represents more or less 80% of SIAE's global collecting. To give an example, from January to November 2008 music rights realised an amount of € 438.118.280 out of € 532.495.396 total rights. The collecting procedures need more speed and efficiency, distribution is often slow and inaccurate with little scope for influence by publisher members.

UK

There are a variety of collecting societies operating in the UK, the principal ones are:

- PRS, the Performing Rights Society, which licenses and distributes royalties from the exploitation of the performing rights/communication to the public right
- MCPS, Mechanical Copyright Protection Society, licensing music for reproduction on records, DVDs etc.

The above two organisations are joined in an alliance called PRS for Music.

- PPL, an organisation collecting performance income on behalf of record labels and performers

PRS for Music is one of the leading and key collecting societies operating within the EU. It generated record revenues in 2008 of over £600m. Both limbs of PRS for Music, PRS on the one hand and MCPS on the other, are managed by boards comprising both publishers and composers and the management of the organisation is closely responsible for the activities of the collecting society on behalf of its members.

In terms of transparency, efficiency of accounting and board representation the UK is one of the better societies, although there is room for improvement. Specifically, there is more scope in the UK for publishers to manage the cost to earnings revenue for themselves and for their composers through their representation on the Boards of PRS for Music.

3. How would you qualify the present system of collective rights' management for both the online and offline environments? Does it cater for a fair and balanced representation of the interests of all categories of rights holders and users of music content? Does it sustain and promote cultural diversity?

There is general acceptance that it is not the role of collecting rights management structures to sustain and promote cultural diversity. Their role is solely to collect and distribute monies on behalf of rights holders, in accordance with actual usage, as cheaply and quickly as possible to allow publishers to continue to invest in culture.

The promotion of culture through subsidies should be done voluntarily or at governmental level. It is not appropriate for collection societies to "tax" rights holders, especially where those rights holders are not represented in the decision making process. Furthermore, many commercial publishers will not be able to continue to invest in talent in places where they compete with subsidised rights.

Central publishing of licenses in the offline domain on an EU level comes in the form of the so-called centralised licensing. Centralising Societies have been able to grant wider than single territory licences with the societies entrusted with the rights for an acquiescing territory. Such acquiescence is based on the centralised license being granted in principle on the then prevailing terms and conditions for that territory.

Belgium

Fragmentation of repertoire in Belgium is a stumbling block to full online exploitation, as users must make several agreements for its use in one territory. This risks less remuneration for local repertoire and also lessens the possibility to export. The positions of major and indie publishers diverge on this point, to the great advantage of the users who use this as an excuse to block payments.

Germany

To answer this question, the distinction must initially be made between the centralised distribution of licenses in the online and in the offline domains. In the former there remain various distortions and difficulties.

The centralised distribution of licenses in the offline domain has generally been a satisfactory success for music publishers. At GEMA, there are distribution schemes developed by the members, in collaboration with the administration, which are intended to ensure a fairer and more balanced remuneration system of the various financially interested parties involved.

For the licensing of record companies, the net individual remuneration principle prevails, whereby the proceeds of revenue are paid to authors and rights holders based on the concrete and actual usage of the material. Such a form of remuneration can be deemed to be fair and balanced and takes into account cultural stimulation.

Greece

As set out in the Greek response to question two above, the society collects all rights. Publishers are not in a position to judge if the society offers a fair and balanced representation since they are not involved in any way in the process. Publishers do not have the means to check or protect the right holder's interests under the current system.

Italy

The system of rights management through "traditional" channels is satisfactory, especially for public performance rights. With regards to the management of online rights, SIAE is currently modernising and finding new ways to improve the system, which is long overdue and much needed.

In terms of "Cultural Diversity", with the support of the Italian Minister of Culture, Italy joined the national UNESCO committee and is conforming to the general demands of other Member States. There are no other concrete initiatives. We believe however that no collecting system may in itself sustain and promote cultural diversity.

UK

As far as the UK is concerned, we consider that the present system does to a large extent cater for a fair and balanced representation of the interests of all categories of rights holders and users. As regards cultural diversity, we do not consider that a collecting society has any role in sustaining or promoting cultural diversity except to the extent that it may be so instructed by its members and in that case it would only be indirectly involved by way of sponsoring certain events. Cultural diversity must, of necessity, come from the creative community and not from an organisation established to protect, licence and distribute members' money.

