

Creative Content
in a European Digital Single Market:
Challenges for the Future

Response of the **European
Composer & Songwriter Alliance (ECSA)**
to the Reflection Document
of DG INFSO and DG MARKT
issued 22nd October 2009

INTRODUCTION

The European Composer & Songwriter Alliance (ECSA) is the umbrella organisation representing over 12, 000 music writers in 36 organisations of Composers and Songwriters more than 28 European countries.

As a lobbying organisation ECSA speaks with one voice in the name of all European composers and songwriters and is formed by the three main genre specific networks of the composers in Europe:

APCOE - Alliance of Popular Music Composer Organisations in Europe

ECF – European Composers Forum

FFACE – Federation of Film and Audio-visual Composers of Europe

ECSA'S RESPONSE

1. Before addressing the specific points raised in the Reflection Document, ECSA would like to point out that the document fails sufficiently to acknowledge the fundamental truth that “creative content” would not exist without the effort and inspiration of individual creators. Without composers and songwriters there would be no music industry as all rights flow from creators who, like a keystone, have to support the entire commercial structure of the industry. In view of this, and, in ECSA’s view, extraordinary that composers and songwriters were not represented at the Roundtable discussions held earlier in 2009. It is also important that the Commission appreciates that although music publishers (both majors and independents) derive their rights from creators (and in most cases work harmoniously with them) they do not “speak” for creators, what they may claim. Rather they speak for their own commercial interests which may or may not coincide with those of creators.
2. ECSA cautiously welcomes the Reflection Document produced by DG INFSO and DG MARKT and in particular the re-statement in the introduction to the document of the responsibility resting upon European Policymakers to protect copyright in an evolving economic and technological environment. ECSA further welcomes the acknowledgement that it is fundamental that creators and other rightholders are entitled to fair and adequate remuneration for the use of their creative works.
3. Holding the above aims at the forefront of our thinking we would stress that it is not just the economic rights of creators that need to

be protected: the laws of all of the member states of the EU acknowledge (to a greater or lesser extent) that the moral rights or authors rights of the creators are equally important. Pivotal to these rights is the right of the author to object to any derogatory treatment of their works. This right can easily be lost in glib talk of wanting to promote the production of user-generated content. These rights are enshrined in the Universal Declaration of Human Rights and the Berne Convention. Whilst it may be that the production of user-generated content can be licensed for social and domestic use it is important that a distinction is made between such use and any form of commercial exploitation of such derivative user generated content, whether it be by the individual user or by on-line services which use the inclusion of such content to attract traffic to their websites and drive advertising revenue.

4. ECSA acknowledges that the fragmented ownership of rights in musical works can make it excessively complicated for users to obtain pan-European licences. ECSA firmly believes that the solution to this fragmentation lies in the re-aggregation of such rights to CMO's. It is only through CMOs that licences will be granted in a transparent and non-discriminatory way, which benefits both users and the individual creators. Creators depend upon CMOs (which in most EU states are governed by creators) to have their interests at the heart of their work. It is worth pointing out however that any intervention by the EU needs to be very carefully considered. The effect (presumably an unintended consequence) of the 2005 Recommendation¹ was that control of the rights necessary for on-line services was further fragmented. ECSA believes that competition between CMO's for the rights of creators is desirable provided that it does not lead to price competition to grant licences to users, which will inevitably lead to a downward spiral and to a devastating loss of income for creators, many of whom depend on payments from CMOs for the majority of their income.
5. With regard to the proposed unitary right, ECSA greets the suggestion with some caution. Firstly because of the danger that it will undermine any defence of the value of music in the face of users arguing that they should pay less for one right than they should for several.
6. In addition ECSA believes that it is important to draw a distinction between the aggregation of rights with CMOs (which ECSA believes to be a positive step) and the amalgamation of distinct rights. Users

¹ Commission Recommendation 2005/737/EC of 18 October 2005

want the rights to be aggregated for ease of licensing; they don't need rights to be amalgamated for this to be

achieved. There is, however, a contradiction inherent in the position taken in the Reflection Document in that creators and right holders are being pressurised to aggregate rights but at the same time CMO's who are the natural home of such rights are being criticised for monopolistic collusion (see below).

7. ECSA is yet to be convinced that legislation is necessary to attempt to resolve fragmentation and territoriality of rights and believes strongly that before any legislative steps are taken the relevant Commissioners should consult all parties that may be affected and carry out appropriate impact assessments.
8. The Roundtable discussions have highlighted the problems which need to be overcome and ECSA is concerned that CMOs and the rightholders should be given sufficient time to implement solutions. However in order that this can be done it is important that there is certainty as to how they are allowed to operate. Although CMOs are taking all steps to comply with the ruling in the CISAC case the fact that the appeal has not been resolved gives regulatory uncertainty which needs to be resolved as soon as practicable.
9. ECSA welcomes the suggestion of Extended Collective Licensing as a way of dealing with the problem of orphan works (although these are perhaps less of a problem for the music industry than certain other creative industries). As stated in the reflection Document it is however important to make provision for the protection of creators' rights.
10. ECSA also welcomes the Reflection Document's suggestion that a more nuanced approach to harmonisation of EU laws on exceptions and limitations of copyright. It should however be borne in mind that there is a potential danger that any harmonisation will merely enshrine all of the various exceptions found in member states across the whole EU, which will only serve to undermine authors' rights. In view of this it is vital that the protection of the creator is kept at the forefront in any such approach.
11. The suggestion that there should be freely available access to ownership and licence information is welcomed. ECSA believes that the natural homes for such databases are the existing CMOs and that lessons should be learned from the Google Books debacle where a commercial database is being used. It should be noted that work is already well underway on a joint venture between PRS

for Music (UK), STIM (Sweden) and GEMA (Germany) and between SCAEM, SIAE and SGAE upon such a comprehensive databases.

12. ESCA would also welcome consideration and discussion of a form of compensation at national level paid by ISPs to rightholders, to exist alongside licenses to individual legal services. However this should not be taken as “legitimising piracy” in the same way that “Private Copying Levies”, which have proved a successful method of compensating creators, do not legitimise commercial copying. However it must be ensured that any such national levies are distributed in a way that recognises the fundamental importance of the creator. ESCA believes that CMOs would be best placed to distribute such income.
13. In conclusion ESCA believes that there is much in the Reflection Document that merits further discussion and development. ESCA would be happy to provide further thoughts on specific policy or practical ideas and to expand upon its views at face to face meetings.

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