EUROPEAN BROADCASTING UNION
Legal Department

UNION EUROPEENNE DE RADIO-TELEVISION
Département juridique

22.6.2007
DAJ/HR/fs
Original: English

EBU COMMENTS

ON THE COMMISSION RECOMMENDATION OF 18 OCTOBER 2005 On The Cross-Border Collective Management Of Copyright And Related Rights For Legitimate Online Music Services

SUMMARY

- Given their mass use of music, involving a huge number of rightholders from anywhere in the world, broadcasters need ***one-stop-shop*** *licensing arrangements* with the music collecting societies, in order to be provided with access to the ***world repertoire*** *for all types of music.* The 2005 Recommendation's current scope of application creates a risk that such collective licensing will be nullified;

- Measures recommended for the ***online sale*** of individual music recordings are ***not appropriate for broadcast services***. This follows from the fact that incorporating existing music into broadcast productions is a ***"secondary use" which is subject to a different legal regime for rights clearance***. Therefore, music collecting societies should (continue to) be in a position to grant broadcasters licences not only for the world repertory but also for broadcasters' interactive online services. It must be ensured that music rightholders ***cannot withdraw any (secondary use) rights for broadcasters' services*** *from the collecting societies* and that existing collective agreements *are extended* with a view to including *interactive online distribution* of broadcast programmes (e.g. for catching up "missed" programmes or podcasting);

- Broadcasters' online services need ***legal certainty***, in full coherence with the existing rules for cross-border broadcasting which guarantee the efficiency of current licensing systems. Such legal certainty requires that broadcasters are enabled to acquire music (and other) rights ***in accordance with the copyright legislation of the Member State in which the transmission in question originates***, but taking account of all aspects of the broadcast service (see recital 17 of the 1993 Satellite and Cable Directive);

- In order to prevent certain music right-holders from abusing their position to hinder one-stop-shop world repertoire collective licensing, to avoid distortion of competition between rights management entities in the EU and to ensure the widest possible exploitation of broadcast productions in the interest of all rightholders, the abovementioned requirements must apply equally to collective licensing of *both* musical authors' rights and rights of phonograms producers and performers in music recordings so that ***in practice these licences have the same effect*** (see recital 26 of the 2001 InfoSoc Copyright Directive*)*;

EBU·UER
L'Ancienne-Route 17A
Case postale 45
CH-1218 Grand-Saconnex GE
Switzerland / Suisse

Tel +41 (0)22 717 25 05
Fax +41 (0)22 717 24 70
e-mail daj@ebu.ch
Internet www.ebu.ch

- Competition law is neither sufficient nor appropriate as a legal instrument to ensure effective collective management of copyright and related rights for the provision of legitimate music services at the Community level. The functioning of any EU rights management entity which practically operates as a collecting society should be governed by a *European* ***Framework Directive on collective rights management***.

DETAILED COMMENTS

The EBU welcomes the initiative of the Commission to consult stakeholders on the Recommendation of 18 October 2005 on collective cross-border management of rights for online music services (the "Recommendation"). With a view to avoiding repetitive statements, the following comments are intended to be complementary to earlier EBU comments on the Recommendation at its earlier development stages, and notably

- the EBU Reaction of 20 March 2006 to the EC Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services (attached hereto as Appendix 1);

- the initial EBU comments of 19 August 2005 on a Commission staff working document - study on a Community initiative on the cross-border collective management of copyright (attached hereto as Appendix 2), and

- the EBU response of 24 June 2004 to the EC Commission Communication on the management of copyright and related rights in the internal market (including executive summary).[1]

Topic 1: Nature of the instrument (question 1)

The question of the nature of the instrument is without any doubt an important one. However, before it can be answered, it must first be established what should be the *legal/regulatory objectives*, i.e. what are the current deficiencies or obstacles that need to be tackled in order to allow present EU policy goals (such as the "Lisbon agenda" or further improvement of the functioning of the Internal Market) to be achieved. Then the question arises of which specific areas/issues should be given priority and what type of rules or measures would be most appropriate and effective to address these issues. This means that the EBU prefers to deal with the question of the most suitable nature of the instrument last (see below under topic 4). In any event, it seems to the EBU that for the issues raised in question 1, a Recommendation is not the most adequate instrument.

Topic 2: EU-wide licensing (in particular, questions 5, 6 and 11)

a) Which "Internet-based" (music) services need improved licensing structures?

First of all, improvement of EU-wide (or Internet-wide) licensing systems is necessary not only because of the emergence of new Internet-based services[2] but also since certain expectations established by the 2001 Copyright Directive have (still) not been fulfilled.

[1] See http://www.ebu.ch/CMSimages/en/leg_pp_copyright_internal_market_24062004_tcm6-15936.pdf.
[2] It should be clarified here that "Internet-based" services means services using the publicly (and possibly globally) accessible network created by the Internet (the "World Wide Web"), but not any other services merely using the Internet protocol as the delivery application layer (such as DSL or IP-TV) without being accessible via the World Wide Web.

Secondly, the Commission's declared aim on the basis for the Recommendation was to facilitate the *online sale of individual music recordings*, such as those being offered by services like iTunes, and not (or, at least, not in particular) the Internet delivery of broadcast services.[3] In the consultation paper of 17 January 2007, it is conceded that the Recommendation does not cover broadcasting (including by cable or satellite). However, it remains beyond the comprehension of the EBU why the particular commercial activity of online sales of music recordings should be given absolute priority over, for example, facilitating on-demand services by European broadcasters - for which a licensing solution was already urgently required under Recital 26 of the 2001 Copyright Directive[4] and which was expressly reiterated by the EBU in its response of 24 June 2004 to the Communication on the management of copyright and related rights in the Internal Market.

Thirdly, the Recommendation failed to make a proper legal distinction between the relevant rights under copyright law. "Online rights" is not a legal connotation. As follows from, *inter alia*, the 1996 WIPO Treaties and the 2001 Copyright Directive, the rights relevant for exploitation via the Internet are the "communication to the public" right and the "making available" (on-demand) right. Broadcasting is a communication to the public which is subject to an exclusive right of authors, whereas broadcasting of commercially available music recordings entitles record producers and performers of those recordings (only) to an equitable remuneration. Thus, under European law solely the on-demand right is an exclusive right of all aforementioned rightholders. Given the intended purpose of the Recommendation, this means that its focus should have been the exercise of on-demand rights.[5]

Finally, the Recommendation focussed mainly on the possibilities for *certain categories of right-owners* to manage their rights (whether or not collectively), but without properly addressing, or at least without adequate safeguards for, the interests of the *users* of these rights, in order to achieve the desired balance and level playing-field in copyright.

