



**CIAM10-0053**

**International Council of Creators of Music**

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**Submission to the consultation on Creative Content  
in a digital single market**

International Council of Creators of Music (CIAM)

The International Council of Authors of Music (CIAM) is an artist's council within CISAC representing 2.4 million composers and lyricists worldwide.

## 1 - Introduction

CIAM welcomes the Reflection Document and the initiative taken by the European Commission. The document and the hearing process provide a welcome opportunity to revisit some of our previous submissions to the Commission but, more importantly – it gives CIAM the chance to engage in the moulding of the future of Europe's online market for music.

CIAM notes with satisfaction that the Commission seems to be as impatient as we are to move towards an online market where the interests of the creators and the consumers are in the foreground, balanced with a level playing field that promotes a fair and competitive environment for all participants.

CIAM is strongly involved in the recent European development. Because of the global nature of the online technology and the markets that arise there from, multi territorial licensing schemes in Europe are of concern to all authors of the world. We believe that Europe will act as a catalyst and that what happens within Europe is likely to influence profoundly what happens on other continents as well.

### **A note on semantics:**

- Author's rights and copyright are not synonymous. They represent distinct traditions that differ in law and in execution.
- "Content" is from an author's point of view a word that at best symbolizes a derogatory term for works of art. "Content" has the effect of reducing art to a mere economical commodity, ignoring important cultural and sociological connotations.
- Interchangeable use of rights holders vs. rights owners. Authors are rights owners' rights as creators; a publisher who derives rights from the creator of the work in question would be a right holder.

### **UN charter/Bern convention:**

CIAM would like to emphasize that author's rights are deeply rooted in both the Universal declaration of human rights (27) (2) as well as in the Bern convention. The submissions which follow are based upon the premise that these two pillars are as strong as ever in a digital environment, not withstanding their strong emphasis on the moral rights of the author.

## 1.1 - Extended collective licensing

CIAM notes with satisfaction that one of the ways forward proposed is extended collective licensing. This has in the past proven to be a very effective and valuable tool for users of music, authors and their Collective Management Organisations (CMOs). Blanket licensing is flexible and is already in wide use today in the negotiating of licenses for public and commercial broadcasters. This blueprint would seem to be the most appropriate for the new and emerging business models of most online services.

However, there are many more discussions to be had here in order to provide a full picture. One of CIAM's concerns is development of arbitration mechanisms in order effectively to set tariffs and resolve conflicts between different groups of rights holders, as well as between rights holders and users.

## 1.2 - One-stop shop/ Super society

By the term one-stop shop we here understand co-administration of our rights with that of other parties holding rights in our works such as publishers and relevant bodies representing neighbouring rights. CIAM, as representative for primary right owners, are open for discussing this kind of rights management. Not least because we in the online area have experienced several examples of business models that authors have been ready and willing to license, but have been thwarted by other rights holders who have prevented this from happening.

As regards the execution of a super society we refer to the pending CISAC case and would like to point out the paradox between a pan European super society/one-stop-shop and current challenges of competition law. It seems contradictory of the commission to shoehorn rights holders into one pan-European entity whilst at the same time objecting to the allegedly “monopolistic” power of smaller, national CMOs. In addition, although a big pan-European super society may be suited to dealing with large commercial users, they are much less likely to provide the service level and approachability necessary for ensuring lawful and easily accessible licensing for local smaller users. These smaller users are vital to the maintenance of European identity and cultural diversity.

CIAM favours a model that could fulfil the demands of both competition law issues and the dual need of the market for local licences provided locally and “central licensing” on a multi-territorial basis. Such examples exist in Harmonia and Ncb (Nordic Copyright Bureau). Ncb is a CMO that seamlessly caters for smaller local users as well as bigger commercial ones, providing multi territorial licenses for eight European countries. If we had several European consortiums in place and all of these were able to provide the world repertoire with rights from all rights holders, healthy competition vis-à-vis rights holders between CMOs could prevail. This model is familiar to authors from the old CISAC model but in a future model with neighbouring rights included.

In such a scenario CIAM would like to see a “tariff of destination” principle incorporated in order to avoid a “race to the bottom” of the price for music. Competition should be on service levels and commissions vis-à-vis rights holders, not on the price of music to users. CIAM suggests that policy makers revisit the previous arrangement known as the Santiago-agreement in order to provide a new, balanced model.