4. Do you think that improvements could be brought into the present system of collective rights' management for both the online and offline environments? If yes, in what areas (transparency and governance, efficiency and quality of services, tariffs and licensing conditions, administrative costs, dispute settlement procedures, control mechanisms of rights management, other)? Please specify.

First of all it is important to stress that music publishers are and should remain free to license their rights directly or through a collective management scheme. In practice, collective rights management remains a very important, practical and effective mechanism for high volume usage of rights. Ideally, the performing right should follow the mechanical in digital licensing and measures should be introduced to increase competition between collection societies to provide the cheapest and quickest distribution of monies to rights holders.

While the Commission Recommendation 2005/737/EC on collective cross-border management of copyright (the 'Recommendation') has improved the system, more remains to be done in all the areas

referred to above. The impact of the Recommendation is discussed in detail in our response to Question five below.

Good governance is an area generally recognised by the creative community and their societies as crucial to the effectiveness of the support which societies are expected to provide to their members – composers, lyricists and their music publishers.

One of the challenges is that of defining and agreeing, preferably on a voluntary basis, on the governance standards which collecting societies should apply in respect to their members.

Minimum standards recommended for EU societies have been agreed between GESAC and ICMP in the ICMP/GESAC Common Declaration, dated 7 July 2006 and set out below in Appendix 1. Two years later, CISAC, in its Professional Rules applicable to the CISAC international membership of societies, effective 1 June 2008, can be viewed as having endorsed many of the principles agreed in the Common Declaration for the EU while elaborating on others.

The next step for the societies, members of GESAC and CISAC, is to promptly apply these standards through the EU and beyond. A brief summary of the recommended minimum standards for EU societies, as agreed in the Common Declaration, is set forth below in Appendix 2.

The level of implementation of these standards is, however, very different from one country to another and from one society to another. Implementation by all would be an improvement. A brief recapitulation of some of the issues arising is set forth below in Appendix 3.

Consideration also needs to be given to opening new discussions between trade associations with a view to continue improving the level of these standards.

5. What has been in your view the impact of the European Commission's Recommendation 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services on the music licensing scene? Has it led to more efficient licensing procedures?

On 7 February 2008, the Commission recorded the positive impact of the Recommendation on the licensing market and the endorsement of the Recommendation by collective rights managers, music publishers and users as a result of its monitoring exercise initiated on 17 January 2007.

The 2005 Commission Recommendation is a flexible instrument which does not prescribe a particular model of licensing but rather it squarely stems from the principle that rights holders should have the right, when they resort to collective licensing, to entrust the management of any of their online rights on a territorial scope of their choice to collective rights managers of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the rights holder. It aims at ensuring that online income for rights holders is generated and the value of their works is safeguarded.

Publishers have devoted time and resources and have made a significant contribution to the implementation of the Recommendation by entering a series of agreements to date. Various models are

emerging, ranging from centralised systems to non-exclusive agreements with a number or potentially all collecting societies that comply with certain mutually agreeable while effective conditions. The core principles governing such models aim at providing users an effective and cost efficient licensing model for the territory/ies they wish to operate in, providing rights owners with transparent and appropriate compensation models, and reinforcing the accountability of collecting societies to their membership, the rights owners. By definition it should follow that dispute resolution should be easier to achieve if all parties participate in the business process.

Obviously, addressing and changing secular tradition cannot be achieved in its entirety in a mere few years and there are issues that still are not satisfactorily resolved, notwithstanding the Recommendation. These include the following:

- **Transparency and Governance:** achieving better governance and transparency is not proving straightforward in some instances. And yet the Recommendation de facto should have already led to increased transparency as the rights holders have input into the licensing process, the tariffs used, the way income is reported and the source of that income. Transparency is however somewhat lacking and needs to be further monitored. In this respect, the ICMP/GESAC common declaration should be seen as a mere starting point.
- **Membership agreements/assignment of rights:** in order to ensure that the concept of “rights holders’ choice” thrives, members should have the option to grant rights on more flexible terms (including on a non-exclusive basis) to collecting societies. Obstacles in membership agreements with societies may need to be removed to unleash the Recommendation’s full potential. Publishers are experiencing difficulties at times in withdrawing rights. Perhaps a further dynamic by which a choice would be given to rights holders becoming members on a non-exclusive basis would remove the need to withdraw rights and create a more competitive environment for the purposes of licensing.
- **Deductions:** on the assumption that rights holders and collecting societies can come to an arrangement that deals with deductions other than management services, then the Recommendation will have addressed rights holders’ participation. By enabling a rights holder to negotiate with and thereby choose the collecting society/ies with which it wishes to do business, the issue of deduction other than for management services provided and the relationship with the level of tariffs should in theory resolve itself.