---

[3] See the EC Commission Staff Working Document of July 2005, available at http://ec.europa.eu/internal_market/copyright/docs/management/study-collectivemgmt_en.pdf, (page 6, under "Problem definition"), which explains that "the online music market is growing at a rapid pace. This is especially true for the US, where the online music market is expected to grow to €1.27 billion by 2008. In contrast, online music revenues in Europe are expected to reach €559 million by 2008. (...) This gap between US and Western European online music revenue needs to be redressed." However, these figures quoted by the Commission are apparently based solely on sales for "downloads" and subscription services, and thus have nothing to do with broadcasting or other online services from broadcasters.

[4] This Recital states that "With regard to the making available in on-demand services by broadcasters of their radio or television productions incorporating music from commercial phonograms as an integral part thereof, collective licensing arrangements are to be encouraged in order to facilitate the clearance of the rights concerned." See also below under topic 3.

[5] Internet *simulcasting* of broadcasts, i.e. the simultaneous, non-interactive transmission of broadcasts via the Internet, by the originating broadcaster is not considered in more detail in these comments as this activity is not, compared to the on-demand ("making available") activities (and unless the national law stipulates otherwise), subject to a exclusive right separately from the "communication to the public"-right. Cf. *Ricketson/Ginsburg*, International Copyright and Neighbouring Rights, 2nd Edition (2006), Vol. I, No. 12.40: "Thus, for example, under the Berne Convention, the BBC is not obliged to obtain additional permission from a foreign author whose work the BBC broadcasts with authorization if the BBC also communicates the broadcast via bbc.co.uk." Consequently, under European law the simulcasting activity is merely a contractual issue, but it goes without saying that measures *enhancing the degree of legal certainty* for such services would naturally be welcomed.

b) Broadcast services are subject to special rights clearance regime

From the broadcasters' perspective, being mass users of musical works and recordings, involving a huge number of right-holders from anywhere in the world, collective licensing is the sole effective means of reconciling the needs and interests of all relevant right-holders and the broadcasters. This need for collective licensing of music for broadcast services is recognized in international treaties like the Berne and Rome Conventions (Article 11bis(2) and Article 12 respectively), in the EU copyright *acquis* and in national laws. With regard to incorporating existing music into broadcast productions, this legislative regime provides that broadcasters are entitled to use musical works and sound recordings (phonograms) provided that the authors, record companies and the performers receive equitable remuneration. ***Consequently, under copyright law a specific legal regime is foreseen to ensure that these broadcasting rights are managed collectively, to the benefit of all right-holders concerned.***

The online sales of music recordings via downloads is closely akin to (and to an increasing extent even substituting) the *primary exploitation* of those recordings via the sale of CD's. In contrast thereto, the use of existing music for broadcast productions is a *secondary use* which is subject to the (above-mentioned) special legal regime for rights clearance. Once such production is broadcast, it is in practical terms no longer possible to make the exploitation thereof, e.g. the on-demand offer of broadcast programmes, subject to another rights clearance regime. ***Measures recommended for the online sales of individual music recordings are therefore not appropriate for broadcast services.***

Another point to be taken into account is the *crucial role of collective licensing* for the growth of new media platforms, as such growth requires more content being made available over such platforms. This crucial role is also reflected by the existence of so-called "extended collective licences" as recognized by Recital 18 of the 2001 Copyright Directive. This system prescribes that a contract, concluded by a representative organization of right-owners with a user (or a group of users) on a certain type of exploitation in a certain field, also applies to right-owners who are not members of that organization (usually subject to certain safeguards for the outsiders). The reason for such a scheme is that in certain areas of mass uses it is simply impossible to find all the right-owners and conclude contracts with them, and this applies in particular to broadcasting.

Consequently, an essential requirement for the mass use of music by broadcasters has always been the one-stop-shop non-exclusive licensing arrangements which enable broadcasters to access the *world repertoire*, i.e. music from all over the world, through a contract with *one collecting society* for the category of protected material it represents. The well-established system of *reciprocal representation agreements* between collecting societies in all the different countries makes this possible. Moreover, this licensing system functions efficiently, irrespective of where the broadcast service takes place, can be received and/or is actually consumed.

For both legal and practical reasons, it is an absolute necessity that collecting societies operating in the field of music should (continue to) be in a position to grant broadcasters licences for the world repertory, and also for the broadcasters' own online (on-demand) services. This follows on from the specific legal regime for broadcasters' use of music.

c) Obstacles to (EU-wide and other) collective licensing for broadcasters

By establishing CELAS (the Centralised European Licensing and Administration Service), operative since January 2007, the German *petits droits* society GEMA has, in co-operation with the UK collecting society, the MCPS-PRS Alliance, now created an ***exclusive*** licensing system for certain "online and mobile exploitation" of the repertoire of EMI Music Publishing (see the press release attached as Appendix 3). This example shows that the Recommendation is likely to lead to *a withdrawal of rights and repertoire* from the collecting societies which, if such withdrawal would include rights relevant for broadcast services and deprive the collecting societies of granting non-exclusive licences for broadcast services, would consequently lead to, for broadcasters, a *potentially disastrous fragmentation* of the management of music rights over several societies, and thereby destroying the benefits of the system of reciprocal representation agreements. In that case, right-holders following the Recommendation with regard to their interactive online rights in the same manner as CELAS would force broadcasters to engage in a search for, and *separately* contract with, the relevant collecting society where those rights are centralized. The Recommendation creates such dangerous effects not only for on-demand rights for on-line sales of music recordings but also for traditional broadcasting rights because it encourages the major right-holders in music recordings to withdraw *any* rights from the collective licensing schemes (as the "mobile exploitation" rights in the CELAS case seem to indicate) without respect for the needs of any other stakeholders (including, for example, right-holders in less popular music). Any such fragmentation of the rights clearance system would make the work of broadcasters extremely difficult, if not impossible.

The above-mentioned concerns of broadcasters have also been expressed by the recent report on the Recommendation adopted by the European Parliament on 14 March 2007 (the "EP Resolution"). In particular, the EP Resolution points out that the "lack of clarity as to the applicability of differing licensing systems leads to legal uncertainty and entails disadvantages particularly for online broadcasting services". It further recognizes the risk that certain right-holders complying with the Recommendation in respect of their interactive online rights would deprive local collecting societies of other rights (e.g. those relating to broadcasting), thus preventing users from acquiring rights for a diversified repertoire from one and the same society.

