

EMI MUSIC PUBLISHING

Response to the European Commission's request for comments in the context of the EU Roundtable on Online Distribution of Music

This submission contains the response of EMI Music Publishing (*EMI*) to the questions raised by the European Commission (*Commission*) following the meeting of the EU Roundtable on Online Distribution of Music (*Roundtable*) on 8 September 2009.

Introduction

1. The Commission's ongoing efforts, in the context of the Roundtable, to facilitate market-based initiatives are instrumental in promoting the online distribution of music in Europe.
2. EMI would like to thank the Commission for the continued opportunity to participate in the Roundtable discussions and to congratulate it on the open and constructive way in which the Roundtable meetings have been held. This, in itself, has already stimulated the industry into taking further steps to move into the digital age.
3. As evidenced by its pioneering initiatives in this area, EMI is committed to pan-European licensing solutions. In particular, EMI welcomes any opportunity to work with other stakeholders (collecting societies, rightsholders and commercial users) to develop new models that result in the standardisation of solutions that lead to the simplification of licensing for users, the delivery of efficient and transparent administration of rights for rightsholders, and the creation of greater opportunities for the efficient aggregation of rights by rights managers acting on behalf of rights owners or aggregators acting on behalf of users.
4. As a music publisher, EMI is committed to maximising the exploitation of the catalogues it represents for the benefit of its writers and thus also itself. EMI is accordingly fully motivated to ensure the fullest possible legitimate exploitation of its repertoire through as many services as possible. EMI is also committed to ensuring that the licensing of such services, as well as being as broad as possible, is as robust and efficient as possible in terms of the administration of such licences and the collection and allocation of revenues to EMI and its writers. EMI therefore seeks to ensure that licensing solutions are as efficient as possible for users and that any intermediary that it selects is accountable and able to deliver the appropriate level and quality of service.

5. At its core, the administration of licenses – particularly in the online environment – is about the accurate capturing and processing of data. EMI believes that the best way to increase the flow of licensing and reduce the administrative burden associated with the clearance of rights which affects users, rights managers and rightsholders is to ensure that the data itself, insofar as it relates to the identification of rights, is standardised, reliable and openly available.
6. EMI considers that the creation of a global repertoire database (**GRD**) offers the best possible way forward to improve the licensing of rights in Europe and presents a concrete and immediate solution that would benefit all stakeholders. As explained in EMI's submission of 7 September 2009 (attached as **Annex 1**), creating a GRD can be achieved in the short term, on the basis of pre-existing data, processes, standards and technologies. Essentially a tool for interacting with existing databases and processes, the GRD will not only serve to render current licensing solutions more efficient and transparent but will also provide the foundation for a variety of possible solutions and improvements. The GRD will facilitate not only interoperable solutions in the context of the existing licensing arrangements but also the emergence of market-driven solutions for the aggregation of rights whether through aggregators, portals, clearinghouses or one-stop shops (including but not limited to solutions such as the SACEM proposal). **Thus, creating a GRD is a logical and crucial first step to enhancing online licensing of music.**
7. EMI believes that it ought to be possible for Roundtable participants to agree on the basic principles that would lead to the creation of a GRD. To assist in this respect, EMI attaches (as **Annex 2**) a draft set of proposed key GRD specifications in the form of a tentative “request for proposal”, to clarify EMI's thoughts in this regard and further stimulate the discussion with the Commission and other Roundtable participants.
8. In addition, EMI considers that the collecting societies' network should offer a number of accompanying commitments that are instrumental to creating the GRD and improving the online licensing of rights generally. In particular, EMI would urge the Commission to invite the collecting societies that participate in the Roundtable (and the other collecting societies and CISAC) to commit to:
 - open their databases and provide an open access view to their repertoire on a multi-territory level for the benefit of music publishers, writers and users;
 - work with the music publisher and user communities to standardise reporting and invoicing formats;

- ensure the GRD is compatible with matching recording and product data;¹ and
 - allow increased flexibility in their membership agreements (including non-exclusive membership for pan-European licensing).
9. In EMI's view, a commitment from Roundtable participants to work towards creating a GRD on the basis of an agreed set of principles (as a critical first step leading to other licensing initiatives), accompanied by the above commitments from CISAC and the collecting societies, would constitute a significant and concrete leap forwards for online licensing of music in Europe.

The creation of a GRD offers a practical and concrete way forward

10. The creation of a GRD is a practical and concrete way forward which would enhance the efficiency, transparency and interoperability of licensing solutions and benefit online music licensing in Europe. It can be achieved if the various stakeholders work together, with the Commission's continued support. A GRD would lead to greater efficiency and innovation. It would create a win-win situation for the entire industry:

- Using standardised datasets that link publishing and master recording identifiers should lead to a significant reduction in transaction costs, by avoiding the unnecessary duplication of work that takes place due to the use of multiple databases. It would support and help to drive forward existing initiatives to standardise those administrative elements in licensing which currently limit the interoperability and transparency of licensing solutions, including, for example, reporting and invoice formats. This would allow for more investment to be made in content and services rather than complex administration procedures.
- A GRD would lead to a huge increase in efficiency in the matching of publishing and master recording rights information and accordingly in the correct and prompt allocation of royalties arising from exploitation. As a result of the GRD being an open-access multi-territory platform that derives information from existing sources and provides an aggregated view, once publishing and master recording identifiers are matched in one context, that match would drive further automated matching available to

¹ The record companies should also be asked to participate in the GRD: but, in the meantime, the collecting societies should make matched and unmatched data available to music publishers and writers to start increasing organically the matching of master recording and publishing databases, so that a truly global database starts to come together.

all users of the GRD. This would be particularly useful for the licensing and collection/distribution of revenues in relation to the so-called “long-tail” which is currently not licensed effectively. This would benefit niche music and promote cultural diversity in particular.

