



OPERATING EUROVISION AND EURORADIO



RECOMMENDATION FOR THE LICENSING OF BROADCAST-RELATED ONLINE ACTIVITIES

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Introduction

A. EBU, GESAC, ICMP and ECSA are seeking to establish certain principles relating to the licensing of certain online services which the members of EBU wish to offer in the EU and which services are related to their linear broadcast activities. Such services are referred to in this Recommendation as "Broadcast-related Online Activities".

B. EBU on behalf of its members is seeking to establish such principles with the aim of providing, where necessary and where so wished by such members, for the possibility of obtaining from collective rights management societies licences which cover linear broadcast activities as well as Broadcast-related Online Activities and to ensure the efficient operation of such licences which are the subject matter of this Recommendation for the benefit of EBU members.

C. GESAC on behalf of its members (in their capacity as collective rights management societies who issue licences in respect of linear broadcast activities to members of EBU) is seeking to establish such principles with the aim of maximising the scope for a voluntary aggregation of the rights necessary to provide, in answer to the above-mentioned possible requests made by members of the EBU, collective rights management society licenses which cover Broadcast-related Online Activities in accordance with the principles set out in this Recommendation and to ensure the efficient operation of such licences for the benefit of GESAC members in their capacity as licensors.

D. ICMP on behalf of its members, ECSA on behalf of its members and GESAC on behalf of its members (in their capacity as collective rights management societies who, on behalf of their member

songwriters, composers and publishers mandate other collective rights management societies to license the rights they represent) are seeking to establish such principles with the aim of ensuring that a successful aggregation of rights to meet the requests of the members of the EBU and the members of GESAC (in their capacity as collective rights management licensing societies) delivers a licensing solution that is transparent and efficient for the ultimate benefit of songwriters, composers and publishers. The members of ICMP, ECSA and GESAC are jointly and severally referred to in this Recommendation as “Rightsholders”.

E. In order to maximise the voluntary aggregation of rights sought by the members of GESAC (in their capacity as collective rights management societies who issue licences in respect of linear broadcast activities to members of EBU) and thereafter the continued aggregation of such rights for the purposes of providing the licensing solutions sought by the members of EBU, the licensing arrangements must assure the members of ICMP, ECSA and GESAC (in their capacity as collective rights management societies who, on behalf of their member songwriters, composers and publishers mandate other collective rights management societies to license the rights they represent) of acceptable administrative arrangements and remuneration for their rights.

F. The parties are industry representative bodies and this Recommendation does not bind and is not capable of dictating the conduct of their respective members. The entrustment of rights to collective rights management societies and the licensing of such rights to broadcasters are subject to the terms of the agreements entered into between rightsholders and collective rights management societies and agreements between collective rights management societies and broadcasters and to the provisions of applicable national, EU and international law.

1. Scope of Broadcast-related Online Activities

1.1 This Recommendation relates to Broadcast-related Online Activities in respect of which the parties agree to seek to achieve an aggregation of rights for the benefit of Broadcasting organisations primarily offering linear offline radio or television broadcast services which are members of the EBU (« Broadcasters ») subject to the acceptable resolution of the matters identified in this Recommendation.

1.2 In the context of the subject matter of this Recommendation Broadcast-related Online Activities consist of online audio or audiovisual services, provided by and under the control and responsibility of a Broadcaster which services have a clear relationship with the Broadcaster’s linear offline broadcast services, in particular material with a thematic relationship with the offline broadcast content.

1.3 The precise scope of Broadcast-related Online Activities, including the timeframe and the territory, shall be determined by the terms of the applicable license between a Broadcaster and the relevant collective rights management society subject always to the scope of the mandate secured by that collective rights management society from the Rightsholders. Subject to 1.5 and 1.6 the parties will seek to take account of the public service remit of the broadcasting organisation concerned.

1.4 Typical examples of Broadcast-related Online Activities would include the communication or making available to the public within the EU of:

- individual programmes or parts thereof which have been previously linearly broadcast by the Broadcaster within a particular time period of the original linear broadcast (so-called catch-up services), or
- material which enriches or otherwise expands on a Broadcaster’s programmes which have been the subject of a linear offline broadcast by that Broadcaster, including by way of

example material that extends or supplements or reviews or previews the relevant programmes' content or themes.

Content which has not been previously linearly broadcast but which is the subject of Broadcast-related Online Activity shall be limited to content which would have been covered by the relevant broadcast licence had it been linearly broadcast.

1.5 The following services are excluded from the scope of the Recommendation:

(a) services where musical works either in the form of a sound recording or an audiovisual recording is offered to consumers against a separate payment structure and/or where consumers can determine the individual musical content of the service freely, independently and separately from the Broadcaster's linear audio or audio-visual programme offerings (for example, offers for the sale or other stand-alone consumption of individual music tracks or albums or music videos, ringtones, real tones, ring-back tones, either for individual use or through playlists);

(b) services where audiovisual works embodying musical works are offered to consumers against a separate payment structure and/or where consumers can determine such audio visual works freely, independently and separately from the Broadcaster's linear audio or audio-visual programme offerings with the exception of audio-visual works which are produced, co-produced or commissioned under a Broadcaster's own editorial responsibility.