The EP Resolution favours a so-called "controlled form of competition" between collecting societies, but only as long as it would "safeguard and promote the diversity of cultural expression, notably by offering users, via one and the same collecting society, large diversified repertoires, including local and niche repertoires and in particular the world repertoire for broadcasters' services." It is also explicitly stated that Member States "in full coherence with the rules for cross-border broadcasting set out in the Satellite and Cable Directive 93/83/EEC, should create legal certainty for providers of online services other than the online sale of music and should enable such other users to apply for the necessary legal consents and duly pay equitable royalties to all categories of right-holders on fair, reasonable and non-discriminatory terms."

Whatever form of competition between music collecting societies is considered appropriate, the necessary guarantees for broadcasters must be provided so as to maintain the benefits of the system of reciprocal representation agreements between the societies which allows for one-stop-shop licensing of the global music repertoire as well as for including all rights necessary for broadcasters' online and on-demand services.

Topic 3: Scope of the Recommendation (in particular, questions 7, 8, 9 and 10)

a) Distinguish measures according to the nature of online services

The comments on this topic depend on whether any envisaged measures should (still) be limited to the online sale of individual music recordings only or should be extended also to other types of Internet-based services which happen to include music. The EBU submits that, insofar as the *exercise of exclusive rights* by music rightholders is concerned, measures for the latter kind of services are indeed necessary, but these should be clearly *distinguished and remain independent* from whatever measures are held appropriate for online *sales* of music.

With respect to Internet-based music services in general, there exists a variety of commercial business models. *Webcasting* (i.e. through real-time streaming only) of "back-to-back" musical recordings can be offered on the basis of a (e.g. monthly) subscription or via a pay-per-listening model (or a combination thereof). Content solely consisting of music can also be offered *on-demand* in various ways. Such an offer could be for listening only (possibly limited to a certain period of time), it could allow for downloading individual tracks (in addition to listening) by consumers and, moreover, such downloads could be differentiated further in time (e.g. expiring after a certain period or as download "to own", download "to rent", "to burn", etc.) and even limited in "place" (downloaded music only playable on certain "authorized devices").

On the other hand, in order to meet changing consumer habits and expectations, most broadcasters' on-demand services today are "catching up" services, i.e. the (non-downloadable) making available of programmes for those citizens who missed the actual radio or television broadcasts thereof, and "podcasts", i.e. previously broadcast programmes (in which musical extracts are used only as background) made available for automatic downloading by citizens so as to allow convenient time-shifted and place-shifted use thereof with any type of digital recording device. No doubt modern audiences' demands will require these services to evolve rapidly into other variations too, but at present, for broadcasters, the aforementioned on-demand uses of broadcast programmes are the most urgent matter for which a political solution can no longer be postponed. In particular, it must be realized that these broadcast services are entirely different from, and have no significant impact on, the mere online sales of music recordings and other Internet-based music services as described above.

b) What should be the aims of the regulatory policy on Internet-based music services?

In the light of the above-mentioned concerns, regulatory measures are required to improve the conditions for an effective licensing framework for certain forms of Internet-based music services (other than online sales). The EP Resolution of March 2007 invited the Commission to introduce such a framework (notably a Framework Directive on music online services) with, *inter alia*, the following features:

- providing users with a high degree of legal certainty and *preserving the availability of the global repertoire* through licences available from any CRM within the EU and through *interoperable technological platforms*;

- fostering right-holders' ability to develop a new generation of collective licensing models for music across the EU for online uses more adapted to the online environment, on the basis of reciprocal agreements and reciprocal collection of royalties *while ensuring that right-holders do not abuse their position so as to prevent one-stop-shop world-repertoire collective licensing*, and

- guaranteeing the efficiency and coherence of licensing systems (*e.g. by enabling broadcasters to acquire rights in accordance with the copyright legislation of the Member State in which the programme in question originates*) and simplifying the extension of existing collective agreements so as to include interactive online distribution of existing content (*e.g. podcasting*).[All emphasis added]

Needless to say, the EBU fully supports all these points. The first issue of the last-mentioned point is already reflected, at least for satellite transmissions, in the 1993 Satellite and Cable Directive, which also guarantees equitable remuneration for all right-owners involved in broadcast services. The rights acquisition should, of course, be based on reasonable conditions and tariffs, taking account of all aspects of the broadcast service (as stated in Recital 17 of the Satellite and Cable Directive), such as the language version and the audience. This regime has demonstrated that it is possible to have both EU-wide circulation of content and easier access to content rights on the one hand, and proper rewards for right-owners on the other. There is no compelling reason why the same system should not apply to broadcast services provided on-line.

c) Are mandatory, binding rules required to achieve such aims and, if so, which?

Many *musical authors'* societies meanwhile acknowledge the above-mentioned needs of broadcasters and do grant on-demand licences with respect to music integrated in television or radio programmes. Unfortunately, in most countries *major record producers* have so far abstained from mandating collective management of on-demand rights for broadcasters' services. This has rendered it impossible in those countries, for example, to make the broadcasters' archives available on-demand. The problem was already identified in the 2001 Copyright Directive, so that a Recital (No. 26) was introduced requesting Member States to encourage collective licensing arrangements for these rights. However, the Recommendation failed to take up this unfulfilled aim, which effectively hindered full development of EU broadcasters' on-demand services, as music extracts are incorporated into most radio and television programmes.

Admittedly, in a press release of 27 April 2007, the record producers' association IFPI announced the availability of new licensing agreements for the collective licensing of "certain streaming and podcast services" for broadcasters. However, to the extent that the conditions of these licensing agreements are known to broadcasters, the limitations of these agreements do not meet the specific practical requirements for broadcasters' daily programming activities. This means that *currently the problem outlined above remains unsolved in practice and the Recital should now be transformed into a binding obligation*.

Moreover, in a few EU countries, record producers and performers eventually agreed collectively on licensing their on-demand rights to broadcasters for the post-broadcast use of programmes. This means that the continuing refusal of major record producers to do so in other EU countries effectively creates a *distortion of competition* between rights management entities in the EU. After all, if those record producers which have collective licensing agreements in place would be prohibited from granting such licences also to broadcasters from other EU countries then this would be tantamount to preventing any rights management society in Europe from collectively licensing its on-demand rights to broadcasters on a EU-wide basis.

Thus, as a voluntary EU-wide solution has still not been achieved with regard to broadcast programmes which include music (but not predominantly), the phonogram producers should be obliged to entrust their rights, for broadcasters' on-demand use of their programmes, to the collecting societies, so that the latter are in a position to grant the broadcasters licences in parallel to those of the authors' societies. Otherwise the latter licences are made obsolete, and European broadcasters (including their archives) remain largely foreclosed from the interactive online market.