- As its role would be limited to providing transparency and ensuring accuracy, the database will not reduce innovation or competition between technologies or platforms. On the contrary, as the data would be available in a neutral manner and from a trustworthy source, the database would free up the market to focus on those areas where innovation is needed, thus creating the scope for new solutions whilst ensuring that different solutions are interoperable.

Key characteristics of a GRD

11. In order to be effective, the GRD needs to have the following characteristics:

- The GRD should be ***straightforward***: it should be a simple tool that facilitates interconnection between rights users, rights managers and rights owners, allowing rights users to identify what content they can license and from whom. It should build on pre-existing data, processes, standards and technologies.
- The GRD should create ***transparency*** and ***reliance***: it should give confidence to rights users that they can rely on the information contained in the database and confidence to rights owners that appointed rights managers are efficiently administering the rights that they are appointed to manage.
- The GRD should be ***comprehensive*** and ***accurate***: it should contain the broadest possible up-to-date information on musical composition and sound recording ownership and licensing representation. EMI considers that in the same way that the internet has global reach, the database has global rather than just European potential and that it is an area where Europe could take a lead that others would follow whilst, at the same time, giving a much needed boost to the European market for online music services.
- The GRD should ***build on existing information***: most, if not all, rights owners and collecting societies operating in Europe hold electronic data on their copyrights. The same is true of the recorded music industry and other

rights owners. Much of the data required for licensing solutions is already being exchanged between many players in the online world.

- There should be *no proprietary ownership* of the information in the GRD. The rights information currently held by collecting societies and rights managers is provided by the rightsholders for the purpose of providing the basis for driving licensing solutions. This data should be available to be used for the benefit of rightsholders rather than be treated as information which is proprietary to collecting societies to which access is controlled or restricted.
- The GRD should be *neutral*: in order to be accepted by the collecting societies, the database operator should not engage in licensing transactions and it should operate independently from the collecting societies. Collecting societies and other rights managers/aggregators² have to be able to add their own applications. This will create a level playing field among collecting societies (and other rights managers), where the most effective, innovative and service-orientated societies/managers would be successful.
- Finally, the GRD will need a *dispute resolution system*: conflicts will always exist, and it will be important to have an adjudication process to which those that use the GRD will have to adhere.

The feasibility of creating a GRD

12. As explained in further detail in **Annex 1**, building a GRD can be achieved in the short term, on the basis of pre-existing data, processes, standards and technologies:

- The *data already exists*: most, if not all, copyright owners and administrators operating in Europe already hold standardised electronic data pertaining to their copyright works, which are granted a unique identifier (ISWC and ISWR).

² There are currently intermediaries active in the industry creating true one stop shops for services that wish to offer music but do not wish to engage in rights clearance and administration. A large number of aggregators and so-called “white label” services exist in Europe and some of the most prominent include 7 Digital, Omnifone and Musiwave. These companies are routinely providing fully cleared solutions to online and mobile service providers covering a broad range of propositions including download and streaming services including subscription offerings. They offer an alternative route for aggregation that preserves both user and rightsholder choice. They provide a route for competition for the user’s business to take place between the different aggregators. The GRD would facilitate these innovative solutions.

- The ***data is already linked***: much of the musical work and sound recording data is already being linked and used across the industry.
- The ***data is already exchanged***: standards exist at every level of the value chain: CWR (used by music publishers and most collecting societies); DDEX³ (proposed by the DDEX board on which users, collecting societies and rightsholders are represented), including now also DDEX “light” and “superlight” to accommodate sales reporting by small users; and CRD (designed by IMPA and adopted by the collecting societies).
- The ***technology is not complex***: based on first-hand experience, EMI understands there are a number of existing platforms that provide the functionality that would be required of a GRD and could form the basis for such a database. EMI does not have any preferred solution as to the platform that should be selected for the GRD.

13. Kept to its essentials, the GRD would thus function as a simple search tool that allows existing platforms to interact, providing access to existing data/systems. This also has the advantage that the investments already made by a number of market players would not become obsolete, but rather will be enhanced by the ability to build on a global set of commonly available data.

Key specifications for the creation of a GRD

14. As the GRD should function (and be perceived to function) as a neutral point of access, the process for the selection of the database platform/operator is important.
- A ***tender offer*** should be launched (by industry players, with the support of the Commission), calling on interested parties to propose their technical solutions for the creation of a GRD. EMI expects that a number of companies will be able and interested to take on this role.
 - In relation to ***funding***, industry should contribute to the financing of the database, but it would be a very powerful signal if partial EU funding were also available.
15. For illustrative purposes, EMI attaches (as **Annex 2**) a set of draft key specifications for a GRD to show what a request for proposal could look like. EMI has prepared this template to stimulate the discussion about practical steps towards the creation of a GRD. Any actual RFP would of course require the input and buy-in of the stakeholders.

³ While the GRD could function without adoption of DDEX, the two are complementary.

The notion of a data exchange

16. The Commission has asked EMI to comment on “the idea of a system of data exchange instead of a central repository”. Although EMI would require further information on any such a proposal in order to comment fully, it would note that a data exchange standard without a central point where the aggregated data can be accessed seems to require that most of the work necessary to implement the GRD be completed, without taking the final small step of making the data itself available in one central place to ensure that:
- all the data is consistent; and
 - the data is openly accessible to all so that it does not form a barrier to competition or transparency.
17. EMI would also note that the concept of a data-exchange already exists amongst CISAC member collecting societies through CISNET and FastTrack, through which territorial views of copyright ownership information is already shared and exchanged. However, access to that data is limited to CISAC member collecting societies, with the user and music publishing communities explicitly excluded from any access.
18. In addition, a common data-exchange format for collecting societies and music publishers already exists in the form of the CWR format. Publishers can deliver the global rights view for copyrighted works to the societies via CWR but have no way of viewing the global picture in any single, open-access repository. Each collecting society in fact disassembles the aggregated global picture in order to represent the localised view. It would be important to address these issues of lack of access and transparency. In particular, EMI would urge the Commission to require CISNET to be opened up to collecting societies’ members (who incidentally have funded its creation through their membership).