6. What is in your view the ‘ideal’ licensing system for the exploitation of music works on both online environments and mobile phone networks? How can the interests of all categories of rights holders, users and cultural diversity be best served?

The existing environment is to a certain extent ideal in that it allows the industry to find acceptable models to regulate its business. Rights owners who invest in creative talent must have the freedom to manage the duty of care they owe their songwriters in the most appropriate way.

ICMP believes that the interests of all categories of rights holders, users and cultural diversity can be further served by the creation of a Pan-European Licensing portal (PEP). PEP was initially proposed by ICMP in response to the need for an impartial solution for both right-holders and users. In essence, PEP would operate as a neutral 'one-stop shop front', and would provide all users with a single point of contact for licensing, payment and reporting. It would therefore facilitate easier access for all users while ensuring recognition and respect for the value of copyright. It could also audit sales reports and information. Entrusted EU societies would continue to control the licensing of their repertoires (and invoices) which would ensure competition between the societies and compliance with competition requirements.

In terms of cultural diversity, PEP would remain neutral and would not impose any licensing option on the society. Furthermore, a centralised point of contact could alleviate the administrative burden of supporting the on-line licensing of local repertoire, which is fundamental in safeguarding cultural diversity.

PEP could be operated by a neutral third party, which would allow the provision of licensing information to the user without any collusion on the part of the licensor.

General support for a PEP is evidenced by the responses of the individual countries surveyed, as set out below:

Belgium

One ideal solution would be the creation of a one stop shop solution for the entire repertoire.

Germany

There is a definite unanimous view of the importance, in the online domain, of establishing a uniform Europe-wide licensing system. It is important that the European collecting societies are able to cooperate with each other when it comes to licensing questions, as they have done previously. For the users, the most significant thing is to have a single system in existence. For the rights holders, especially those from national and niche repertoires, it is important that Europe-wide distribution be safeguarded. We must ensure that those active in the market are able to regulate their own affairs themselves.

Greece

There is a divergence of opinion amongst Greek publishers on this matter, with a push for Pan European licensing on the one hand and continuing support for the country by country clearing process on the other.

UK

The ideal licensing system should be tiered as follows:

- Pan-European licensing: a music user seeking a pan-European licence should be able to obtain a pan-European licence from one or more rights owners/collective rights managers for the repertoire that they are seeking.
- For local licensing: the local collecting society should be able to grant a license for that territory.

This would ensure that music can be licensed effectively across Europe, to ensure that value is generated for music and rights holders are quickly and efficiently paid. It would also ensure that all music was being licensed whether part of the Anglo-American repertoire or repertoire generated in respective territories. It is the role of the publisher on behalf of their composers to ensure that all music is both promoted and licensed. This is not the function of any collecting society.

With contributions from ICMP Member Organisations: MPA UK, UNEMIA Italy, FEM Italy, DMV Germany, MPA Greece, VMN Netherlands and IMPA.

ICMP is the international umbrella trade association representing the interests of the music publishing community globally. ICMP's constituent members are regional, national and international music publishers' associations throughout the world. Through these associations, we represent independent national music publishers, mainly SMEs, regional music publishers and international independent and major publishers. Our members cover all music genres, ranging from pop to classical and everything in between. They invest in lyricists and composers and advocate for fair and effective copyright laws, which allows them to make a living from their creativity.