In the interests of an efficient licensing framework, the envisaged instrument should therefore ensure that

- *no music right-holders abuse their position so as to prevent one-stop-shop world-repertory collective licensing to broadcasters;*
- *existing collective agreements for broadcast services are extended to include online distribution of broadcast programmes via podcasting or other on-demand services, and*
- *right-holders are not allowed to withdraw any (secondary use) rights for broadcasters' (offline and online) services from the music collecting societies.*

Topic 4: Governance and transparency (in particular, questions 15 and 16)

The above-mentioned example demonstrates clearly that "mere encouragement" in a legislative Recital does not provide a sufficient safeguard that voluntary (and acceptable) arrangements will follow in a timely manner. A Recommendation, given its non-binding character, is not likely to have a significantly stronger appeal, but this may well be different if such an instrument has the explicit (prior) support of the other political institutions. It is therefore not surprising that the EP Resolution of March 2007 invited the Commission to introduce a *European Framework Directive on collective rights management*.

On the other hand, in our opinion any future Framework Directive on collective licensing should not be limited to online music services only but should also include rules for *all collective rights management* entities, in order to create a level playing-field.[6] This means that such Framework Directive should apply also to rights management entities (such as CELAS) which practically function as a collecting society, whatever their legal form, as long as it is engaged in the act of collecting and/or distributing on behalf of a certain category of rightholders.

---

3 Annexes

[6] For further details thereon, see Section III of the EBU response of 24 June 2004 to the EC Commission Communication on the management of copyright and related rights in the internal market, footnote 1.

EUROPEAN BROADCASTING UNION **UNION EUROPEENNE DE RADIO-TELEVISION**

Legal Department ***Département juridique***

Original: English

20 March 2006

REACTION TO EC COMMISSION RECOMMENDATION ON COLLECTIVE LICENSING OF CROSS-BORDER MUSIC SERVICES

A key objective of the Commission's Recommendation on the collective management of on-line music services is to *enhance legal certainty for users and to foster the development of legitimate on-line services, thereby increasing the revenue-stream for rightholders* (recital 8). Contrary to this broad claim, the Recommendation was, in reality, intended to focus on the very specific case of the on-line *sale* of recorded individual song tracks. But its wording also covers, in particular, programme services which are streamed, simulcast or made available by broadcasters and which include music, mainly as a mere background element to the programme. The specific demarcation thus introduced, between all on-line (Internet) services on the one hand and off-line services on the other, is not in keeping either with the approach of the international copyright and neighbouring rights treaties or, in the more general EU media policy context (extension of the Television without Frontiers Directive to on-line services), with the Commission's own distinction in respect of linear and non-linear services.

Even if the Recommendation were to be followed only within its own intended scope, the effect for broadcasters would be extremely negative and regrettable. However, the further implications of the Recommendation for broadcasters' own on-line activities would be downright disastrous.

- One-stop-shop licences from one collecting society for the whole world music repertoire, for both off-line and on-line use, must continue to be possible

The major on-line service providers in the EU are, in fact, the European broadcasters. In accordance with EU policies, EU broadcasters seek to ensure that their viewers and listeners have access to a wide range of programmes on all available *alternative off-line and on-line* transmission platforms, both simultaneously (therefore including Internet simulcasting) and on-demand (i.e. on a "time-shifted" basis, for those who missed the scheduled time). Individual broadcasters use up to 180,000 pieces of music - including recorded music from commercial phonograms - within their programmes every week, and an essential requirement for such mass use of music, involving a huge number of rightowners, has always been (since the early days of broadcasting) the *one-stop-shop* non-exclusive blanket licensing arrangements with one single collecting society covering the whole world repertoire for the respective category of protected material which it represents.

If only a few authors were to follow the Recommendation, not a single collecting society *worldwide* would any longer be in a position to represent the whole world repertoire for any type of on-line service. This fact alone shows that the Recommendation goes in the wrong direction.

EBU·UER
L'Ancienne-Route 17A
Case postale 45
CH-1218 Grand-Saconnex GE
Switzerland / Suisse

Tel +41 (0)22 717 25 05
Fax +41 (0)22 717 24 70
e-mail daj@ebu.ch
Internet www.ebu.ch

*Fostering the development of **all** legitimate on-line services* thus requires confirmation of the indispensable role of reciprocal representation agreements between collecting societies, with the assurance, for broadcasters and other users, of the possibility of one-stop-shop blanket licences for the worldwide repertoire covering their off-line and their on-line services. This also means that such collective licences must be available, supported as necessary by legislative guarantees, for all the musical rights concerned. As long as record producers abstain from mandating collective management of their on-demand rights in respect of pieces of recorded music forming an integrated part of television or radio programmes, there is, otherwise, no guarantee that the respective on-line licence to broadcasters granted by a collecting society for musical works could ever be implemented. The result in that case is to deprive authors, as well as performers and the public at large, of the benefits of such services.

- Legal certainty for legitimate users requires legal coherence and practicability

The Recommendation appears to be based on the - mistaken - legal assumption that the applicable law for any type of on-line service is not just that of the country where the relevant physical act takes place but, rather, the laws of all the countries where the service can be received (simulcasting) or from where it can be accessed (on-demand).

For broadcasters, such a *de facto* revival of the "Bogsch theory", rightly dismissed by both the Sat/Cab Directive and the Council of Europe's Satellite Convention, and also, more generally, by the Television without Frontiers Directive (the country-of-origin principle), would be as unacceptable as it would be incomprehensible.

In the case of satellite broadcasting it is undisputed that the only applicable law is that of the country where the physical act of broadcasting *originates*, i.e. from where the programme-carrying signals are transmitted towards the satellite and where the author can *enforce* his right of authorization or prohibition. For the same underlying reasons the same principle must apply *a fortiori* in the case of on-line services. Here, the relevant acts (making available on, or communication from, a server) and the country where they take place are likewise clearly identifiable, but the area of potential reception or accessibility is, in principle, the whole world. As is well established now in the case of satellite broadcasting, the fact that a given act is governed by the law of one single country in no way prejudges the principles of establishing a fair remuneration for that act. In fact, the entire economic reality must be taken into account, regardless of where the ultimate beneficiaries of the broadcast or other service may be located.

Were the single act of communication/making available to be subject to the cumulative application of the laws of all countries worldwide, *legitimate* on-line services could never even take off, since their operation would be conditional on the provider clearing rights in every country around the world. If, as may be suspected, the Commission did not fully realize this ultimate consequence of its position, the hope remains that the Commission will have second thoughts and that, as a result, the record will be set straight soon.