One-stop shops

19. The GRD proposal is not inconsistent with the creation of one-stop shops, but rather it would facilitate market-driven one-stop shops to develop. In order to offer choice to users and empower rightsholders to make their own repertoire available as broadly as possible, it is crucial that one-stop shops do not operate on a mandatory basis. EMI considers that one-stop shops should emerge and operate on the basis of market forces, and that no single one-stop shop should be allowed to operate as the only option for pan-European licensing for the worldwide repertoire. Accordingly, EMI welcomes the fact that the Commission does not

intend to mandate a particular one-stop shop proposal as the sole (or preferred) solution, and has consistently promoted market-driven solutions.

One-stop shops should be non-mandatory

20. In order to avoid re-importing the problems of the past, it is essential that one-stop shops do not operate on a (legally or factually) mandatory basis, i.e. that there is no (legal or de facto) obligation on rightsholders to deal with prescribed rights managers.

21. A solution that will promote competition and choice should embrace:

- the need for conditions to be set so that there could be more than one pan-European entity that aggregates rights; and
- the possibility that, as a result of rightsholders' choice,,one-stop shops may not automatically be in a position to offer the entire worldwide repertoire.

22. Any pan-European representative of rights should expressly provide for rightsholders to be able to opt for direct appointment and direct distribution rather than having to unnecessarily funnel revenue through national collecting societies by virtue of non-negotiable exclusive membership agreements. This raises a need for increased flexibility in national society membership agreements (including the need for non-exclusive membership for pan-European licensing), which should be addressed in order to allow multiple one-stop shop solutions to develop.

Specific comments on the SACEM proposal

23. Although EMI would need to understand better the exact details of SACEM's proposal, it considers that any serious proposal aimed at improving licensing, including a one-stop shop is worth exploring as one of several possible solutions, provided it is operated on a genuinely voluntary basis (see above).⁴ Indeed, if in practice, the SACEM proposal produced the only entity representing the local repertoire of the participating societies, it would not operate as a truly "non-exclusive" one-stop shop.

24. Moreover, the SACEM proposal should be seen as *one* possible solution rather than *the only* possible solution. A single pan-European entity that offers the

⁴ The legal and practical complexities in this regard are well described in the Commission's decision in *Universal/BMG*. Please see Case M.4404, *Universal Music Group/BMG Music Publishing*, decision dated 22 May 2007 at paragraphs 150-177.

global repertoire on a blanket licence basis (such as envisaged by the SACEM proposal) would be inconsistent with the existence of users' and rightsholders' choice.

25. The SACEM proposal also merits the following specific comments:

- The notion that a one-stop shop would be able to offer a blanket licence underscores its mandatory nature. Indeed, if there is genuine rightsholder choice in the appointment of a one-stop shop, there is a possibility that the SACEM entity would not represent the worldwide repertoire. However, the creation of the GRD (see above) would facilitate transactional licensing in such circumstances.
- The very creation of a single entity solely mandated to seek to represent the worldwide repertoire would point to a protracted and potentially interminable debate about who owns and controls it and the nature of the arrangements it would or could enter into with both users and rightsholders.
- Some aspects of SACEM's proposal point to the perpetuation of the problems with the current system. For example, a key problem which affects rightsholders currently is that societies license repertoire on a blanket basis without transactional invoicing. This results in systematic problems with the efficient allocation and distribution of revenues. SACEM's proposal suggests that the one-stop shop entity takes in blanket royalties and then allows the existing system to distribute the money. All the current problems would then be replicated or indeed magnified with the addition of one extra stage/hurdle.

Criteria for the appointment of collective rights managers

26. Finally, the Commission has requested EMI to comment on what criteria should apply for the appointment of collective rights managers.

Objective criteria

27. EMI considers that collective rights managers should meet the following minimum objective criteria:

- the demonstrable ability to account transparently, efficiently, promptly and directly;

- the demonstrable ability to license and invoice on a transaction and repertoire specific basis;
- the demonstrable capability to make effective use of the internationally agreed data-exchange standards (e.g., CWR, CRD, DDEX) that drive efficient and cost-effective administration;
- reasonable costs of administration;
- the capacity and commitment to monitor licensees and unlicensed sales, and to assist in the enforcement of rights;
- a commitment to the standardisation of those elements of the system that should be standardised for the sake of efficiency and transparency;
- a commitment to the preservation of the intrinsic value of copyright; and
- a negotiated mandate agreement that provides for all of these requirements to be contractually enforceable.

28. Moreover, rightsholders should remain free to appoint a particular rights manager, even if the latter fulfils the above objective criteria.

EMI's appointment of representatives

29. EMI always looks for the best possible way to ensure the works of its authors are exploited effectively. As explained at previous Roundtable meetings, in addition to its appointment of CELAS, EMI is taking concrete steps to implement a strategy of testing alternative rights managers and a multiple rights manager approach, whether through sub-agency or through direct (non-exclusive) appointment of additional rights manager.

30. **[Confidential – business secrets]**

31. As a result of these types of initiatives, the industry may very well be evolving to a situation where several “one-stop shops” emerge as a result of market forces. This would involve a number of rights managers representing the repertoire of one or more rights owners – not because they have an automatic entitlement to represent the global repertoire, but because they were selected on their merits by rightsholders.