## 1.3 - Merging of rights

With regards to joint licensing CIAM is open for discussing a potential new digital right, and exploring whether a “merger” between author’s rights and neighbouring rights is at all possible. However, as primary right owners it is of the utmost importance that such efforts are built upon the Human Rights Charter and the Bern Convention. CIAM is also extremely concerned lest such a new digital right, unless conceived in an extremely careful manner, will decrease the value of music in the face of users arguing that they should pay less for one right than they should for several.

We seem to be in a phase now where “feels-like-free” models are sought after and attractive in the marketplace. Authors have accepted this in a transition phase because it’s preferable to piracy but are eager to get into a position where consumers accept and acknowledge that music is not free.

#### **1.4 - Reference database**

Our CMO's have slightly different policies in this area as of today but many of them have databases with an open interface towards users and the general public. (e.g. GEMA, ISWC-Net). We are open to discussing this point further and eventually to provide such a database with relevant data from all our sources. A precondition of the provision of such a database would be that consumers and users are only able to access information on a "need to know" basis. Ownership and licence information would be available but CIAM would not sanction the provision of information on, for example splits and shares as this information is relevant neither to the general public nor to commercial users. Another precondition should be that such a database is "non-profit" so that we avoid a situation like the one we see with Google and books.

#### **1.5 - Compensation from ISPs**

The Danish TDC Play service is an example of a service that uses an appropriate business model for the appropriate technology to everyone's satisfaction: TDC, the ISP, has an attractive service that increases loyalty from their customers and reduces their churn, the consumer have unlimited access to a wide range of music and the rights holders are adequately remunerated and protected. This case shows that there is a way for the ISPs to collaborate with rights holders, monitor and monetize Internet traffic and to turn that into attractive business models.

But market based, voluntary collaboration between rights holders and ISPs, is not happening on a broad basis. Deliberations about using governmental incentives and regulation that aims at making ISPs responsible for monetizing and monitoring the traffic of music, is therefore in our opinion apt. A fairly low "access charge" administered through extended collective licensing, could help in order to re-establish a "floor" in the music industry, without hindering established services or other "premium services". That being said, CIAM is very cautious about any attempt to "legalize" illegitimate services.

#### **1.6 - Piracy**

Piracy is detrimental to the development of a healthy online market for music and thus for the development of European music in the time to come. Several court cases in European countries show that the responsibilities of Telcos/ISPs in regard to piracy are unclear. As mentioned, our preferred solution would be that the ISPs provide the remuneration for such use on a price pr. play basis. The next best solution would be that the compensation for unauthorized use comes from ISPs or governments providing provisional and relative compensation to rights holders, depending on the degree of piracy. CIAM believes that in both cases, CMOs should distribute such income.

## **1.7 - Transparency**

CIAM fully support the efforts towards an even higher degree of transparency. Authors established CMOs and it is very much in our interest that they operate as openly as possible. Only in this way will the CMOs seem trustworthy towards its members and justify its function in society as a whole. Hopefully, a demand for a high degree of transparency and obliteration of non-disclosure agreements will also be suggested towards our other custodians in the digital domain: publishers, record companies, ISPs and commercial users. Authors are seldom granted insight into how our works are promoted by these entities and financial reports on the use of our works are not provided for. Such practice is not compatible with establishing a level playing field for healthy competition of one music service against another.

## **1.8 - User-generated content**

User generated content is of concern to us in as much as they often are linked to a breach of our moral rights when such works enter the public domain designated for commercial use. (e.g. You tube). This is an example of a clash between the American Copyright model and the author's rights regimes of continental Europe. CIAM is concerned that the growing importance of social media will make it even harder to maintain European law unless it is strengthened. A solution has to be sought here, both in terms of control, legal framework and potential compensation. Again, CIAM is concerned that the moral rights attributed to authors are fully valid in the online area today, and remain so in the future.

## **2 - Conclusion**

The reflection document outlines several routes suggesting possibilities that merit further investigation. CIAM is looking forward to elaborating on our position and partaking in the process through meetings and face-to-face deliberations.