EUROPEAN BROADCASTING UNION **UNION EUROPEENNE DE RADIO-TELEVISION**

Legal Department ***Département juridique***

19.8.2005/MB/HR

INITIAL EBU COMMENTS ON COMMISSION STAFF WORKING DOCUMENT: STUDY ON A COMMUNITY INITIATIVE ON THE CROSS-BORDER COLLECTIVE MANAGEMENT OF COPYRIGHT

SUMMARY OF EBU REACTION

To remove practical obstacles to licensing of on-line cross-border music services, *including those provided by broadcasters*, EU action is required to achieve ***a true one-stop pan-European collective licensing system in terms of clearance, administration and payment, for both musical works and commercial phonograms.***

This requires *a legislative guarantee* that each music collecting society ("CRM") in each EU country (respectively representing rights in musical works or commercial phonograms) is capable of providing to users who so request a *pan-European blanket* licence (i.e. covering the whole EU) for the whole world repertoire. For broadcasters, this must cover *both* the on-line *and* off-line transmission platforms which they use.

The need for such an effective collective music licensing system implies that

- ***Option 1 ("do nothing") is indeed not acceptable.***

- ***Option 3*** (giving individual right owners the possibility to mandate one collecting society of their choice for "EU-wide exploitation of their on-line rights", separately ("unbundled") from their off-line rights)***, though favoured by the Commission Staff Working Document, does not present a viable alternative to the present system of reciprocal representation agreements among collecting societies***. Whereas inclusion of such a CRM-of-choice principle could perhaps benefit certain individual right owners, under Option 2 such benefits would remain merely theoretical in the absence of a comprehensive system of reciprocal agreements which cover on-line, as well as off-line, rights for the whole world repertoire, and which ensure that users have the possibility of one-stop-shop acquisition of the necessary rights.

EBU·UER
Ancienne Route 17A
Case postale 45
CH-1218 Grand-Saconnex GE
Switzerland / Suisse

Tel +41 (0)22 717 25 05
Fax +41 (0)22 717 24 70
e-mail daj@ebu.ch
Internet www.ebu.ch

- ***The* starting-point *for the required EU action should be Option 2***, which would "eliminate territorial restrictions and discriminatory provisions in the reciprocal representation agreements between collecting societies". However, this alone would not suffice, as it leaves the user exposed to unacceptable risks and does not address the major obstacle to the development of on-line services constituted by the continuing *lack* of collective administration of on-line on-demand (making available) rights in commercial phonograms. Moreover, major obstacles for on-line music services occur if either the world repertoire cannot be guaranteed or musical authors' ("*petits droits*") societies and record producers' societies do not adhere in practice to the same kind of licensing principles. That is why it is vital to ***guarantee the effective operation of pan-European collective blanket licensing via legislation***, in respect of both musical works and, notably, commercial phonograms (which involve rights of record producers *and* performers).

- ***Option 2*** must therefore be ***complemented*** by the following:

❖ The necessary ***guarantee that the licence granted by any single music collecting society is indeed blanket with regard to the represented right owners.*** This can be achieved either through the provision of a *legal presumption* that the organization has the power to administer the right in every work or phonogram covered by the blanket licence (i.e. for the world repertoire) or through the system of *extended collective licences* (to which specific reference is made in Recital 18 of Directive 2001/29/EC);

❖ An express legislative confirmation that the licence covers not only the initial acts of on-line transmission or making available, but also any other act relevant under copyright or neighbouring rights, taking place anywhere within the EU territory, which *completes the intended effect* of those initial acts;

❖ An express reference to the fact that, in calculating the equitable level of remuneration to be made to the single CRM, *due account has to be taken of the entire audience of the on-line service*, ***wherever it may be***. This reference should be based on the directions given in Recital 17 of the 1993 Satellite/Cable Directive;

❖ ***Mandatory collective management*** should be provided for licensing of the rights needed by broadcasters to enable the ***on-demand use of their radio or TV programmes*** incorporating recorded music from commercial phonograms *as an integral part thereof.* This is now indispensable since, in disregard of the legislator's expectation (Recital 26 of Directive 2001/29/EC), phonogram producers have still not provided the necessary mandates to the societies enabling collective management of such rights, nearly ten years after broadcasters requested such collective licensing;

- Ensuring effective collective rights management also implies ***proper supervision mechanisms***. The EBU refers in this connection to the detailed points made in its response of 24 June 2004 on the Commission's 2004 Communication on rights management, in support of the Commission's overall conclusion that the monitoring of collecting societies under competition law should be *complemented by a* ***legislative framework on good governance****.*

MORE DETAILED COMMENTS

The EBU welcomes the initiative of the Commission to take action to facilitate and ensure effective collective rights management for the purposes of promoting licensing of legitimate "on-line"[1] cross-border music services across the European Union. However, if this very valid objective is to be achieved, ***Option 2 is the sole possible starting-point, which must be complemented by various legislative guarantees.***

An appropriate solution for achieving the desired objectives can be attained only by addressing certain fundamentally important elements which are at present missing in the Commission's working paper. These are explained under the following headings:

- the various different types of "on-line music services" as well as the precise meaning of the expression "multi-territorial licensing" for such services (A);
- real obstacles which impede agreements, covering both off-line and on-line transmission, between music collecting societies and broadcasters (B);
- conclusions for the best approach for a solution (C).

However, before going into detail, a short explanation is required as to why Option 3, favoured by the Commission, cannot in fact present a viable alternative.

Option 3 would give individual right owners the possibility to mandate one collecting society of their choice for "EU-wide exploitation of their on-line rights", separately ("unbundled") from their off-line rights, thus rendering superfluous - in the Commission's assumption - the existing reciprocal representation agreements among collecting societies.

From the point of view of the Commission, such a solution would have advantages for ***right owners***. However, these advantages are merely theoretical as long as the ***users*** (including the broadcasters) are not advantaged at the same time by such an innovation. For users, the essential requirement is the possibility of one-stop-shop acquisition of the necessary rights, both in terms of scope (world repertoire) and territory (the EU territory). Whereas Option 3 would provide a perfect solution with regard to the ***territory***, it would in no way ensure that a given collecting society chosen by a given right owner for central management of ***his*** or ***her*** rights throughout the EU could also grant EU-wide licences with regard to all the other EU and non-EU right owners, i.e. the ***world repertoire***. To stay within the EU, if author X from Belgium chooses a (or the) CRM in France for the purposes of EU-wide licensing and author Y from Belgium or Hungary chooses a (or the) CRM in Italy, then neither CRM would be in a position to grant a broadcaster or other user a licence covering the works of both authors.

[1] Although the expression "on-line" is commonly used to describe Internet exploitation, in fact *wireless* means are increasingly being used for the purposes of technical connections over the Internet.