6 October 2009

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ANNEX 1

Global Repertoire Database

There is a broad recognition of the urgent need to improve the flexibility, transparency and efficiency of licensing the digital arena. The music industry inherently has a high degree of fragmentation of rights both between recording and publishing rights but also within those along territorial and ownership lines. The growth of legitimate digital exploitation across the EEA requires efficient and transparent cross-border licensing solutions. Rightsholders continue to look for ways to enable the marketplace but one of the key difficulties they and the industry face is the absence of workable trading platforms.

There is no single document, catalogue or searchable open database tool available to the user community, rightsholders or intermediaries (including those representing rightsholders or those aggregating rights on behalf of users) that details the several million songs and recordings that are commercially available in Europe. A comprehensive and up to date database confirming ownership and licensing information for publishing and sound recording repertoires would be invaluable to the various players in the industry seeking to develop innovative services and licensing solutions. Moreover, the lack of such a tool has impeded, and continues to impede, industry efforts to grow the marketplace for the legitimate distribution of digital media. The same is true for non-musical media/entertainment content. See Appendix I.

In recognition of this problem, there are numerous parties developing their own solutions. These initiatives are developing in isolation with the result that they (i) are focused primarily on the immediate needs of the relevant parties rather than addressing the general cross-border licensing needs of the industry (ii) are not all based on the same standard and interoperable datasets and (iii) treat the data itself (as opposed to the innovative technological platforms that would use that data) as proprietary information.

These initiatives have moved too slowly and are in many cases fundamentally flawed due to the lack of interoperability with which they are built.

What is the Global Repertoire Database

An Information and Rights Exchange or Global Repertoire Database would be a central repository of copyright and related rights providing basic information that identifies the relevant copyright work or sound recording, identifies the owner or owners of rights in that work or recording on a pan territorial basis, identifies the representatives of those owners (where applicable) on a pan territorial basis and provides a link between the data relating to copyright works and the data relating to sound recordings that embody those works.

Such a database would allow users to easily identify the rights they are exploiting in the context of any service and the owners or representatives they should approach for licences in order to operate their services legitimately. The database would also provide the raw data that would drive the platforms and processes necessary to administer licences including the user's reporting of exploitation and rightsholder's representatives' distribution of royalties to rightsholders. In doing this, the Global Repertoire Database would substantially improve the transparency, efficiency, simplification and harmonization of copyright licensing, as well as encourage innovation and competition in

both the development of consumer facing services and the development or licensing solutions and the aggregation of rights. See Appendix II.

What the Global Repertoire Database isn't:

There is a huge difference between copyright ownership data and the software platforms through which such data may be used or made available. The Global Repertoire Database would be limited to an open source repository of the data itself, leaving the industry free to innovate and create the software platforms and solutions required to run any services whether at the user end or the rightsholder or rightsholder representative end. The Global Repertoire Database would simply enable those platforms and solutions to be created using sound reliable data with less scope for disputes and complications

It is EMI's contention that there is no reason for copyright ownership data itself to be subject to any constraints, claims of proprietary ownership, restrictive access or control. The data at its source emanates from rightsholders, and rightsholders do not consider information about their ownership of copyright to be a matter for secrecy nor do they wish it to be difficult for users to identify the ownership of rights. Certain bodies seek to assert the proprietary ownership of the data in their possession. Most collection societies, including the umbrella body CISAC, contend that all electronic data pertaining to copyright ownership is owned by CISAC and its members. The contention is that access to this data has to be controlled by its proprietary owners. This approach creates barriers to innovation, competition and transparency.

The feasibility of building a Global Repertoire Database

+ The Data Already Exists

Most, if not all, copyright owners and administrators operating in Europe hold standardized electronic data pertaining to their copyrights. Copyright works are granted a unique identifier – the International Standard Works Code (ISWC). Sound recordings are granted a unique identifier - the International Standard Recording Code (ISRC). Outside of the music industry, similar identifiers exist. For example, the Film/Visual industry's audiovisual productions unique identifier - the International Standard Audio/Visual Number (ISAN). Similar systems operate in the field of book publishing and photographic libraries. The step forward that the Global Repertoire Database would provide would be for these unique identifiers and the associated rights and ownership information to be centrally available from a reliable source. Our proposal is for a repository of information relating to musical works and sound recordings but the principles and benefits that apply in relation to the music industry should also apply to other media and entertainment industries and, in view of the fact that digital services now offer, and will increasingly offer, broader choice of media to consumers, a Global Repertoire Database could form the basis for a true multimedia repository of data driving even greater efficiency and innovation in the digital space.

+ The Data is Already Linked

Much of the musical work and sound recording data is already being successfully linked and used in the traditional industry. For example, in the context of the physical audio product market segment, most collection societies in Europe hold details of the ISWC

and the linked ISRCs for the recordings that they have licensed. This linkage is in certain circumstances not limited to a national picture, and this is certainly true of those societies that currently operate so called European Central Licence Agreements with the recording arms of SONY, WARNER, UNIVERSAL and EMI. This linkage is also being made in the on-line marketplace by many of the major users (e.g. Apple) who are operating databases cataloguing the rights that they are exploiting in the context of their services. But the issue is (i) the data is being linked by individual entities and this is not always consistent and (ii) the data is not being made available freely or in a standard form to ALL users for ALL the available repertoire.