APPENDIX 1

ICMP/GESAC

Common Declaration on Governance in Collective Management Societies and on Management of

On-line Rights in Music Works

7 July 2006

Whereas ICMP/CIEM and GESAC have engaged in a dialogue on issues of common interest,

Whereas the dialogue has been given momentum and a sharper focus by the adoption by the Commission of its Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (hereafter, the "Recommendation"),

Whereas ICMP/CIEM and GESAC have agreed to move forward in successive steps, within a defined time-frame, on a certain number of issues relating to the governance of all societies in the European Union managing music rights in music works on a collective basis on behalf of rights holders, i.e. authors, composers and music publishers (hereafter "collective management societies" or "CMS"), to the categories of online rights in music works and to potential co-operation between CMS in connection with cross-border online licences,

Whereas ICMP/CIEM and GESAC commend the European Commission for having chosen as a policy option in the Recommendation to re-enforce the position of rights holders,

Whereas ICMP/CIEM and GESAC have agreed as a first step to adopt this initial Common Declaration which sets forth some agreed principles:

1. Membership in CMS:

Membership in CMS will be open to all music publishers, including all individuals and all corporate or other legal entities, as rights holders.

2. Representation on Board of Directors of CMS:

a. Music publishers, as members, will be eligible to Boards of directors, and will have, as a minimum, at least one-third of the seats dedicated to music rights holders on the Board.

b. Each society will retain the ability to set forth specific rules relating to the eligibility to the Board of music publishers controlled or owned by users, provided that these rules will be defined and applied in a balanced, fair, equitable, proportionate, even-handed and non-discriminatory way.

3. General Meeting of Members of CMS:

General meetings of the members of CMS or any equivalent bodies will be called at least once a year and music publishers will have a fair and balanced representation in the voting rights at such meetings of members.

4. Transparency and accountability of CMS to the Rights holders:

CMS will report regularly to all rights holders they represent, whether directly or under reciprocal representation agreements, on any licences granted, on applicable tariffs, and on royalties collected and distributed. They will inform right holders of the repertoire represented, the territorial scope of the mandates granted, and on existing reciprocal agreements.

5. Categories of online rights:

a Collective rights management:

ICMP/CIEM acknowledges the advantages to rights holders of collective rights management by CMS within the framework of the Recommendation.

b. Freedom of choice:

Rights holders will be free to elect the CMS of their choice to manage their online rights (or to manage their rights directly) as decided by them, in conformity with the categories of online exploitations defined below, and to change from one society to another the administration of those rights which they decide to have collectively managed.

c. Forms of exploitations:

- Existing so-called GEMA categories will be adapted to online exploitations through the definition of new EU standard on-line categories, harmonised between societies, as set forth below in this Declaration agreed between ICMP/CIEM and GESAC
- A review mechanism will be put in place in order to, in cooperation with ICMP/CIEM, adjust these standard categories of online exploitations as the market and licensing needs evolve
- These new categories will be by forms of exploitation:
 - On-line categories will be split between interactive exploitations and non-interactive exploitations (e.g., essentially webcasting, portals exploitations, individual websites, etc.) thus forming two new categories; each category will include the different rights required for the corresponding exploitations (mechanical and/or performing rights
 - Simulcasting will not be within the on-line categories, as it is actually related to broadcasting and will fall within the category for broadcasting,
- CMS may create more detailed sub-categories within each of the above mentioned standard categories, notably if required by national legislation.

6. Further steps:

a. ICMP/CIEM and GESAC are committed to immediately encourage their respective members to commence the implementation of the points agreed in this Common Declaration within the next twelve months, e.g. by requesting from their national authorities the necessary modifications of the relevant applicable laws.

b. ICMP/CIEM and GESAC agree to continue moving forward without delay the dialogue between the two organisations, particularly on governance (specifically, the arrangements for electing publishers to CMS' Boards of directors, e.g.: collegiate voting) and on cross-border online licences and the potential related cooperation between CMS."

For ICMP/CIEM - Mr Jean-Manuel de Scarano, Chairman

For GESAC - Mr Bernard Miyet, President

APPENDIX 2

ICMP/GESAC

Common Declaration - 7 July 2006

Summary of Minimum Standards

The standards, as agreed, are aimed to facilitate the choice by rights holders of the way their works are managed and to develop transparency to the membership and control by such membership of the societies' management.

1. Transparency to the membership and control by the membership of the society's management:

The bylaws of societies in the EU should incorporate the following rules.