Therefore, reciprocal arrangements among CRMs remain indispensable, also on an EU level. As a consequence, whereas Option 3 could perhaps lead to an improvement of the position of certain individual authors (and the inclusion of such a CRM-of-choice principle might therefore be considered for that very purpose), Option 3 could in no way remove the perceived shortcomings of the present collective management system with regard to on-line music services.[2] In particular, the continuing *lack* of collective administration of on-line on-demand (making available) rights in commercial phonograms has proved to be the major obstacle to the development of on-line services in Europe.

Therefore Option 3 cannot provide a viable solution.

A. Precise context and meaning of "cross-border music service" licensing

A.1. Various types of "on-line music services"

On reading the Commission's Study, the first overall impression is that the (on-line) *sale of individual records (songs or albums)* is essentially the type of service which the Commission has in mind when suggesting its preferred option. This impression is based on the Commission's stated premise that "a commercial user requires a licence from each and every relevant collective rights manager in each territory of the EU in which the work is accessible". Indeed, to the extent that this premise may be correct, it would be so only in relation to *on-line sales* of recorded music.

However, the Commission's Study indicates that its proposals relate in fact to *any music service* provided on the Internet, including simulcasting, webcasting and on-demand services. Thus, it should be irrelevant whether these services are offered by on-line sales companies, webcasters or broadcasters in the EU. This also implies that the proposals must cover services where music is either the (sole) feature of the service or merely one integrated background element of a varied broadcast programme service.

Moreover, the Commission's proposals in its Working Paper puts *all types* of *Internet-related* on-line music collective rights administration in one basket. Such a generalization is not in keeping with the approach either of international copyright and related rights treaties, or with the current discussions in the context of the Television without Frontiers Directive. In particular, neither the copyright/related rights treaties nor the latter policy discussions on linear and non-linear services make a separation between the treatment of traditional broadcasting on the one hand and streaming (Internet simulcasting or webcasting) on the other.

[2] It might even encourage certain right owners to choose a non-EU CRM, e.g. in the USA, to manage the rights they have in the EU, which would only result in a higher trade deficit for the EU.

Furthermore, if any comparison with the US market for on-line music services can or should be made, then one cannot overlook the ongoing impediments to European broadcasters' cross-border music services created by the record industry, as reflected by the current lack of an appropriate mandate to the relevant collecting societies. For almost ten years now, the EBU has been requesting a proper solution on this particular issue. *Without an effective collective licensing scheme for EU broadcasters*, the (mainly US-dominated) record industry would be able to continue to block Internet webcasts and simulcasts of music recordings originating in EU countries, precluding EU broadcasters from carrying out many of their activities as (music) content providers over the Internet. For further details, see under B.2 below.

A.2 Broadcasters' on-line music services

In accordance with EU policies and, as far as EBU Members are concerned, as part of their public service remit, EU broadcasters seek to ensure that their viewers and listeners have access to a wide range of programmes and services on *all types of available transmission platforms*. Their activities *do not normally include on-line sale of* the record industry's *individual recordings*, but do involve use, within their programmes, of music from a huge number of (often very small) extracts from commercially published phonograms. For example, the BBC uses around 180,000 pieces of music within its broadcast services every week.

This means, notably, that the licence from (all) the music licensor collecting societies has to cover all the various off-line or on-line transmission platforms used by EU broadcasters. Otherwise, they cannot enable their audiences to choose the particular technical means for receiving the programme service *as it is being broadcast/transmitted to the general public* (i.e. including terrestrial or satellite broadcasting or Internet simulcasting).

Moreover, the services which EU broadcasters are expected to provide include the possibility for their audiences to be able to *listen to or view* their programmes at whatever specific time *after the broadcast*. Therefore, blanket licensing arrangements between broadcasters and the respective music collecting societies for musical works and commercial phonograms need to be available in order to cover also the offer/transmission activity for such *on-demand* services (which are completely different from on-line on-demand record sale operations).

A.3. Meaning of "multi-territorial" or "pan-European" licensing

The expression "multi-territorial licensing" is used by the Commission in its Study in a broad sense to cover a wide variety of situations where services originating in one EU country are "accessible" by people in one or more other EU country (and, indeed, further afield). It is clear that *due account* has to be taken of such people in the licensing arrangements (see below). However, depending on the nature of the particular

"cross-border" service, a further (separate) copyright-relevant "act" occurs in any country outside the originating country (i.e. outside the country of origin of the transmission) only if a *separate* reproduction or transmission takes place in that other country. In contrast to the case of on-line sales of individual recordings, there is no such separate "act" in simulcasting or webcasting in the sense of broadcasting via the Internet.

- ***Centralized licensing*** *(covering separate copyright-relevant acts taking place outside the originating country)*

On-line record sales may involve separate copyright-relevant *acts of reproduction* in each country where records are bought on-line, in addition to the act of "making available" of these records in the originating country. However, if the Commission's objectives to promote effective licensing of such on-line cross-border music services are to be achieved, it would seem indispensable to ensure that such service providers should be able to choose to clear all the legally relevant rights on a centralized basis. Each collecting society in each EU country must therefore be in a position to provide an EU-wide licence for such activities, irrespective of the countries where complementary individual acts relevant under copyright may take place.

The EBU has indeed drawn the Commission's attention already to other circumstances where practical experience has shown that centralized licensing, *at the choice of the original service provider*, may be indispensable to ensure viability of the operation as a general commercial whole.[3]

- ***Pan-European licensing*** *(for mere transmission services on-line)*

The copyright aspects of on-line (music) *transmission services*, which differ from on-line on-demand record sales, have not been sufficiently analyzed by the Commission's Study. Consequently, the Study fails to take due account of typical broadcasters' interests and needs. In particular, it must be realized that, at the time that the right of broadcasting/communication to the public was first introduced into the Berne Convention in 1928, it was already clear, and specified in the Conference records, that the only legally relevant *act* under copyright law is the *transmission*; these Records also expressly confirm that *reception* of a communication to the public outside the country of origin of the transmission did not constitute a legally relevant *act*. This cross-border element had always existed in the case of radio broadcasts (the only type of communication to the public at a distance in existence at that time).

At the beginning of the 1980s, the Commission took the important policy decision to take specific steps to promote the availability of broadcast programme services to audiences across the EU. Still with the same general policy considerations in mind, the Commission took the opportunity to *confirm* the "country-of-origin-of-the-transmission"

[3] For example, this is the case for *transnational satellite-to-cable broadcasting services*, see the Summary of EBU proposals to the EC Commission for modification of the 1993 EC Satellite/Cable Directive, available at the EBU website at www.ebu.ch.

copyright rule in the 1993 Satellite/Cable Directive, in order to avoid any confusion or creation of obstacles to the proper functioning of the Internal Market in the case of communication to the public by satellite. Incidentally, the fact that this Directive confirms a pre-existing legal principle, rather than establishing a specific internal market instrument, is also borne out by a parallel confirmation of the same legal principle in the European Convention relating to questions on copyright and neighbouring rights in the framework of transfrontier broadcasting by satellite.