+ The Data is Already Exchanged

Much of the data is already being exchanged between many significant players in the on-line sector. By way of example, works copyright data is provided by publishers to collection societies and visa-versa through the Common Works Registration (CWR) data format on a daily basis. Royalty data is also exchanged between collection societies and some of the larger publishers via the Common Royalty Data (CRD) data format. However, even within these so-called "standard" formats, there are many localized and unnecessary variations that mean that between territories the formats are not standard at all.

For a number of years, a group of users, licensors, publishers and collection societies have been developing an all encompassing data-exchange format called Digital Data Exchange (DDex). But this has yet to be fully adopted by the industry at large as an acceptable standard.

So, whilst the data exists, is linked and is exchanged, there is currently no viable comprehensive data-exchange available to users, rightsholders or rightsholder representatives.

+ The Technology is Not Complex

EMI has significant first-hand experience of the relevant technological solutions, having designed, developed and implemented a complete new suite of business support systems for its business. Amongst many other functions, these systems support full cross border rights representation and licensing information for both publishing and master recording rights. EMI's experience is that the technology construct necessary to drive a pan-territory repertoire database is simple.

The system would consist of a web-service utility data exchange allowing for the simple search, identification and presentation of ownership and licensing information on the assets available for licensing in the digital industry across Europe. With the appropriate focus and support, such a database could be assembled from existing data relatively quickly and economically.

EMI is not proposing its own proprietary systems as the solution. In fact, EMI believes that the Global Repertoire Database has a greater opportunity of achieving support if the underlying IT solution is not dependent on proprietary systems operated by any of the traditional music industry players.

The benefits of a Global Repertoire Database

+ Efficiency, transparency and certainty

From a user perspective a common Global Repertoire Database:

- Provides a simple way for all to identify owners/licensing agents of repertoires.
- Will allow users to bring together efficiently and with certainty all the rights they require for the services they operate.
- For those users that require the clearance of rights in a limited number of works and/or recordings will provide much needed clarity and simplicity.
- For those users that require clearance of rights in a wide cross section of existing works and recordings will provide efficiency and transparency in licensing and reporting to rightsholders.
- Will provide certainty as to title – a single “source of truth” - and eliminate any confusion that might arise out of different rights managers maintaining incorrect, inconsistent or out of date pan-territory copyright ownership information.
- Could and should provide for dispute resolution mechanism to insulate users from possible negative implications in the extremely limited cases of ownership disputes. A predicate for such a system already exists in the IMPA Counter-Claim, Dispute & Infringement Proposal which has been adopted so far by PRS for Music and ASCAP.

From a rightsholder or rights manager perspective, a common Global Repertoire Database:

- Will enable greater efficiency in relation to the administration of rights by eliminating the need for 28 national societies to maintain different and incompatible databases.
- Will allow for consistent and transparent linking of information about sound recordings and publishing rights. Whilst the linking of this information is made in each territory by the relevant societies, this is not fully comprehensive and is more advanced in some territories than others.
- Will allow for a greater accuracy of usage identifications and resulting revenue distribution by reducing the need for manual matching of works against recordings.

+ Enabling innovation and competition

A common Global Repertoire Database frees up the participants in the industry to devote resources currently spent on building, maintaining and using proprietary and often incompatible databases towards developing the most compelling consumer facing and rights management services using one robust dataset.

- The lack of opaque barriers around the data would enable competition on a level playing field between rights managers based on the quality of administration services they could provide.
- Since the data drives much of the user's operational licensing compliance requirements (logging copyright assets used in their services and reporting activity), common and accepted data would remove the need for users to create

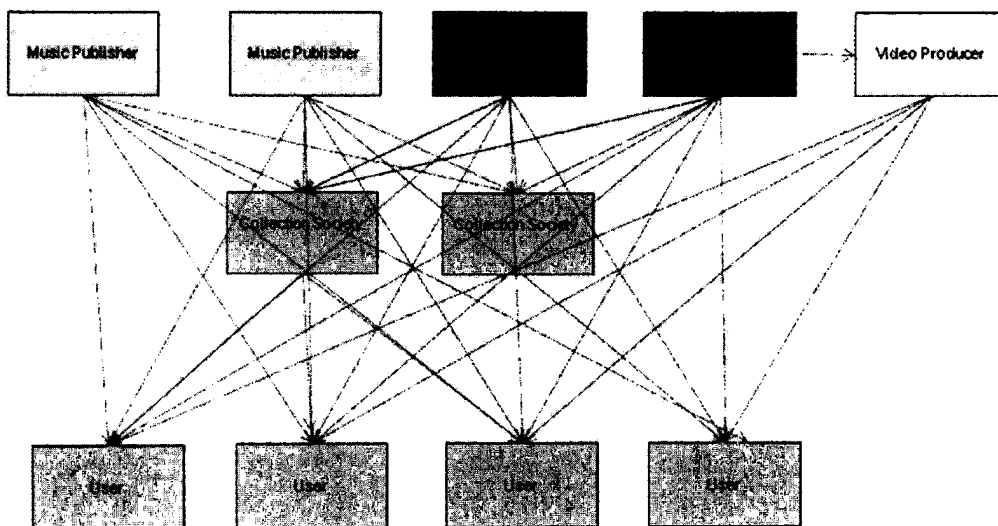
and maintain bespoke databases taken from a variety of different rightsholder sources, freeing up resources to focus on the consumer and business propositions as opposed to administrative requirements.

