

Commission of the European Communities
Audiovisual and Media Policies Unit of the
Directorate-General for Information Society
and Media

7 March 2008

Creative Content online in the Single Market – issues for consultation

KODA represents more than 32,000 composers, lyricists and music publishers, and licenses musical rights to a very large number of music users. KODA has more than 60,000 customers.

KODA has chosen to make a consultation statement together with all other organisations, representing authors and performing artists. The consultation statement was forwarded to the Commission 29 February 2008. This contribution, which only concerns multi-territorial licensing, is to be seen as a supplement to this common consultation statement.

6.
KODA has worked intensively with licensing throughout many years, and we basically find it doubtful that there is a significant actual demand for pan-European licenses.

We believe that the major part of the work exploitation within the online area will be focused on a national level for many years to come, and that the demand for transboundary licenses will be global and not pan-European.

There is a much larger need for creating a better basis for co-licensing more types of rights than there is for a pan-European licensing model for a few right categories.

The music users who have demanded pan-European licenses have not done so based on a need, but rather based on the simple wish to pay less for the rights.

Further, there are solid grounds for believing that when the record companies wish to have pan-European licenses it is merely to be able to force the payment to authors and music publishers even further down. In

the online world the record companies try to enforce a division ratio on rights revenues that is known from the sales of physical copies. The reality is, however, that online music models - such as subscription schemes – replace radio as well as sales of physical copies. In fact it seems that subscription schemes have a greater resemblance to radio than to sales of physical copies.

Therefore, authors and music publishers ought to be ensured that the division ratio in new online services – in relation to the record companies – reflects a compromise between the division ratio applying to radio and the one applying to sales of physical copies and downloads. Any thought that the record companies in the digital world shall be entitled to possess the musical works is unfair and undermining to the cultural diversity.

However, if there is a documented need for pan-european licensing models, it is essential that these models do not undermine well functioning national collecting societies and that they do not counteract co-licensing between various kinds of rights holders. Therefore, such models must be of a complementary nature.

Non complementary models as for instance the issued statement of complaint to CISAC and 25 different European collecting societies made by DG Competition can only be seen as destroying for well functioning systems. This initiative completely undermines the possibilities for a market adjustment to the changed conditions in the online world. The only outcome of this initiative will be that the music publishers and other strong group of rights holders are going to withdraw their repertoire from the collecting societies or will create a position enabling them to do so if a negative decision is made in this matter. This is definitely not encouraging neither to the security of supply in relation to the users, the size of the total transaction costs or the foundation of pan-European licenses. It is important that a joint Commission, the Parliament and the individual member states take responsibility for this case. And if the rules that have been in force till now are to be fundamentally changed, the decisions to do so should be made according to a democratic procedure – and not by the civil servants in DG Competition.

7.

If there is an adequate demand for multi-territorial licenses, these will be developed by the market itself. Within all rights categories there are strong well-organised rights holders who will cause such licenses to be offered. It will therefore be most economical efficient to let the market handle the development itself.

If pan-European solutions are being enforced this will result in a fragmentation of the repertoire, which will be highly detrimental to the entire European society.


8.

The long tail is a reality within the online area, as it has been for many years when it comes to traditional radio. It is obvious that the online technology makes it possible to access the market much easier – also in relation to works with only a small or dispersed demand. When it comes to small repertoires the collecting societies play a unique role because their infrastructure is available to all rights holders on non-discriminating conditions. No matter how antiquated and rigid the EU adjustment may be, the very popular works will always be licensed because there is an adequate volume to ensure that this will happen regardless of the market conditions. The same does not apply to the small repertoire. The fact is that the only warrantor for access to the small repertoire will in the long run be efficient collecting societies.

It is remarkable and incomprehensive that the EU Commission often sees the American copyright system as a role model. The reality is however, that the American system has enormous transaction costs and that authors and performing artists in fact are forced to assign their rights to producers due to the lack of efficient collecting societies.

The American collecting societies within the music area provide poor services. The income level is unsatisfactory and the administrative costs are very high, especially when considering that the American collecting societies have completely renounced to collect fees in areas that are difficult and costly.

The collection of fees for downloads and other online use in the USA is a huge problem for all European collecting societies within the composer area. The fact is that in practice no license to use of musical works is obtained for all European music authors who have not entered into a music publishing agreement, and even though some fees are allocated to the coverage of their demands, these do not actually reach the music authors. They operate quite openly with the so-called “grey repertoire” where payment only takes place if a demand is presented.

 Sincerely yours

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