Since in actual fact there is no real difference between satellite broadcasting and on-line transmission of programmes, both being transfrontier by nature, the same approach should logically be taken towards mere transmissions on-line of broadcasters' programmes.[4]

In this context, it is only consistent, and generally acknowledged, that audiences beyond the country where the transmission takes place are *a relevant factor* for determining the *level of remuneration.* In fact, Recital 17 of the Satellite/Cable Directive specifically states that *"in arriving at the amount of the payment to be made for the rights acquired, the parties should take account of all aspects of the broadcast, such as the actual audience, the potential audience and the language version"*. The Court of Justice of the European Communities, in a judgment of 14 July 2005, has recognized the necessity to use these criteria, not only in the context of satellite broadcasting, but - as indeed is normal and to be expected - also in other circumstances where *the physical result of a particular act of communication to the public is merely the reception beyond the country where the act of transmission takes place.* This is indeed the case not only for traditional terrestrial radio and TV broadcasting but also for Internet real-time streaming. In all these cases there is no relevant "act" under copyright law taking place in any country other than the country where the transmission was originated by the service provider.

Therefore, mere reception of on-line transmissions in countries other than the country of origin may be referred to, loosely, as "accessibility", but this has no legal relevance. The "audience factor" can be understood only in a general sense of *economic* relevance, notably for determining the *appropriate level* of remuneration to be paid under the single payment and administration fee agreed with the single licensor collecting society in respect of the relevant act of transmission.

[4] This is also why the EBU has proposed earlier (see the EBU response of 25.6.2004) that the Commission should take similar steps in the case of communication to the public by streaming on the Internet or other communications networks (thus covering, notably, Internet simulcasts of broadcasts over terrestrial or satellite Hertzian waves).

B. Obstacles to music collecting societies' agreements with broadcasters

B.1 Current agreements with societies representing musical works

The general situation regarding agreements between *petits droits* collecting societies and broadcasters is characterized by blanket licence agreements, covering the world repertoire, and many of these agreements also cover whatever technical means (on-line or off-line) are used by the individual broadcaster to bring its programme services to the public. Moreover, if on-line uses are included (simulcasting, webcasting, making available of broadcast programmes on-demand, as applicable), then payment for such use is normally integrated in the overall agreement with that society.

B.2 Current agreements with societies representing commercial phonograms

Contracts in respect of *off-line* transmission (broadcasting via terrestrial or satellite Hertzian waves) have always been concluded between the broadcaster and the relevant collecting society, on behalf of both record producers and performers, on the basis of a negotiated blanket rate for the act of transmission, the level of remuneration taking account of the audience factor, wherever the audience may be.

However, the position regarding *on-line* use of commercial phonograms is fraught with insurmountable obstacles. The EBU has previously and repeatedly pointed out to the Commission that the notified IFPI model Reciprocal Agreement for Internet Simulcasting does not effectively ensure collective licensing of legitimate on-line cross-border music services, for both legal and practical reasons. On the contrary, it expressly prevents collective licensing for *on-demand use* and, as regards Internet simulcasting, has been the direct cause of the *introduction* of obstacles, which previously did not exist, to the conclusion of collective agreements.

- ***concerning on-demand use***

The IFPI Simulcasting Agreement expressly *prevents* the relevant collecting societies from granting any licences for on-demand use in respect of record producers' rights, including those needed by broadcasters to enable the on-demand use of their radio or TV programmes incorporating recorded music from commercial phonograms as an integral part thereof. In spite of the legislator's expectation (Recital 26 of Copyright Directive 2001/29/EC) that this be done, and nearly ten years after broadcasters first requested the possibility of such licensing, it appears that in only two countries have broadcasters been able to acquire rights for on-demand services on a collective basis. The continuing lack of the necessary mandate to the societies for collective licensing arrangements is why ***mandatory*** collective management of rights for such on-demand use of commercial phonograms by broadcasters should now be provided *through legislation*. Moreover, there is otherwise no guarantee that any on-line licence granted to broadcasters by the

collecting societies for musical works could ever be implemented, in which case authors are prevented from receiving any remuneration for such use.

- ***concerning Internet simulcasting***

Even for the simulcasting of broadcast programmes, many broadcasters are faced with various obstacles which effectively prevent the conclusion of reasonable agreements with the relevant collecting society for such use of commercial phonograms:

- continuing attempts are being made to force broadcasters to accept *different tariffs* for all territories where Internet simulcasts can be *received*. For the reasons set out above (see under A.3), such demands are unacceptable on both legal and practical grounds;

- in several EU countries the licensing terms put forward *purport to be on the basis of a restricted mandate* only, and are intended to exclude any reception of Internet simulcasts outside the country of transmission, or to cover reception only in the limited number of countries in which the collecting society is a signatory to the IFPI Simulcasting Agreement;

- although many of the relevant collecting societies are supposed to act on behalf of *both* performers *and* producers, they have stated that their mandate did not in some cases cover *performers' rights* (since the performer members of the respective collecting societies have not subscribed to the IFPI position or procedures for Internet simulcasting).[5]

C. Conclusions for the best approach

What is required is *legal certainty* that each music collecting society (i.e. in respect *both* of musical works *and* commercial phonograms) in each EU country is in a position to grant and guarantee a *pan-European* (i.e. covering the whole EU) *blanket licence*, for the whole world repertoire, to broadcasters (and other users who so request), in order to enable their particular pan-European service to function effectively.[6] This involves an express legislative confirmation that the licence covers not only the initial act of on-line transmission or making available, but also any other act relevant under copyright or

[5] Indeed, most national laws, in line with the international treaties and EU Directives, specifically require users to pay a ***single*** equitable remuneration, i.e. one single amount covering payment due to *all* performers and producers of phonograms used for broadcasting or any communication to the public (including webcasting and Internet simulcasting). The IFPI Simulcasting Agreement as notified to the Commission does not in fact cover performers' rights.

[6] As pointed out in para. 259 of the 1990 WIPO Study on Collective Administration of Copyright and Neighbouring Rights, "the whole system of collective administration would be undermined if collective administration organizations would not be allowed to grant blanket licences and would be obliged to identify, work by work, and right owner by right owner, their actual repertoire".

neighbouring rights, taking place anywhere within the EU territory, which completes the intended effect of those initial acts. It also involves an express reference to the fact that, in calculating the equitable level of remuneration, *due account has to be taken of the entire audience of the on-line service, wherever it may be.* This reference should be based on the directions given in Recital 17 of the 1993 Satellite/Cable Directive.