- A common and open access database would open up the industry to smaller players and new entrants offering consumer facing businesses, rights management services and other intermediary services increasing the scope for innovation and the size of the sector.
- Level playing field competition between rights managers would mean that those managers that provided the best services would naturally attract and aggregate repertoires of works and recordings. This aggregation should not only drive improvements in services offered to rightsholders but crucially reduce the number of licences that users would need to seek should they wish to license the global repertoires of works and recordings

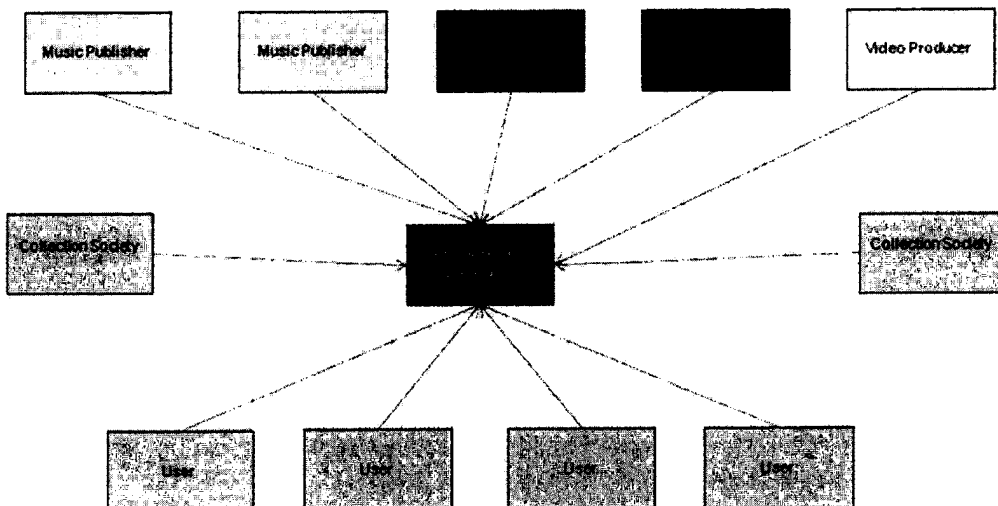
+ Benefitting niche markets and cultural diversity

One of the beneficiaries of the digital environment is the so called "long tail", i.e. Works whose exploitation in the traditional music business is limited by the constraints of commerce and profitability. Such works would typically be anticipated to sell in such small numbers that they are not viable for distribution as physical products. The digital environment – particularly in the context of a pan-territory service - enables works to be made available notwithstanding relatively low anticipated sales. Currently, because of the absence of a comprehensive pan-territory database that links sound recording and publishing rights, these niche works are significantly less likely to be accurately remunerated than the more popular commercial works. This is because they are unlikely to be automatically linked in the current systems to sound recording data therefore requiring them to be manually matched by rights managers. Manual matching is not cost effective for low levels of usage and therefore does not often take place. A Global Repertoire Database would allow for central and comprehensive matching reducing transaction costs and enabling the distribution of income to niche works at the same marginal cost as popular works. This should result in a greater distribution of income to niche works and therefore encourage cultural diversity.

Appendix I – The data exchange now



Appendix II – The Information & Rights Exchange/Global Repertoire Database



ANNEX 2

Global Repertoire Database

Draft Template for Discussion Purposes

Request for proposal – proposed technical specifications and selection process

Introduction

There is a broad recognition of the urgent need to improve the flexibility, transparency and efficiency of licensing within the digital arena. The music industry inherently has a high degree of fragmentation of rights both between recording and publishing rights but also within those categories, along territorial, ownership and creative collaboration lines. The growth of legitimate digital exploitation across the EEA requires efficient and transparent cross-border licensing solutions. Rightsholders and users continue to look for ways to enable the marketplace but one of the key difficulties they and the industry face is the absence of workable trading platforms.

There is currently no single document, catalogue or searchable open database tool available to the user community, rightsholders or intermediaries (including those representing rightsholders or those aggregating rights on behalf of users) that details the several million songs and recordings that are commercially available in Europe. A comprehensive and up to date database confirming ownership and licensing information for publishing and sound recording repertoires would be invaluable to the various players in the industry seeking to develop innovative services and licensing solutions. Moreover, the lack of such a tool has impeded, and continues to impede, industry efforts to grow the marketplace for the legitimate distribution of digital media. The same is true for non-musical media/entertainment content.

In recognition of this problem, numerous parties are developing their own solutions. These initiatives are developing in isolation with the result that they (i) are focused primarily on the immediate needs of the sponsoring parties rather than addressing the wider cross-border licensing needs of the industry; (ii) are not all based on the same standard and interoperable datasets; and (iii) treat the very data itself (as opposed to the innovative technological platforms that would use that data) as proprietary information. These initiatives have moved too slowly and are in many cases fundamentally flawed due to the lack of interoperability with which they are built.

There is a willingness from the user and rightsholder communities to invite possible solution providers to develop an offering that meets the requirements outlined herein. Parties that can meet all or most of the requirements outlined below are invited to enter the process.

I. Scope of Work and Deliverables

There are several requirements and preferences associated with the solution being sought:

- The database would consist of a web-service utility data exchange allowing for the simple search, identification and presentation of ownership and licensing information on the assets available for licensing in the digital industry across Europe and would store the aggregated view of all copyrighted works available for licensing. The database would interact with existing rightsholders databases to achieve this view on a daily basis
- The database would be a central repository of copyright and related rights providing basic information that (i) identifies the relevant copyright work or sound recording, (ii) identifies the owner or owners of rights in that work or recording across the EEA, (iii) identifies the

representatives of those owners (where applicable) on a pan-European basis and (iv) provides a link between the data relating to copyright works and the data relating to sound recordings that embody those works.

- The database would include the minimum data-set pertaining to a copyrighted work including:
 - Work Title
 - ISWC
 - Writer Name
 - IPI/CAE Number
 - Availability of Licensing by Use Type
 - Licensor Name by Territory
 - Percentage Control by Territory by Licensor

- The database would have the following minimum data-set pertaining to a music recording:
 - Track Name
 - ISRC
 - Artist Name
 - Product Name
 - UPC
 - GRID
 - Availability of Licensing by Use Type
 - Licensor Name by Territory

- Outside of the music industry, similar standard data and identifiers exist (e.g. the International Standard Audio/Visual Number (ISAN)). The database would have the scalability to apply in due course to other media and entertainment industries where the same requirements exist.