- Restatement of non-discrimination principle (whether residency or nationality) [a] and of its consequences on access to societies, eligibility in societies and distributions by societies [b]:
 - a) Non-discrimination between:
 - rights holders and repertoires (domestic/non-domestic); and
 - categories of rights holders (composers, lyricists and music publishers): do note the importance of the local sub-publishers who act on behalf of non-domestic composers, lyricists and publishers;
 - b) Consequences on:
 - Access of all rights holders to membership, whether individuals or corporations, e.g. composers, lyricists and music publishers;
 - Equitability in respect of eligibility to Boards/executive committees; and
 - Equal treatment in respect of distributions, access to documentation and transparency of documentation.

2. Statement of principles of "fair" treatment, "equitability", "proportionality" & "even-handedness" and of its consequences on voting rights and representation:

- equitability in respect of the allocation of voting rights between members - the allocation should be fair and balanced,
- equitability in respect of representation on Boards/executive committees: the rule of "fairness" agreed in the Common Declaration for publishers' representation in societies is a minimum of one-third of the music rights' seats,

- the issue of rights holders controlled or owned by users becoming members of societies' boards was duly addressed by the Common Declaration & each society retains the ability to set forth specific rules relating to the eligibility to the Board of music publishers controlled or owned by users, provided that these rules will be defined and applied in a balanced, fair, proportionate, and non-discriminatory way.

3. Statement of standard rules as in all corporate organisations:

The bylaws of all EU societies should at least provide:

- to call a General Meeting of Members at least once a year to present & ask for an approval of accounts & of the annual report,
- for regular reporting to all the rights holders represented by the societies, whether societies represent them directly (membership) or through representation agreements (between societies) on, in particular: * licenses granted,* applicable tariffs, * royalties collected & distributed, * repertoire represented, * territorial scope of mandates granted, * agreements between societies, and
- for such transparency & accountability to apply to all rights and exploitations entrusted.

4. Rights holders' choice of management in respect to their exclusive copyrights:

The bylaws of societies in the EU should be drafted in a way to allow:

- Choice by the rights holders of individual or collective management for their works.
- Choice by the rights holders of their preferred collective management society (ies).
- Choice by the rights holders of the scope of their grants to societies in respect to their works.
- Right and ease of withdrawals by the rights holders of their works by categories of rights and categories of exploitations, preferably harmonised through the EU.
- In order to implement such rights and ease for online exploitations, introduction in the bylaws of societies of two new online categories defined by form of exploitations for all EU societies: interactive & non-interactive exploitations (non-interactive includes essentially webcasting, portals & websites exploitations). There could remain flexibility for societies to create online sub-categories, but within these two categories.
- Choice of the territorial scope of grants to societies by the rights holders.

APPENDIX 3

ICMP/CIEM – GESAC

Common Declaration - 7 July 2006

Implementation of Minimum Standards

The recommended minimum standards should be implemented throughout the EU. While progress is on-going, the level of advancement varies from one EU society to another, as illustrated below:

Implementation of the Statement of principles of “fair” treatment, “equitability”, “proportionality” & “even-handedness” and of its consequences on voting rights and representation:

- Some EU societies continue not to admit music publishers as members, which is unfair to the non-domestic creative community who are often represented by music publishers. This is the case for example when the applicable laws or bylaws restrict membership (& distributions) to «individuals» - which discriminates against corporate rights holders, such as music publishers. This is an anomaly that should be cured.
- The allocation of fairer voting rights is also an issue in certain instances; it could be addressed through collegiate voting or alternatively through the allocation of voting rights which reflect more proportionally the repertoires at stake.
- While the one-third-rule for the representation of music publishers is now being met by several EU societies & while there has been considerable goodwill to self-regulate, amendments are still required in certain areas. These are often tied with the inability for music publishers to be admitted as full members, notwithstanding the fact that the society is entrusted to manage the culturally diverse works of the creators the publishers represent and to whom the publishers are accountable on the basis of their publishing agreements.

Implementation of the Statement of standard rules as in all corporate organisations:

- A number of EU societies do not call General Meetings of members on an annual basis.
- Reporting and accountability remain to be improved in the case of several societies.

Implementation of the principle that rights holders should have choice of management in respect to their exclusive copyrights:

- Many EU societies have yet to amend their bylaws to include the two new online categories.