For users, the essential requirement is the possibility of one-stop-shop acquisition of the necessary rights, in terms of *scope* (world repertoire) as well as *territory* (the EU territory). However, as is apparent from the discussions on Internet simulcasting which have been taking place between broadcasters and collecting societies for commercial phonograms (see under B.2 above), the risk of "holes" in blanket licences is not theoretical but very real, because of *inadequacies* in either the content of the reciprocal agreements or the extent to which societies (or the performer members thereof) have not subscribed to the terms of such agreements. It seems also still to be the case that societies for commercial phonograms are not yet effectively operational in certain EU countries. Therefore, given the absolute necessity of blanket licensing for broadcasters, such problems must be effectively avoided through provision of a *legislative guarantee* that the collective licence covers the whole world repertoire. As regards authors' ("*petits droits*") societies, no such absolute *practical* necessity has been shown for additional guarantees beyond those which already exist. Nevertheless, the necessity to ensure that musical authors' societies and record producers' societies do adhere in practice to the same kind of licensing principles would plead in favour of applying the legislative guarantee to both categories.

As is well known, such a guarantee can be implemented *either through provisions resulting in an effective legal presumption* that the organization has the power to administer the right in the world repertoire of the category of material covered by the blanket licence and to represent the right owner in legal proceedings, *or through the system of extended collective licences* (to which specific reference is made in Recital 18 of the Copyright Directive 2001/29/EC, and which has been used for very many years to the satisfaction of right owners and users alike in, for example, the Nordic countries).

Moreover, for the reasons given above, mandatory collective management should be provided for licensing of the rights needed by broadcasters to enable the on-demand use of their radio or TV programmes incorporating recorded music from commercial phonograms *as an integral part thereof.*

In the light of the foregoing, Option 1 ("do nothing") is obviously not acceptable, as it does not take away any of the current obstacles. But also Option 3 cannot achieve the desired results, as it ignores the absolute necessity of blanket licensing for broadcasters, which requires a comprehensive system of reciprocal representation agreements covering on-line rights for the whole world repertoire.

Only when taking Option 2 as the starting-point, but complemented by the above-mentioned indispensable obligations, can it be guaranteed that the music licensor collecting societies for both musical works and commercial phonograms are in a position to provide the necessary *blanket licence covering the world repertoire* and, in accordance with the practical needs of individual broadcasters, to cover terrestrial and satellite broadcasting as well as their Internet simulcasting and on-demand services.

EMI Music Publishing reaches agreement with MCPS-PRS and GEMA to establish 'one-stop' pan-European licensing of mobile and online digital rights in EMI MP's Anglo-American* songs

Ground breaking initiative follows recent recommendations from EC

Cannes - January 23, 2006. It is announced today that EMI Music Publishing has entered into a Heads of Agreement with the MCPS-PRS Alliance (the UK Collection Society) and GEMA (the German Collection Society), with the aim of offering to license the rights in EMI MP's Anglo-American songs* under a single license across Europe for Mobile and On Line Digital uses.

This ground breaking move will allow businesses, for the first time, to obtain a single unified license for the entirety of Europe, encompassing all rights necessary, to enable them to undertake their services without the need to contract on a territory by territory and Society by Society basis. The objective of this innovative agreement, when finalized, is to speed the expansion of existing mobile and On Line Digital services and encourage the development of new services. The result will be greater choice for consumers and increased opportunity for EMI MP's songwriters to benefit from the legitimate use of their songs.

This initiative is the first to follow the recent recommendations of the European Commission, which in October 2005, advocated that rights owners should be encouraged to use one body across Europe to license their songs for mobile and on line digital uses, so that a one-stop shop is available for Pan European licensing. The agreement, for the present, is limited to EMI MP's Anglo-American* repertoire.

EMI MP, in selecting the MCPS-PRS Alliance and GEMA to implement and administer this initiative, sought to ally with Societies well placed to work with their sister societies to forge an effective pan-European licensing and collection regime. Both GEMA and MCPS-PRS have been in the forefront of efforts to modernize the collective management of rights both within their territories and across Europe through international forums such as GESAC and BIEM.

Peter Ende, President & CEO Continental Europe, EMI Music Publishing said: "Our goal with this initiative is to help speed the development of new on-line and mobile services across the expanse of Europe – assuring that they take root as durable, legitimate businesses serving the needs of consumers regardless of where they may live. In that way not only will consumers benefit but so will our writers and composers.

We welcome the opportunity to work with the Alliance (MCPS-PRS) and GEMA in building the first pan-European one-stop shop for licensing these new ways of experiencing music. Their involvement will assure that licensees and rights holders will receive the best possible service."

Guy Moot, Managing Director EMI Music Publishing Ltd (UK) added: “I am pleased that, for the first time, our songs will be made available under one license for the entirety of Europe. The old rules of doing business need bringing up to date to give users the ease of licensing they and the digital world need. William Booth (Executive Vice President/General Manager), Terry Foster-Key (Executive Vice President, Continental Europe) and Peter Ende, together with their colleagues at GEMA and the Alliance, have got this to first base and everyone is committed to finalizing the engineering of what would be a groundbreaking deal for EMI Music Publishing and our writers. Our mission at EMI MP is to assure that the music our songwriters and composers entrust to our care is made broadly available in a responsible and effective manner. I believe that this is a major step forward not only for our songwriters and composers, but also for potential licensees. Ultimately the greatest winner will be consumers who will have greater access to our music, sooner.”

It is anticipated that the Heads of Agreement announced today will be finalized into a formal agreement in the next couple of months at which time this new approach to licensing will take effect. A further announcement will be forthcoming when a commencement date has been established.

* Footnote: Anglo-American songs include those composed and written in the United States, Canada, United Kingdom, Ireland, South Africa, New Zealand and Australia.

-ENDS-

About EMI Music Publishing

EMI Music Publishing, a unit of Britain's EMI Group PLC, is the world's leading music publisher with more than 1 million songs in its catalogue. It represents many of the top songwriters, producers and artists in the industry today, including James Blunt, Sean "P.Diddy" Combs, Jermaine Dupri, Enya, Gorillaz, Alicia Keys, Sting, Usher and Kanye West.

In addition, EMI Music Publishing owns the copyright to some of the world's best loved classic songs including "New York, New York", "Santa Claus Is Coming To Town", "Singin' In the Rain", and the song voted the "Song of the Century" - "Over The Rainbow”.

For further information please contact: Jonathan Morrish, The Outside Organisation.
Tel: 020 7436 3633, Mobile: 07802 239416, email: jonathan.morrish@outside-org.co.uk

Source : http://www.emigroup.com/Press/2006/press6.htm