- The solution would include a standardized, secure, Web API/software interface to the database for use by licensees and intended licensees, rightsholders (including music publishers, collecting societies and record companies) and rights-aggregators for facilitating down-stream activities such as:
 - To communicate with licensors for purposes of licensing works,
 - To report usage of works, and
 - To pay appropriate royalties to licensors for such usage.

- Data would be provided to rightsholders and licensees in an agreed-upon standard format (e.g., XML or DDEX), and all parties must be able to customize ingestion of the data feed.

- The database would allow for the identification of duplicate claims by rightsholders, i.e. where the multiple ownership claims for a particular asset equal more than 100%, and would facilitate the creation of a Dispute Notification and Resolution process for rightsholders and a process for licensees to pay for unidentified usage pending identification.

- There would be a Code of Practice (rules of membership) for all rightsholders participating in the Dispute Notification and Resolution process that would define the behaviour expected by the parties to ensure that bona-fide claims are respected by all rightsholders and that counter-claims will be made only when properly evidenced. A prime example would be surrendering rights on

termination of a writer agreement with a rightholder. Here, the process would only work efficiently if all participant rightholders relinquish rights in a timely and accurate manner.

- The database and all held data should be completely secure and open for all authorized users, with the same permissions for owners of rights feeding data into the system and those exporting data sets as defined in a User Agreement and Code of Practice
- The database architecture and infrastructure must be sufficiently robust to accommodate in the region of 5 million individual music copyright assets and significantly more recording assets plus the ownership and licensee information associated with each. The database would have the scalability to add new data-sets to the existing model where this additional meta-data becomes a necessary operational requirement.
- Preferably, potential providers will have experience in the music and media industries, but minimally a provider must have access to expertise in relation to copyright, sound recording and music publishing rights and access to knowledge of the business of sound recording distribution. Additionally, it will be helpful if providers have trusted relationships in the music industry. Potential providers include a range of enterprises such as collecting societies, technology companies, software solution providers or others with demonstrated capabilities in large-scale data management and efficient, cost-effective and timely technology development and management.

II. Requirements for Proposals and Evaluation Criteria

Proposals should be submitted in searchable, electronic form suitable for easy distribution among members of the Proposal Review Committee.

Proposals should include, but not be limited to:

- A recommended approach to the project, including details of any phased implementation
- Project deliverables, contingencies, milestones, schedules, project start and completion dates
- Estimated project costs, including development costs, data acquisition costs, and proposed licensing/maintenance fees
- A description of similar projects performed which characterize applicant's capabilities to succeed with this project
- A description of key personnel and their relevant education and experience
- A description of any intellectual property required by the proposal, including information on ownership and licensing fees and terms
- Relevant references