1.6 The use of musical works in the context of advertisements or other material which is clearly intended to promote or otherwise endorse products or services including the Broadcaster's own brand, products or services is excluded from the scope of this Recommendation, unless the relevant use has been the subject of a prior clearance with the relevant rightsholder for a scope which includes the Broadcast-related Online Activities.

1.7 For determining remuneration due in respect of Broadcast-related Online Activities, each party to the licence should use objective and non-discriminatory criteria, taking into account all aspects of the concerned services, in particular the actual and potential relative importance of the audiences as well as the remuneration agreed with relevant licensees or fixed by the competent authorities in other countries where relevant audiences for the services concerned are located.

2. Transparency

To maximise the potential for the aggregation of rights sought by the members of the EBU for licensing of Broadcast-related Online Activities, it is essential that Rightsholders should be able to satisfy themselves that the terms of any licensing arrangement are acceptable prior to committing their rights to the relevant collective rights management society. The members of GESAC accordingly should, in the context of seeking the appropriate mandates from Rightsholders, provide Rightsholders with full transparency as to all relevant matters including the scope of rights proposed to be granted, the value to be derived in respect of those rights and the basis on which royalties or fees are to be calculated, allocated and distributed. Transparency should equally apply to the information which flows pursuant to a licence including reporting from licensees, details of gross collections, net distributions and full access to any suspense or unallocated revenue files to enable full tracking and royalty identification by Rightsholders of any sums that have not been allocated for distribution by a collective rights management society.

3. Administration solutions

3.1 An efficient and effective administration infrastructure capable of processing and allocating royalties or fees stemming from the licensing of Broadcast-related Online Activities to Rightsholders accurately and at an acceptable cost is key to the success of any proposed licensing solution. In the context of granting multi-territorial rights it is particularly important that any administration solution is capable of correctly dealing with the allocation of revenues to the appropriate Rightsholders and, to the extent that royalties would flow through multiple collective rights management societies prior to the ultimate distribution of monies to authors, composers and publishers (as appropriate), that any process that involves multiple collective rights management societies does not result in (i) undue delay (ii) excessive cumulative deductions and (iii) a lack of transparency as to the source and basis for the calculation of the amounts paid.

3.2 In order for a collective rights management society to be able to deliver a cost effective, accurate and timely distribution of royalties, high quality reporting from licensees is essential but for the purposes of blanket licenses extended to Broadcast-related Online Activities the collective rights management society must have access to the most accurate and most comprehensive data about rights ownership for the international repertoire. In the context of multi-territorial licensing, it is recognised that a key requirement would be for the collective rights management society to use an authoritative multi-territory database. The creation of such a database is the object of the work currently being undertaken by the Global Repertoire Database Working Group.

3.3 It is recognised that as between the members of ICMP and the members of GESAC the entrustment of rights required from Rightsholders to secure the aggregation of rights will be based on an assessment, carried out in good faith, including a consideration of the administration infrastructure of the collective rights management society and of the provisions of the ICMP/GESAC Declaration, that any administration solution is appropriate and acceptable.

4. Distribution rules and deductions

4.1 The basis on which royalties are allocated to Rightsholders and the aggregate deductions applied by collective rights management societies should not only be transparent but should also be non-discriminatory and objectively fair.

4.2 If income from a license will flow through more than one collective rights management society before ultimately being accounted for to the relevant author, composer and publisher thereby potentially being subject to multiple allocation and distribution rules and multiple deductions prior to ultimate remittance, all applicable allocation and distribution rules and deductions should be disclosed to Rightsholders.

4.3 Any proposal made by a collective rights management society to the Rightsholders for the aggregation of rights should include sufficient detail so that Rightsholders are able to fully and accurately identify the applicable allocation and distribution rules and aggregate deductions that will apply.

5. High quality reporting

5.1 High quality and timely reporting from licensees maximises the accuracy and efficiency of allocation of royalties to rightsholders. It is a key ingredient for any successful material license and, in

relation to multi-territory exploitation, it is critical to ensure the allocation of appropriate royalties to the correct rightsholders.

5.2 It is in the interests of all stakeholders and in the interests of a successful single market approach to licensing that reporting formats and requirements are standardised, according to mutually agreed criteria, in a cost-effective manner and which would maximise efficiencies in the market and that such standardisation ultimately benefits licensees, collective rights management societies and rightsholders.

5.3 The ultimate aim should be ensuring the greatest possible accuracy and automation of reporting and administration procedures so that all stakeholders can reap the benefits that technology can offer with regards to the administration of rights.

5.4 In this context the adoption and ultimately the implementation of such mutually agreed standard reporting formats and procedures in respect of Broadcast-related Online Activities should be sought by the parties.

6. Conclusion and next steps

The Parties recognise that this Recommendation, which is to be implemented and interpreted in compliance with EU competition rules, including relevant case law, reflects practical guidelines for licensing of the Broadcast-related Online Activities and should be applied on a case-by-case basis when and where such licences are required.

The parties agree to conduct a regular review of the progress and implementation of this Recommendation. The parties' review shall aim to promulgate examples of success and best practice.