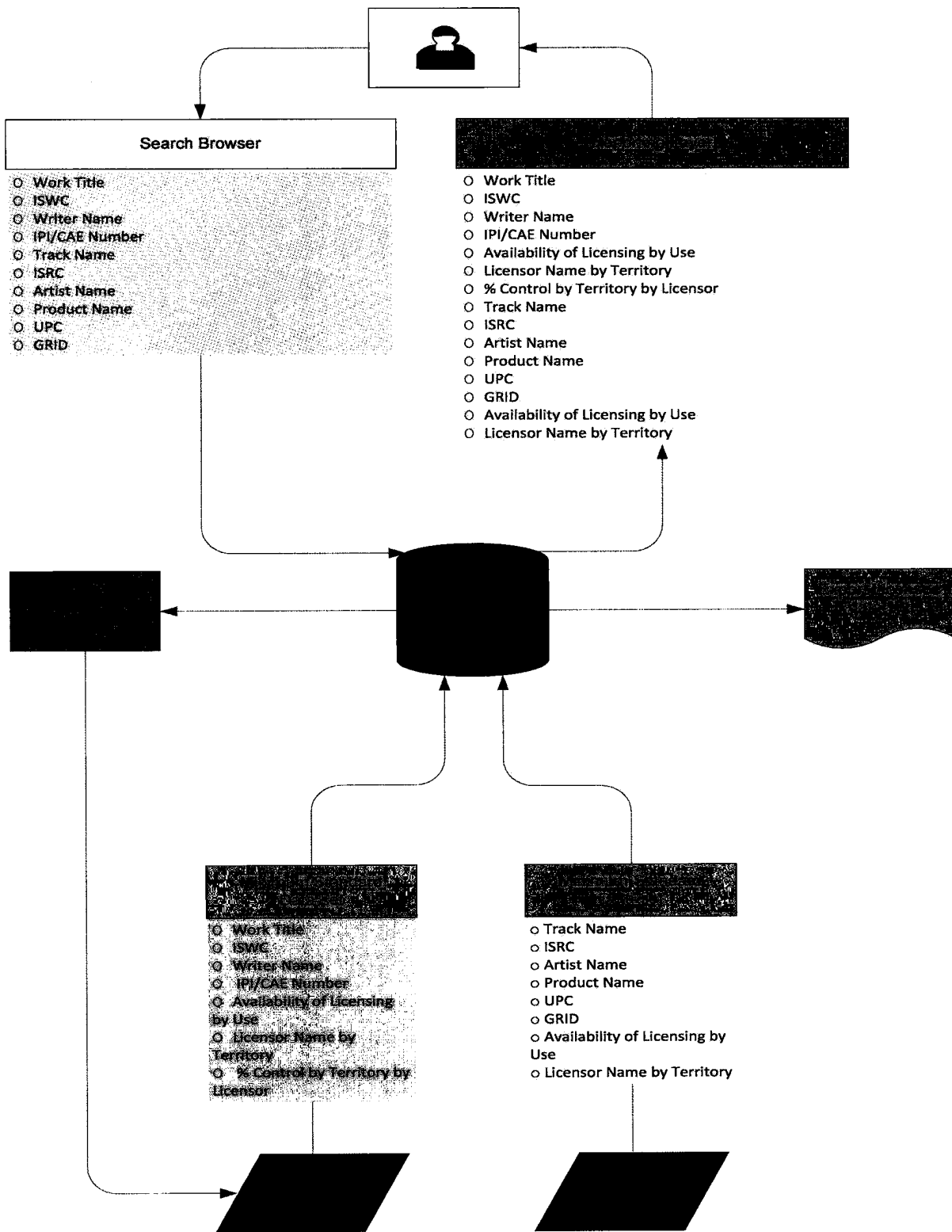
III. Process

The interested parties/customers of the database will engage in the following process to launch this project:

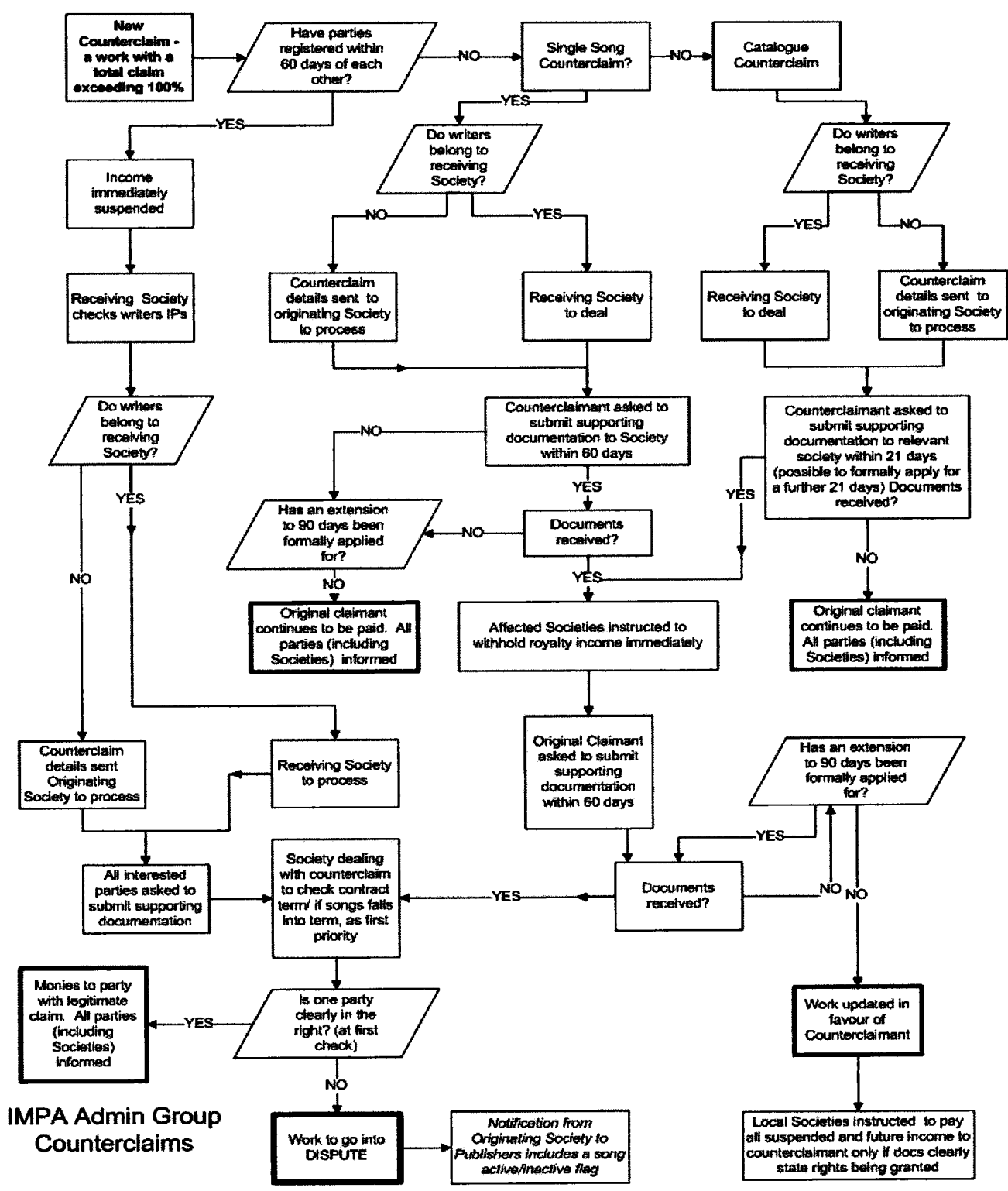
1. If there is interest, a pre-proposal conference call will be held to confirm the requirements for the Global Repertoire Database as well as the process used for selection.
2. A Request for Proposal document will be made available to all providers seeking to make a proposal.
3. By a published date, all proposals must be received.

4. A Proposal Review Committee composed of interested party representatives will review proposals, and will inform applicants that they will or will not be invited to make in-person presentations to the Committee.
5. In-person presentations will be scheduled.
6. Selection of the provider will be determined at the close of the process.

Appendix I – The Global Repertoire Database – A Graphical View



Appendix II – The Global Repertoire Database – The Dispute Resolution Process



IMPA Admin Group Counterclaims